

**Solid Waste Regulation Reform**  
**Revisions to 310 CMR 19.000**  
**Draft**

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department has provided comments in bold type to assist the reader. These comments will not be part of the final promulgated regulation. There are three categories of regulatory revisions here: **third-party inspections, permit streamlining, and standardizing.** Bold type is used to indicate the category of the revision.

19.006 Definitions

[NOTE TO REVIEWERS: Some definitions in 310 CMR 19.000 were revised on November 23, 2012 to be consistent with amendments of the Site Assignment Regulation (310 CMR 16.00). MassDEP is proposing additional amendments of definitions below to support the changes in the Solid Waste Program that have been developed as part of the Department's 2012 Regulatory Reform Initiative.]

**Third-party Inspections**

Active Landfill means a landfill that has an authorization to operate pursuant to 310 CMR 19.042 and for which the Department has not approved facility closure completion pursuant to 310 CMR 19.140.

**Presumptive Approval**

Asbestos Waste means Asbestos-containing Material and Asbestos-containing Waste Material as defined in 310 CMR 7.00. ~~As of October 7, 2005 Asbestos-containing Material is defined at 310 CMR 7.00 as follows: friable asbestos and any material containing 1% or more asbestos by area as determined by a laboratory using USEPA approved methods. This term includes, but is not limited to, sprayed on and troweled on materials applied to ceilings, walls, and other surfaces, insulation on pipes, boilers, tanks, ducts, and other equipment, structural and non-structural members, tiles, shingles or asbestos-containing paper. As of October 7, 2005 Asbestos-containing Waste Material is defined at 310 CMR 7.00 as follows: any friable asbestos-containing material removed during a demolition/renovation project and anything contaminated in the course of a demolition/renovation project including asbestos waste from control devices, bags or containers that previously contained asbestos, contaminated clothing, materials used to enclose a work area during a demolition/renovation operation, and demolition/renovation debris.~~

**Third-party Inspections**

Closed Landfill means a landfill for which the Department has approved facility closure completion or a post-closure monitoring plan pursuant to 310 CMR 19.140.

**Transfer Station Permit Streamlining**

Construction and Demolition (C&D) Waste Transfer Station means a transfer station permitted by the Department to accept fifty (50) tons per day or more of construction and demolition

waste. A C&D waste transfer station may accept other types of solid waste in accordance with its permit.

~~Existing Facility means a facility which, pursuant to a valid site assignment and Departmental approval, was either:~~

- ~~(a) in operation prior to July 1, 1990 and was not closed in a manner approved by the Department, or~~
- ~~(b) under construction on or before July 1, 1990. "Under construction" means that the owner or operator had obtained all necessary Federal, state and local permits and either:
  - ~~1. a continuous, physical, on-site construction program had begun; or~~
  - ~~2. the owner or operator had entered into contractual obligations, which could not be canceled or modified without substantial loss, for the construction of the facility to be completed within a reasonable time.~~~~

~~Expansion means: ,in the case of combustion facilities and handling facilities, an increase in the waste handling, treatment or processing capacity beyond the tonnage limits approved in the permit; and, in the case of landfills, a horizontal or vertical increase in the size of a facility beyond the horizontal or vertical limits specified or approved in the permit.~~

1. For a landfill, a horizontal or vertical increase in the size of the landfill beyond the horizontal or vertical limits specified or approved in the permit; and
2. For a transfer station:
  - a. In the case of a transfer station permitted by the Department to accept less than 50 tons per day (TPD), an increase in the tonnage acceptance limits approved in the permit that would result in the facility accepting 50 TPD or more; and
  - b. In the case of a transfer station permitted by the Department to accept 50 TPD or more, an increase in the tonnage acceptance limits of more than twenty-five percent (25%) beyond the limits approved in the permit, determined on a cumulative basis since the last new or expanded transfer-station permit was issued to the facility.
3. For any other handling facility or combustion facility, an increase in the tonnage acceptance limits beyond the tonnage limits approved in the facility permit.

~~Handling Facility means any facility that is not a disposal facility, for example transfer stations, storage facilities and other facilities and that is 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.~~

## **Presumptive Approval**

Medical or Biological Waste means Medical or Biological Waste as defined in 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.

~~New Facility means any solid waste management facility which had not commenced construction prior to July 1, 1990. (See also Existing Facility and Facility)~~

## **Transfer Station Permit Streamlining**

Responsible Official means 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 to bind the corporation pursuant to a corporate vote; or a representative of the corporation who has been duly authorized pursuant to a corporate vote to bind the corporation, provided the representative is responsible for the overall operation of the facility;
- (b) For a limited liability company: a person authorized pursuant to M.G.L. c. 156C, § 24 and the limited liability company's operating agreement with the authority to bind the company and all the members;
- (c) For a trust: a trustee or any other natural person authorized (i) to enter into contracts regarding the trust property, (ii) to bind the trust, or (iii) to encumber or dispose of the trust property;
- (d) For a partnership: a general partner who has been duly authorized ~~with the authority to bind the partnership or the proprietor, respectively;~~
- (e) For a sole proprietorship: the sole proprietor; or
- (f) 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.

## **Presumptive Approval**

Special Waste means any solid waste ~~that is determined not to be a hazardous waste pursuant to 310 CMR 30.000 and~~ that exists in such quantity or in such chemical or physical state, or any combination thereof, so that particular management controls are required to prevent an adverse impact to the public health, safety or the environment from the collection, transport, transfer, storage, processing, treatment or disposal of the solid waste.

## **Third-party Inspections**

Third-Party Inspection means an inspection conducted by a third-party inspector in accordance with 310 CMR 19.018.

Third-Party Inspector means an individual registered with the Department to conduct third-party inspections in accordance with 310 CMR 19.018.

## Standardizing Provisions

### 19.007: Access Rights of the Department

~~The Department may from time to time without prior notice make examinations and evaluations of solid waste management facilities to determine and enforce compliance with 310 CMR 19.000. The owner or operator shall in no way restrict, impede, or delay such inspections when performed by a representative of the Department upon presentation of Department issued identification.~~ This section relates to the rights of the Department to enter properties and to obtain and review information to verify compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2, and/or 310 CMR 19.000, in the handling, management, transfer, processing, storage, treatment, disposal, use or reuse of solid waste.

(1) Access to Facilities and Properties. At all reasonable times and without prior notice, personnel or authorized representatives of the Department may enter any facility or other property where solid waste has been, is being, or may be, placed, disposed, stored, transferred, handled, managed, processed, treated, used or reused, for the purposes of: protecting the public health, safety or the environment; preventing or abating nuisances; assessing, preventing or remediating damage to the environment; or determining or enforcing compliance; provided that personnel or authorized representatives of the Department present Department-issued identification and receive the consent of the owner, operator or person in control of said facility or property. Notwithstanding the foregoing, personnel or authorized representatives of the Department may enter a facility or property without such consent as authorized by the conditions of any authorization, determination, modification, permit, or other approval, by the conditions of any order or other enforcement document, if emergency conditions require immediate entry, or as otherwise authorized by law.

(2) During Inspection. After entry, personnel or authorized representatives of the Department may investigate, sample, photograph, or inspect any records, condition, equipment, practice, operation or property and make examinations and evaluations of a facility or other property specified in 310 CMR 19.007(1) to determine and enforce compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2 and/or 310 CMR 19.000 or take or arrange for actions authorized by M.G.L. c. 21H, § 4.

(3) Access to Information. Where necessary to ascertain facts relevant to compliance or to actual or potential harm to public health or safety, actual or potential nuisances, or actual or potential damage to the environment that may be caused by the handling, management, transfer, processing, storage, treatment, disposal, use or reuse of solid waste, the Department may request and any person shall, within a reasonable time, furnish the requested information and shall permit said Department personnel or authorized representatives to have access to and to copy or to take images of, all records relating thereto.

(4) Duty to Cooperate. The owner and operator of a facility or other property and the person possessing information as specified in 310 CMR 19.007(2) shall in no way restrict, impede, or delay an inspection or requests for information by personnel or authorized representatives of the Department where such inspection and requests are made pursuant to a reasonable request in accordance with 310 CMR 19.007 or with the conditions of any authorization, determination,

modification, permit, or other approval, or pursuant to the conditions of any order or other enforcement document, or as otherwise authorized by law.

(5) Warrants. Upon denial of access or if the Department cannot locate with reasonable efforts the owner, operator or person in control of a facility or property, or upon refusal of a person to provide information requested, the Department may seek, from a court, judge, justice or magistrate, a warrant authorizing personnel or authorized representatives of the Department to conduct a reasonable search of the facility or property, or to obtain the information requested. This section shall not preclude the Department from gaining access through other legal means, including, but not limited to, a court order or injunctive relief.

### **Transfer Station Permit Streamlining & Third-party Inspection**

#### 19.011: Signatories, General Certification, and Engineer's Supervision

(1) Signatories and General Certification. Any application for a permit, authorization to construct, authorization to operate, permit modification, and any determination, certification, report and any other document submitted to the Department pursuant to 310 CMR 19.000, shall be signed by the appropriate responsible official. Any person, required by 310 CMR 19.000 or any order or other enforcement document issued by the Department, to submit papers to the Department shall identify ~~themselves~~ himself or herself by name, profession, and relationship to the applicant and legal interest in the facility, and make the following ~~certification statement~~: "

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

(2) Engineering Supervision. This subsection 310 CMR 19.011(2) does not apply to any documents submitted to the Department pursuant to 310 CMR 19.018. All papers pertaining to design, construction, operation, maintenance, or engineering of a site or a facility shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology, air modeling, air monitoring and groundwater sections of an application or monitoring report shall be completed by competent professionals experienced in the fields of soil science and soil engineering, geology, air modeling, air monitoring and groundwater, respectively, under the supervision of a Massachusetts registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.

### **Presumptive Approval & Transfer Station Permit Streamlining**

#### 19.016: Post-closure Use

(1) No ~~Person~~ person shall use a solid waste management facility site for any purpose ~~other than that established in the permit or plan approval~~ after closure without: ~~first obtaining Departmental approval~~.

(a) obtaining a written approval from the Department for any post-closure use on a landfill's final cover or affecting an appurtenance to said landfill, including but not

limited to, appurtenances required for the management of leachate, landfill gas and stormwater; or

(b) submitting a valid certification in accordance with 310 CMR 19.034 for a post-closure use at a transfer station which is not a C&D transfer station; or

(c) obtaining a presumptive approval in accordance with 310 CMR 19.039(7) for any other type of post-closure use at any other type of solid waste facility not subject to 310 CMR 19.016(1)(a) or (b).

### **Third-party Inspections**

**310 CMR 19.018 is a new section.**

19.018: Third-Party Inspections.

(1) Purpose. 310 CMR 19.018 sets forth third-party inspection requirements for specific types of facilities.

(2) Applicability. The owner and operator of any solid waste facility to which this regulation applies shall have third-party inspections conducted and shall submit third-party inspection reports in accordance with the requirements of 310 CMR 19.018 commencing 180 days from **[the effective date of this regulation]**. 310 CMR 19.018 applies to the owner and operator of the following types of facilities and to individuals who conduct third-party inspections at such facilities:

(a) active landfills;

(b) closed landfills;

(c) handling facilities;

(d) combustion facilities; and

(e) other solid waste activities or facilities, as determined by the Department.

(3) Types of Inspections. The owner and operator of a facility listed above at 310 CMR 19.018(2) shall have the following types of third-party inspections conducted at the facility in accordance with the performance standards and other requirements of 310 CMR 19.018:

(a) facility operation and maintenance inspection;

(b) waste ban inspections at any facility with a waste ban compliance plan approved by the Department in accordance with 310 CMR 19.017(5); and

(c) any other third-party inspection as directed by the Department.

(4) General Requirements for Owners and Operators.

(a) Each owner and operator of a facility shall ensure that the facility:

1. is inspected by a third-party inspector who meets or exceeds the qualification criteria set forth in, and is registered with the Department pursuant to, 310 CMR. 19.018(5);

2. is inspected according to the frequency and the performance standards set forth in 310 CMR 19.018(6) and (7); and

3. submits copies of all third-party inspection reports to the Department in accordance with in 310 CMR 19.018(8).

(b) . The owner and operator shall not conduct their own third-party inspections and shall not retain any of the following individuals to conduct such third-party inspection:

1. a person with daily on-site responsibility for the operation or management of the facility to be inspected;
  2. a person with a financial interest in such facility;
  3. a spouse, parent, child, or sibling of the owner or operator;
  4. the spouse, parent, child, or sibling of any employee of the owner or operator;
  5. an employee of the owner or operator; provided that a municipal owner or operator may retain as a third-party inspector a municipal employee from a department, board or office of the municipality that is separate from the department, board or office of the municipality that owns or operates the facility (e.g., a municipal engineer or board of health agent to inspect a transfer station managed by the municipality's department of public works); and provided that:
    - a. the municipal owner or operator certifies that:
      - i. the municipal department, board or office that owns or operates the facility has not sought to compromise the independence of the third-party inspector in any way;
      - ii. the municipal department, board or office that owns or operates the facility has not sought to influence the conduct of the inspection or the third-party inspection report; and
    - b. the third-party inspector certifies that:
      - i. he or she has been able to conduct an independent third-party inspection; and
      - ii. the findings and recommendations made in his or her third-party inspection report have not been subject to influence by his or her municipal employer, by any co-worker or by any elected or appointed official of the municipality.
- (c) The owner and operator shall allow the third-party inspector full access to the facility and its records for the purpose of performing any activity related to conducting the third-party inspection or preparing the third-party inspection report. The owner and operator shall in no way restrict, impede, or delay such inspection when performed by the third-party inspector.
- (d) The owner and operator shall postpone any inspection for which the owner or operator or any of his or her employees learns of the date of inspection in advance.
- (e) The owner and operator shall provide true, accurate and complete information to the third-party inspector which is not misleading.
- (f) For any facility with an existing third-party inspection requirement, 310 CMR 19.018 shall apply; provided that the following shall remain in effect if it is more stringent than 310 CMR 19.018: any specific existing term of a permit, authorization to operate or other approval issued to the facility by the Department, including but not limited to beneficial use determination approvals, or of any order or enforcement document issued to the facility by the Department, including but not limited to terms that require more frequent of third-party inspections or impose facility- or site-specific requirements.
- (g) Nothing in this section shall be construed to limit the Department from determining that more frequent third-party inspections or more stringent requirements for third-party inspections are required for a facility subject to this section. When deemed necessary by the Department, such alternate inspection frequency or more stringent

conditions shall be set forth in the facility's permit, authorization to operate, or other written approval, order or other document issued by the Department pursuant to 310 CMR 19.000.

(5) General Requirements, Registration and Qualifications for Third Party Inspectors.

(a) Third-Party Inspector Requirements. Each individual performing inspections pursuant to 310 CMR 19.018 shall have the continuing duty to meet the following performance standards to ensure that his or her registration is maintained pursuant to 310 CMR 19.018(5):

1. be registered according to the process set forth in 310 CMR 19.018(5)(b) prior to conducting any third-party inspections after **[the effective date of this regulation]**;
2. file with the Department an updated qualifications statement every two years that is signed and certified in accordance with 310 CMR 19.011(1);
3. file with the Department an updated qualifications statement within thirty (30) days when there is a change in the individual's licensure status or professional standing;
4. complete all training requirements required under this section;
5. personally conduct and complete third-party inspections in accordance with the performance standards in 310 CMR 19.018(6) through (7);
6. prepare accurate and complete third-party inspection reports in accordance with the performance standards in 310 CMR 19.018(6) through (7) and submit third-party inspection reports to facility owners and operators in accordance with the requirements of 310 CMR 19.018(8);
7. not make any false, inaccurate, incomplete or misleading statements in any third-party inspection report; and
8. provide any information regarding third-party inspections to the Department upon request as soon as possible but in no event more than seven (7) business days following receipt of the request.

