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310 CMR 16.00: SITE ASSIGNMENT REGULATIONS FOR SOLID WASTE FACILITIES

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16.01: General Requirements

- (1) Purpose and General Description. The purpose of 310 CMR 16.00 is to protect public health, safety and the environment by comprehensively regulating:
  - (a) the siting of solid waste facilities; and
  - (b) operations which recycle, compost, or convert recyclable or organic materials.
- (2) Organization. 310 CMR 16.00 is composed of four parts.
  - (a) Part I identifies the activities that require a site assignment and the activities that are exempt from site assignment but remain subject to regulation by the Department.
  - (b) Part II establishes the rules for a public hearing held by the board of health for assigning a site.
  - (c) Part III describes the application fee paid by a site assignment applicant and used by a board of health for technical review of the data and for conducting a public hearing.
  - (d) Part IV establishes the site suitability criteria that are to be applied by the board of health or the Department, whichever is applicable, in determining whether a site is suitable.
- (3) Authority. Pursuant to M.G.L. c. 21A, §§ 2 and 8, c. 21H, § 7, and c. 111, §§ 150A and 150A½, the Department has the authority to:
  - (a) establish a process for a board of health and the Department to issue site assignments; and
  - (b) regulate recycling, composting and conversion operations.
- (4) Applicability. The site assignment requirements set forth at 310 CMR 16.00 shall apply to facilities that process, store, transfer, treat, or dispose of solid waste. They shall not apply to:

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- (a) Hazardous Waste Facilities. Facilities that manage hazardous wastes which are regulated pursuant to 310 CMR 30.000: *Hazardous Waste*;
  - (b) Waste Water Treatment Residuals Facilities. Facilities which manage waste-water treatment plant residuals subject to the siting process pursuant to M.G.L. c. 83, § 6 and regulated pursuant to 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*, provided that 310 CMR 16.00 does apply to solid waste management facilities which co-dispose waste-water treatment plant residuals with solid waste;
  - (c) Small Combustion Facilities. A solid waste combustion facility that is rated by the Department at one ton per hour or less pursuant to M.G.L. c. 111, § 150A; and
  - (d) Beneficial Reuse of a Solid Waste pursuant to 310 CMR 19.060: Beneficial Use of Solid Waste. The beneficial use of a solid waste as a secondary material in compliance with the requirements set forth at 310 CMR 19.060: *Beneficial Use of Solid Waste*.
- (5) Access to Facilities and Properties.
- (a) Reasonable Access. 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 or recyclable or organic material has been or is being disposed, handled, managed, placed, processed, reused, stored, transferred, treated, used or for the purposes of: assessing, preventing or remediating damage to the environment; protecting the public health, safety or the environment; determining or enforcing compliance; or preventing or abating public nuisances; provided that the 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 if emergency conditions require immediate entry as authorized by the conditions of any authorization, determination, modification, permit, or other approval, by the terms of any order or other enforcement document, or as otherwise authorized by law.
  - (b) During Inspection. After entry, personnel or authorized representatives of the Department may inspect, investigate, photograph, or sample any condition, equipment, operation, practice, record or property and make examinations and evaluations of a facility or other property specified in 310 CMR 16.01(5)(a), to determine and enforce compliance with M.G.L. c. 21A, §§ 2 and 8, M.G.L. c. 111, §§ 150A and 150A½ and/or 310 CMR 16.00 or take or arrange for actions authorized by M.G.L. c. 21H, § 7.
  - (c) 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 public nuisances, or actual or potential damage to the environment that may be caused by the disposal, handling, management, placement, processing, reuse, storage, transfer, treatment or use of solid waste or recyclable or organic materials, 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.
  - (d) Duty to Cooperate. The owner and operator of a facility or other property and the person possessing information as specified in 310 CMR 16.01(5)(c) shall in no way restrict, impede, or delay an inspection or any request for information by personnel or authorized representatives of the Department where such inspection or request is made pursuant to a reasonable request in accordance with 310 CMR 16.01(5), or in accordance with the conditions of any authorization, determination, modification, permit, or other approval, or pursuant to the terms of any order or other enforcement document, or as otherwise authorized by law.
  - (e) 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. 310 CMR 16.01(5)(e) shall not preclude the Department from gaining access through other legal means, including, but not limited to, a court order or injunctive relief.

16.01: continued

(6) Joint and Several Liability. Wherever 310 CMR 16.00 states 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 violation against the owner, the operator or both.

(7) Burden of Proof. In every proceeding, the owner and operator bear the burden to persuade the Department that the activities or operations being conducted pursuant to 310 CMR 16.00 do not create public nuisance conditions and do not pose a significant threat to public health, safety or the environment.

(8) Enforcement.

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

1. fail to submit a certification, log, notification, permit application or modification, plan, report or any other document within the time period specified in 310 CMR 16.00 or as specified in any approval, order, or permit issued by the Department;
2. make any false, inaccurate, incomplete or misleading statements in any certification, log, notification, permit application or modification, plan, report, or any other document which that person is required to maintain and submit pursuant to 310 CMR 16.00, or as specified in any approval, order, or permit issued by the Department;
3. hold himself or herself out as a responsible official when he/she is not fully authorized to bind the corporation, company, partnership, trust, sole proprietorship or municipality in violation of 310 CMR 16.00;
4. deny the Department access, upon reasonable request pursuant to 310 CMR 16.01(5) or pursuant to an authorization, modification, permit or other approval or order or other enforcement document, or as otherwise authorized by law, to:
  - a. enter upon and inspect the site, or other property where solid waste or recyclable or organic material has been or is being disposed, handled, managed, placed, processed, reused, stored, transferred, treated or used; and
  - b. review and copy any relevant records to determine and compel compliance with applicable regulations and any permit, modification or other approval or order issued pursuant to 310 CMR 16.00;
5. maintain or operate any place as a facility unless such place has been assigned by the board of health or the Department, whichever is applicable, pursuant to M.G.L. c. 111, § 150A;
6. handle or dispose of solid waste at any location that does not have a site assignment, except as may be allowed pursuant to 310 CMR 16.03;
7. recycle, compost, convert or otherwise handle recyclable or organic materials in a manner that is not in compliance with 310 CMR 16.03, 16.04 or 16.05;
8. fail to comply fully with the applicable provisions of 310 CMR 16.00 or with any authorization, modification, permit or other approval or order or other enforcement document issued pursuant to 310 CMR 16.00 or with any certification submitted pursuant to 310 CMR 16.00;
9. act without submitting a notification or certification, whichever is applicable, in accordance with 310 CMR 16.00; or
10. violate any other provision of 310 CMR 16.00.

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

1. order the owner or operator, or any other person responsible for the violation, to:
  - a. cease operations until the violation is corrected to the satisfaction of the Department or until such person obtains a site assignment and solid waste management facility permit or a permit issued pursuant to 310 CMR 16.00;
  - b. cease all illegal activity immediately or at a specified date and to comply fully with 310 CMR 16.00 and 19.000: *Solid Waste Management* or with any permit or conditions pursuant to 310 CMR 16.00; or
  - c. take appropriate remedial measures immediately or by a specified date to bring the site into compliance or to protect public health, safety or the environment, including without limitation, closure of the site.

16.01: continued

2. rescind, suspend, revoke, or modify any general permit or permit issued pursuant to 310 CMR 16.00 and/or initiate an enforcement action in accordance with applicable statutes or regulations. Where a permit is rescinded, suspended or revoked, the owner or operator shall cease operations until:
  - a. the owner or operator corrects the violation to the satisfaction of the Department; or
  - b. the owner or operator applies for and obtains a site assignment and solid waste management facility permit.
3. 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: *Administrative Penalty*; or
4. take such other action provided by 310 CMR 16.00 or 310 CMR 19.000: *Solid Waste Management* or other applicable statutory or regulatory authority as the Department deems appropriate.

(c) Right to Adjudicatory Hearing. A person who is the subject of an order issued pursuant to 310 CMR 16.01(8)(b)1. or 2. shall have the right to request an adjudicatory hearing on such order within 21 calendar days of the date of service of the order by filing a notice of claim with the Department in accordance with the procedures set forth in 310 CMR 16.01(8) and in 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*. 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: *Administrative Penalty*.

(d) Waiver of Right to Adjudicatory Hearing. Any person who is the subject of an order issued pursuant to 310 CMR 16.01(8)(b)1. or 2. shall be deemed to have waived the right to an adjudicatory hearing, unless, within 21 calendar days of the date of service of the order, the Department receives a request for an adjudicatory hearing with a notice of claim setting forth the basis for the request for an adjudicatory hearing, subject to and in compliance with the applicable provisions of 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*

(e) Service of Notices and Orders. Service in all civil administrative penalty actions is governed by 310 CMR 5.00: *Administrative Penalty*. The Department may serve an order issued pursuant to 310 CMR 16.00 according to any of the following procedures except for any process, notice, or order issued in the course of an adjudicatory hearing governed by the provisions of 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*.

1. Service of an order is complete when it is hand delivered by an employee or agent of the Department to the person to be served or to any officer, employee, responsible official or agent of the person. The fact and date of service is established by the return or affidavit of the person making service.
2. Service of an order, when made by any form of mail requiring the return of a receipt signed by the person to be served, is complete upon delivery to the person or to any officer, employee, responsible official or agent of the person. The fact and date of service is established by the returned receipt.
3. The Department may make service of an order in any other manner, including any form of electronic mail, facsimile or other electronic medium, national overnight carrier, or regular mail to the last known address, or by publication or other method of delivery reasonably calculated to give actual notice to the recipient of the order. The Department may use such alternative methods of service only when the person to be served declines to accept receipt by the service methods specified in 310 CMR 16.01(8)(e)1. and 2. The fact of service in such cases is established by such records as may be available. Service is complete upon the date on which the Department initiates electronic transmission, the date of publication, one day after the date of overnight mailing or three days after the date of regular mailing or other method of service.

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(9) Time.

(a) Computation of Time. Unless otherwise specifically provided by law or regulation or any determination issued pursuant to 310 CMR 16.00, any time period prescribed or referred to in 310 CMR 16.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day on which the Department's offices are closed, the time period shall run until the end of the next business day. If the time period prescribed or referred to is six days or less, only days when the offices of the Department are open shall be included in the computation.

(b) Timely Filing. Papers required or permitted to be filed under 310 CMR 16.00, or any provision of the applicable law, must be filed at the board of health office or such other place as the board of health, Department or 310 CMR 16.00 shall designate within the time limits for such filings as set by 310 CMR 16.00. Papers filed in the following manner shall be deemed to be filed as set forth in 310 CMR 16.01(6)(b)1. through 5.:

1. hand-delivery during business hours shall be deemed filed on the day delivered;
2. hand-delivery during non-business hours shall be deemed filed on the next regular business day;
3. mailing by placing in U.S. mail shall be deemed filed on the date so postmarked;
4. electronic delivery during regular business hours shall be deemed filed on the date received; and
5. electronic delivery after regular business hours shall be deemed filed on the business day following receipt.

(c) Papers shall show the date received by the board of health and the Department. The board of health and the Department shall cooperate in giving date receipts to any person filing papers by hand-delivery.

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

(11) Notwithstanding 310 CMR 19.000: *Solid Waste Management* and any solid waste management facility permit condition, the owner and operator of a solid waste management facility with a solid waste management permit issued pursuant to 310 CMR 19.000: *Solid Waste Management* may conduct any activity pursuant to 310 CMR 16.03, 16.04 or 16.05 by complying with the applicable requirements of 310 CMR 16.03, 16.04 and 16.05; provided that:

- (a) if the activity conducted pursuant to 310 CMR 16.03, 16.04 or 16.05 is conducted on the landfill footprint, then the owner and operator shall also comply with 310 CMR 19.039: *Applicant's Request to Modify a Permit*; and
- (b) the activity conducted pursuant to 310 CMR 16.03, 16.04 or 16.05 will be conducted consistently with the solid waste management facility's site assignment and will not adversely impact the solid waste management facility.