(b) Registration. To be eligible to conduct a third-party inspection required by 310 CMR 19.018, an individual shall register with the Department in advance by filing a qualifications statement. The qualifications statement is a self-certification by an individual, on a form provided by the Department, documenting that he or she meets or exceeds the minimum qualification requirements set forth at 310 CMR 19.018(5)(c) for the specific type or types of third-party inspection that said individual may be retained to conduct. The qualifications statement shall include:

1. all relevant professional licenses and certifications that the individual currently holds, including but not limited to:
  - a. Registered professional engineer (PE);
  - b. Registered sanitarian (RS);
  - c. Solid waste operator license(s);
  - d. Solid Waste Association of North America (SWANA) certification(s);
  - e. Licensed site professional (LSP); or
  - f. Asbestos inspector licensure and certification by the Massachusetts Department of Labor and Workforce Development Division of Occupational Safety;
2. specific academic degrees that the individual has received;

3. specific solid waste training that the individual has successfully completed, such as SWANA training or Department waste ban training; and
  4. all relevant experience in the solid waste management field.
- (c) Third-Party Inspector Qualifications. An individual may qualify to conduct one or more types of third-party inspection, as follows:
1. General Qualifications. In order to be qualified to conduct any type of third-party inspections pursuant to 310 CMR 19.018(5), a third-party inspector shall demonstrate that he or she has in-depth knowledge and understanding of solid waste management laws, regulations and requirements applicable to the specific type or types of third-party inspections that said individual may be retained to inspect;
  2. Waste Ban Inspector Qualifications. In order to be qualified to conduct a waste ban inspection at a facility pursuant to 310 CMR 19.018(5), the third-party inspector shall have successfully completed the Department's waste ban training course and any subsequent training required by the Department.
  3. Facility Operation and Maintenance Inspector Qualifications. In order to be qualified to conduct a facility operation and maintenance inspection of an active landfill, closed landfill, handling facility or combustion facility pursuant to 310 CMR 19.018(5), a third-party inspector shall, at a minimum, have the following credentials and experience:
    - a. Professional or Academic. The third-party inspector shall:
      - i. be a registered Massachusetts professional engineer in good standing;
      - ii. be a registered Massachusetts sanitarian in good standing;
      - iii. be a Massachusetts licensed site professional in good standing; or
      - iv. have a Bachelor's degree in engineering or in a physical or biological science; and
    - b. Experience. The third-party inspector shall have three or more years of full-time professional experience of the following type in the solid waste management field, or part-time equivalent experience:
      - i. managing a solid waste facility;
      - ii. designing or engineering solid waste facilities;
      - iii. inspecting solid waste facilities; or
      - iv. other solid waste consulting experience regarding the operation or management of solid waste facilities; and
    - c. Training. The third-party inspector shall have successfully completed any refresher training required by the Department.
  4. C&D Processing Facility Operation and Maintenance Inspector Qualifications. In order to conduct a facility operation and maintenance inspection of a C&D processing facility, a third-party inspector shall, at a minimum, have all of the credentials and experience set forth in 310 CMR 19.018(5)(c)1. and 3. and shall also have the following qualifications:
    - a. Asbestos License and Certification. The third-party inspector shall have an Asbestos Inspector license and classroom certification from the Massachusetts Department of Labor and Workforce Development, Division of Occupational Safety; and

- b. Asbestos Training and Experience. The third-party inspector shall have a minimum of forty (40) hours of on-the-job training in the identification of potential asbestos-containing material (ACM) and ACM sampling protocols or two months of full-time field experience, or part-time equivalent, under the direct supervision of a certified Asbestos Inspector or Management Planner, as prescribed in 453 CMR 6.07(2).
- (d) List of Registered Third-Party Inspectors. The Department shall create and maintain a list of those who have registered as third-party inspectors. After the first submittal of a qualifications statement by an individual for the purpose of being listed as a third-party inspector pursuant to 310 CMR 19.018(5), the Department may make a written determination, including the reasons therefore, not to list that individual if the Department determines in its sole discretion that the qualifications statement:
1. is incomplete;
  2. does not contain information sufficient to demonstrate that the individual meets the minimum qualifications set forth at 310 CMR 19.018(5) to conduct at least one of the types of third-party inspections required therein; or
  3. contains information that is not true, accurate or otherwise contains false or misleading information.
- (e) Removal from List or Change in Listed Qualification Status. The Department may make a written determination, including the reasons therefore, to remove an individual from the list of third-party inspectors or to change the status of the third-party inspector's qualifications (e.g., to reflect a change in status from qualified for all inspection types to only qualified for one type of inspection), if the Department determines in its sole discretion that the third-party inspector:
1. has submitted a the qualifications statement that is not true, accurate or otherwise contains false or misleading information;
  2. has failed to meet one or more of the obligations at 310 CMR 19.018(5)(a);
  3. is no longer qualified to conduct one or more types of third-party inspections;
  4. has a pattern of conducting inspections that do not meet the regulatory requirements; or
  5. has a pattern of submitting reports that do not meet the required standards.
- Any determination by the Department pursuant to this subsection shall be in writing and shall state the reasons for de-listing the individual or changing the status of the individual's qualifications. A registered third-party inspector may at any time notify the Department that he or she wants to be removed from the list of registered third-party inspectors or change his or her status.
- (f) Reconsideration and Appeal Rights.
1. Any individual who is omitted or removed from the list of registered third-party inspectors by the Department, or whose status on the list the Department has changed, may submit a written request to the Department for reconsideration of its determination. Said request shall be postmarked within twenty-one (21) days of the issuance of the Department's determination. The Department may request a meeting with the individual. The Department shall respond in writing to the reconsideration request and shall state the reasons for omitting or removing the individual. Such determination shall not become effective until the twenty-second (22) day after issuance or after issuance of a final decision in an

adjudicatory hearing, whichever is later. Failure to submit a written request for reconsideration in a timely manner shall be deemed to be a waiver of the individual's right to request an adjudicatory hearing.

2. Any individual who receives a determination on reconsideration pursuant to 310 CMR 19.018(5)(f)1. has the right to request an adjudicatory hearing from the Department. Any such individual shall be deemed to have waived such right unless the individual delivers, within twenty-one (21) days of the date of issuance of the Department's written determination on reconsideration, a request for an adjudicatory hearing that complies with the requirements of 310 CMR 1.01. Any individual who is aggrieved by a final decision in an adjudicatory hearing regarding a determination on reconsideration issued pursuant to 310 CMR 19.018(5)(f)1. may obtain judicial review thereof in accordance with the provisions of M.G.L. c. 30A, §14.

(6) Performance Standards for Third-Party Facility Operation and Maintenance Inspections.

(a) General performance standards.

1. A third-party inspector shall assess a facility's operation and maintenance practices and procedures to determine whether the facility is in compliance with all applicable requirements, including, but not limited to, requirements set forth in: 310 CMR 19.000; orders or other enforcement documents issued to the facility; permits, approvals, determinations and other authorizations issued to the facility by the Department; the facility's operation and maintenance plan; and the facility's waste ban compliance plan.
2. Prior to conducting each third-party facility operation and maintenance inspection, the third-party inspector shall identify and review all requirements applicable to the operation and maintenance of the facility, including but not limited to those requirements identified in 310 CMR 19.018(6)(a)1.
3. During each third-party inspection, in order to complete an assessment of the facility's compliance with all applicable requirements as set forth in 310 CMR 19.018(6)(a)1., the third-party inspector shall examine and evaluate all of the facility's solid waste activities, equipment, operations, practices, procedures, and records relevant to the type of third-party inspection being conducted, including without limitation:
  - a. the status and condition of all operating and monitoring equipment, structures, appurtenances and devices;
  - b. each operational aspect of the facility related to solid waste handling, processing, recycling, storage and disposal, including but not limited to:
    - i. vehicle weighing and recording of scale data;
    - ii. tipping areas and the unloading of incoming materials;
    - iii. inspection and handling of incoming and outgoing waste, recyclable materials and other materials regulated by the Department; and
    - iv. types and quantities of waste and materials received or stored at the facility;
  - c. status of all facility record-keeping requirements;
  - d. material processing areas, material processing equipment and material storage areas for recyclable materials, waste or residue;
  - e. facility records required to be kept pursuant to 310 CMR 19.000; and



(c) Additional Performance Standards for Third-Party Facility Operation and Maintenance Inspections of Closed Landfills.

1. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate a closed landfill's compliance with:
  - a. the landfill post-closure requirements set forth at 310 CMR 19.142;
  - b. conditions set forth in the facility's closure permit(s);
  - c. the conditions of any post-closure use permit(s); and
  - d. the requirements set forth at 310 CMR 19.016 and 310 CMR 19.143, as applicable, governing post-closure use activities.
2. The owner and operator of a closed landfill shall ensure that a facility operation and maintenance inspection conducted at each closed landfill at least once every two (2) calendar years, with at least six (6) months between consecutive inspections.

(d) Additional Performance Standards for Third-Party Facility Operation and Maintenance Inspections of Handling Facilities, Except C&D Processing Facilities.

1. The performance standards in this section apply to handling facilities that are not C&D processing facilities, which are addressed in 310 CMR 19.018(6)(e).
2. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a handling facility with:
  - a. the requirements for stormwater controls, equipment and weighing facilities set forth at 310 CMR 19.205;
  - b. the operation and maintenance requirements set forth at 310 CMR 19.207;
  - c. the requirements set forth in the facility's approved waste ban compliance plan; and
  - d. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.
3. The owner and operator of a handling facility shall ensure that a facility operation and maintenance inspection is conducted at the handling facility according to the following schedule:
  - a. For a facility permitted to accept less than fifty (50) tons per day shall undergo a third-party inspection at least once every calendar year, with at least four (4) months between consecutive inspections; and
  - b. For a facility permitted to accept fifty (50) tons or more per day shall undergo a third-party inspection at least twice every calendar year, with at least two (2) months between consecutive inspections.

(e) Additional Performance Standards for Third-Party Facility Operation and Maintenance Inspections of Construction and Demolition (C&D) Processing Facilities.

1. The performance standards in this section apply to C&D processing facilities only. They do not apply to other types of handling facilities, which are addressed in 310 CMR 19.018(6)(d).
2. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a C&D processing facility with:

- a. the requirements for stormwater controls, equipment and weighing facilities set forth at 310 CMR 19.205;
- b. the operation and maintenance requirements set forth at 310 CMR 19.206 and 19.207;
- c. the requirements set forth in the facility's approved waste ban compliance plan;
- d. the facility's suspect asbestos-containing material (ACM) inspection and management protocol; and
- e. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.
- 3. The third-party inspector shall observe random incoming waste loads and collect ACM samples from suspect materials and send those sample(s) for analysis in accordance with the facility's approved ACM inspection and management protocol.
- 4. The owner and operator of a C&D processing facility shall ensure that a facility operation and maintenance inspection is conducted at the C&D processing facility at least once in every two-month period, with at least twenty (20) days between consecutive inspections.
- (f) Additional Performance Standards for Third-Party Facility Operation and Maintenance Inspections of Combustion Facilities.
  - 1. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a combustion facility with:
    - a. the operation and maintenance requirements set forth at 310 CMR 19.207;
    - b. the ash handling and disposal conditions set forth in the combustion facility's permit and its operation and maintenance plan;
    - c. the requirements set forth in the facility's approved waste ban compliance plan; and
    - d. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste materials at the facility.
  - 2. The owner and operator of a combustion facility operation and maintenance inspection shall be conducted at the combustion facility at least once in every two-month period, with at least twenty 20 days between consecutive inspections.
- (7) Performance Standards for Third-Party Waste Ban Compliance Inspections.
  - (a) General. The owner and operator of a facility that has an approved waste ban compliance plan pursuant to 310 CMR 19.017 shall have the facility inspected by a qualified third-party inspector to assess compliance with the waste bans at 310 CMR 19.017 by haulers and generators delivering waste to the facility.
  - (b) Exemptions.
    - 1. An owner or operator of a handling facility that does not accept loads greater than five (5) cubic yards is exempt from this subsection 310 CMR 19.018(7); and
    - 2. An owner or operator of a facility that participates in the Class II Recycling Program in accordance with the terms of 310 CMR 19.300 is exempt from this subsection 310 CMR 19.018(7).

(c) General performance standards.

1. Prior to conducting each third-party waste ban compliance inspection, the third-party inspector shall identify and review all requirements applicable to waste ban compliance at the facility, including but not limited to, the facility waste ban compliance plan and the requirements of 310 CMR 19.017.
2. During an inspection and for the minimum number of loads as required pursuant to 310 CMR 19.018(7)(e), a third-party inspector shall examine and evaluate the compliance of the facility with its approved waste ban compliance plan, as follows:
  - a. Visually monitor all incoming loads received at the facility during the waste ban inspection;
  - b. Instruct the owner or operator to spread any load not identified as a failed load by the owner or operator in order to identify those loads found to be noncompliant with the waste bans set forth at 310 CMR 19.017;
  - c. Record all identified failed loads using photographs, weigh slips, and standardized waste tracking forms provided by the Department. Such forms may include, but are not limited to, hauler and generator information (to the extent known) and the percentage of the load that is comprised of waste ban material(s); and
  - d. Conduct a comparative analysis of the percentage of failed loads identified by the third-party inspector with the percentage of failed loads documented pursuant to the facility's comprehensive load inspections conducted in accordance with the facility's approved waste ban compliance plan.
3. Third-party inspections shall be unannounced and randomly timed during the facility's normal operating hours, as follows:
  - a. Inspection days shall be determined randomly from among the planned operating days of the facility during the inspection period specified in 310 CMR 19.018(7)(d).
  - b. The third-party inspector shall keep the selected dates of third-party inspections confidential and not notify the owner or operator, or any employee or individual affiliated with or related to the owner or operator, of such dates prior to arriving at the facility to conduct a third-party inspection.
4. Where a third-party inspector observes that the material delivered by haulers and generators to the facility deviates from the applicable requirements set forth at 310 CMR 19.018(7)(c)1., the third-party inspector shall document all such deviations and recommend corrective actions for the facility to take to return to compliance with such requirements.
5. The third-party inspector shall prepare an accurate and complete third-party inspection report presenting the results of his or her inspection in accordance with the performance standards set forth at 310 CMR 19.018(7) and submit the report to the owner and operator that complies with the requirements set forth at 310 CMR 19.018(8).

(d) Frequency. Waste ban inspections shall be conducted in accordance with the following frequency:

1. at an active solid waste landfill: at least once in every two-month period, with at least twenty (20) days between consecutive inspections;
2. at all handling facilities other than C&D processing facilities:
  - a. at a facility permitted to accept less than fifty (50) tons of waste per day, at least once every calendar year, with at least four (4) months between consecutive inspections;
  - b. at a facility permitted to accept fifty (50) tons or more of waste per day, at least twice every calendar year, with at least two (2) months between consecutive inspections;
3. at a C&D processing facility: at least once in every two-month period, with at least twenty (20) days between consecutive inspections;
4. at a combustion facility: at least once in every two-month period, with each such inspection at least twenty (20) days between consecutive inspections.

(e) Minimum Loads. Once the third-party inspector begins a waste ban inspection, the third-party inspector shall observe and document each and every load, until the following minimum number of loads, containing at least five (5) cubic yards of material each, have been observed:

1. For a facility permitted to accept from 1 to 99 tons of waste per day, four (4) vehicle loads;
2. For a facility permitted to accept greater than 99 but less than or equal to 299 tons per day, eight (8) vehicle loads;
3. For a facility permitted to accept greater than 299 but less than or equal to 499 tons per day, twelve (12) vehicle loads;
4. For a facility permitted to accept greater than 499 but less than or equal to 999 tons per day, sixteen (16) vehicle loads; or
5. For a facility permitted to accept more than 999 tons per day, twenty (20) vehicle loads.

#### (8) Third-Party Inspection Reports, Record-keeping Requirements and Procedures.

##### (a) Third-Party Inspector Requirements.

1. Report and Certification. A third-party inspector who has performed a third-party inspection pursuant to 310 CMR 19.018 shall prepare, sign, and certify his or her inspection report on a form or forms provided by the Department in accordance with 310 CMR 19.011(1) and submit the report to the owner and operator.
2. Facility Operation and Maintenance Inspection Report. For each facility operation and maintenance inspection, the third-party inspector shall prepare a third-party inspection report that describes and reports in detail the results of his or her inspection of the facility's compliance with all applicable requirements, including, but not limited to:
  - a. any deviation from compliance with the operation and maintenance requirements contained in the applicable requirements set forth at 310 CMR 19.018(6) through (7);
  - b. the status and condition of all operating and monitoring equipment, structures, appurtenances and devices;

- c. the status and condition of each operational aspect of the facility, including but not limited to, waste handling, processing, recycling, storage and disposal of waste and materials;
- d. a summary of all waste and materials received by and handled at the facility, including all loads identified and rejected because of contamination or unacceptability during the applicable inspection period specified at 310 CMR 19.018(6)(b) through (f) or 310 CMR 19.018(7)(d);
- e. the status of the facility's compliance with applicable record-keeping requirements;
- f. the estimated volumes of all materials and wastes stored at the facility at the time of the inspection;
- g. the analytical results of all sample(s) collected by the third-party inspector during the inspection, including chain of custody documentation (e.g., for suspect ACM sampling at C&D processing facilities);
- h. the overall condition of the entire facility, including the site perimeter and security measures such as fencing, facility entrance, access roads, and storm water management structures that handle runoff or leachate from solid waste activities and operations;
- i. any corrective action(s) proposed by the third-party inspector to be taken by the owner or operator, with recommended schedules for implementing the corrective action(s); and
- j. any additional information as required by the Department on a facility-specific basis.

3. Waste Ban Compliance Inspection Report. For a waste ban compliance inspection conducted pursuant to 310 CMR 19.018(7), the third-party inspector shall prepare a third-party inspection report that describes and reports in detail the results of his or her inspection, including but not limited to:

- a. any deviation from compliance with the waste bans at 310 CMR 19.017 by haulers and generators delivering waste to the facility; and
- b. a comparative analysis of the percentage of failed loads identified by the third-party inspector and the percentage of failed loads documented pursuant to the comprehensive load inspections conducted in accordance with the facility's approved waste ban compliance plan.

4. Report Format. Each third-party inspection report shall be submitted in the format specified by the Department.

5. Duty of Third-Party Inspectors to Provide Information. Upon request of the Department, a third-party inspector shall provide a copy of any third-party inspection report prepared by him or her to the Department within seven (7) business days. Upon request, a third-party inspector shall furnish any other information, documents or records associated with such inspection and allow the Department access to and to copy all records relating to the facility within seven (7) business days.

(b) Owner and Operator Requirements.

1. Reports and Certifications. The owner or operator of a facility shall be responsible for the timely submission of each third-party inspection report regarding the facility to the Department and the board of health of the

municipality in which the facility is located no later than thirty (30) days following the date of the inspection. The owner or operator shall also sign and certify such report in accordance with 310 CMR 19.011(1). Notwithstanding the foregoing, nothing in this section 310 CMR 19.018 relieves any individual of any duty to report or provide notice of any information that such individual is required to report in a shorter timeframe pursuant to any statute, regulation, permit, approval, determination, authorization, order or other requirement.

2. Corrective Actions. In the event that a third-party inspection report contains a recommendation for corrective action(s), the owner or operator shall submit, along with the inspection report, the following:
  - a. a written report documenting the completion of the corrective action(s);
  - b. documentation or explanation why corrective action is not needed; or
  - c. a plan and schedule for completing corrective action(s), on a form provided by the Department. The owner or operator may elect to correct deviations identified in the third-party inspection report in a manner that is different than that recommended by the third-party inspector, so long as the facility is brought back into compliance with applicable requirements.
3. Deficiency Notice. In the event that the Department issues a written deficiency notice to the owner or operator regarding any submittal required by 310 CMR 19.018, the owner or operator shall, within twenty-one (21) days of the date of issuance of the Department's notice, provide a written response to the Department that describes how the facility intends to correct the deficiencies identified by the Department and provides a compliance schedule.
4. Records. A copy of each third-party inspection report shall be maintained at the facility in accordance with the record-keeping requirements of 310 CMR 19.000. The owner and operator shall make third-party inspection reports available to personnel or authorized representatives of the Department for review at the facility upon request.

### **Transfer Station Permit Streamlining**

#### 19.020: Permit Requirements for Solid Waste Management

#### (1) Permit Requirements for Construction and Operation of Solid Waste Management Facilities:

No person shall construct, operate or maintain a facility to store, process, transfer, treat or dispose of solid waste except in accordance with:

- (a) a valid site assignment;
- (b) a solid waste management facility permit ("permit"), issued in accordance with 310 CMR 19.000; an Existing Facility Permit issued pursuant to the Solid Waste Management Facility regulations in effect on July 1, 1990, or a Permit By Rule for Certain Transfer Stations issued pursuant to the Solid Waste Management Facility regulations in effect on July 1, 1990;
- (c) an authorization to construct the facility issued by the Department in accordance with 310 CMR 19.041; and
- (d) an authorization to operate the facility issued by the Department in accordance with 310 CMR 19.042.

~~(2) Inactive Landfill Facility.~~

~~(a) Prior to January 1, 1992, the owner of an inactive landfill or dumping ground that was in operation after April 21, 1971 but ceased operations prior to July 1, 1990 shall have filed:~~

- ~~1. proof that the facility was closed in accordance with plans approved by the Department; or~~
- ~~2. a final closure and post closure plan in accordance with 310 CMR 19.030(3)(c)5. if the facility was not closed in accordance with a closure/post-closure plan approved by the Department.~~

~~(b) The owner of an inactive landfill or dumping ground that ceased operations prior to April 21, 1971 may be required to file a final closure and post closure plan if so ordered by the Department.~~

**Transfer Station Permit Streamlining**

**310 CMR 19.029 is a new section.**

19.029 Permit Application, Review, Approval and Issuance Procedures

(1) Requirements for Construction, Operation, Modification and Expansion of a Solid Waste Management Facility.

No person shall construct, operate, maintain, expand or modify a facility to store, process, transfer, treat or dispose of solid waste except in accordance with:

- (a) a valid site assignment;
- (b) a solid waste management facility permit (“permit”) and any applicable facility expansion permit issued in accordance with 310 CMR 19.032;
- (c) an authorization to construct the facility issued by the Department in accordance with 310 CMR 19.041;
- (d) an authorization to operate the facility issued by the Department in accordance with 310 CMR 19.042 or, for a transfer station which is not a C&D waste transfer station, a certification in accordance with 310 CMR 19.035; and
- (e) any applicable modification permit issued in accordance with 310 CMR 19.033 or 310 CMR 19.034.

(2) Application. The owner or operator intending to design, construct, operate, maintain, expand or modify a facility shall submit an application in accordance with 310 CMR 19.030.

(3) Review. The application shall contain sufficient information so that the Department can evaluate whether the application meets the applicable review criteria 310 CMR 19.038.

(4) Applicable Permit Procedure.

(a) Use of Permit Procedure at 310 CMR 19.032. The permit review process set forth at 310 CMR 19.032 shall be used to review the following applications:

1. an application for a new facility;
2. an application for expansion of a handling facility, including a transfer station;
3. an application for expansion of a combustion facility;
4. an application for lateral expansion of a landfill;
5. an application for vertical expansion of a landfill; or
6. any other application the Department deems appropriate.

(b) Use of Permit Procedure at 310 CMR 19.033. The permit review process set forth at 310 CMR 19.033 shall be used to review the following:

1. an application for a permit modification;
2. an application for corrective action (including but not limited to assessment);
3. a closure plan;
4. a post-closure plan;
5. an application for post-closure use on the final cover of a landfill or affecting an appurtenance of a facility;
6. an application for a Beneficial Use Determination; or
7. any other application the Department deems appropriate.

(c) Use of Presumptive Approval Permit Procedure at 310 CMR 19.034. The presumptive approval permit procedure set forth at 310 CMR 19.034 shall apply to the following proposed modifications:

1. any administrative change at a facility;
2. a post-closure use that:
  - a. does not affect the facility's appurtenances, and
  - b. is not located on the final cover of a landfill;
3. acceptance of certain special wastes pursuant to 310 CMR 19.061;
4. a minor operational or equipment change, such as, but not limited to, a change in processing equipment, a change from diesel to electric powered equipment, or a change in the facility's floor plan with the substitution of the same or similar equipment or the addition of mobile equipment; and
5. any other modification as determined by the Department.

(d) Use of Certification Procedure at 310 CMR 19.035 for Transfer Station (that is not a C&D Waste Transfer Station). The certification process at 310 CMR 19.035 shall be used in the following situations:

1. thirty (30) days prior to the operation of a new or expanded transfer station or the acquisition of a transfer station;
2. thirty (30) days prior to a modification in the design, construction, operation, maintenance, closure, or post-closure use of the transfer station;
3. when a certification has not been submitted within the previous five (5) years;  
or,
4. one hundred and twenty (120) days after [the effective date of these regulations] for an operating transfer station with a valid permit.

### **Transfer Station Permit Streamlining**

#### 19.030: Application for a Solid Waste Management Facility Permit

(1) General. Any person intending to construct, operate or maintain a solid waste management facility shall file an application for a permit. Applications shall consist, at minimum, of the plans, descriptions, reports and other information required in 310 CMR 19.030(3).

(2) Facility-Specific Plans. In addition to the plan requirements set forth in 310 CMR 19.030(3), the applicant for a new facility shall submit such additional or alternative information as required in other parts of 310 CMR 19.000 governing the permitting of specific types of solid waste management facilities.

(3) Application. An application for a permit shall include:

- (a) a completed application on a form as may be provided by the Department;
- (b) applicant identification which shall include such information and documentation as the Department deems necessary to fully identify all persons having a legal or financial interest in, or operational responsibility for, the site or facility; those persons' legal status; those persons' ~~or~~ prior ownership or operating history of solid waste facilities; and other relevant information ~~which identifies the applicant and~~ regarding the applicant's competency to own and/or operate a facility;
- (c) a solid waste management facility plan ("Plan") for the particular type of solid waste management facility ~~including that includes~~ such maps, data, information and documents as required in the applicable facility specific regulations. The Plan shall, at a minimum, be comprised of the following components:

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.030(3)(c)1. through 310 CMR 19.030(3)(g) because no revisions to these subsections are proposed. These subsections give detail on what is included in a Plan, and other requirements for the permit application including a public health report, site assignment boundaries and MEPA status.]**

~~(g) The first Technical Review Period (TR1) as specified under 310 CMR 4.00: Timely Action and Fee Provisions, shall not be completed until the Secretary's final MEPA certificate has been issued for the project.~~

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.030(4) through (6) because no revisions to these subsections are proposed. These subsections outline requirements for filing and confidentiality requests, variances and how information must be presented.]**

(7) Signatory. An application shall be signed and certified in accordance with 310 CMR 19.011(1).

(8) Engineering Supervision. All papers pertaining to design, construction, operation, maintenance, or engineering of a site or a facility shall bear the seal and signature of a Massachusetts registered supervising engineer or other applicable person as required at 310 CMR 19.011(2).

~~(8) Certification. Application shall be signed and certified to by the applicant as to all statements of fact therein in accordance with 310 CMR 19.011.~~

~~(9) Signatories. All applications for permits, authorizations or modifications submitted pursuant to 310 CMR 19.000 shall be signed as follows:~~

- ~~(a) If the applicant is a corporation, by an individual who is a responsible corporate officer of the corporation and who is authorized by the corporation, in accordance with corporate procedures, to sign such documents on behalf of the corporation. As used in this section, "responsible corporate officer" shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other~~

~~individual who performs for the corporation policy-making or decision-making functions similar to those performed by a president, secretary, treasurer, or vice president.~~

~~(b) If the applicant is a partnership, by a general partner.~~

~~(c) If the applicant is a sole proprietorship, by the proprietor.~~

~~(d) If the applicant is a municipality or public agency, by a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.~~

## **Standardizing**

### 19.031: Review of Applications for Completeness

~~(1) File Number. The Department shall assign a file number to each application when the application is filed with the Department. The file number shall be used in all subsequent correspondence between the Department and the applicant regarding the application and shall appear on any subsequent filings by the applicant.~~

~~(2) Completeness Review. The Department shall initially determine whether each application is administratively complete. If an application is determined to be administratively incomplete the Department shall provide written notice to the applicant. The notification shall identify the deficiencies and specify the timeframe for the applicant to respond to the notification. Said notification shall not constitute a determination as to the technical adequacy of the application and shall comply with 310 CMR 4.00, if applicable. If the applicant does not respond within the timeframe specified by the notification and the applicable regulations then the Department may act on the application based on the existing information.~~

~~(3) Complete Applications. An application shall be deemed complete for the purposes of initiating the review process described at 310 CMR 19.032 through 19.036 or 310 CMR 19.037 when the Department receives the application and determines that all required information has been submitted, provided that the Department may require additional information at any time during the permit review period.~~

## Transfer Station Permit Streamlining

### 19.032: Permit Procedure for ~~Review of Applications for a~~ New Facility~~ies~~ or Expansions Permit Application

(1) General. This section describes the permit procedure for a permit application for a new facility, an expansion of an existing facility, or for any other application the Department deems appropriate as specified in 310 CMR 19.029(4)(a). ~~Applicability. The Department shall review applications submitted pursuant to 310 CMR 19.000, using either the permit review procedures set forth at 310 CMR 19.032 through 19.036 (Review of Applications for New Facilities or Expansions) or the procedures set forth at 310 CMR 19.037 (Review Procedure for Permit Modifications, Permit Renewals and Other Approvals). The decision process set forth at 310 CMR 19.032 through 19.036 shall be used to review the following:~~

- ~~(a) applications for a new facility;~~
- ~~(b) applications for expansion of a combustion facility;~~
- ~~(c) applications for lateral expansion of a landfill;~~
- ~~(d) applications for vertical expansion of a landfill;~~
- ~~(e) applications for expansion of a handling facility; and~~
- ~~(f) such other applications as the Department deems appropriate.~~

(2) Issuance of a Draft Decision.

(a) The Department shall prepare a draft decision. A draft decision for granting a permit shall include all appropriate conditions, standards, and requirements necessary to establish a new facility or to conduct approved activities at an existing facility.

(b) Each draft decision shall be accompanied by a fact sheet briefly describing:

1. the facility or activity which is the subject of the draft decision;
2. the type and quantity of wastes which are to be handled;
3. the reasons for the terms and conditions set forth therein; and
4. the reasons why requested variances or alternatives to required standards are or are not proposed to be approved.