(12) Transition Provisions.

(a) Determinations of Need. An owner and operator to whom a determination of need has been issued are subject to the following requirements.

1. Operation Pursuant to Determination of Need for Transition Period. An owner and operator to whom a determination of need has been issued may continue operating in compliance with such determination of need until the date of expiration of the determination of need or the date five years after November 23, 2012, whichever is sooner, hereafter referred to as the transition deadline.
2. Requirements for Transition Notices or Filings by Transition Deadline. The owner or operator must take one of the following steps prior to the transition deadline:
  - a. at least 180 days prior to the transition deadline, file a notice with the Department demonstrating that the operation qualifies for an exemption pursuant to 310 CMR 16.03. Upon filing of such notice, the owner and operator shall continue operating only in accordance with the applicable exemption at 310 CMR 16.03, and the determination of need shall no longer be in effect.

16.01: continued

b. at least 180 days prior to the transition deadline, file a certification with the Department in accordance with 310 CMR 16.06(1) stating that the operation is in compliance with 310 CMR 16.04. Upon such filing, the owner and operator shall continue operating only in accordance with the applicable general permit at 310 CMR 16.04, and the determination of need shall no longer be in effect.

c. at least 180 days prior to the transition deadline, if 310 CMR 16.01(12)(a)1. and 2. do not apply, submit a renewal application that complies with 310 CMR 16.05 to the Department.

(b) Conditional Exemptions. An owner and operator of an operation previously exempt pursuant to the provisions of 310 CMR 16.05 in effect prior to November 23, 2012 shall comply with the applicable requirements of 310 CMR 16.00. If the operation is subject to an annual certification, the owner or operator shall submit the first certification on or before February 15, 2014. Thereafter, the owner and operator shall continue to comply with 310 CMR 16.00, including but limited to, if applicable, filing an annual certification in accordance with 310 CMR 16.06(1).

(c) Nothing in 310 CMR 16.01(12) shall be construed to limit the authority of the Department to take any enforcement action if the owner or operator fails to comply with any determination of need during its remaining term or with the requirements of 310 CMR 16.00 or 310 CMR 19.000: *Solid Waste Management* at any time.

16.02: Definitions

The following words when used in 310 CMR 16.00, except as otherwise required by the context, shall have the following meaning:

Abutter means the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including, but not limited to, land located directly across a street, way, creek, river, stream, brook or canal.

Adjacent Area means a parcel of land contiguous to a site or in close enough proximity to be directly impacted by water, air or soil borne pollutants, not exceeding a ½ mile radius from the site.

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

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

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

Aerobic Digestion means a process of accelerated biodegradation of organic materials using microorganisms under controlled conditions in the presence of oxygen.

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

16.02: continued

Agricultural Material means organic materials produced from the raising and processing of plants and animals as part of agronomic, horticultural, aquacultural or silvicultural operations including, but not limited to, animal manures, animal products and by-products (including carcasses), bedding materials and plant materials.

Anaerobic Digestion means a process of accelerated biodegradation of organic materials using microorganisms under controlled conditions in the absence of oxygen.

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

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

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

Biodegradable or Biodegradation means capable of being broken down into carbon dioxide, water and humus by biological organisms including, but not limited to, microorganisms.

Biodegradable Product means a product that meets the standards of the American Society for Testing and Materials (ASTM) D6400 and D6868 as of November 23, 2012.

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

Clean Wood means discarded material consisting of trees, stumps and brush including, but not limited to, sawdust, chips, shavings, bark, and new or used lumber. Clean wood does not include:

- (a) wood from commingled construction and demolition waste;
- (b) engineered wood products; and
- (c) wood containing or likely to contain:
  1. asbestos;
  2. chemical preservatives such as, but not limited to, chromated copper arsenate (CCA), creosote or pentachlorophenol; or
  3. paints, stains or other coatings, or adhesives.

Combustion Facility means a facility established in accordance with a valid site assignment and Department-issued permit and employing an enclosed system including, but not limited to, a refuse disposal incinerator using controlled flame combustion, the primary purpose of which is to thermally break down solid waste and producing ash that contains little or no combustible materials.

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

Composting or Composted means a process of accelerated biodegradation of organic materials using microorganisms under controlled conditions in the presence of oxygen using windrows or piles including, but not limited to, covered aerated piles or bays. For the purposes of 310 CMR 16.00, composting is not aerobic digestion or conversion.



16.02: continued

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

Conversion means aerobic or anaerobic digestion or enzymatic, thermal or chemical degradation of organic materials. For purposes of 310 CMR 16.00, conversion does not include composting.

Department means the Department of Environmental Protection.

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

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

Disposal Facility means any combustion facility or any landfill.

Downgradient means:

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

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

Facility means a site or works, and other appurtenances thereto, which is, has been or will be used for the handling, storage, transfer, processing, treatment or disposal of solid waste, including all land, structures and improvements which are directly related to solid waste activities.

Food Material means material produced from human or animal food production, preparation and consumption activities and which consists of, but is not limited to, fruits, vegetables, grains, and fish and animal products and byproducts.

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

16.02: continued

Handling means processing, storing, transferring or treating a material or solid waste.

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

Handling Facility means any facility that is not a disposal facility including, but not limited to, a transfer station, storage facility and any other facility used primarily for the storage, processing or treatment of solid waste.

Interim Wellhead Protection Area (IWPA) means that wellhead area established pursuant to 310 CMR 22.02: *Definitions*.

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

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

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

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

Non-potential Drinking Water Source Area means that area defined by 310 CMR 40.0006: *Terminology, Definitions and Acronyms*.

Operation means recycling, composting or conversion activities, subject to 310 CMR 16.03, 16.04 or 16.05, and the property on which any such activities take place.

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

Organic Material means any of the following source-separated materials: vegetative material; food material; agricultural material; biodegradable products; biodegradable paper; clean wood; or yard waste. It does not include sanitary wastewater treatment facility residuals.

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

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

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

Pollution shall have the same meaning as in 310 CMR 19.006: *Definitions*.

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

16.02: continued

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

Potential Private Water Supply means a potable water supply as defined at 314 CMR 5.11: *Ground Water Standards*, capable of yielding water of sufficient quality and quantity which is located under a parcel of land that at the time of the earlier of the following two filings, the Site Assignment Application or, where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form, is:

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

Potentially Productive Aquifer means:

- (a) any aquifers delineated by the U.S. Geological Survey (USGS) as a high or medium yield aquifer; and
- (b) any aquifers located east of the Cape Cod Canal (Cape Cod), on the Elizabeth Islands, on Martha's Vineyard, or on Nantucket.

Pre-sort means to separate from solid waste and to keep separate from solid waste. Pre-sorting does not require the separation of components that are integral to that material (*e.g.* insulation or electronic components in white goods).

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

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

Proposed Drinking Water Source Area means the preliminary Zone II or the preliminary IWPA for a proposed water supply well that has received a site exam approval by the Department and is actively pursuing source approval under the Drinking Water Regulations at 310 CMR 22.21(1): *Source Approval*.

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

Recyclable or Recyclable Material means a material that has the potential to be recycled and which is pre-sorted. Recyclable material includes biodegradable paper, but does not include:

- (a) organic materials that will be composted or converted; or
- (b) construction and demolition waste unless it has been separated and kept separate into at least the following categories: asphalt, brick and concrete; ceiling tiles; wood; metals; plaster and wallboard; roofing materials; and carpet.

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

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

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

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

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

16.02: continued

Residence or Residential means a single, multi-family, or group home, residential unit or apartment complex. For purposes of 310 CMR 16.00, a group home means an establishment, usually resembling a private home, for providing a small group of persons with special needs, such as handicapped or elderly persons or children, with lodging and supervised care.

Residual means all waste remaining after treatment or processing. Residual remaining after treatment or processing is not pre-sorted material. Air and water discharges managed in accordance with applicable regulations are not residuals.

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 to bind the corporation pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or operation;
- (b) for a limited liability company, person authorized pursuant to M.G.L. c. 156C, § 24 and the limited liability company's operating agreement to bind the company and all the members;
- (c) for a trust: a trustee or any other natural person authorized:
  - 1. to enter into contracts regarding the trust property;
  - 2. to bind the trust; or
  - 3. to encumber or dispose of the trust property.
- (d) for a partnership: a general partner who has been duly authorized to bind the partnership;
- (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.*: a principal executive officer or a ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

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

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

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

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

- (a) designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c. 111, § 150A; or
- (b) establishes that an area of land was utilized as a site for the disposal onto land of solid waste or as a site for a refuse disposal incinerator prior to July 25, 1955 as provided in St. 1955, c. 310, § 2. The area of land site assigned under 310 CMR 16.02: *Site Assignment* shall be limited to the lateral limits of the waste deposition area ("the footprint"), or the area occupied by the incinerator, as they existed on July 25, 1955, except as otherwise approved by the Department in approved plans. Said assignment shall apply only to uninterrupted solid waste disposal activities within the footprint or plan-approved area and shall have no legal force or effect at any time after the cessation of disposal activities except as otherwise provided at 310 CMR 16.21.

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

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

16.02: continued

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

- (a) hazardous wastes as defined and regulated pursuant to 310 CMR 30.000: *Hazardous Waste*;
- (b) sludge or septage which is land applied in compliance with 310 CMR 32.00: *Land Application of Sludge and Septage*;
- (c) waste-water treatment facility residuals and sludge ash from either publicly or privately owned waste-water treatment facilities that treat only sewage and which is treated and/or disposed at a site regulated pursuant to M.G.L. c. 83, §§ 6 and 7 and/or M.G.L. c. 21, §§ 26 through 53 and the regulations promulgated thereunder, unless the waste-water treatment residuals and/or sludge ash are co-disposed with solid waste;
- (d) septage and sewage as defined and regulated pursuant to 314 CMR 5.00: *Ground Water Discharge Permit Program*, and regulated pursuant to either M.G.L. c. 21, §§ 26 through 53 or 310 CMR 15.00: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, provided that 310 CMR 16.00 does apply to solid waste management facilities which co-dispose septage and sewage with solid waste;
- (e) ash produced from the combustion of coal when reused as prescribed pursuant to M.G.L. c. 111, § 150A;
- (f) solid or dissolved materials in irrigation return flows;
- (g) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;
- (h) materials and by-products generated from and reused within an original manufacturing process;
- (i) materials which are recycled, composted, or converted in compliance with 310 CMR 16.03, 16.04 or 16.05; and
- (j) organic material when handled at a Publicly Owned Treatment Works as defined in 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers* and as approved by the Department pursuant to 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*.

Solid Waste Management Facility means Facility.

Source Separated means separated from solid waste at the point of generation and kept separate from solid waste. Source separated does not require the separation of components that are integral to that material (*e.g.* insulation or electronic components in white goods).

Storage means temporary containment of a material or solid waste in a manner which does not constitute disposal.

Storage Facility means a handling facility where solid waste is stored.

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

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

Treatment means the use of any method, technique or process to change the chemical, biological character or composition of material or waste; to neutralize such material or waste; to render such material or waste safer to transport, store or dispose; or make such material or waste amenable to recovery, storage or volume reduction. Storage alone does not constitute treatment.

Upgradient means:

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

16.02: continued

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

Vegetative Material means plant material.

Watershed means that area defined by 310 CMR 22.02: *Definitions*.

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

Zone A means that area defined by 310 CMR 22.02: *Definitions*.

Zone B means that area defined by 310 CMR 22.02: *Definitions*.

Zone C means that area defined by 310 CMR 22.02: *Definitions*.

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

Zone I means that area defined by 310 CMR 22.02: *Definitions*.

Zone II means that area defined by 310 CMR 22.02: *Definitions*.

16.03: Exemptions from Site Assignment

(1) Manufacturing or Industrial Activities. The following manufacturing or industrial operations which handle recyclable or organic materials in the manufacturing or industrial process do not require a site assignment, a facility permit pursuant to 310 CMR 19.000: *Solid Waste Management*, a general permit pursuant to 310 CMR 16.04, or a recycling, composting or conversion permit pursuant to 310 CMR 16.05, but shall handle such recyclable or organic materials in a manner that prevents an unpermitted discharge of pollutants to air, water, land or other natural resources of the Commonwealth, does not create a public nuisance, and does not present a significant threat to public health, safety or the environment:

- (a) paper mills, including de-inking plants and paperboard manufacturers;
- (b) steel mills;
- (c) aluminum smelting plants and mills;
- (d) glass manufacturing plants;
- (e) plastic manufacturing plants;
- (f) tire re-capping plants;
- (g) de-tinning plants;
- (h) cement and concrete plants;
- (i) foundries;
- (j) asphalt batching plants; and
- (k) rendering plants.

(2) The activities listed in this subsection at 310 CMR 16.03(2)(a) through (c) do not require a site assignment, a facility permit pursuant to 310 CMR 19.000: *Solid Waste Management*, a general permit pursuant to 310 CMR 16.04, or a recycling, composting or conversion permit pursuant to 310 CMR 16.05, provided that the owner and operator incorporates best management practices in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, does not create a public nuisance, and does not present a significant threat to public health, safety or the environment.

(a) Handling Solid Waste.

1. Temporary Solid Waste Storage. Temporary storage of solid waste in dumpsters, roll-offs, or other temporary storage containers for the collection of solid waste generated on-site.
2. Temporary Storage by a Public Works Department. Dumpsters, roll-offs, or other temporary storage containers or temporary storage areas at a location controlled by a public works department such as a municipal or state department, agency or authority of

16.03: continued

public works, transportation, public parks or recreation or similar government entity, when used exclusively for solid waste generated and collected by the government entity and when storage is appropriate for the type of waste (e.g., materials such as trash from roadside trash barrels are stored in dumpsters or roll-offs while materials such as street sweepings may be stored without containers).

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

- a. there is no unloading or transfer of the solid waste from the container or vehicle to the ground or to another container or vehicle;
- b. the trucks or other solid waste handling and transfer equipment are sufficiently enclosed to prevent public nuisance conditions; and
- c. the zoning provisions applicable to the truck storage or repair site would not disallow such an activity or use.
- d. For purposes of 310 CMR 16.03(2)(a)3., occasionally means not a routine or scheduled activity, but the result of unexpected circumstances such as equipment breakdown or unscheduled closure of a solid waste management facility.

4. Hospital and Laboratory Medical or Biological Waste Storage Area. A hospital, medical laboratory or biotechnology company which accepts for storage, pending off-site treatment or disposal, medical or biological waste generated on-site by the hospital, medical laboratory or biotechnology company, or medical or biological waste generated off-site, provided that the hospital, medical laboratory or biotechnology company complies with the following requirements.

- a. The hospital, biotechnology company or medical laboratory has sufficient properly designed and operated medical or biological waste storage areas to accommodate on-site and off-site medical or biological waste and manages all medical or biological waste in compliance with 105 CMR 480.000: *Minimum Requirements for the Management of Medical or Biological Waste*, and any other applicable law or regulation.
- b. The hospital, medical laboratory or biotechnology company accepts and stores medical or biological waste generated off-site with medical or biological waste generated on-site in accordance with the applicable requirements below.
  - i. Hospital. A hospital collects and stores medical or biological waste generated on-site and off-site only from hospitals or clinics that the hospital owns or from hospitals, clinics or physicians with whom the hospital has a professional affiliation for the provision of medical services.
  - ii. Medical Laboratory. A medical laboratory collects and stores medical or biological waste generated on-site and only generated off-site from laboratories that it operates or generated off-site by customers to whom the laboratory provides laboratory services but only to the extent that the medical or biological waste collected and stored from such customers does not, on a daily basis, exceed the amount of medical or biological waste generated on-site from the medical laboratory's own laboratory activities.
  - iii. Biotechnology Company. A biotechnology company collects and stores medical or biological waste generated on-site and off-site only from the company's biotechnology operations conducted at buildings owned or leased by the biotechnology company.

(b) Handling Recyclable Material.

1. Recycling Drop-off Center. A recycling drop-off center.
2. One Day Collection Event. A one day collection event for recyclable materials.
3. Beverage Container Redemption Center. A redemption center which collects, stores, and processes beverage containers subject to the provisions of M.G.L. c. 94, §§ 321 through 326.
4. Paper Baling and Handling. Paper baling and handling of recyclable paper (including all grades of paper and paperboard).
5. Asphalt Pavement, Brick and Concrete Recycling Operation. An asphalt pavement, brick or concrete rubble processing (crushing) operation when:

16.03: continued

- a. the operation is located at:
    - i. an active quarry or active sand and gravel pit where any asphalt pavement, brick and concrete rubble that is transported to the operation is presorted, so it contains only asphalt pavement, brick or concrete rubble; or
    - ii. the site of a demolition and/or construction project where all the asphalt pavement, brick and concrete rubble processed is generated at the site;
  - b. the material consists solely of asphalt pavement, brick and concrete rubble that is not mixed with or contaminated by wastes;
  - c. the asphalt pavement, brick and concrete rubble is processed so the maximum length of the largest dimension of any piece of rubble is less than six inches;
  - d. all rebar is removed in the process and is recycled or disposed in an approved facility;
  - e. there is no accumulation of the asphalt pavement, brick and concrete rubble or rebar prior to or after processing whether in its as-received, in-process or processed condition for more than six months from the date of receipt;
  - f. at least 30 days prior to commencement of operation, the owner or operator notifies the Department and the board of health in writing using a form provided by the Department; and
  - g. the owner or operator maintains accurate records for at least three years to demonstrate compliance with 310 CMR 16.03(2)(b)5.
6. Tire Chipping, Shredding or Other Tire Processing. Tire chipping, shredding or other tire processing when:
- a. only tires or tires with wheel rims attached, that are not mixed with other solid waste, are processed;
  - b. the quantity of whole tires on site does not exceed the number of tires that can be processed in a 24-hour period or 1000 tires, whichever is greater;
  - c. the total quantity of processed tires (tire chips, shreds or other tire derived products) at the site does not exceed five times the weight of tires that can be processed in a 24-hour period or the equivalent of 5000 tires, whichever is greater;
  - d. whole tires and processed tires are stored in buildings, covered containers or covered to prevent the infiltration of water;
  - e. whole tires and processed tires are stored in accordance with 310 CMR 7.00: *Air Pollution Control* and local fire department requirements for storing combustible material;
  - f. there is no accumulation of tires and/or processed tires prior to or after processing whether in its as-received, in-process or processed condition for more than 30 days from the date of receipt;
  - g. the processed tires are:
    - i. used to make new synthetic polymers ("rubber");
    - ii. used in accordance with a beneficial use determination or other approval required by the Department;
    - iii. combusted in a facility that is not a solid waste facility and in accordance with a specific air quality approval issued under 310 CMR 7.00: *Air Pollution Control* that approves the combustion of tires or processed tires as an alternative fuel;
    - iv. transferred to a solid waste management facility approved by the Department; or
    - v. transferred out-of-state and managed in accordance with that state's laws; and
  - h. at least 30 days prior to commencement of operation, the owner or operator notifies the Department, the board of health, and the local fire department in writing using a form provided by the Department.
- (c) Handling or Disposal of Organic Materials.
1. Activities Located at an Agricultural Unit. Activities located at an agricultural unit as defined in 330 CMR 25.02: *Definitions*, provided that the owner and operator comply with the regulations and guidelines of the Department of Agricultural Resources. If the Department of Agricultural Resources determines that the activity at a specific agricultural unit is no longer regulated by the Department of Agricultural Resources, then the owner and operator shall be subject to 310 CMR 16.00.

16.03: continued



2. Small Composting Operations Not at a Residence. Composting (other than at a residence) provided that:
  - a. less than 20 cubic yards or less than ten tons per week of vegetative materials, food materials or animal manures that are generated on-site and then combined with the addition of bulking materials (from on- or off-site) to achieve effective composting; and
  - b. at least 30 days prior to commencement of operation, the owner or operator notifies the Department and the board of health in writing using a form provided by the Department.
3. Municipal Food Material Collection Center. A municipally owned collection center for residents to drop off food materials, provided that:

16.03: continued

- a. the center accepts only food materials from residents of the municipality;
  - b. the food material is stored in a container which is kept sealed when food material is not being added;
  - c. no more than one ton of food material is collected per day and no more than three tons are on-site at any time;
  - d. the food material is stored at the center and removed from the center in a manner that does not create public nuisance conditions, such as, but not limited to, odors or vectors. In no case shall food material be on-site for more than seven days after receipt; and
  - e. at least 30 days prior to commencement of operations, the owner or operator notifies the Department and the board of health, in writing, using a form provided by the Department.
4. Land Application of Manure. The land application or composting of manures in normal farming activities.
  5. Residential Composting. At a residence, composting of organic materials generated at the residence.
  6. Residential Disposal of Stumps, Trees and Brush. Disposal of stumps, trees and brush at a single family home or farm where the stumps, trees and brush are generated and disposed within the boundaries of such home or farm by the occupant or resident of that home or farm.
  7. Handling of Clean Wood. The handling and use of clean wood as defined in 310 CMR 16.02.
  8. Leaf and Yard Waste Transfer Operation. A leaf and yard waste transfer operation provided that all materials are transferred off-site within seven days of receipt.

16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations

- (1) Applicability. The following operations are eligible for a general permit and do not require a site assignment, a facility permit pursuant to 310 CMR 19.000: *Solid Waste Management*, or a recycling, composting, or conversion permit pursuant to 310 CMR 16.05, provided the operation meets the requirements of 310 CMR 16.04:
  - (a) a recycling operation that receives no more than 250 tons per day of recyclable materials, not including paper;
  - (b) a composting operation that:
    1. receives no more than 105 tons per week and no more than 30 tons per day of Group 2 organic materials, listed at 310 CMR 16.04(3)(b): *Table 1. Examples of Organic Materials*, or other organic materials with a carbon to nitrogen ratio of 30:1 or less;
    2. contains less than 5,000 cubic yards of organic materials per acre; and
    3. has less than 50,000 cubic yards of organic materials on site at any one time; or
  - (c) an aerobic or anaerobic digestion operation that receives no more than 100 tons per day of organic material from on or off site, based on a 30 day rolling average.
- (2) General Permit Requirements for a Recycling Operation. The owner and operator of an operation that handles recyclable materials shall:
  - (a) ensure the operation and its products do not result in an unpermitted discharge of pollutants to air, water, land or other natural resources of the Commonwealth, create a public nuisance, or present a significant threat to public health, safety or the environment;
  - (b) ensure that the recyclable materials and products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment;

## 16.04: continued

- (c) ensure that the type and quality of recyclable materials is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;
- (d) ensure that the operation handles recyclable materials and residuals only within a handling area, containers or trucks that are sufficiently enclosed and covered to prevent a public nuisance;
- (e) ensure that the amount of residuals generated at a single-stream recycling operation does not average more than 15%, or at any other type of recycling operation 10%, by weight of the materials received during any quarter;
- (f) ensure that the material, in its as-received, in-process or processed condition, shall not exceed the amount of recyclable or organic material that can be received in one year. This time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load;
- (g) ensure that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination;
- (h) maintain accurate records for at least three years to demonstrate compliance with 310 CMR 16.04 and submit a report to the Department annually by February 15<sup>th</sup> on a form provided by the Department that shall include, but not be limited to, the amounts and types of recyclable materials received, transferred and recycled and the amount of residuals managed during the previous calendar year; and
- (i) submit a compliance certification in accordance with 310 CMR 16.06(1).