~~(3c)~~ Distribution of the Draft Decision. The Department shall send a copy of the draft decision and the accompanying fact sheet; to the applicant, the local board of health, abutting board of health, if any, and, on written request, to any other person.

~~(4d)~~ Description of Procedures. A description of the procedures for reaching a final decision on the permit application shall accompany the copy of the draft decision and shall include:

- ~~(a)~~ 1. the beginning and ending dates of the comment period and the address where comments will be received;
- ~~(b)~~ 2. any other procedures by which the public may participate in the process leading to a final permit decision; and
- ~~(c)~~ 3. the name and telephone number of an individual to contact for additional information.

### ~~19.033: (433) Public Notice for Facility Permit Actions.~~

~~(1a)~~ Public Notice. The Department shall cause public notice to be given when:

- ~~(a)~~ 1. a draft decision on a facility permit application has been prepared; or

~~(b)2.~~ a public hearing on a draft decision has been scheduled. Public notice in this case shall be given at least 21 days prior to the hearing date.

~~(2b)~~ Notice of More Than One Permit. A public notices may describe more than one permit or permit action.

~~(3) Comment Period.~~ Public notices issued pursuant to 310 CMR 19.033(1) shall allow at least 30 days for public comment. The comment period shall begin on the date the public notice is first published in a newspaper as specified at 310 CMR 19.033(4)(b) or on a later date specified in the public notice.

~~(4c)~~ Method of Notice. Public notice shall be given by the following methods:

~~(a)1.~~ By mailing notice to:

~~1a.~~ the applicant;

~~2b.~~ the board of health of the ~~city or town~~ municipality in which the facility is to be located or the permitted activity is proposed;

~~3c.~~ the board of health of any municipality within ½ mile of the proposed facility (“abutting board of health”); and

~~4d.~~ abutters of the facility site.

~~(b)2.~~ By publication, paid for by the applicant, in a daily or weekly newspaper of general circulation in the locality affected by the facility.

~~(5d)~~ Content of Notice. All public notices shall, at a minimum, contain the following information:

~~(a)1.~~ a description of the proposed facility including the type of facility, proposed tonnage, location and hours of operation;

~~(b)2.~~ the identity and mailing address of the applicant;

~~(c)3.~~ the public location where the application can be inspected; and

~~(d)4.~~ either the time period for written comments on the application and the address to which comments should be mailed, and, if a public hearing is to be held, the public hearing information set forth at 310 CMR 19.032(5).;

~~19.034: The (4) Comment Period.~~

~~(a)~~ A public notice issued pursuant to 310 CMR 19.032(3) for a draft decision shall allow at least 30 days for public comment. The comment period shall begin on the date the public notice is first published in a newspaper as specified at 310 CMR 19.032(3)(c)2. or on a later date specified in the public notice.

~~(4b)~~ Written Comments. During the public comment period, ~~provided for in 310 CMR 19.033(3)~~ any interested person may submit written comments on the draft decision to the office of the Department processing the permit request.

~~(2c)~~ Extending or Reopening the Public Comment Period. The Department may extend or reopen the public comment period ~~prescribed in 310 CMR 19.033(3)~~ to allow for the issuance of a modified draft decision or to give interested persons an opportunity to comment on the information or arguments submitted. If the Department gives such an extension, public notice thereof shall be given in the manner prescribed in 310 CMR 19.0332(3). Such notice shall specify any new issues to be considered.

~~19.035: (5) Public Hearing.~~

~~(4a)~~ Circumstances Requiring Hearing. The Department shall schedule a public hearing within the ~~community~~ municipality wherein the proposed facility is to be located when:

- ~~(a)~~1. the applicant requests a public hearing;
- ~~(b)~~2. the Commissioner determines that there is sufficient public interest in unresolved issues of concern; or
- ~~(c)~~3. the Department prepares a modified draft decision with substantial revisions from the original draft decision ~~issued pursuant to 310 CMR 19.032(2)~~ as a result of comments received pursuant to 310 CMR 19.034~~2~~(4). Copies of the modified draft decision shall be distributed in accordance with 310 CMR 19.032(~~3~~2)(~~c~~).
- ~~(2)~~b. Content of Public Hearing Notice. Public notice of the public hearing shall be given in the manner described in 310 CMR 19.03~~3~~2(3) and shall include:
- ~~(a)~~1. the date, time, and place of the public hearing; and
- ~~(b)~~2. the nature and purpose of the public hearing.
- ~~(3)~~c. Public Hearing Procedures.
- ~~(a)~~1. Hearing Officer. The Department shall designate a representative to conduct the public hearing. The Hearing Officer shall have authority to ensure an orderly presentation of issues, comments, data, and arguments, and to ensure an adequate and comprehensible record of the proceedings. The Hearing Officer may, at his or her discretion, without limitation of the foregoing:
- ~~1~~a. define relevant issues, receive and consider relevant matter and exclude irrelevant or unduly repetitive matter;
- ~~2~~b. determine the order in which persons wishing to do so may present oral comments;
- ~~3~~c. conduct appropriate examination of persons offering oral comments;
- ~~4~~d. establish a reasonable time limit for all persons wishing to offer oral comments;
- ~~5~~e. require the applicant or any other person intending to present studies or exhibits for consideration at the hearing to file such material within a reasonable time in advance of the hearing;
- ~~6~~f. require any person who refers to or relies upon written information or expert opinion in offering comments to provide copies of such material within a reasonable time after the hearing;
- ~~7~~g. permit an opportunity for oral rebuttal of comments received;
- ~~8~~h. allow a reasonable time after the hearing for providing written comment or rebuttal; and
- ~~9~~i. order adjournment, recess, or rescheduling of the hearing.
- ~~(b)~~2. Participation in the Hearing. Any person may attend and observe the public hearing. Any person wishing to offer oral comments may do so upon filing a written statement containing the name, address, and telephone number of an authorized representative to whom correspondence may be addressed for purposes of the hearing.
- ~~(c)~~3. Authorized Representative. An individual may appear on his or her own behalf. A duly authorized officer or employee may represent a corporation; a duly authorized member may represent a partnership, joint venture or association; and an authorized trustee may represent a trust. Any person shall have the right to be accompanied, represented and advised by an authorized agent or attorney.

~~(d)~~4. Conduct of Hearings. ~~The H~~hearings shall be as informal as may be reasonable and appropriate under the circumstances. The Hearing Officer shall ensure that the conduct of persons at the hearing will at all times be orderly.

~~(e)~~5. Withdrawal of Request for Hearing. The applicant or any other person who requested a hearing may withdraw the request, or may elect to submit any comments or documents without a hearing, by filing with the Department a written withdrawal. If notice of a hearing has already been published pursuant to 310 CMR 19.032(3), such withdrawal ~~must~~shall be filed at least ten days prior to the scheduled hearing, and notice of the withdrawal shall be provided in the same manner specified in 310 CMR 19.03~~(2)~~(3).

~~(f)~~6. Recordings and Transcripts. The proceedings at the hearing shall be recorded either electronically or stenographically. Transcripts or electronic copies shall be supplied to any person, upon request, at his or her own expense. Any person, upon request, may order a stenographer to transcribe the proceedings or the Department's electronic recording at his or her own expense. In such event, a stenographic record shall be provided to the Department at no expense to the Department, and upon such other terms as the Hearing Officer shall order.

~~19.036:~~ (6) Issuance of the Final Decision on a Permit Application.

~~(1)~~a) Issuance and Public Notice. After the close of the public comment period, or, if applicable, the close of the public hearing, whichever is later, the Department shall issue a final decision on the permit application. Notice of the Department's final decision and summary response to comments shall be given to the applicant by electronic transmission upon agreement by the applicant, or, if not, by first class mail. Notice shall also be provided to the board of health, any abutting board of health and each person who has requested notice of the final decision.

~~(2)~~b) Effective Date. Unless otherwise stated ~~on~~in the permit, the permit shall be effective upon issuance.

~~(3)~~c) Summary Response to Comments. At the time the decision is issued, the Department shall prepare a summary of the major comments on the draft decision and a response to comments and shall describe any major changes made to the draft decision as a result of comments received~~the public hearing.~~

~~(4)~~d) Legal Challenges.

~~(a)~~1. Appeal. Any person aggrieved by the ~~issuance or denial of the final~~ permit decision or permit modification may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, § 150A and c. 30A: not later than 30 days following the date of receipt-issuance of the final permit decision to the applicant. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the final permit decision by a court of competent jurisdiction, the final permit decision shall ~~remain effective or become effective at the conclusion of the 30-day period~~be effective in accordance with 310 CMR 19.032(6)(b).

~~(b)~~2. Notice of Action. Any aggrieved person intending to appeal a ~~grant or denial of a final~~ permit decision to the Superior Court shall first provide notice of

intention to commence such action. Said notices of intention shall include the Department file number and shall identify with particularity the issues and reason why it is believed the final permit decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the permit application, if applicable, at least five days prior to the filing of an appeal.

~~(e)~~3. No allegation shall be made in any judicial appeal of a final permit decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in 310 CMR 19.000, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

### **Transfer Station Permit Streamlining**

#### **19.0373: Permit Review Procedure for an Application for a Permit Modifications, Permit Renewals and/or Other Approvals**

(1) General. This section describes the permit procedure for a permit application for a modification to a facility or other application as the Department deems appropriate as specified in 310 CMR 19.029(4)(b). ~~Applicability. The permit review process set forth at 310 CMR 19.037 shall be used to review the following:~~

~~(a) a closure and post-closure plan;~~

~~(b) applications for modifications filed pursuant to 310 CMR 19.039 and 310 CMR 19.040, except expansions as described at 310 CMR 19.032(1);~~

~~(c) applications for post-closure use of a facility for purposes other than solid waste management;~~

~~(d) applications for authorization to construct filed pursuant to 310 CMR 19.041;~~

~~(e) applications for authorizations to operate, and renewals thereof, filed pursuant to 310 CMR 19.042; and~~

~~(f) such other applications as the Department deems appropriate.~~

(2) Issuance of Permit Decision and Public Notice. The Department shall mail a copy of its permit decision on an application to the applicant, the board of health of the ~~city or town~~ municipality in which the facility is located, the board of health of any municipality within ½ mile of the proposed facility (~~“abutting board of health”~~) and any other person who has requested in writing that the Department provide a copy of the permit decision.

(3) Effective Date. Unless otherwise stated in the permit ~~decision or approval~~, the permit decision shall be effective upon its issuance.

(4) Review of Decision.

(a) Provisional Decision. The Department may defer the effective date of a permit decision for the purpose of obtaining comments by issuing a provisional permit prior to a final decision. Such a provisional decision shall be accompanied by a notice stating that written comments may be submitted to the Department for a period of at least 21 days

after the date of issuance of the provisional decision. Prior to the effective date established therein, the Department ~~shall issue a final permit~~ may rescind or modify the provisional decision at the end of the comment period ~~by written notice~~.

(b) Where no provisional decision is issued, an applicant aggrieved by the Department's Decision, ~~may~~ within 21 days of the issuance of the Department's permit decision to the applicant, may file a written request, with the appropriate regional office of the Department, that the permit decision be deemed a provisional decision, and a written statement of the basis on which the applicant believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the permit decision shall be deemed a provisional decision ~~with an effective date 21 days after the Department's receipt of the request~~. Such a request shall reopen the administrative record, and the Department ~~shall issue a final~~ may rescind, supplement, modify, or reaffirm its permit decision at the end of the comment period. Failure by an applicant to exercise the right provided in 310 CMR 19.033~~7~~(4)(b) shall constitute a waiver of the applicant's right to appeal.

#### (56) Legal Challenges.

(a) Appeal. Any person aggrieved by the ~~issuance or denial of the final~~ permit decision, except as provided for under 310 CMR 19.033~~7~~(4)(b), may file an appeal for judicial review of said permit decision in accordance with the provisions of M.G.L. c. 111, § 150A and M.G.L. c. 30A ~~not~~ later than 30 days following the date of receipt issuance of the final permit decision to the applicant. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the final permit decision by a court of competent jurisdiction, the final permit decision shall ~~remain effective or become effective at the conclusion of the 30-day period~~ be effective in accordance with 310 CMR 19.033(3).

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

(c) No allegation shall be made in any judicial appeal of a final permit decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in 310 CMR 19.000, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

#### **Presumptive Approval**

**All the language in 310 CMR 19.034 is new. The existing presumptive approval process is shown in redline at 310 CMR 19.039.**

#### 19.034 Presumptive Approval Process

(1) General. This section describes the procedure for the Department's presumptive approval of certain modifications to a facility. The modification specified in 310 CMR 19.029(4)(c) may be made without prior written approval from the Department provided that:

- (a) at least 45 days prior to commencing such modification, the owner or operator submits to the Department and the board of health a written description of the proposed modification on an application form provided by the Department;
- (b) within 45 days of receipt of the form, the Department has not determined, in a letter to the owner and operator, that 310 CMR 19.034 does not apply to the proposed modification or that additional information is needed to make that determination; and
- (c) within 45 days of completion of the modification, the owner or operator submits to the Department as-built plans and/or a report describing the modification.

**Transfer Station Permit Streamlining**  
**310 CMR 19.035 is a new section.**

19.035: Transfer Station Certifications

(1) General. The responsible official for a transfer station that is not a C&D waste transfer station shall submit a certification to the Department in accordance with 310 CMR 19.035 by the earliest of the following applicable deadlines:

- (a) thirty (30) days prior to the operation of a new or expanded transfer station or the acquisition of a transfer station;
- (b) thirty (30) days prior to a modification in the design, construction, operation, maintenance, closure, or post-closure use of the transfer station;
- (c) when a certification has not been submitted within the previous five (5) years; or,
- (d) one hundred and twenty (120) days after [the effective date of these regulations] for an operating transfer station with a valid permit.

(2) Form. The certification shall be submitted on a form supplied by the Department. The certification shall address compliance with the permit(s) issued to the transfer station and include all information regarding any changes at the transfer station relating to the design, construction, operation, maintenance, closure and post-closure use of the transfer station since the last certification was submitted.

(3) Operating Transfer Stations. For a transfer station operating prior to [the effective date of these regulatory revisions], the transfer station permit shall consist of the permit itself and the authorization to operate and any modifications thereto. Any expiration date contained in the transfer station permit shall have no force and effect after the owner or operator of the transfer station submits a valid certification pursuant to 310 CMR 19.035.

(4) Certification Statement. The responsible official for the transfer station shall submit a certification and shall:

- (a) state whether the transfer station is in compliance with its permit and all other applicable requirements including, but not limited to, 310 CMR 19.043;
- (b) identify any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement, including, but not limited to, any notifications required pursuant to M.G.L c. 21E, § 7, and 310 CMR 40.0300 (releases and threats of release of oil and/or hazardous material), and any

reporting of violations required pursuant to 310 CMR 7.02(6) (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520 (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department;

(c) if the transfer station is not in compliance, state what the owner and operator will do to return the transfer station to compliance and the date by which compliance will be achieved; and

(d) include the following statement:

I, [name of responsible official], attest under the pains and penalties of perjury:

1. That I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;

2. 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;

3. That systems to maintain compliance are in place at the transfer station and will be maintained even if processes or operating procedures are changed;

4. That I am fully authorized to make this attestation on behalf of this transfer station; and

5. That I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information.

(5) Burden of Proof. In every proceeding, the owner and operator of any transfer station which qualifies for a certification pursuant to 310 CMR 19.035 bears the burden to persuade the Department that the transfer station does not create nuisance conditions and does not pose a threat to public health, safety or the environment.