(3) General Permit Requirements for Composting or Aerobically or Anaerobically Digesting Organic Materials.

- (a) The owner and operator of an operation that composts or aerobically or anaerobically digests organic materials shall:
  1. ensure the operation and its products do not result in an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, create a public nuisance, or present a significant threat to public health, safety or the environment;
  2. ensure that the operation incorporates best management practices, including but not limited to:
    - a. producing stabilized organic materials;
    - b. maintaining proper thermal regulation and monitoring to prevent spontaneous combustion and destroy pathogens;
    - c. managing stormwater and leachate to prevent ponding and water pollution;
    - d. maintaining access to an adequate water supply with adequate pressure for fire control;
    - e. implementing an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
    - f. implementing a vector control plan that is appropriate for the size and type of the operation that will minimize the presence of vectors. The plan shall identify specific actions that will be taken to address complaints if unacceptable vectors occur beyond the property line of the operation;
    - g. employing an appropriate number of properly trained personnel for the size and type of the operation;
    - h. using equipment that is appropriate for the size and type of the operation; and
    - i. developing a contingency plan that describes corrective actions to be taken for management of the organic materials and products in the event of equipment breakdowns, delivery of unacceptable material, spills, fires, extreme weather conditions or other events, including but not limited to the failure of the odor or vector control plan;
  3. ensure that the operation is located at least 250 feet from any existing water supply well in use at the time the operation commences;
  4. ensure that the type and quality of organic materials is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;

## 16.04: continued

5. ensure that the organic material and products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment, including but not limited to implementing a toxics control plan that:
  - a. will minimize entry of toxic materials into the operation;
  - b. is appropriate for the organic materials to be managed at the operation; and
  - c. ensures that the final products resulting from the operation do not pose a significant threat to public health, safety or the environment.

Should toxics be detected in the final products at levels that pose a significant threat to public health, safety or the environment for any likely use of the product, the plan shall also include a contingency plan that identifies steps to be taken to reduce toxics in incoming organic materials, describes corrective actions to be taken for management of the organic materials and products, and identifies how any contaminated products are to be used or disposed;

6. ensure that the amount of residuals generated does not average more than 5% by weight of the materials received during any quarter;
7. ensure that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination;
8. not allow materials, in their as-received, in-process or processed condition, to be stored for more than one year from the date of their receipt at the operation. This time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load;
9. maintain accurate records for at least three years to demonstrate compliance with 310 CMR 16.04 and submit a report to the Department annually by February 15<sup>th</sup> on a form provided by the Department that shall include, but not be limited to, the amounts and types of organic materials received and composted and the amount of residuals managed during the previous calendar year; and
10. submit a compliance certification in accordance with 310 CMR 16.06(1).

(b) Additional Requirements for a Composting Operation. The owner and operator of a composting operation shall comply with 310 CMR 16.04(3)(a) and shall:

1. ensure that no more than 25%, by volume, of the total compost mixture shall be a Group 2 Organic Material listed at 310 CMR 16.04(3)(b): *Table 1. Example of Organic Materials* or other organic materials with a carbon to nitrogen ratio of 30:1 or less;
2. ensure that adequate and appropriate bulking material (consisting of Group 1 organic materials listed at 310 CMR 16.04(3)(b): *Table 1. Example of Organic Materials* or other organic materials with a carbon to nitrogen ratio of greater than 30:1) is readily available on-site to mix with incoming Group 2 organic materials or other organic materials with a carbon to nitrogen ratio of 30:1 or less;
3. ensure that all Group 2 organic material or other organic materials with a carbon to nitrogen ratio of 30:1 or less is mixed into the compost windrows or piles to such an extent that it is unrecognizable as a separate material as soon as possible but no later than the close of business each day, or transferred off-site by the close of business on the same day that it is received at the operation; and
4. ensure timely and regular aeration of the compost to ensure proper aerobic, temperature, moisture and porosity conditions.

16.04: continued

Table 1. Examples of Organic Materials

Table 1 Examples of Organic Materials			
Group 1 Organic Materials		Group 2 Organic Materials	
Example Materials	C:N ratio	Example Materials	C:N ratio
Clean wood	100-1300:1	Vegetables	11-19:1
Cardboard	560:1	Food material	14-16:1
Paper and paper products	125-850:1	Grass clippings	17:1
Leaves	40-80:1	Green plant material	15-19:1
Straw	60-80:1	Fish waste	2-5:1
Corn stalks	60-75:1	Manure	6-14:1
Shrub trimmings	50:1	Solid and liquid digestate from aerobic and anaerobic digestion processes	Variable

Source: U.S. Composting Council, Best Management Practices (BMPs) for Incorporating Food Residuals Into Existing Yard Waste Composting Operations, p. 20. found at <http://compostingcouncil.org/admin/wp-content/uploads/2010/09/BMP-for-FW-to-YW.pdf>.

(c) Additional Requirements for an Aerobic or Anaerobic Digestion Operation. The owner and operator of an aerobic or anaerobic digestion operation shall comply with 310 CMR 16.04(3)(a) and shall:

1. ensure that all Group 2 organic material, listed at 310 CMR 16.04(3)(b): *Table 1. Example of Organic Materials*, or other organic materials with a carbon to nitrogen ratio of less than 30:1 generated off-site is delivered to the operation via sealed tank or vessel and transferred using a direct connection (e.g. hose) technology, however, this requirement does not apply to an operation that accepts less than 15 tons per day of Group 2 organic materials listed at 310 CMR 16.04(3)(b): *Table 1. Example of Organic Materials* or other organic materials with a carbon to nitrogen ratio of less than 30:1;
2. ensure that all handling occurs in sealed tanks or vessels, with odor controls; and
3. ensure that all organic material is either added to the active digestion system by the close of business on the same day that it is received at the operation or stored in sealed tanks or vessels, with odor controls.

#### 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations

(1) Applicability. The recycling, composting, conversion or handling of recyclable or organic materials that does not qualify for an exemption pursuant to 310 CMR 16.03 or a general permit pursuant to 310 CMR 16.04, shall apply for a recycling, composting or conversion (RCC) permit pursuant to 310 CMR 16.05. A RCC operation that has a RCC permit does not require a site assignment or a solid waste management facility permit pursuant to 310 CMR 19.000: *Solid Waste Management* provided the owner or operator complies with the permit.

(2) RCC Permit Application. Any applicant applying for a RCC permit pursuant to 310 CMR 16.05 shall submit an application to the Department, using forms and procedures provided by the Department, including without limitation, those specified in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*, with a copy to the board of health.

(a) Pre-application Meeting. The applicant shall attend a pre-application meeting with the Department. The applicant shall provide to the Department, at least 14 days prior to the meeting date, sufficient information to describe the general nature and scope of the applicant's proposal including, but not limited to, the following information:

## 16.05: continued

1. the location;
  2. a description of the technology, including a process flow chart and the size and type of all equipment used;
  3. the type, quantity and quality of all materials received and products or residuals produced; and
  4. identification of the potential public nuisances and adverse impacts from the operation and the proposed methods for controlling such public nuisances and impacts.
- (b) General Application Requirements. The applicant shall submit an application that meets the following requirements.
1. The application shall include sufficient information such that the Department can:
    - a. evaluate the feasibility of the proposal to accomplish the intended recycling, composting or conversion activity; and
    - b. evaluate the potential for public nuisances and impacts of the operation on public health, safety and the environment.
  2. The application shall identify all other local, state or federal permits required.
  3. All forms, plans, and other papers pertaining to design and construction of an operation to be permitted pursuant to 310 CMR 16.05, shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable about the proposed technology, design and construction and shall bear the seal, signature and discipline of said engineer. Any other form, plan or paper shall be completed by a competent professional experienced in the appropriate field.
  4. All mapping and surveying shall be completed by a registered surveyor.
  5. The application shall provide an estimate for a financial assurance mechanism, if required by the Department, similar to the types of financial assurance approved in 310 CMR 19.051: *Financial Assurance Requirements*.
  6. The application shall include documentation that the MEPA process:
    - a. does not apply;
    - b. applies and the Secretary has determined that an EIR is required; or
    - c. has been completed, and the Secretary has issued a certificate or a determination that an EIR is not required.
  7. The Department reserves the right to require additional information.
- (c) Specific Application Information. The owner or operator shall ensure that the application includes the following information, as may be modified by the pre-application meeting or pursuant to 310 CMR 16.05(2)(b)7.
1. Recyclable or Organic Material. The following information shall be provided for each material managed at the operation:
    - a. a detailed description of the type, quantity, and sources of all material(s) to be received by the operation;
    - b. the physical, biological and chemical specifications governing the quality of material accepted for recycling, composting or conversion;
    - c. where known or when requested, a detailed chemical and physical characterization of the material, including contaminants;
    - d. the methods and procedures employed to ensure the material specifications are met. This may include, but is not limited to:
      - i. training, signage or other aids for generators of the material; and
      - ii. sampling and testing of materials at the site of generation, when received at the operation or after processing and treatment to ensure the quality of the material, including minimizing toxic substances; and
    - e. a toxics control plan that:
      - i. will minimize entry of toxic materials into the operation;
      - ii. is appropriate for the organic materials to be managed at the operation; and
      - iii. ensures that the final products resulting from the operation do not pose a significant threat to public health, safety or the environment. Should toxics be detected in the final products at levels that pose a significant threat to public health, safety or the environment for any likely use of the product, the plan shall also include a contingency plan that identifies steps to be taken to reduce toxics in incoming organic materials, describes corrective actions to be taken for management of the organic materials and products, and identifies how any contaminated products are to be used or disposed.

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2. Site. The following descriptions, plans, or other site information shall be provided:
  - a. a general description of the site and the surrounding area;
  - b. a map indicating the location of the proposed operation;
  - c. a site map indicating:
    - i. the geographical and geological characteristics of the site;
    - ii. the location and distance to manmade structures and features (such as but not limited to, parks, conservation areas, buildings, roads and power lines) within ½ mile of the site; and
    - iii. the location and distance to environmental receptors, including but not limited to, public and private water supply wells, wetlands, streams, rivers or other water bodies within ½ mile of the site.
3. Design and Operation. The following plans, reports, diagrams, schematics, studies and other information shall be provided:
  - a. a description of the technology, including:
    - i. a process flow chart; and
    - ii. the history of the use of the technology, including:
      - (i) number of units operational;
      - (ii) type of materials processed;
      - (iii) products produced and their use;
      - (iv) an evaluation of operational successes and failures; and
      - (v) evaluation of operational issues including preventing public nuisances and adverse impacts to the public health, safety or the environment;
  - b. a design plan including:
    - i. a detailed description of the proposed method(s) for recycling, composting, converting or handling the material from initial receipt through final products and residuals;
    - ii. identification of all equipment to be used at the operation;
    - iii. the layout of the operation including all structures, equipment, buildings, roads and other appurtenances;
    - iv. the location, quantity and composition of all emissions or discharges, including but not limited to wastewater discharges and air emissions;
    - v. environmental controls that:
      - (i) prevent public nuisances, including but not limited to, odor, vectors, noise and dust; and
      - (ii) protect public health, safety and the environment, including but not limited to, the proposed method of treatment and management of wastewater discharges, air emissions, stormwater and leachate;
    - vi. the location and size of on-site storage areas for received materials, products and residuals; and
    - vii. the size of the operation in tons per day;
  - c. An operations and maintenance plan, including:
    - i. a description of the methods and procedures employed to ensure and verify the quality of materials received and products produced;
    - ii. a description of the proposed material handling methods and techniques;
    - iii. an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
    - iv. a vector control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
    - v. a description of the routine environmental monitoring and sampling protocols;
    - vi. an inspection plan to ensure the operation will be in compliance with the RCC permit and all applicable regulations; and
    - vii. a record keeping system that documents the compliance of the operation with its RCC permit and all applicable regulations;

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- d. contingency plans for:
  - i. management of incoming recyclable or organic materials should there be an interruption in operation;
  - ii. management of incoming recyclable or organic materials that do not meet specifications and need to be rejected;
  - iii. response to a fire, flood, or other extreme weather conditions or acts of nature;
  - iv. response to a spill or leakage of any material at the site requiring remediation or corrective action; and
  - v. repairing or replacing broken or inoperative equipment.
- 4. Products and Residuals. The owner or operator shall ensure that the application includes the following information:
  - a. a description of the type and quantity of products to be produced and how they will be used;
  - b. documentation that markets or uses exist for the products to be produced;
  - c. a description of how organic materials that are to be land-applied are to be stabilized and how pathogens are to be destroyed; and
  - d. the quantity and composition of any residuals generated and how and where they will be managed.