## **Reorganization**

**This section was moved from 310 CMR 19.040. Language existing at 19.040 is shown in standard text and revised text is shown in redline.**

19.036: Department's Modification, Suspension or Revocation of a Permit

(1) General. The Department may rescind, suspend, or modify a permit when it determines that the operation or maintenance of a facility results in a threat to the public health, safety or the environment in accordance with the provisions of M.G.L. c.111, § 150A and after a hearing in accordance with M.G.L. c.30A, § 11.

(2) Burden of Proof. Where any violation of M.G.L. c. 111, § 150A or 310 CMR 19.000 or any permit or order issued thereunder occurs, the burden shall be on the operator to prove that said violation does not constitute a threat to the public health and safety or to the environment.

(3) Scope of Determination of Threat. In considering whether the continued operation of a facility presents a threat to the public health and safety or the environment the Department may consider:

(a) the likelihood of a discharge or release of pollutants from the facility;

(b) the actual or potential impacts from a discharge or release of pollutants from the facility; or

(c) the potential adverse impacts on the Commonwealth's natural resources from the disposal of restricted materials ~~restricted~~ pursuant to 310 CMR 19.017: ~~Waste Control~~.

310 CMR 19.037 Reserved.

**Transfer Station Permit Streamlining**

19.038: ~~Applicability and~~ Review Criteria for a New or Expanded Facility Permit or Permit Modification.

(1) Applicability of Permitting Criteria. The criteria the Department shall apply when reviewing a permit applications (~~e.g., landfills, combustion facilities, handling facilities, post-closure use~~) ~~for Authorizations to Construct (ATCs) under 310 CMR 19.041,~~ or an application for a permit modifications are as follows:-

- (a) New or Expanding Landfills. A ~~P~~permits application for a new landfills or landfill expansions shall comply with the criteria set forth at 310 CMR 19.038(2)(a), (c) and (d).
- (b) New or Expanding Combustion Facilityies. A ~~P~~permits application for a new or expanding combustion facilityies shall comply with the criteria set forth at 310 CMR 19.038(2)(a) and (b).
- (c) New or Expanding Handling Facilityies. A ~~P~~permits application for a new or expanding handling facilityies shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1. through 11., 13. and 14., and (b);).
- (d) Modifications of ~~Aa~~ Landfills, Combustion Facilityies ~~and-or~~ Handling Facilityies. An application for a mModifications of a landfill, combustion facility or handling facility not addressed at 310 CMR 19.038(1)(a), (b), ~~or (c), or (e)~~ shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1. through 12.
- (e) Post-closure Use. A ~~p~~Permits application for the post-closure use of a facility ~~for purposes other than use as a solid waste management facility~~ shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1., 3., 4., 6., 8., and 10.

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.038(2) because no revisions to this subsection is proposed. This subsection details the review criteria for review of applications for permit and permit modifications.]**

**Presumptive Approval & Transfer Station Permit Streamlining**

310 CMR 19.039 Reserved.

19.039: Applicant's Request to Modify a Permit

~~(1) General. An owner or operator seeking to alter or change a permit or the Department approved design, operation and maintenance procedures or closure/post-closure design of a facility, including any conditions imposed in the permit, shall apply to the Department for approval to modify the permit in accordance with 310 CMR 19.039.~~

~~(2) Types of Modification. Acts including but not limited to the following constitute modifications to which 310 CMR 19.039 applies:~~

- ~~(a) expansions of solid waste management facilities;~~
- ~~(b) acceptance of solid waste in excess of permitted capacity or tonnage limits;~~
- ~~(c) alteration of the original design and operation of the facility; and~~

~~(d) any other deviation, including post-closure use, from the construction, operation and maintenance of the facility required by the permit.~~

~~(3) Application.~~

~~(a) Expansions. An application for an expansion of a facility shall include all or part of the plan components set forth in 310 CMR 19.030(3)(c) as the Department deems necessary to evaluate the feasibility and potential impact of the proposed expansion on public health, safety or the environment.~~

~~(b) Modifications. An application for modifications not addressed at 310 CMR 19.039(3)(a) shall include the appropriate information to clearly and fully describe the proposed modification and any or all potential impacts from the modification.~~

~~(4) Filings. An application for modification shall be submitted to the Department in accordance with 310 CMR 19.030.~~

~~(5) Review Procedure. Except as may be allowed in accordance with 310 CMR 19.039(6), the Department shall review and issue a decision on whether to allow a modification to a permit in accordance with the following provisions:~~

~~(a) Expansions. Review of Applications for New Facilities or Expansions, 310 CMR 19.032 through 19.036, shall apply to expansions described at 310 CMR 19.032; or~~

~~(b) Modifications. Review Procedure for Permit Modifications, Permit Renewals and other Approvals, shall apply to other modifications, unless the Department determines otherwise pursuant to 310 CMR 19.032(1)(f).~~

~~(6) Alternative Review Process for Certain Modifications. The Department may, in accordance with permit conditions established pursuant to 310 CMR 19.043 or guidelines established by the Department, determine that certain modifications to facility plans may be effected without prior written approval, as provided below:~~

~~(a) at least 30 days prior to commencing such modification the permittee shall notify the Department and the board of health in writing of the planned modification;~~

~~and~~

~~(b) within 30 days of completion of the modification the permittee shall submit to the Department as built plans and/or a report describing the modification.~~

## **Reorganization**

310 CMR 19.040 Reserved.

### 19.040: Department's Modification, Suspension or Revocation of a Permit

~~(1) General. The Department may rescind, suspend, or modify a permit when it determines that the operation or maintenance of a facility results in a threat to the public health, safety or the environment.~~

~~(2) Burden of Proof. Where any violation of M.G.L. c. 111, § 150A or 310 CMR 19.000 or any permit or order issued thereunder occurs the burden shall be on the operator to prove that said violation does not constitute a threat to the public health and safety or to the environment.~~

~~(3) Scope of Determination of Threat. In considering whether the continued operation of a~~

~~facility presents a threat to the public health and safety or the environment the Department may consider:~~

- ~~(a) the likelihood of a discharge or release of pollutants from the facility;~~
- ~~(b) the actual or potential impacts from a discharge or release of pollutants from the facility;~~
- ~~(c) the potential adverse impacts on the Commonwealth's natural resources from the disposal of materials restricted pursuant to 310 CMR 19.017: Waste Control.~~

## **Transfer Station Permit Streamlining & Standardizing**

### 19.041: Authorization to Construct

(1) General. The following shall not be constructed except in accordance with a valid authorization to construct issued by the Department in writing:

- (a) a new or expanded facility for which a permit has been issued;
- (b) modifications to a facility for which a permit modification has been issued; or
- (c) a new phase in the case of a landfill being developed in phases.

(2) Transfer Station Exclusion. 310 CMR 19.041(1)(b) applies to a C&D waste transfer station, but it does not apply to any other type of transfer station; provided that a responsible official for the transfer station has submitted a valid certification for the transfer station in accordance with 310 CMR 19.034.

(23) Filing. The applicant owner or operator shall file a request for an authorization to construct in writing with the Department in the appropriate Regional Office. However, unless otherwise indicated, the Department shall consider an application for a solid waste management facility permit or an application to modify a permit to constitute a request for an authorization to construct.

(34) Issuance of Authorization. In general, the Department shall issue an authorization to construct when the solid waste management facility permit or permit modification is issued, except in the case of phased construction of a landfill where an authorization to construct may be required for each phase and except where the Department determines that any of the following permits has not been applied for, as applicable, or granted at the time the solid waste management facility permit is to be granted:

- (a) Massachusetts Surface Water Discharge Permit for point source discharges to surface waters pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00;
- (b) ground water discharge permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 5.00, as may be amended;
- (c) storm water discharge permit pursuant to M.G.L. c. 21, § 43, and 40 CFR 122;
- (d) sewer connection permit for the discharge of collected and or pre-treated leachate into a municipal sewer system as required by 314 CMR 7.00;
- (e) Federal Water Pollution Control Act section 404 dredge and fill permit relative to surface water pursuant to the Federal Water Pollution Control Act; and
- (f) other local, state and federal permits, approvals or authorizations that are required for the construction of the facility.

(45) Sunset. If construction of the facility or first phase thereof has not been completed or no

solid waste has been processed or disposed at the facility within three years of the date of issuance of an authorization to construct the authorization shall expire. The owner or operator may apply to the Department for an extension of the authorization at any time prior to or after it expires.

(56) Enforcement. The issuance of an authorization to construct shall not limit the Department's right to take appropriate enforcement action, including, without limitation, the suspension, revocation or modification of the permit or revocation of the authorization to construct if 310 CMR 19.000 or any condition of the permit or authorization to construct ~~is~~are violated.

(67) Deed Notice. ~~In accordance with M.G.L. c. 111, § 150A requires, the owner and operator of a facility shall record a~~ ~~that~~ notice of the authorization to construct ~~Permit~~ ~~be recorded~~ in the registry of deeds or, if the site is registered land, in the registry section of the land court for the district wherein the land lies. The notice shall be captioned "Notice of Authorization to Construct a Solid Waste Facility Operation" and shall contain a title reference citing the source of title of the land on which the facility is to be constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land). This notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instrument of transfer, whereby an interest in and/or a right to use the land on which the facility is to be constructed, or a portion thereof, is conveyed.

### **Transfer Station Permit Streamlining & Standardizing**

#### 19.042: Authorization to Operate

(1) General. No person shall operate a facility, or if a new or existing facility is developed in phases, operate in any new phase of a facility, without a valid authorization to operate issued by the Department in writing.

(2) Transfer Station Exclusion. 310 CMR 19.042(1) applies to a C&D waste transfer station, but it does not apply to any other type of transfer station; provided that a responsible official for the transfer station has submitted a valid certification for the transfer station in accordance with 310 CMR 19.034.

(23) Filing. The applicant shall file a request for an authorization to operate in writing with the Department in the appropriate Regional Office.

(34) Issuance of Authorization. An authorization to operate shall only be issued after the Department is persuaded by the applicant that:

(a) appropriate financial assurance has been secured in accordance with 310 CMR 19.051;

(b) as-built plans, signed and stamped by a registered professional engineer, have been submitted where required by the Department; ~~and~~

(c) the deed notice regarding the authorization to construct a solid waste facility operation has been recorded or registered as required pursuant to 310 CMR 19.041(67); and

(d) the construction of the facility or phase thereof is complete and the facility is operational. For the purposes of 310 CMR 19.042 a facility shall be considered complete when:

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.042(4)(d)1. through 6. because no revisions to these subsections are proposed. These subsections set criteria for completion of facility construction.]**

(45) Renewal of an Authorization to Operate.

[NOTE TO REVIEWERS: We have omitted 310 CMR 19.042(5)(a) and (b) because no revisions to these subsections are proposed. These subsections set forth procedures for renewal of an authorization to operate. The Department is proposing changes to 310 CMR 19.042(5)(c) as set for below.]

(c) Conditions and Terms of a Renewal. The Department may include all conditions of the original authorization to operate or, pursuant to 310 CMR 19.040, ~~(Department's Modification, Suspension or Revocation of a Permit)~~; establish new ~~fixed~~ conditions for the authorization to operate based on the applicant's record of compliance with applicable laws and regulations, the site assignment, plan submissions, public health and environmental impacts of the facility, amendment of the regulations, the facility financing requirements and remaining capacity of the facility.

(56) Enforcement. The issuance of an authorization to operate shall not limit the Department's right to take appropriate enforcement actions, including, without limitation, the suspension, revocation or modification of the permit or revocation of the authorization to operate, if any provision of 310 CMR 19.000 or any condition of the permit, authorization to operate or any order issued by the Department is violated.

### **Transfer Station Permit Streamlining & Standardizing Provisions**

#### 19.043: Conditions for Permits and Authorizations

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.043(1) through (4). because no revisions to these subsections are proposed. These subsections set forth conditions on permits and authorizations. The Department is proposing revisions to 310 CMR 19.043(5) as set forth below.]**

(5) Standard Conditions. The following conditions shall apply to all owners, and operators ~~or Permittees~~ in the permits issued by the Department ~~(hereinafter comprehensively referred to as "permittee")~~:

(a) Duty to Comply. The ~~permittee~~ owner and operator shall comply at all times with the terms and conditions of the permit or approval, 310 CMR 19.000, M.G.L. c. 111, § 150A, and all other applicable state and federal statutes and regulations, including, but not limited to, the permit review criteria at 310 CMR 19.038(2)(a)1. through 10.

- (b) Duty to Maintain. The permittee owner and operator shall always operate and maintain all facilities, environmental control and monitoring systems, vehicles and equipment which the permittee installs or uses.
- (c) Duty to Halt or Reduce Activity. The permittee owner and operator shall halt or reduce activity whenever necessary to maintain compliance with the permit conditions, or to prevent an actual or potential threat to the public health, safety or the environment.
- (d) Duty to Mitigate. The permittee owner and operator shall remedy and shall act to prevent all potential and actual adverse impacts to persons or the environment resulting from non-compliance with terms or conditions of the permit or approval. The permittee owner and operator shall repair at his own expense all damages caused by such non-compliance.
- (e) Duty to Provide Information. The permittee owner and operator shall furnish to the Department, within a reasonable time, any information which the Department may request and which is deemed by the Department to be relevant in determining whether cause exists to modify, revoke, or suspend a permit or approval, or to determine if the permittee is complying with the permit or approval.
- (f) Entries and Inspections. The permittee owner and operator shall allow personnel or authorized agents-representatives of the Department, without warrant, upon presentation of Department-issued identification credential or other documents as may be required by law; to enter the facility to:
- ~~1. enter at all reasonable times any premises, public or private, for the purpose of investigating, sampling and/or inspecting any records, condition, equipment, operation, practice or property at the facility relating to regulated activities subject to M.G.L. c. 111, § 150A;~~
  - ~~2. enter at any time such premises for the purpose of to determine and enforce compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§150A and 150A1/2 and/or 310 CMR 19.000. protecting the public health, safety, or to prevent damage to the environment; and~~
  - ~~3. have access to and copy at all reasonable times all records that are required to be kept pursuant to the conditions of the permit or approval and all other records relevant to the permittee's solid waste activities.~~
- (g) Records. All records and copies of all reports required by 310 CMR 19.000 shall be kept by the permittee owner or operator for at least three years. This period shall be automatically extended for the duration of any enforcement action. This period also may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 19.009.
- (h) Signatory Requirement. All reports, and information requested or ordered by the Department, shall be signed by a responsible official of the owner or operator in accordance with 310 CMR 19.011(1). ~~a individual described in 310 CMR 19.030(11) or by a duly authorized representative of such individual. An individual is a "duly authorized representative" only if an individual identified in 310 CMR 19.030(11) has designated in writing to the Department that such individual is a "duly authorized representative."~~
- (i) Duty to Inform. The permittee owner and operator shall have a continuing duty to immediately:
1. correct any incorrect facts in an application;

2. report or provide to the Department any omitted facts which should have been submitted to the Department at any time;
3. report to the Department, in advance, each planned change in the facility or activity which might result in non-compliance with a term or condition or a permit or approval;
4. report to the Department each change in the information listed in the application filed pursuant to 310 CMR 19.030;
5. report by the next business day any emergency condition (such as a fire) that will have an extended impact on facility operations or pollution control, unless required to notify on a different schedule in accordance with 310 CMR 19.132 or 310 CMR 40.0000; and
6. notify the Department of any change in the ~~permittee's~~ owner's or operator's name or mailing address.