(3) Review Criteria. The Department shall issue an RCC permit only if it is persuaded that 310 CMR 16.05(3)(a) through (h) are met.

(a) Recyclable or Organic Materials Only. Incoming materials meet the definition of recyclable or organic materials, and the operation will minimize toxic materials. The Department may take into account the following factors in making its decision:

- 1. whether the materials have been separated from solid waste to the maximum extent possible and contain the least possible amount of solid waste;
- 2. the nature of any contaminants and their probable effect on public health, safety and the environment from handling or use of products;
- 3. whether the materials are or are likely to be contaminated with toxic substances, as determined by the Department; and
- 4. whether the toxics control plan is sufficient to prevent significant threats to public health, safety or the environment.

(b) Design and Operation is Feasible. The operation will function as it has been proposed and designed in that:

- 1. the materials can feasibly be and will be recycled, composted or converted under the proposal set forth in the application;
- 2. the incoming material and product specifications will be met consistently;
- 3. the products will have markets or a reasonable likelihood of having a market;
- 4. materials, whether in their as-received, in-process or processed condition, shall not be stored for more than one year from the date of their receipt at the operation. The time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load; and
- 5. the quantity of residuals generated through the processing and treatment of materials will not average more than the following percentages by weight of materials handled during any calendar quarter:
  - a. 5% for organic materials;
  - b. 5% for recycling of construction and demolition waste;
  - c. 10% for recycling of recyclable material except at a single-stream operation;
  - d. 15% for recycling of recyclable material at a single-stream operation; or
  - e. Such other percentage as the Department may establish in order to minimize residual generation. The residual generation criteria established at 310 CMR 16.05(3)(b)5.a. through d. may be modified by the Department under the following circumstances:
    - i. the industry average for processing materials of the same nature utilizing the best available processing equipment is different than the percentages set forth in 310 CMR 16.05(3)(b)5.a. through d; or
    - ii. the scale of the operation is sufficiently small that actual residual generation is minimal.



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- (c) No Significant Threats or Nuisances. The operation will not present a significant threat to public health, safety or the environment and will not create a public nuisance.
  - (d) No Unpermitted Discharges. The operation will not result in an unpermitted discharge to air, water, land or other natural resources of the Commonwealth.
  - (e) Appropriate Siting. The site is appropriate for the particular proposed activity, size, and technology taking into consideration, but not limited to, distances to sensitive human and environmental receptors, such as residences, schools, public and private water supply wells, wetlands, streams and rivers.
  - (f) MEPA Compliance. The owner and operator have demonstrated that either the MEPA process does not apply or the MEPA process has been completed and the Secretary has issued a certificate or a determination that an EIR is not required.
  - (g) Financial Assurance. The owner or operator has provided a sufficient financial assurance mechanism, similar to the types of financial assurance approved in 310 CMR 19.051: *Financial Assurance Requirements*, if required by the Department, to pay for the removal and proper management of materials and restoration or remediation of the buildings, equipment or land should the operation be terminated.
  - (h) No Adverse Impact on Solid Waste Facility. If the operation is located at a solid waste management facility, it will not adversely impact the solid waste management facility and will be operated consistently with the facility's site assignment and solid waste management facility permit.
- (4) RCC Permit Conditions. The Department may issue an RCC permit subject to conditions. These conditions may include but are not limited to:
- (a) requirements that the owner and operator operate in a manner that prevents an unpermitted discharge of pollutants to air, water, land or other natural resources of the Commonwealth, does not create a public nuisance, and does not present a significant threat to public health, safety or the environment;
  - (b) requirements that the owner and operator ensure the quality of the incoming materials, including but not limited to, requirements to ensure that recyclable and organic materials are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment and that the type and quality of incoming materials is sufficient for the operation;
  - (c) requirements that the owner and operator ensure the quality of final products, including but not limited to, requirements to ensure that products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment and that the quality of the products is sufficient for products to be marketable;
  - (d) requirements that the operation handle materials in a manner that prevents public nuisance conditions, including but not limited to, requirements for enclosed, covered or sealed handling areas, containers or trucks, timely incorporation of organic materials, required ratios of organic material types, and maintenance of proper aerobic or anaerobic temperature, moisture and porosity conditions;
  - (e) requirements for an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds and that identifies specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
  - (f) requirements for a vector control plan that is appropriate for the size and type of the operation that will minimize the presence of vectors and that identifies specific actions that will be taken to address complaints if vectors occur beyond the property line of the operation;
  - (g) requirements for a contingency plan that describes corrective actions to be taken for management of recyclable or organic materials and products in the event of equipment breakdowns, delivery of unacceptable material, spills, fires, extreme weather events or other events, including but not limited to the failure of the odor or vector control plan;
  - (h) requirements for establishing the operation at appropriate distances from sensitive human and environmental receptors, such as residences, schools, public and private water supply wells, wetlands, streams and rivers;
  - (i) requirements that the owner and operator minimize generation of residuals, limiting the amount of solid waste or other materials mixed in with incoming recyclable or organic materials;
  - (j) requirements to ensure proper disposal of residuals;

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- (k) requirements that the length of time that incoming material, products and residuals can be on-site is limited and in no case will create a public nuisance;
- (l) requirements for appropriate number of properly trained personnel for the size and type of operation;
- (m) requirements for equipment that is appropriate for the size and type of the operation;
- (n) requirements that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination;
- (o) requirements that the owner or operator maintain accurate records for adequate periods of time and report annually;
- (p) a requirement that the owner or operator annually submit a compliance certification in accordance with 310 CMR 16.06(1);
- (q) a requirement that the proposed operation obtain all other appropriate local, state and federal approvals or permits, including but not limited to, permits for air emissions or water discharges;
- (r) a requirement that the owner or operator provide a financial assurance mechanism similar to the types of financial assurance approved in 310 CMR 19.051: *Financial Assurance Requirements*;
- (s) a requirement that the owner and operator consent to the right of the Department without prior notice to periodically enter upon and inspect the property, the operation and relevant operating records, to determine and compel compliance with applicable regulations and the conditions of the permit;
- (t) an expiration date on which the RCC permit expires, with a date by which the applicant shall timely submit a renewal application for consideration by the Department; and
- (u) requirements that the owner and operator ensure that the operation does not adversely impact the solid waste management facility if the operation is located at a solid waste management facility and that the owner and operator operate consistently with the facility's site assignment and solid waste management facility permit.

(5) Public Review of RCC Permit.

- (a) Publication of Draft RCC Permit Decision. The Department shall issue a draft RCC permit decision granting or denying the application. A copy of the draft decision shall be provided to the applicant, to the board of health and to any person who asks in writing for a copy of the draft decision and provides the Department with an electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. mail address.
  1. Public Notice. Public notice, paid for by the applicant, shall be provided in a daily or weekly newspaper of general circulation in the locality of the operation;
  2. Content of Public Notice. The public notice shall contain:
    - a. a description of the proposed operation including the type of technology, proposed tonnage, location and hours of operation;
    - b. the identity and mailing address of the applicant;
    - c. the public location where the application and the draft RCC permit decision can be inspected; and
    - d. the time period for written comments on the application and the address to which comments should be mailed.
- (b) Public Comment Period. The Department shall accept written comments from any person up to 30 days from the date the public notice is first published in a newspaper or a later date specified in the public notice. Any person who requests a copy of the RCC permit decision at the time of issuance shall provide the Department with his or her electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. mail address. Submitting comments does not automatically make a person a party to the RCC permit proceeding.
- (c) Intervention by Group of Ten Persons. A group of ten persons may intervene in an adjudicatory proceeding relating to an RCC permit application by sending a letter to the Department prior to the public comment period deadline that states:
  1. its intent to intervene as a group of ten persons;
  2. the facts and grounds on why the group believes the RCC permit decision will cause damage to the environment, as defined in M.G.L. c. 214, § 7A; and
  3. the relief sought.

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The letter shall include an affidavit from each person stating his or her intent to be part of the group and to be represented by the group's authorized representative. Any group of ten persons filing written comments which meet these requirements shall be considered a party to the proceeding for the purposes of notice and any other procedural rights applicable to such proceedings under M.G.L. c. 30A, including specifically the right to request an adjudicatory hearing on the Department's RCC permit decision in accordance with 310 CMR 16.05(6)(d).

(d) Public Hearing. The Department shall schedule a public hearing on the draft RCC permit decision within the municipality wherein the proposed operation is to be located when:

1. the applicant requests a public hearing by submitting a written request to the Department prior to the close of the public comment period;
2. the municipality, through its board of selectmen or mayor as applicable, wherein the proposed operation is to be located, requests a public hearing by submitting a written request to the Department prior to the close of the public comment period; or
3. the Commissioner or his designee determines that there is sufficient public interest. The content of the public notice, paid for by the applicant, for such hearing shall include the date, time, and place of the public hearing and the nature and purpose of the public hearing. Such notice shall comply with 310 CMR 16.05(5)(a)1. and 2.

(e) The Department shall issue an RCC permit decision following the 30 day comment period or after the public hearing, if one is held. The RCC permit decision is final after the 21<sup>st</sup> day following the issuance of the RCC permit decision unless, if a person files a request for an adjudicatory hearing in a timely manner, then the Department's RCC permit decision is not final until the Commissioner issues a final decision pursuant to 310 CMR 1.01(14): *Decisions*. After the RCC permit decision is final, stay of the RCC permit shall be governed by M.G.L. c. 30A, §14.

(6) Request for Adjudicatory Hearing of the Department's RCC Permit Decision and Process for Intervention. The definitions of terms set forth at 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection* apply to 310 CMR 16.05(6) unless otherwise defined in 310 CMR 16.00. In the event of a conflict between definitions in 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection* and 310 CMR 16.00, the definitions in 310 CMR 16.00 prevail for purposes of 310 CMR 16.05(6).

(a) The following persons shall have the right to request an adjudicatory hearing of an RCC permit decision (not a draft decision) issued by the Department:

1. The Applicant.
2. An Aggrieved Person. An aggrieved person shall have the burden of proof to establish his or her status as an aggrieved person as defined at 310 CMR 16.02 and must state in the request for an adjudicatory hearing the specific basis of his or her aggrievement.
3. Groups of Ten Persons. A group of ten persons that has submitted written comments in accordance with 310 CMR 16.05(5)(c) has a right to request an adjudicatory hearing with respect to a RCC permit decision. In the case of a group of ten persons requesting an adjudicatory hearing, the issues at the adjudicatory hearing shall be limited to those of damage to the environment and the elimination or reduction thereof, as defined under M.G.L. c. 214, § 7A. The request for adjudicatory hearing shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each person shall file an affidavit stating the intent to be a part of the group and to be represented by its authorized representative.
4. The Municipality Wherein the Proposed Operation Is to Be Located. The board of selectmen or the mayor, as applicable, of the municipality wherein the proposed operation is to be located, provided the municipality has submitted written comments in accordance with 310 CMR 16.05(5)(b).

(b) Intervention in Adjudicatory Hearings. Nothing in 310 CMR 16.00 shall prevent a person from requesting to intervene in an adjudicatory hearing pursuant to 310 CMR 1.01(7): *Intervention and Participation*. Any motion to intervene pursuant to 310 CMR 1.01(7): *Intervention and Participation* shall be filed within 21 days from the date the first request for an adjudicatory hearing is filed with the Department.

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(c) Limitation on Matters Raised in Request for Adjudicatory Hearing. The matters that may be raised in a request for an adjudicatory hearing by a person who has the right to request an adjudicatory hearing, or by an intervenor, are limited to the matters raised during the public comment period; provided, however, that a matter may be raised upon a showing that it was not reasonably possible with due diligence to have raised such matter during the public comment process or for good cause shown.

(d) Process for Requesting an Adjudicatory Hearing. A written request for an adjudicatory hearing shall be filed or postmarked within 21 days from the date the Department issues its RCC permit decision. The adjudicatory hearing request shall be in the form of a notice of claim and shall comply with all the requirements of 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*. The person requesting the adjudicatory hearing shall send a copy of the request for adjudicatory hearing by first class mail or hand delivery, to the applicant and to any person who has submitted an electronic or mailing address with timely written comments to the Department.

(e) Timeline and Procedures for Adjudicatory Hearing.

1. Pre-screening and Motions.

a. Upon receipt of the notice of claim, the presiding officer will schedule a prescreening conference to be conducted pursuant to 310 CMR 1.01(5)(a)15. and will send notice to all parties. Such prescreening conference will presumptively occur not more than 30 days after the notice of claim is filed. As used in 310 CMR 16.05(6)(e)1. through 4., "presumptively" means that the timeline is binding, absent extraordinary circumstances, in which case the presiding officer has authority to extend the timeline.

b. Any person who intervenes after filing of the notice of claim shall promptly receive the notice of the prescreening conference, but any intervention shall not change the schedule of the prescreening conference or the hearing.

c. Any party may file a motion to dismiss or for summary decision prior to the prescreening conference or by a date set by the presiding officer at the prescreening conference. Motions will not change the schedule of the prescreening conference or the hearing.

d. Upon notice to the parties, the presiding officer may provide an opportunity at the prescreening conference for a simplified hearing conducted pursuant to 310 CMR 1.01(8)(a): *Simplified Hearing*.

e. If the presiding officer determines an appeal to be major or complex, he or she will adjust the schedule either by extending it up to 30 days or by taking the matter ahead of other cases.

f. Every party must attend and be prepared to discuss settlement and the narrowing of issues at the prescreening conference. At the conclusion of the prescreening conference or shortly thereafter, the presiding officer shall prepare and send to all parties a prescreening conference report for any appeal not resolved in prescreening. The prescreening conference report shall contain a list of issues that are in dispute, are legally relevant and are to be addressed in the parties' direct and rebuttal cases.

g. The presiding officer may rule on the timeliness, standing and compliance with the requirements of 310 CMR 16.05(6)(e), *sua sponte* or in response to a motion, and provide a prompt ruling to the parties.

2. Pre-filed Testimony.

a. A petitioner must file its direct case with the Department and serve a copy on every party no later than 45 days after the prescreening conference. In its direct case, the petitioner must establish the legal and factual basis for its position on the issues identified by the presiding officer in the prescreening report. Failure to do so will result in a waiver of petitioner's direct case for that issue. In addition, the direct case at a minimum shall include:

- i. a description of the subject matter of the Department's RCC permit decision; and
- ii. credible evidence from a competent source in support of each claim of factual error, including any relevant expert report(s), plan(s), or photograph(s).

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b. A respondent that seeks to support or defend the Department's RCC permit decision shall file and serve on all parties a direct case within 30 days of the filing of the petitioner's direct case. The response shall, at a minimum, include a rebuttal to the petitioner's direct case setting forth the legal and factual basis supporting the Department's RCC permit decision, including relevant statutory and regulatory citations and evidentiary support consisting of credible evidence from a competent source and any affirmative defenses and evidentiary support for them.

c. An intervenor that contests the Department's RCC permit decision shall file a direct case that conforms to 310 CMR 16.05(6)(e)2.a. no later than the due date of the petitioner's direct case. An intervenor that supports the Department's RCC permit decision shall file a direct case that conforms to 310 CMR 16.05(6)(e)2.b. no later than the due date of the respondent's direct case.

d. The petitioner or an intervenor aligned with the petitioner may file rebuttal evidence no later than seven days after the filing of the direct case by the respondent or any intervenor aligned with the respondent. The rebuttal evidence shall be limited to countering evidence submitted in a respondent's or intervenor's direct case and shall be served on all parties.

3. Hearing.

a. Upon receipt of the notice of claim, the Department will schedule a hearing and will send notice to all parties. A hearing will be held presumptively within 120 days after the notice of claim is filed.

b. The presiding officer shall conduct a hearing. At the hearing, the parties' direct cases shall consist of, and be limited to, the evidence contained in their respective direct cases and rebuttal evidence, subject to evidentiary rulings of the presiding officer. The primary function of the hearing shall be cross-examination of witnesses and, at the presiding officer's discretion, an oral closing argument. The hearing shall be limited to one day, unless the presiding officer finds that there is good cause for a longer hearing.

4. Final Action. The presiding officer shall issue a written recommended final decision, presumptively within 30 days after the close of the hearing that shall include findings on the contested issues. The Commissioner shall issue a final decision consistent with 310 CMR 1.01(14)(b): *Final Decisions*, presumptively within six months of the filing of the notice of claim, or in the case of an appeal deemed major or complex in which the schedule was extended, in accordance with the extended schedule. Should a party request a tentative decision, the request shall be governed by 310 CMR 1.01(14)(a): *Recommended Decisions and Tentative Decisions*, and the schedule for completion of proceedings shall be extended to accommodate such request.

(f) Relationship to Other Rules of Adjudicatory Proceedings. To the extent there is conflict between the regulations governing appeals set forth in 310 CMR 16.05(6) and the Rules of Adjudicatory Proceedings set forth in 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection* the former shall prevail.

(7) RCC Permit Modifications.

(a) The proponent shall notify the Department and the board of health of proposed changes in design or operations where:

1. the owner or operator intends to recycle, compost or convert material(s) substantially different from those materials for which the RCC permit was granted;
  2. the design and/or management of the operation is to be altered;
  3. the owner or operator proposes to increase the volume or quantity of materials to be handled by the operation above that volume or quantity established in the RCC permit;
- or
4. as otherwise specified in the RCC permit.

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

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

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(8) Demonstration Project for Recycling, Composting or Converting Recyclable or Organic Material. The Department may approve a project to demonstrate innovative recycling, composting or conversion projects as provided in 310 CMR 16.05(8)(a) through (d).

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

1. the materials to be processed shall be limited to the recyclable or organic materials permitted to be processed by operations set forth at 310 CMR 16.05; and
2. a project shall be limited to a specified time period not to exceed two years from the date of approval, after which time the project shall terminate unless an extension is granted in writing by the Department or applicable state and local permits are obtained.

(b) Application. An applicant shall submit an application to conduct a recycling, composting or conversion demonstration project to the Department, with a copy to the board of health. The application shall contain:

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

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

1. the potential for adverse impacts taking into account the type and amount of recyclable and organic materials, the project location, the design and operating controls, the management practices and the owner's and operator's experience;
2. whether the activity can be carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, does not create a public nuisance; and does not present a significant threat to public health, safety or the environment;
3. the likelihood of obtaining useful, new information in the time frame proposed for the demonstration project; and
4. the ability of the applicant to appropriately use or dispose of all project materials once the demonstration project has been completed.

(d) Review Process. The Department shall follow the procedure described at 310 CMR 16.05(5) when issuing its decision on whether to allow the demonstration project.

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

(1) Compliance Certification Requirements.

(a) Compliance Certification Schedule.

1. New or Newly Acquired Operations. The owner or operator of each new recycling, composting or conversion operation that handles recyclable or organic materials, which qualifies for a general permit, pursuant to 310 CMR 16.04, or RCC permit issued by the Department, pursuant to 310 CMR 16.05, shall submit a compliance certification to the Department with a copy to the board of health, in accordance with 310 CMR 16.06(1)(b) 30 days prior to the commencement of a new operation or the acquisition of such an operation.
2. Existing Operations. The owner or operator of each operation in existence on or before November 23, 2012 shall submit a certification by February 15, 2014, unless the owner or operator has a Determination of Need issued before [the effective date of these regulations], in which case the owner and operator shall comply with the schedules set forth in 310 CMR 16.01(12) for submission of a certification for the operation.
3. Annual Certification Requirement. The owner or operator of an operation for which a certification is required to be submitted by 310 CMR 16.06(1)(a)1. or 2. shall submit a new annual compliance certification to the Department on or before February 15<sup>th</sup> of each calendar year on a form provided by the Department.

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

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1. state whether the operation is in compliance with the applicable requirements as listed on the certification form and contained in 310 CMR 16.00;
2. include a commitment to identify to the Department any violations of 310 CMR 16.00 that occur;
3. if the operation is out of compliance, state what the owner and operator will do to return to compliance and the date by which compliance will be achieved; and
4. include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:
  - a. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
  - b. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
  - c. that systems to maintain compliance are in place at the operation and will be maintained even if processes or operating procedures are changed;
  - d. that I am fully authorized to make this attestation on behalf of this operation; and
  - e. 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".

16.07: Certification

Any person, required by 310 CMR 16.00 or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the proposed site, and make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment".

16.08: Site Assignment Application Submission Requirements

- (1) General. Any person wishing to establish a new facility at a New Site or to Expand a Site onto an area not previously assigned must file a Site Assignment Application (application) with the board of health and provide copies as specified at 310 CMR 16.08(2).
- (2) Copies. The applicant shall file:
  - (a) two copies of the application with the local board of health;
  - (b) one copy of the application with the local library;
  - (c) two copies of the application with the Department, one to the Business Compliance Division, Boston, and one to the regional office in which the proposed site is located;
  - (d) one copy of the application with the Massachusetts Department of Public Health, Bureau of Environmental Health Services, Boston;
  - (e) one copy of the application with the board of health (abutting board of health), and one copy with the library of any municipality within ½ mile of the proposed site assigned area;
  - (f) one copy of the application with the applicable regional planning agency duly established by the Legislature and governing the municipality in which the proposed facility is to be located; and
  - (g) one copy of the application with any Person requesting it during the public comment period, except that the applicant may charge the reasonable cost of reproduction for the copies requested under this provision. The applicant shall maintain a list of each Person requesting a copy, the date of each request, and the date each copy was sent out.

## 16.08: continued

(3) Service of Copies. Simultaneous with the filing of any and all papers with the board of health, the applicant filing such papers shall send a copy(ies) to the Department and the Department of Public Health, as prescribed in 310 CMR 16.08(2). All papers filed with the board of health shall be accompanied by a certificate signed under the pains and penalty of perjury that copies have been sent, specifying the mode of service, date mailed or delivered, the address, and address of service. Failure to comply with these requirements shall be grounds for refusal by the board of health or the Department to accept papers for filing.