(j) Notification of Bankruptcy. The ~~permittee~~ owner and operator shall notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding pursuant to Title 11 (Bankruptcy) of the United States Code in which the permittee is named as debtor within ten days after commencement of the proceeding.

~~(k) CRT Operations. CRT Operations, as defined in 310 CMR 16.02, that obtain a site assignment and solid waste facility permit shall meet the requirements at 310 CMR 16.05(3)(f) as part of the conditions of their permit.~~

## **Standardizing**

### 19.044: Transfer of Permits

(1) General. No sale, assignment, or transfer of the rights or privileges, or effective control of such rights or privileges, granted under a permit to establish, expand, construct, operate or maintain a facility shall be valid unless:

(a) pursuant to M.G.L. c. 111, § 150A, notice that the facility is operating or was operated has been recorded in the registry of deeds, or if the site is registered land, in the registry section of the land court for the district wherein the land lies. The notice shall be captioned "Notice of Solid Waste Facility" and shall contain a title reference citing the source of title of the land on which the facility is to be constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land). This notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instrument of transfer, whereby an interest in and/or a right to use the land on which the facility is to be constructed, or a portion thereof, is conveyed;

**[NOTE TO REVIEWERS: We have omitted 310 CMR 19.044(1)(b) through (d) because no revisions to these subsections are proposed. These subsections set forth more conditions on permit transfers. The Department is proposing revisions to 310 CMR 19.044(2) as set forth below.]**

(2) Registering of Deed. For the transferred permit to remain effective, written proof must be provided to the Department within 30 days of the effective date of the transfer that the transfer

has been completed, and if the transfer involves the conveyance of real estate, that such conveyance has been duly recorded in the appropriate Registry of Deeds or land court.

## **Presumptive Approval**

**Section 19.061 is proposed to be replaced in its entirety by the following section 19.061.**

### 19.061: Special Waste

(1) General. The management of special waste shall not result in adverse impacts to the public health, safety or the environment or result in nuisance conditions. Management of a special waste comprises the receipt, handling, storage, processing, treatment and/or disposal of such special waste.

(a) Except as provided below at 310 CMR 19.061(3), the owner or operator of a facility may manage a special waste without prior written approval from the Department.

(b) the owner or operator of a facility with an existing special waste(s) approval issued before [the effective date of the regulations] may continue to manage such special waste in accordance with the existing approval(s) or, alternatively, may manage special waste in accordance with 310 CMR 19.06 provided that:

1. a owner or operator of a transfer station that is not a C&D waste transfer station submits a certification in accordance with 310 CMR 19.034; or

2. a owner or operator of any other type of facility makes a submission in accordance with 310 CMR 19.039(7), *Presumptive Approval Process for Certain Modifications*.

(2) Exclusions. The following special waste materials are not subject to the management requirements of 310 CMR 19.061(3):

(a) Asbestos waste that consists of:

1. intact and unbroken vinyl asbestos tile (VAT);

2. asphaltic asbestos-containing siding products and asphaltic asbestos-containing roofing materials such as roofing felts and roofing shingles<sup>1</sup>; or

3. other asbestos waste excluded by the Department in writing from the management requirements of 310 CMR 19.061(3).

(b) Medical or biological waste that has been rendered non-infectious in accordance with 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*, and is packaged, labeled and otherwise managed in accordance with 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.

(3) Management Requirements for Asbestos Waste, Medical or Biological Waste, and Sludge.

(a) General Requirements. The following requirements shall apply to any facility handling or disposing asbestos waste, medical or biological waste, or sludge unless such material has been excluded pursuant to 310 CMR 19.061(2):

1. at least 45 days prior to accepting asbestos waste, medical or biological waste, or sludge, the facility owner or operator submits to the appropriate Regional

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<sup>1</sup> Other asbestos-containing roofing shingles and siding products such as those containing a cementitious binding characterized as being hard and brittle are subject to the management requirements of 310 CMR 19.061(3).

Office of the Department and the board of health of the municipality where the facility is located:

- a. a certification in accordance with 310 CMR 19.034 for a transfer station which is not a C&D transfer station; or
- b. a presumptive approval application in accordance with 310 CMR 19.039(7) for any other type of facility.

2. The submission shall include:

- a. the type and quantity of asbestos waste, medical or biological waste, or sludge intended to be managed on a daily, weekly, monthly and yearly basis; and
- b. the intended methods to be employed for managing the asbestos waste, medical or biological waste or sludge.

(b) Specific Requirements for Managing Asbestos Waste. In addition to the requirements at 310 CMR 19.061(1) and (3)a., asbestos waste shall be managed as follows:

1. Asbestos waste shall not be accepted for disposal at a solid waste combustion facility;

2. Asbestos waste that has not been properly wetted, containerized and labeled according to 310 CMR 7.15 shall not be accepted at any facility;

3. Asbestos waste that has been properly wetted, containerized and labeled shall be managed so as to maintain the integrity of the containers and to prevent emissions of asbestos fibers to the ambient air; and

4. Landfill Specific Requirements. In addition to the above requirements, any owner and operator of a landfill that receives asbestos waste shall observe the following requirements:

a. Asbestos waste shall be immediately disposed in the landfill and shall not be stored at the landfill prior to placement in the landfill;

b. Asbestos waste shall be placed in the landfill in such manner as to prevent the release of asbestos fibers to the ambient air during placement;

c. Asbestos waste placed in the landfill shall immediately be covered by sufficient amounts of either solid waste that does not contain asbestos or daily cover material, to assure that no asbestos fibers are released to the ambient air during or subsequent to compaction;

d. Accurate records shall be maintained of the surveyed location(s) in the landfill of all asbestos waste. Locations of asbestos waste deposition shall be noted in the Notice of Landfill Operation required pursuant to 310 CMR 19.141. Locations of asbestos waste deposition shall also be included whenever information regarding the facility is recorded in the chain of title for the property on which the landfill operates pursuant to M.G.L. c. 111, § 150A;

e. Areas of the landfill containing asbestos waste shall be clearly marked by the operator; and

f. Areas of the landfill containing asbestos waste shall not be excavated unless written approval is issued by the Department.

(c) Requirements for Managing Medical or Biological Waste. In addition to the requirements at 310 CMR 19.061(1) and (3)a., any owner or operator of a facility managing medical or biological waste shall manage such waste as follows:

1. Medical or biological waste shall be treated, packaged, labeled and disposed of in accordance with 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.
2. Landfills. Medical or biological waste shall not be disposed in a landfill unless the waste is rendered non-infectious in accordance with 105 CMR 480.000.

(d) Requirements for Managing Sludge. In addition to the requirements at 310 CMR 19.061(1) and (3)a., any owner or operator of a facility shall manage sludge as follows:

1. General Requirements. Disposal of any sludge shall comply with the following requirements:
  - a. a sludge may be accepted at a disposal facility only after recycling or other reuse options, such as land application, conversion and composting, have been investigated by the applicant or by the generator of such sludge;
  - b. a sludge accepted at a facility shall not contain free draining liquids; and
  - c. a sludge disposed at a landfill shall contain a minimum of 20% solids.
2. Landfill Requirements for Sewage Treatment and Water Treatment Sludges. In addition to the requirements set forth at 310 CMR 19.061(3)(d)1., any owner or operator of a landfill shall ensure that sewage treatment and water treatment sludge disposed at a landfill shall be incorporated into the active face of a landfill in a 3:1 mixture of solid waste to sludge or placed in a designated area and covered immediately.

~~(1) General. No solid waste management facility shall receive, store, process, treat or dispose of a special waste unless said solid waste management facility:~~

- ~~(a) is operated and maintained in compliance with a valid site assignment, plan approval or permit and any authorizations issued by the Department;~~
- ~~(b) has received written approval from the Department to handle the specific special waste pursuant to 310 CMR 19.061(5) and operates in compliance with the conditions of the approval, if required herein; and~~
- ~~(c) manages the waste in accordance with the requirements of 310 CMR 19.061(6).~~

~~(2) Classification of Special Wastes. A solid waste is classified as a special waste if:~~

- ~~(a) the waste is a special waste listed in 310 CMR 19.061(3); or~~
- ~~(b) the waste will require special management to ensure protection of public health, safety or the environment based upon the physical, biological, or chemical properties of the waste.~~

~~(3) Listed Special Wastes. Solid wastes that the Department has classified as listed special wastes include:~~

- ~~(a) asbestos waste;~~
- ~~(b) infectious wastes, except as specified in 310 CMR 19.061(6)(c)4.;~~
- ~~(c) sludges, including but not limited to wastewater treatment sludges, drinking water treatment sludges and industrial process wastewater treatment sludges.~~

~~(4) Application to Manage Special Wastes.~~

~~(a) General.~~

- ~~1. Solid waste management facilities shall use the application procedures described in~~

~~310-CMR-19.061(4), to apply to the Department for approval to manage a special waste.~~

~~2.—The application shall include such information, data and descriptions as required by~~

~~the Department to fully assess the nature of the special waste, its handling requirements~~

~~and the capability of the facility to properly manage the waste.~~

~~(b) Filing.—An application for approval to manage a special waste shall be filed with the Department. At the time of application to the Department, a copy of the application shall be filed with the board of health in whose jurisdiction the facility is located.~~

~~(c) Application for Special Wastes Other than Asbestos and Infectious Wastes.—Except for asbestos waste and infectious waste as specified in 310-CMR-19.061(4)(d), applications to manage special wastes shall include the information specified in 310-CMR-19.061(4)(c). Data submitted on the physical, chemical or biological properties of the waste shall be generated from analyses of representative samples of the waste for each source of the waste. The application shall include:~~

~~1.—identification of the solid waste management facility;~~

~~2.—identification of the generator(s) of the waste and the specific source or sources of the waste;~~

~~3.—a general description of the nature of the waste;~~

~~4.—a description of the industrial or other process which generates the waste;~~

~~5.—the quantity of the waste to be disposed and frequency of disposal (volume and/or tonnage per month or year);~~

~~6.—a detailed description of the physical properties of the waste including, but not limited to size, density and percent solids;~~

~~7.—a detailed description of the chemical properties of the waste including, but not limited to pH, reactivity, leachability and total metals;~~

~~8.—a demonstration that the waste is not a hazardous waste pursuant to 310-CMR-30.000;~~

~~9.—the biological properties of the waste, if applicable, including, but not limited to pathogens;~~

~~10.—identification of special waste handling procedures to be employed by the facility to ensure proper management of the special waste; and~~

~~11.—other information about the waste or the solid waste management facility as required by the Department in order to classify the waste or to determine the ability of the facility to handle the material.~~

~~(d) Applications for Asbestos Wastes and Infectious Wastes.—Applications to manage asbestos wastes or infectious wastes shall include:~~

~~1.—identification of the solid waste management facility;~~

~~2.—the quantity of the waste to be handled or disposed (volume and/or tonnage per month or year);~~

~~3.—identification of special waste handling procedures to be employed by the facility to ensure proper management of the special waste; and~~

~~4.—other information about the waste as required by the Department in order to determine the ability of the facility to handle the special waste.~~

~~(5) Department Approval to Manage Special Wastes:~~

~~(a) Classifications. When the waste is not a listed special waste, the Department shall determine whether the waste is classified as a special waste. The Department's determination shall be based upon the quantity of waste, the physical, biological and chemical properties of the waste and whether the waste will require special management to ensure protection of public health, safety or the environment.~~

~~(b) Decision. The Department shall determine whether a facility shall receive approval to manage the special waste identified in the application. The Department shall base its decision on whether the facility can safely manage the special waste.~~

~~(c) Issuance of a Decision. The Department shall issue a written decision for all wastes for which it receives a request conforming with the requirements set forth in 310 CMR 19.061(4).~~

~~(d) Conditions. The Department may issue an approval to manage a special waste subject to any conditions the Department deems necessary to protect public health, safety or the environment. The approval may also contain a condition prohibiting the applicant from accepting the special waste for a period of not less than 14 days, to allow the Department to review comments from the board of health submitted pursuant to 310 CMR 19.061(5)(f), unless the Department determines that an adverse impact would result from a delay in disposal.~~

~~(e) Permit Modification. If the Department determines that the handling of a waste at a facility shall cause a deviation from the approved plan or permit, the operator shall submit an application for permit modification in accordance with 310 CMR 19.039.~~

~~(f) Board of Health Notification and Comment Period.~~

~~1. The board of health shall be notified of the Department's decision on an application to manage a special waste.~~

~~2. Within 14 days of receiving such notification the board of health may request the Department to rescind or modify an approval to manage a special waste where the board of health deems that the handling of the special waste would have an adverse impact.~~

~~(g) Modification or Rescission. The Department shall modify or rescind, as appropriate, an approval to accept special waste if the board of health demonstrates to the satisfaction of the Department, in the request filed in accordance with 310 CMR 19.061(5)(f), that the acceptance of the special waste under the conditions which may have been imposed by the Department is likely to result in an adverse impact.~~

~~(6) Management Requirements for Special Wastes.~~

~~(a) General Requirements. The following conditions shall apply to any solid waste management facilities handling special wastes:~~

~~1. the operator shall keep a copy of the approval to manage a special waste on file at the facility and make available said approval letter upon request by Departmental representatives; and~~

~~2. the operator shall instruct and train employees in proper handling procedures for any special waste approved to be managed by the facility.~~

~~(b) Requirements for Handling Asbestos Wastes. In addition to the requirements at 310 CMR 19.061(6)(a), all asbestos waste, except as specified in 310 CMR 19.061(6)(b)3., shall be managed in accordance with 310 CMR 19.061(6)(b)1. and 2.~~

~~1. All facilities shall observe the following requirements for handling asbestos waste:~~

- ~~a.—Asbestos waste shall not be accepted for disposal at solid waste combustion facilities.~~
- ~~b.—Asbestos waste that has not been properly wetted, containerized and labeled according to 310 CMR 7.15 shall not be accepted at any solid waste management facility.~~
- ~~c.—Asbestos waste that has been properly wetted, containerized and labelled in accordance with 310 CMR 7.15 shall not be accepted at any solid waste facility unless that facility has received approval from the Department in accordance with 310 CMR 19.061 to accept asbestos waste.~~
- ~~d.—Asbestos waste that has been properly wetted, containerized and labelled shall be managed so as to maintain the integrity of its containers and to prevent emissions of asbestos fibers to the ambient air.~~

~~2.—Landfill Specific Requirements. In addition to the requirements in 310 CMR 19.061(6)(b)1., landfills that have received approval from the Department to accept asbestos waste shall observe the following operational requirements:~~

- ~~a.—Asbestos waste shall be immediately disposed in the landfill and shall not be stored at the landfill prior to placement in the landfill.~~
- ~~b.—Asbestos waste shall be placed in the landfill in such manner as to prevent the release of asbestos fibers to the air during placement.~~
- ~~c.—Asbestos waste shall be placed in the landfill using a method approved by the Department. The approved method shall be as described in 310 CMR 19.100 through 19.204 in Department guidance or in a Department approval or permit. All such approved placement methods shall include requirements that the asbestos waste is covered by sufficient amounts of either solid waste that does not contain asbestos and/or daily cover material to assure that no asbestos fibers are released to the air during or subsequent to compaction.~~
- ~~d.—Accurate records of the surveyed location in the landfill of all asbestos waste shall be maintained. Locations of asbestos deposition shall be noted in the Record Notice of Landfill Operation pursuant to 310 CMR 19.100 through 19.204. Locations of asbestos deposition shall also be included whenever information regarding the property is recorded on the property deed pursuant to M.G.L. c. 111, § 150A.~~
- ~~e.—Areas of the landfill containing asbestos shall be clearly marked by the operator.~~
- ~~f.—Areas of the landfill containing asbestos waste shall not be excavated.~~