(4) Fees. The applicant shall tender payment of the Technical Fee in accordance with 310 CMR 16.30(2)(b) or enter into alternative fee payment arrangements to the satisfaction of the board of health.

(5) Site Assignment Application.

(a) General. The application shall be completed using forms supplied by the Department and shall contain sufficient data and other relevant information to allow the Department and the board of health to determine, independent of additional information, whether the site is suitable. The level of analysis presented in an application shall be commensurate with the nature and complexity of the proposed facility.

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

(c) Waiver. The application shall clearly state whether a waiver, as provided in 310 CMR 16.18 or 310 CMR 16.40(6), is requested. Applications for waivers shall be independent of the main body of the Site Assignment Application and shall include:

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

(d) Massachusetts Environmental Policy Act (MEPA).

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

(e) Signatures. Applications shall be signed and sworn to by the applicant(s) and his or her agent, if different, as to all statements of fact therein, as set forth in 310 CMR 16.07. Where the applicant is not the owner in fee simple of the title or interest in the site, then said owner shall also sign the application.

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

16.09: Public Access to Application

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



16.10: Review of Application for Completeness

- (1) Report Number. The Department shall assign a Report Number to each application when the application is filed with the Department and notify the applicant, the board of health, and the Department of Public Health. The Report Number shall be used in all subsequent correspondence with the board of health, the Department, the applicant and the Department of Public Health and shall appear on any subsequent filings by the applicant.
- (2) Public Comments. During the Determination Period, as defined in 310 CMR 16.10(3) the Department shall accept written comments from the board of health or interested persons regarding the completeness of the application.
- (3) Determinations. The Department shall issue a written determination to the applicant as to the completeness of the application on or before 21 days after the filing of said application with the Department. An application shall not be considered complete unless the Technical Fee, if any, has been paid and the application forms are complete and accompanied by the appropriate supporting documentation. If the Department determines that the application is incomplete, deficiencies shall be stated. The Department shall send a copy of such determination to the board of health and the Department of Public Health.
- (4) Public Notice of Application. The applicant, after receipt of notice of completeness from the Department, shall notify all parties identified at 310 CMR 16.08(2) and abutters to the site by certified mail, and provide public notice that an application has been filed with the local board of health. The notice shall:
  - (a) appear in at least one newspaper that has general circulation within the municipality and in the *Massachusetts Environmental Policy Act (MEPA) Monitor*, where the proposed facility was required to file an Environmental Notification Form (ENF) or Environmental Impact Report (EIR) with MEPA;
  - (b) include the location of the site; the size of the site; the type of facility; the type of waste or material to be handled at the facility; daily tonnage or throughout; the names, and addresses of the proponents and the person to whom requests for copies of the application should be directed; the public location within the community and hours where the application may be inspected; the time period for comment to be received by the Department and the address to which the comments should be mailed; and
  - (c) Where the municipality has a population of greater than 15% of residents who do not speak English as their primary language, the applicant shall publish an additional notice in a daily or weekly newspaper(s) circulated in that community written in the primary language(s) of these residents.
- (5) Commencement of Review Period. The Department Review Period shall commence when the applicant has provided proof to the Department that the public notice requirement as set forth in 310 CMR 16.10(4) has been satisfied. Proof may be in the form of a copy of the public notice in the publication.

16.11: Review Period

- (1) General. Upon commencement of the Review Period, the Department shall review the application to determine if the site is suitable.
- (2) Public Comments. During the initial 21 days of the Review Period the Department shall accept written comments from the board of health or other interested persons regarding the suitability of the site. All comments shall be filed with the Department's Regional Office in which the proposed site is located. The Department shall make available all comments received regarding the application to the applicant and the board of health at their request.
- (3) Applicant Response and Modification.
  - (a) Response to Comments. The applicant may respond in writing and/or the Department may require the applicant to respond to comments during the initial 40 days of the Review Period.
  - (b) Modification of Application. During the initial 40 days of the Review Period the applicant may modify an application provided that said modifications, when taken in their totality, do not constitute a major modification. The Department shall determine if modifications are major and issue written notice of such determinations to the applicant.

16.11: continued

(c) Major Modifications. The applicant must notify the Department and the board of health within five days of receipt of a notice from the Department that a single modification or a series of modifications constitute a major modification, whether it intends to:

1. withdraw the application; or
2. withdraw the modifications and let the Department review of the application continue on the unmodified application.

(4) Failure to File Notification. Failure of the applicant to file a notification within the appropriate time will constitute a withdrawal pursuant to 310 CMR 16.11(3)(c)2.

(5) Additional Information. The Department may require the applicant to provide additional information as the Department deems necessary to fully evaluate if the site is suitable.

(6) Restricting of Comments or Response. After 40 days the Department may restrict further comments or responses to allow the completion of the Department review of the site.

(7) Issuance of Report. The Department shall issue the Report on Suitability (Report) within 60 days of the receipt of proof that the public notice requirement set forth in 310 CMR 16.10(4) has been satisfied.

16.13: Department Report On Suitability (Report)

(1) General. The Department shall forward the Report and the accompanying record to the board of health and shall provide a copy of the Report to the applicant.

(2) Content. The Report shall include:

- (a) the Report Number;
- (b) a statement indicating that the application does or does not contain sufficient data to allow the Department to determine if the site meets the criteria. A determination that an application did not contain sufficient information to allow a determination on each criteria shall be sufficient grounds for a negative determination of suitability;
- (c) a statement that the site meets or fails to meet each the site suitability criteria set forth in 310 CMR 16.40, including any conditions; and
- (d) findings of fact pertaining to the application, any waiver that was requested, and the suitability of the site.

(3) Basis for Report. The Report shall be based upon:

- (a) the record;
- (b) the facts and information otherwise available to the Department;
- (c) expertise of the Department;
- (d) expertise of other local, state or federal agencies consulted by the Department.

(4) Record. The record shall consist of the application, including any waivers requested or any modifications submitted; any report or records the Department has used in making its determination; and any and all correspondence, notices, and written comments by the Department, boards of health, applicant or the public which have been submitted in accordance with 310 CMR 16.00.

(5) Public Access. The board of health shall ensure that the Department's Report on Suitability and the Department Record are made available for copying and reasonable inspection.

16.14: Reconsideration of Findings

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

16.15: Further Action on Application

- (1) Negative Determinations of Suitability. When the Department issues a Report with a finding that a site fails to meet the site suitability criteria or that an application does not contain sufficient data to allow a determination on the criteria, the site assignment process is complete and the board of health shall not hold a public hearing as prescribed in 310 CMR 16.20, provided that an applicant may request the Department to reconsider the findings in the Report and the Report may be reissued.
- (2) Positive Determinations of Suitability. When the Department issues a Report with a finding that the site does meet the site suitability criteria, the board of health shall proceed to hold a public hearing pursuant to 310 CMR 16.20 for the purpose of deciding whether to grant or refuse to grant a site assignment for the parcel of property which is the subject of the Department Report.

16.16: Requests for Technical Assistance from the Department

- (1) Technical Assistance. The board of health may request advice, guidance, or technical assistance from the Department to assist in the review of the information contained within the application or the Report. Any request for technical assistance shall be in writing. The technical assistance from the Department shall stop on the date of the first scheduled public hearing, except where it will serve to clarify information contained within the Department Report.
- (2) Informal Arrangements. After a request for technical assistance, the Department and the board of health may enter into informal arrangements to facilitate the review of the application, provided that the applicant is informed of any such arrangement.

16.17: Application Review by the Department of Public Health

- (1) Review and Comments. The Department of Public Health (DPH) shall review the application and comment as to any potential adverse impacts the site may have on public health and safety. Such review and comment shall be made no later than 60 days after the start of the Review Period. The Department of Public Health may submit or discuss its comments with the Department during the Review Period.
- (2) Department of Public Health Report. The Department of Public Health at the written request of the board of health shall make or have made a written report containing its comments on the potential adverse impacts of the site on public health and safety and may submit said report no later than 60 days after the start of the Review Period. The DPH may submit such report to the board of health.
- (3) Coordination with Board of Health. The DPH shall coordinate and cooperate with the board of health on any matter relating to the report upon written request by the board of health to DPH.

16.18: Waiver

(1) General. The Commissioner may waive any provision or requirement contained in Part I of 310 CMR 16.00, or at 310 CMR 16.21: *Alternative Use of Assigned Site*, not specifically required by law where the Commissioner finds:

- (a) that the waiver is necessary to accommodate an overriding community, regional or state public interest; and
- (b) the granting of the waiver would not interfere with the ability of the board of health to fulfill its duties; and
- (c) the granting of the waiver would not diminish the ability of the general public to review and comment on the proposed project.

(2) Filings. All requests for waivers shall be filed and documented in accordance with 310 CMR 16.08(5)(c).

16.20: Public Hearing Rules

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

(2) Applicability. 310 CMR 16.20, governs the conduct of public hearings by a board of health on a Site Assignment Application following the issuance of a Report by the Department finding that a proposed site is a suitable for a specified type(s) of solid waste facility(ies), as required by M.G.L. c. 111, § 150A.

(3) Public Hearing Definitions. The following words when used in 310 CMR 16.20, shall, except as otherwise required by context, have the following meaning:

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

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

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

Decision means final decision rendered by the board of health.

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

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

16.20: continued

Party means the applicant, any abutting board(s) of health and any abutter(s), group of ten citizens or other intervenor duly registered pursuant to 310 CMR 16.20(9)(b).

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

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

(4) Representation

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

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

(5) Time

(a) Timely Filing. Papers required or permitted to be filed under 310 CMR 16.20, or any provision of the applicable law must be filed at the board of health office or such other place as the board shall designate within the time limits for such filing as are set by 310 CMR 16.20 or the Hearing Officer. Papers filed in the following manner shall be deemed to be filed as set forth herein:

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

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

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

(c) Computation of Time. Unless otherwise specifically provided by law or 310 CMR 16.20, computation of any time period referred to in 310 CMR 16.20 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the board is closed, in which event the period shall run until the end of the next following business day. When the time period is less than six days, intervening days when the board is closed shall be excluded in the computation.

(d) Extension of Time. It shall be within the discretion of the board or Hearing Officer, for good cause shown, to extend any time limit contained in 310 CMR 16.20. All requests for extension of time shall be made by motion before the expiration of the original or previously extended time period. This discretion shall not apply to any limitation of the time prescribed by the Massachusetts General Laws.

(6) Filings Generally

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

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

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

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

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

Any Party may request a waiver of the requirement of 310 CMR 16.20(6)(e). The Hearing Officer may grant the request if significant expense or waste of resources would be avoided and if adequate arrangements can be made for access to the Papers by all persons who would otherwise be entitled to service of a copy.

(7) Initiation of Hearings.

(a) Commencement. The board shall commence a public hearing pursuant to 310 CMR 16.40 within 30 days of receipt of the Department's Report On Suitability (Report).

(b) Public Notice. At least 21 days prior to commencement of the public hearing the board shall notify all parties identified at 310 CMR 16.08(2) of the hearing, by certified mail, and cause notice of the public hearing to be published. Such notice shall be published in daily or, if not possible, weekly newspapers of general circulation in the municipality. Where the municipality has a population of greater than 15% of residents that do not speak English as their primary language, the board of health shall publish an additional notice in a daily or weekly newspaper(s) circulated in that community written in the primary language(s) of those residents.

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

(8) Examination of Record Below; Discovery

(a) Availability of the Record. The Report, the application, and all comments received by the Department on the application are public records and shall be made available by the board for inspection and copying by any person during reasonable business hours. The board may charge reasonable copying fees for any of the documents comprising the record below. There shall be no additional discovery.