~~3.—Requirements for Certain Classes of Asbestos Wastes. The following asbestos wastes are not subject to the provisions of 310 CMR 19.061 except as specified at 310 CMR 19.061(6)(b)1.a.:~~

- ~~a.—intact and unbroken vinyl asbestos tile (VAT);~~
- ~~b.—asphaltic asbestos-containing siding products and asphaltic asbestos-containing roofing materials such as roofing felts and roofing shingles (Note: This does not include other asbestos-containing roofing shingles and siding products such as those containing a cementitious binding characterized as being hard and brittle.); and~~
- ~~c.—other asbestos waste so designated by the Department in writing.~~

~~(c) Requirements for Handling Infectious Waste. In addition to the requirements at 310 CMR 19.061(6)(a), infectious waste shall be handled in accordance with the following:~~

- ~~1. In addition to the requirements of 310 CMR 19.000, infectious waste shall be treated, packaged, labeled and disposed of in accordance with 105 CMR 480.000.~~
- ~~2. Landfills. Infectious waste shall not be disposed in a solid waste landfill unless the waste is processed and managed to meet the requirements of 310 CMR 19.061(6)(c)4.~~
- ~~3. Facilities Other than Landfills. Infectious waste (which has not been rendered non-infectious) shall not be accepted at a solid waste management facility unless that facility has received approval under 310 CMR 19.061 to manage infectious waste.~~
- ~~4. Infectious waste that has been rendered non-infectious in accordance with 105 CMR 480.000 and is packaged, labeled and otherwise managed in accordance with 105 CMR 480.000 is not subject to 310 CMR 19.061 and may be accepted at any solid waste facility.~~

~~(d) Requirements for Handling Sludges. In addition to the requirements at 310 CMR 19.061(6)(a), sludges shall be handled in accordance with the following:~~

- ~~1. General Requirements. Disposal of all types of sludges shall comply with the following requirements.~~
  - ~~a. Sludges accepted at a solid waste facility shall not contain free draining liquids.~~
  - ~~b. Sludges disposed at landfills shall contain a minimum of 20% solids.~~
  - ~~c. Odor control methods, acceptable to the Department, shall be employed at all landfills accepting odor producing sludges.~~
- ~~2. Requirements for Sewage Treatment and Water Treatment Sludges. In addition to the requirements set forth at 310 CMR 19.061(6)(d)1., sewage treatment and water treatment sludges shall comply with the following requirements.~~
  - ~~a. Sewage treatment and water treatment sludges shall be incorporated into the active face of a landfill in a 3:1 mixture of solid waste to sludge or placed in a designated area and covered immediately.~~
  - ~~b. Sewage treatment sludges may be accepted at a solid waste landfill only after land application and composting options have been investigated by the applicant or by the generator of such sludge and determined by the Department not to be feasible, provided that said investigation of options may be deferred for a reasonable time upon a determination by the Department that adverse impacts may occur as a result of delaying disposal of the sludge.~~
  - ~~c. Sewage treatment sludges containing pathogens that have not been stabilized using methods approved by the Department shall not be disposed at an unlined landfill, unless specifically approved by the Department on a temporary basis.~~
- ~~3. Requirements for Industrial Wastewater Treatment Sludges. In addition to the requirements set forth at 310 CMR 19.061(6)(d)1., industrial wastewater treatment sludges shall comply with the following requirements. The solid waste management facility operator shall provide data, descriptions and other~~

~~information required at 310 CMR 19.061(4) to the Department for each separate source of industrial wastewater treatment sludge prior to acceptance at the landfill.~~

~~(7) Reclassification. The Department may reclassify a waste in accordance with 310 CMR 19.061(5) or place further conditions on an approval to manage a special waste in accordance with 310 CMR 19.061 should such action be deemed necessary. Any such reclassification or conditions shall be in writing.~~

### **Third-party Inspections**

#### 19.081: Enforcement Provisions

(1) Wherever these regulations, 310 CMR 19.000, or any approvals or orders issued pursuant thereto, require that the owner or operator shall take action or refrain from taking action, the owner and operator shall be jointly and severally liable such that the Department may take action for any violations of 310 CMR 19.000 against the owner, the operator or both.

(2) General. No applicable standard, requirement or condition established in 310 CMR 19.000 or provision of any permit, authorization, modification, determination, or other approval or order or other enforcement document issued pursuant to 310 CMR 19.000~~Nothing in 310 CMR 19.000, 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. Any failure by any person whose activities are governed by M.G.L. c. 111, § 150A, as amended, and 310 CMR 19.000, to comply fully with their provisions thereunder or the terms and conditions of any order, permit, authorization, modification, determination, or other approval or order or other enforcement document issued ~~under~~ pursuant to 310 CMR 19.000, or with the terms of a site assignment, shall constitute a violation of M.G.L. c. 111, § 150A ~~the statute~~ and 310 CMR 19.000. ~~Nothing in 310 CMR 19.000, 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.~~ It shall also be a violation of 310 CMR 19.000 for any person to:

(a) Fail to submit a certification, log, application for a permit or permit modification, plan, report, third-party inspection report, or any other document within the time period specified in 310 CMR 19.000 or in any approval, order, or permit issued by the Department;

(b) Provide or cause to be provided any false, inaccurate, incomplete or misleading information, in any certification, log, application for a permit or permit modification, plan, report, third-party inspection report, third-party inspector qualifications statement, or any other document which that person is required to submit to the Department pursuant to applicable requirements of 310 CMR 19.000;

(c) Provide any false, inaccurate, incomplete or misleading information to a third-party inspector or influence a third-party inspector to provide any false, inaccurate, incomplete or misleading information in any certification, third-party inspection report or other submittal to the Department pursuant to 310 CMR 19.000;

(d) Alter or misrepresent the findings or recommendations made by a third-party inspector in a third-party inspection report submitted to the Department pursuant to 310 CMR 19.018;

(e) Hold himself or herself out as a responsible official when he/she is not fully authorized to bind the corporation, company, partnership, trust, proprietorship or municipality;

(f) Upon reasonable request pursuant to 310 CMR 19.007 or in compliance with conditions of an authorization, determination, modification, permit or other approval or order or other enforcement document, deny personnel or authorized representatives of the Department access to:

(1) enter upon and inspect any facility or other property where solid waste has been or will be placed, stored, transferred, handled, managed, treated, processed, disposed, used or reused; and

(2) review and copy relevant records to determine and compel compliance with applicable regulations and the conditions of any authorization, determination, modification, permit or other approval or order or other enforcement document issued pursuant to 310 CMR 19.000;

(g) Fail to comply fully with the applicable standards, requirements or conditions established in 310 CMR 19.000 or with the provisions of any permit, authorization, modification, determination, or other approval or order issued, or with the terms and conditions of any certification submitted, pursuant to 310 CMR 19.000;

(h) Act without submitting a certification in accordance with 310 CMR 19.000 or without a permit or other approval issued pursuant to 310 CMR 19.000 or site assignment where one is required; or

(i) Violate any other provision of 310 CMR 19.000.

(23) Action by the Department. Whenever the Department has cause to believe that a violation has occurred, it may, without ~~limitation~~~~election~~:

(a) order the owner or operator of the site or facility, or any other person responsible for the violation, to cease operations until the violation is corrected to the satisfaction of the Department, or until such person obtains a site assignment, solid waste facility permit, and any other applicable approval (e.g., a BUD) pursuant to 310 CMR 19.000, or other applicable permit pursuant to 310 CMR 16.00;

(b) order the owner or operator of the site or facility, or any other person responsible for the violation, to cease immediately or at a specified date all illegal activity, and to comply fully with ~~the provisions of the statute~~ M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2, 310 CMR 19.000, or any permit, authorization, certification, determination, or approval submitted or issued pursuant to 310 CMR 16.00 or 310 CMR 19.000, ~~or site assignment~~;

~~(c)~~ order the owner or operator of the site or facility, or other person responsible for the violation, to take appropriate remedial measures, immediately or by a specified date ~~appropriate remedial measures~~, to bring the site or facility into compliance to the satisfaction of the Department or to protect public health or safety or the environmental resources of the Commonwealth, including without limitation closure of the site or facility;

~~(d)~~ commence proceedings pursuant to 310 CMR 19.040 to rescind, suspend, revoke, or modify a permit;

~~(e)~~ commence proceedings pursuant to M.G.L. c. 111, § 150A to rescind, suspend, revoke, or modify a site assignment;

~~(f)~~ 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 or initiate an enforcement action in accordance with applicable statutes and regulations;

(g) refer the matter to the Attorney General for civil or criminal action pursuant to any applicable statute; or

(h) take such other action as provided by 310 CMR 19.000 or other applicable statutory or regulatory authority as the Commissioner deems appropriate.

(34) Service of Notices and Orders. Service in all civil administrative penalty actions is governed by 310 CMR 5.00. The Department serves an order according to the following procedure except for processes, notices, and orders issued in the course of an adjudicatory hearing, which are governed by the provisions of 310 CMR 1.00:

(a) ~~A person applying for or holding any form of permit or authorization issued under the statute and 310 CMR 19.000 shall appoint a person as agent for service of process, shall notify the Department of the name, address, and telephone number of the appointed agent, and shall notify the Department promptly of any change in the status of the agent or of the information provided pursuant to the provisions of 310 CMR 19.081(3).~~

(b) ~~Service of an order is complete when it is delivered in hand by an employee or agent of the Department to the person to be served or to any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service or to the person's last known address in the Commonwealth or elsewhere or to the last known address in the Commonwealth or elsewhere or any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service. The fact and date of service is established by the return of the person making service.~~ (c) ~~Service of an order may be made via hand delivery or mail. 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 receipt by to the person or to by any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service. The fact and date of service is established by the returned receipt or by affidavit of the person who hand delivery the order.~~

(d) The Department may make service of an order in any other manner, including any form of telecommunications or publication, that is reasonably calculated to give actual notice of the order to the person to be served. The Department may use such alternative or substitute methods of service when the recipient refuses to accept service by the means set forth in 310 CMR 19.081(4)(a) or only when exigent circumstances require its doing so. The fact and date of service in such cases is established by such records as may be available.

(45) Right to Adjudicatory Hearing. Subject to the provisions of 310 CMR 19.081(65), a person who or which is the subject of an order issued pursuant to 310 CMR 19.081(32)(a) or (b) shall have the right to an adjudicatory hearing on such order pursuant to 310 CMR 1.001: *Adjudicatory Proceedings*. 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.

(5)6) Waiver of Right to Adjudicatory Hearing. Any person who or which is the subject of an order issued pursuant to 310 CMR 19.081(32)(a) or (b) shall be deemed to have waived the right to an adjudicatory hearing, unless, within 21 days of the date of service of the order, the Department receives a written statement setting forth the basis for the request, subject to and in compliance with the applicable provisions of 310 CMR 1.001.

## Presumptive Approval & Third-party Inspections

### 19.130: Operation and Maintenance Requirements

#### Subsections (1) through (4) of 310 CMR 19.130 are proposed to be revised as follows:

(1) General. ~~An Operator~~s shall incorporate procedures and practices, in accordance with approved plans and permit conditions, such as proper sequencing of landfill operations, proper grading of the site, proper maintenance of drainage and collection systems, and the application of adequate amounts and appropriate types of cover materials, which will prevent pollution of ground water, surface water and air quality and prevent nuisance conditions from developing.

(2) Operator Supervision. The overall care, maintenance and ~~responsibility~~management for a landfill shall be under the direction of a qualified operator.

(3) Special Wastes. No solid waste that ~~is has been classified as~~ a special waste ~~pursuant to 310 CMR 19.061(2): Classification of Special Waste~~, shall be received or disposed at any landfill unless the provisions of 310 CMR 19.061 are satisfied and the special waste is ~~handled~~managed in accordance with any conditions specified by the Department in ~~any~~granting approval to ~~handle~~manage the special waste ~~and in accordance with the handling provisions of 310 CMR 19.061~~.

(4) Banned or Restricted Solid Wastes. ~~Any~~s Solid wastes which ~~has~~ve been banned or restricted from disposal pursuant to 310 CMR 19.017 ~~Waste Bans~~ shall be managed at a landfill in accordance with the ~~approved~~facility's waste ban compliance plan prepared and approved in accordance with 310 CMR 19.017(5) unless an exception has been granted under 310 CMR 19.017(6).

#### Subsection (35) of 310 CMR 19.130 is proposed to be revised as follows:

##### (35) Inspections.

(a) The facility shall be inspected by a third-party inspector in accordance with 310 CMR 19.018, and such third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000.~~registered Massachusetts professional engineer, or other qualified professional approved by the Department, experienced in solid waste management, and retained by the owner/operator, on a frequency approved by the Department in the Operation and Maintenance Plan.~~

##### (b) An inspection shall:

- ~~1. be reported in writing and shall describe in detail the status and condition of all operating and monitoring equipment, appurtenances and devices; any deviation from compliance with operation and maintenance requirements set forth at 310 CMR 19.130, the site assignment, permit, or the authorization to operate, any actions taken to correct such deviations, as required by the Department or recommended by the inspecting engineer; and schedules to correct identified problems.~~
- ~~2. be signed and dated by the inspecting engineer, or other professional approved by the Department, certifying that to the best of his/her knowledge all information is accurate and complete.~~

- ~~(c) The operator shall submit one copy of the inspection report to the Department and one copy to the board of health no later than 14 days following the date of the inspection.~~  
~~(d) The operator shall be responsible for the timely submission of inspection reports to the Department and the board of health.~~

### Third-party Inspections, Standardizing

#### 19.132: Environmental Monitoring Requirements

(1) General. The owner or operator shall conduct monitoring of surface water, ground water, landfill gas and any other media as determined by the Department, including without limitation soil and sediment, on a schedule established in the permit or as otherwise required by Department. The owner or operator of facility that submits environmental monitoring results under the provisions of 310 CMR 19.132 shall ensure that analytical and environmental monitoring data submitted to the Department is scientifically valid and defensible, and of a level of precision and accuracy commensurate with its stated or intended use. Compliance with this performance standard includes, but is not limited to:

- (a) employing procedures and methodologies for the collection and analysis of soil, sediment, water (or other liquids), vapor, air, and/or waste samples that consist of:  
(1) methods published by the Department, the U.S. Environmental Protection Agency, the American Society for Testing and Materials (ASTM), the American Public Health Association (APHA), the National Institute for Occupational Safety and Health (NIOSH), the American Water Works Association (AWWA), and other organizations with expertise in the development of standardized analytical testing methods; or  
(2) other methods approved by the Department.  
(b) retaining a person who is qualified by education, training and experience to perform sample collection and analysis.

#### (2) Surface and Ground Water Monitoring.

- ~~(a) Sampling and analysis of surface and ground water shall be done in accordance with methods approved by the Department.~~ The owner and operator shall ensure that surface and ground water monitoring are conducted at any active landfill and during the facility's post-closure period set forth in 310 CMR 19.142.
- (b) The owner ~~and~~ /operator ~~of a facility~~ shall conduct surface and ground water monitoring at sampling points established in the permit and/or as required by the Department. The ground water point of compliance for ~~a solid waste~~ landfills shall be no more than 150 meters from the edge of the waste disposal area (as delineated in the facility's current ~~DEP~~ permit, ~~or~~ specified in the engineering plans referenced in the permit, or as otherwise delineated by the Department), or the property line, whichever is less.
- (c) The owner ~~or~~ /operator shall establish background surface water and ground water quality at sampling points hydraulically upgradient of the landfill. Background water quality shall be determined by a minimum of four quarterly rounds of samples for each of the monitoring parameters or constituents listed in 310 CMR 19.132(2)(h).
- (d) The owner ~~or~~ /operator shall conduct surface and ground water monitoring on a schedule established in the permit or as required by the Department. At a minimum, monitoring shall be performed semi-annually except as required pursuant to 310 CMR

19.132(2+)(c), unless the Department approves or orders, in writing, a different frequency of sampling.

(e) The Department may refuse to accept monitoring data where:

1. the sample was taken from a ground water monitoring well for which the Department has not received and approved as-built construction plans, boring logs and well locations;
2. the sample was taken from a ground water monitoring well constructed in a manner not approved by the Department;
3. the analyses were performed by a laboratory other than a Massachusetts certified laboratory, unless the sample is accompanied by a complete QA/QC submittal; ~~or~~
4. the sample was not handled in accordance with the sampling and preservation requirements (*e.g.*, sample container, holding time and sample volume) specified by the testing method;
5. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with 310 CMR 19.133;
6. the sample does not contain sufficient documentation regarding chain of custody;
7. the sample was not collected or analyzed in accordance with 310 CMR 19.132(1); or
8. the Department has reason to believe the sampling data is false, inaccurate, incomplete or misleading.

(f) The owner or operator shall submit ~~All analytical results shall be submitted~~ to the Department within 60 days after the date of sample collection or as specified in the permit or as otherwise required by the Department. The analytical results shall be summarized in tables with a discussion of the results including a trend analysis. Where the Department provides a form for environmental monitoring reports, the report shall be made ~~submitted on that form and shall contain all information as requested by that form.~~ If no form is provided by the Department, the report shall include, unless otherwise approved by the Department, the following information: ~~The results shall include, unless otherwise approved by the Department, the following information:~~

1. site plans or maps showing sampling locations, distribution of contaminants, groundwater contours and groundwater flow direction;
2. a letter report briefly summarizing the data and identifying any issues of concern;
3. all field Quality Assurance/Quality Control information; and
4. chain of custody forms.

(g) The owner or operator shall record ~~S~~static ground water elevations and total well depth ~~shall be recorded~~ prior to collecting a ground water sample whenever a monitoring well is to be sampled.

(h) At a minimum, the owner or operator shall analyze surface and ground water samples ~~shall be analyzed~~ for the following parameters, unless otherwise approved by the Department based on review of past monitoring results or other relevant information:

1. Indicator parameters:
  - a. pH (in situ);
  - b. Alkalinity;

- c. Temperature (in situ);
- d. Specific Conductance (in situ);
- e. Nitrate Nitrogen (as Nitrogen);
- f. Total Dissolved Solids;
- g. Chloride;
- h. Calcium;
- i. Sodium;
- j. Iron;
- k. Manganese; and
- l. Sulfate
- m. Chemical Oxygen Demand (COD)
- n. Dissolved Oxygen

2. Inorganics:

- a. Arsenic;
- b. Barium;
- c. Cadmium;
- d. Chromium
- e. Copper
- f. Cyanide;
- g. Lead;
- h. Mercury;
- i. Selenium;
- j. Silver; and
- k. Zinc.

3. all of the compounds included in EPA Method 8260, and methyl ethyl ketone, methyl isobutyl ketone, acetone and 1,4 dioxane. In addition, unknown peaks having intensities greater than five times the background intensity shall be identified (Method 8260 is detailed in the EPA publication SW-846, entitled *Test Methods for Evaluating Solid Waste.*); and

4. any additional parameters required by the Department.

(i) The owner or operator shall ensure that Ppractical quantitation limits (or laboratory reporting limits) ~~must~~ meet or be are below the Maximum Contaminant Level (MCL) or applicable standard for each analyte tested. ~~or If not, the Department will not accept the data will not be accepted.~~

(j) If the concentrations of any of the parameters listed in 310 CMR 19.132(2+)(h) exceed the state or federal drinking water standards, Maximum Contaminant Levels (MCLs), Ambient Water Quality Standards for surface water samples established at 314 CMR 4.00, or alternative standards established in a permit<sub>;</sub> or guidelines or standards established by a permit, order or authorization issued by the Department for contaminants for which no federal or state standard exists, at any sampling point, the owner~~or~~ operator shall<sub>;</sub>:

- 1. notify the Department within 14 days of the finding; and
- 2. collect, analyze and submit to the Department another round of samples within 60 days of the prior date of sample collection and determine the concentration of all parameters identified in 310 CMR 19.132(2+)(h) that were exceeded~~or as,~~ unless otherwise specified by the Department.

(k) Where the Department determines, at any time, based upon the ground and surface water analyses from the facility, upgradient water quality and baseline water quality, that assessment and corrective actions shall be required, the owner and operator shall undertake the assessment and/or corrective actions as determined by the Department. Such assessment shall characterize the full nature and extent of contamination, and the risks of harm to public health, safety and the environment in accordance with the requirements of 310 CMR 19.150 *et seq.* and 310 CMR 40.0114. In establishing the applicable standards for groundwater down-gradient of the point(s) of compliance the Department shall consider the factors and procedures contained in sections 310 CMR 40.0900 and 310 CMR 40.1000.

(l) Nothing in this section shall limit the responsibility of the ~~landfill~~owner or operator to comply with the provisions of M.G.L. c. 21H, § 4, M.G.L. c. 111, § 150A, 310 CMR 19.150, M.G.L. c. 21E, and 310 CMR 40.000~~14~~ at all locations down-gradient of the point(s) of compliance.

(23) Monitoring of the Secondary Leachate Collection or Leak Detection System.

(a) The owner or operator shall monitor the quantity and quality of leachate collected by the secondary leachate collection system or leak detection system, where such a system has been constructed. Monitoring shall be accomplished as specified in the solid waste management facility permit, the leachate discharge permit or as deemed necessary by the Department.

(b) The owner or operator shall submit, in addition to permit requirements, the results of the leachate monitoring from the secondary leachate collection system or leak detection system to the Department with third-party inspection reports.

(c) Where leachate is determined by the Department to have entered the secondary leachate collection system or leak detection system in excess of design standards, the owner or operator shall undertake the actions specified under 310 CMR 19.150:~~Landfill Assessment Requirement~~ and 310 CMR 19.151:~~Corrective Action Requirements~~ as required by the Department.

(34) Leachate Monitoring.

(a) The owner or operator shall monitor the quantity and quality of leachate as deemed necessary by the Department or as specified in the leachate discharge permit.

(b) The owner or operator shall submit, in addition to permit requirements, the results of the leachate monitoring to the Department with the inspection reports required pursuant to 310 CMR 19.130(35).

(45) Gas Monitoring.

(a) The owner or operator shall sample and physically and chemically characterize the recovered gas, condensates, or any other residues generated, and submit a copy of such analyses to the Department.

(b) The owner or operator shall conduct Ggas monitoring ~~shall be conducted~~ as follows:

1. Sampling and analysis of landfill gas shall be done in accordance with methods approved by the Department.
2. The owner ~~and~~ operator shall conduct landfill gas monitoring at sampling points established in the permit and/or as required by the Department.

3. The owner ~~/or~~ operator shall conduct landfill gas monitoring on a schedule established in the permit or as required by Department. Monitoring shall be performed quarterly unless otherwise approved by the Department.
- (c) The Department may not accept landfill gas monitoring data where:
1. the sample was taken from a gas monitoring device for which the Department has not received and approved as-built construction plans and locations; or
  2. the sample was taken from a gas monitoring device constructed in a manner not approved by the Department; ~~or~~
  3. the analyses were performed by a laboratory other than an approved laboratory, unless the sample is accompanied by a complete QA/QC submittal;
  4. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with the requirements of 310 CMR 19.133;
  5. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with 310 CMR 19.133;
  6. the sample does not contain sufficient documentation regarding chain of custody;
  7. the sample was not collected or analyzed in accordance with 310 CMR 19.132(1); or
  8. the Department has reason to believe the sampling data is false, inaccurate, incomplete or misleading.
- (d) The owner or operator shall submit Aall analytical results ~~shall be submitted~~ to the Department within 60 days after the date of sample collection or as the scheduled sampling period specified in the permit. The analytical results shall be summarized in tables with a discussion of the results, and shall include an analysis of pertinent trends. Where the Department provides a form for environmental monitoring reports, the report shall be ~~made~~submitted on that form and shall contain all information as requested by that form. If no form is provided by the Department, the report shall include, unless otherwise approved by the Department, the following information:
1. site plans or maps showing sampling locations, concentrations and gas exceedences;
  2. a letter report briefly summarizing the data and identifying any issues of concern;
  3. all field Quality assurance/Quality control information; and
  4. chain of custody forms.
- (e) The owner and operation shall conduct Ggas monitoring ~~shall be conducted during the facility's active operation~~ at any active landfill and for the post-closure period set forth in 310 CMR 19.142(2).

## Standardizing

### 19.140: Landfill Closure Requirements

#### **Subsection (6) of 310 CMR 19.140 is proposed to be revised as follows:**

(6) Completion of Closure. A facility shall be deemed closed on the date of the Department's written determination that the closure of the facility has been completed in accordance with the permit.

- (a) A facility shall be deemed to be closed for the purposes of 310 CMR 19.000 on the date of the Department's determination. A facility shall be deemed to be closed only after the applicant has documented that the Notice of Landfill Operation has been recorded or registered as required pursuant to 310 CMR 19.141 and the Department has issued its determination of closure.
- (b) The post-closure period shall begin on the date of the Department's determination.

### Standardizing

#### 19.141: ~~Record~~ Notice of Landfill Operation

(1) Prior to obtaining a determination from the Department that closure of a landfill has been completed or an approval from the Department for a post-closure use of a landfill, the owner or operator of a landfill shall record a notice~~Notification~~ that a landfill has been operated on a site ~~shall be recorded~~ in the registry of deeds or in the registry section of the land court for the district wherein the landfill lies in accordance with M.G.L. c. 111, § 150A. The notice~~fication~~ shall be captioned "~~Record~~ Notice of Landfill Operation ~~M.G.L. c. 111, § 150A, 310 CMR 19.141~~" and shall contain a title reference citing the source of title of the land on which the facility was constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land). This Notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instrument of transfer, whereby an interest in and/or a right to use the land on which the facility was and is to be constructed, or a portion thereof, is conveyed. The Notice shall~~and~~ contain the following:

- (a) identification of record owners of the property;
- (b) a description of the landfill site, by metes and bounds and by reference to an appropriate map or plan to be recorded therewith, signed by a qualified professional engineer or a land surveyor, depicting the boundaries of the filled area and the location of any and all leachate collection devices, gas and ground water monitoring wells associated with the site;
- (c) a detailed description of the type and extent of the final cap and cover on the landfill;
- (d) a description of the nature and duration of post-closure maintenance and monitoring requirements for the site and the amount and form of the financial assurance requirements pursuant to 310 CMR 19.000; ~~and~~
- (e) reference to the Department file number or other Department means for identifying the landfill file; and

~~(f) (2) The notice shall contain~~ the following statement:

"The premises described herein are subject to the provisions of M.G.L. c. 111, § 150A and 310 CMR 19.000. Said premises shall not be used for any purpose other than as a landfill without prior written approval of the Department of Environmental Protection. Continued operation of the site as a landfill requires the transfer of the permit in accordance with 310 CMR 19.044. The procedure for Department approval for any use other than as a landfill is set forth at 310 CMR 19.143. Such Department approval of other use is transferable or assignable only upon written approval of the Department."

### Third-party Inspections

**Subsections (5) and (6) of 310 CMR 19.142 are proposed to be revised as follows:**

19.142: Landfill Post-closure Requirements.

(5) Post-closure Requirements. During the post-closure period the owner or, operator (or successors or assigns thereto) shall perform the following activities on any closed portion of the facility:

- (a) take corrective actions to remediate and/or mitigate conditions that would compromise the integrity and purpose for the final cover;
- (b) maintain the integrity of the liner system and the final cover system;
- (c) collect leachate from and monitor and maintain leachate collection system(s);
- (d) monitor and maintain the environmental monitoring systems for surface water, ground water and air quality;
- (e) maintain access roads;
- (f) maintain landfill gas control systems;
- (g) protect and maintain surveyed benchmarks; and
- (h) have the landfill inspected by a third-party inspector in accordance with 310 CMR 19.018 and such third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000~~consulting Massachusetts Registered Professional engineer, or other qualified professional approved by the Department, experienced in solid waste management, in accordance with the post-closure plan.~~

(6) Inspection Reporting Requirements. The owner, operator, successor or assigns shall have the facility inspected by a third-party inspector in accordance with 310 CMR 19.018. Such inspections shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the post-closure plan or any other approval, order or other document issued by the Department pursuant to 310 CMR 19.000.

~~The owner, successors or assigns shall submit a report every two years except as otherwise required by the Department during the post-closure period describing any activity at the site and summarizing the results of environmental monitoring programs and inspections by third-party consulting Massachusetts Registered Professional engineers, or other qualified solid waste professional approved by the Department, experience in solid waste management as required at 310 CMR 19.142(5)(h).~~

**Presumptive Approval**

19.143: Post-closure Use of Landfills

(1) Applicability. Pursuant to M.G.L. c. 111, § 150A no site on which a facility was operated shall be used for any other purpose without: ~~the prior written approval of the Department.~~

- (a) a written approval for any post-closure use on a landfill's final cover or affecting an appurtenance to a landfill, including but not limited to appurtenances required for the management of leachate, landfill gas and stormwater; or
- (b) a presumptive approval in accordance with 310 CMR 19.039(7) for any other type of post-closure use at a landfill facility.

[NOTE TO REVIEWERS: We have omitted 310 CMR 19.0143(2) through (4) because no revisions to these subsections are proposed. These subsections set forth procedures for post-closure uses and construction.]

### Third-party Inspections

Subsections (25) of 310 CMR 19.207 is proposed to be revised as follows:

19.207: Handling Facility Operation and Maintenance Requirements

(25) Inspections.

- ~~(a) The facility shall be inspected by a [third party inspector in accordance with 310 CMR 19.018](#), and such [third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018](#), unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000. Massachusetts registered professional engineer, or other qualified professional approved by the Department, experienced in solid waste management, and retained by the owner/operator, on a frequency as approved by the Department in the Operation and Maintenance Plan.~~
- ~~(b) An inspection shall:~~
- ~~1. be reported in writing and shall describe in detail the status and condition of all operating and monitoring equipment, appurtenances and devices, any deviation from compliance with operation and maintenance requirements set forth at 310 CMR 19.130, the site assignment, permit, or the authorization to operate, any actions taken to correct such deviations, as required by the Department or recommended by the inspecting engineer, and schedules to correct identified problems.~~
  - ~~2. be signed and dated by the inspecting engineer, or other professional approved by the Department, certifying that to the best of his/her knowledge all information is accurate and complete.~~
- ~~(c) The operator shall submit one copy of the inspection report to the Department and one copy to the board of health no later than 14 days following the date of the inspection.~~
- ~~(d) The operator shall be responsible for the timely submission of inspection reports to the Department and the board of health.~~