16.20: continued

(b) Prefiled Direct Testimony. The Hearing Officer may, on his/her own motion, order all Parties to file within a reasonable time in advance of the public hearing full written text of the testimony of their witnesses on direct examination on issues pertinent to site assignment, including all exhibits to be offered into evidence, or on issues specified by the Hearing Officer. Such testimony shall be filed by or before a time specified by the Hearing Officer and shall be available to examination and copying as provided in 310 CMR 16.20(8)(a). The Hearing Officer may also require the filing of written rebuttal testimony within a reasonable time after the filing of the direct testimony described in the preceding sentence. All testimony filed pursuant to this rule shall be subject to the penalties of perjury. All witnesses whose testimony is filed pursuant to this rule shall appear at the hearing on the merits and be available for further examination or cross-examination at the discretion of the Hearing Officer. If a witness is not available for further examination or cross examination at the hearing on the merits, the written testimony of the witness shall be excluded from the record unless the Parties agree otherwise.

(9) Intervention and Participation.

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

1. Abutters. Any abutter or group of abutters to the proposed facility shall be a Party to the hearing by timely submission of a Party Registration Statement in accordance with 310 CMR 16.20(9)(b).
2. Ten Citizens Groups. Any group of ten or more persons may Register collectively as a Party to the public hearing in which damage to the environment, as defined in M.G.L. c. 214, § 7A, or public health and safety are or might be at issue; provided, however, that such intervention shall be limited to the issues of impacts to public health, safety and damage to the environment and the elimination or reduction thereof in order that any decision in the public hearing shall include the disposition of such issue.

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

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

If no Authorized Representative is identified in the Registration Statement the first person mentioned in the Statement as a member of the group shall be deemed the Authorized Representative of the group. Said Authorized Representative shall have the sole authority to sign submissions by the group. A group that registers as a Party shall be collectively deemed a Party and shall have the rights of participation of a Party as set forth in 310 CMR 16.20, except as limited by 310 CMR 16.20(9).

16.20: continued

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

(d) Rights of Participants

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

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

(10) Conduct of Public Hearing.

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

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

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

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

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

(f) Evidence and Testimony

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

2. All evidence and testimony, materials and legal rules on which a decision is to be based must be entered into the Record of the public hearing, unless excluded pursuant to 310 CMR 16.20(8)(b), or (10)(f)3.

3. Witnesses giving testimony shall be available for such further examination or cross examination as is determined to be appropriate by the Hearing Officer. Failure of a witness to be so available may be grounds to strike any other testimony given by such witness from the record at the sole discretion of the Hearing Officer. The Hearing Officer may limit or exclude unduly repetitious or irrelevant evidence. The Report and the Department Record shall not constitute testimony for the purposes of 310 CMR 16.20

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

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



16.20: continued

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

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

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

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

(k) Decision.

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

2. Standard of Decision. A board shall determine that a site is suitable for assignment as a site for a new or expanded solid waste facility unless it makes a finding, supported by the record of the hearing, that the siting thereof would constitute a danger to the public health, safety or environment, based on the siting criteria set forth and established under 310 CMR 16.40.

3. Tentative Decisions. Tentative decisions shall not be issued as a matter of routine, but shall be issued only if a Party requests a tentative decision either in writing or orally on the record, prior to the close of the hearing on the merits; or if the board determines that a tentative decision should be issued in the interest of justice. Every tentative decision shall be in writing and shall be signed by a majority of those officials of the board who rendered the decision. Every tentative decision shall contain a statement of the reasons therefor, including a determination of fact pertaining to each of the site suitability criteria listed in 310 CMR 16.40 or law necessary to the decision. If the majority of the board who must sign the final decision have personally heard or read the evidence, the board shall not be required to comply with a request to issue a tentative decision.

4. Final Decision. Every final decision shall be in writing and shall be signed by a majority of those officials of the board who rendered the decision. Every final decision shall contain a statement of the reasons therefore, including a determination of fact pertaining to each of the site suitability criteria listed in 310 CMR 16.40 or law necessary to the decision, provided that if a final decision was preceded by a tentative decision, the final decisions may incorporate by reference those determinations set forth in the tentative decision, subject to such modifications and discussion as the Hearing Officer or board may deem appropriate to respond to timely filed opposing and concurring views with the tentative decision.

(11) Selection and Qualification of Hearing Officer

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

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

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1. is related to any board member, abutting board of health member, party, abutter, or applicant;
2. is a current or former employee or agent of the applicant or of the municipality where the proposed site is located or a municipality of an abutting board of health prior to selection as Hearing Officer. Notwithstanding the aforesaid, a person who has previously served as a Hearing Officer is not excluded from subsequent service as a Hearing Officer;
3. has a personal financial interest or at the time of selection or at any time during the proceedings be employed by any person having a financial interest in the board's decision on site suitability; or
4. does not have experience by training or practice in conducting administrative or judicial proceeding's.

(c) Duties. The Hearing Officer's duties shall include:

1. opening and closing the hearing;
2. establishing the order of the proceedings;
3. ensuring that only reliable and relevant testimony is introduced;
4. assisting all those giving testimony to make a full and free statement of the facts in order to bring all information necessary to determine whether a site is suitable or not suitable;
5. ensuring that all Parties have an opportunity to present their claims orally or in writing and to present witnesses and evidence relevant to the suitability or non-suitability of the site;
6. ensuring that participants have an opportunity to present evidence, whether orally or in writing, relevant to the suitability or non-suitability of a site;
7. introducing into the record any regulations, statutes, memoranda or other materials he believes relevant to the issues at the proceeding;
8. receiving, ruling on, limiting or excluding evidence pursuant to 310 CMR 16.20(10)(f); and
9. establishing a date and time following the close of hearing until which time written evidence will be received, considered and made part of the record.

Where procedural issues arise regarding the conduct of the hearing which are not governed by 310 CMR 16.20 the Hearing Officer may rely on 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*, to resolve such issues.

(d) Powers. The Hearing Officer's powers shall include the authority to:

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

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

(13) Notice of Decision.

(a) Incorporation into the Record. Upon its issuance, the decision shall be incorporated into the Record and made available for inspection and copying as set forth in 310 CMR 16.20(8)(a).

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(b) Time of Notice. Within seven days of issuance of its decision the board shall publish notice of its decision in the same manner as set forth in 310 CMR 16.20(7)(b).

(c) Content of Notice. The nature of decision shall identify the applicant, briefly describe the proposed facility, including its location, and set forth the board determination. The notice shall include the following provision: "Any person aggrieved by the decision of the board of health may, within 30 days of publication of this Notice of Decision appeal under the provisions of M.G.L. c. 30A, § 14".

16.21: Alternative Use of Assigned Site

(1) Site Assignment. Where a site has been assigned as a dumping ground or a refuse disposal incinerator pursuant to St. 1955, c. 310, § 2, a different solid waste activity shall not be conducted at the site except in accordance with a new or modified site assignment established in accordance with 310 CMR 16.00, except as specified at 310 CMR 16.21(3)(a).

(2) General Use Site Assignment. Where a site assignment does not contain a condition limiting its use to a particular method of solid waste management, a new or modified site assignment is not required to obtain a permit for any solid waste management activity at the site.

(3) Specific Use Site Assignment. Where a site is assigned for a specific solid waste purpose, a different solid waste activity or any activity regulated pursuant to 310 CMR 16.03, 16.04 or 16.05 shall not be conducted at the site except in accordance with a new or modified site assignment, except as allowed at 310 CMR 16.21(3)(a), (b) or (c):

(a) Recycling, Composting or Conversion. Recycling, composting or conversion may be conducted in accordance with 310 CMR 16.03, 16.04 or 16.05, as applicable, at any assigned disposal or handling facility without requiring a new or modified site assignment; provided however, if the recycling, composting or conversion operation cannot be conducted at such assigned facility consistent with its site assignment, then the site assignment shall be modified before the owner or operator commences operation of the recycling, composting or conversion operation.

(b) Handling Facility at a Closed or Inactive Landfill or Combustion Facility Site. A site which has been assigned for use as a landfill or combustion facility, which has been closed or is in the process of imminently closing, shall not require a new or modified site assignment to obtain an approval for the storage, transfer or processing of solid waste when:

1. the facility does not receive solid waste in excess of the tonnage limits stated in the site assignment for landfilling, or combustion or processing;
2. the site assignment does not contain a condition which directly or indirectly prohibits the handling activity or establishes a date for the termination of all solid waste activities at the site which is shorter than the anticipated useful life of the handling facility; and
3. the site meets the suitability criteria at 310 CMR 16.40(3)(d), unless a waiver of one or more criteria has been granted pursuant to 310 16.40(6).

(c) Other Solid Waste Activity listed at 310 CMR 16.03(2)(a). Solid Waste Activities listed at 310 CMR 16.03(2)(a) may be conducted at any assigned disposal or handling facility without requiring a new or modified site assignment.

16.22: Modifications to and Rescissions and Suspensions of Site Assignments

(1) Modifications to Site Assignments Due to a Threat to Public Health, Safety or the Environment. In accordance with M.G.L. c.111, §150A, the assigning board of health, or the Department, may at any time rescind, suspend or modify a site assignment upon a determination that the operation or maintenance of a facility results in a threat to public health, safety or the environment after due notice and public hearing. The public hearing must satisfy the requirements of M.G.L. c.30A, §11.

(2) Major Modifications to Site Assignments at the Request of the Facility Owner or Operator. Modifications deemed to be “Major Modifications” include: modifications required to “Expand a Site”; vertical expansions beyond the limits of an approved plan; modifications as specified at 310 CMR 16.21(1) and 16.21(3), Alternative Use of An Assigned Site; or any request to waive any site assignment criterion set forth at 310 CMR 16.40(3) as it applies to the existing facility. A major modification shall require submittal of a new site assignment application that addresses all criteria affected by the modification, as determined by the Department in writing, and shall be reviewed in accordance with the requirements established at 310 CMR 16.08 through 16.20.

(3) Minor Modifications to Site Assignments at the Request of the Facility Owner or Operator. Any request to modify a site assignment that is not subject to 310 CMR 16.22(1) or (2), including any request to modify conditions established by the Board of Health in the site assignment, or to increase daily or annual tonnage limits, except as specified at 310 CMR 16.22(4), are deemed to be “Minor Modifications.” The Board of Health may modify a site assignment to address a minor modification, at the request of the facility owner or operator, without requiring the filing of a new application by the applicant or site suitability report by the Department, provided the Board of Health provides public notice and holds a public hearing in accordance with the requirements of 310 CMR 16.00 prior to deciding on the minor modification.

(4) Reserve Capacity Approvals. Notwithstanding 310 CMR 16.22(3), any facility may request, in writing to the Department, a temporary increase in the daily or annual tonnage limits to address a short-term emergency situation, as determined by the Department, without the requirement for a minor modification of the site assignment.

(5) MEPA Review. Any modifications to the site assignment may require the filing of a Notice of Project Change pursuant to 310 CMR 11.10, MEPA Regulations. Should a Notice of Project Change be required the applicant shall comply with 310 CMR 16.08(5)(d) prior to submitting a new site assignment application.

16.30: Fees

(1) Application Fees

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

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

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

(c) Alternative Systems. The board of health may establish, in lieu of part or all of 310 CMR 16.30, another system for the assessment and payment of an Application Fee provided such system is agreed to by the applicant.

(d) Nothing in 310 CMR 16.30 creates or modifies any rights of boards of health relative to the assessment or collection of fees under applicable statutes, by-laws, or ordinances governing municipal finance.

(2) Technical Fee.

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

(b) Assessment of Fee.

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

2. Form of Payment. The board shall prescribe the amount of the fee and the manner of payment in writing to the applicant within ten days of the filing of the application in accordance with 310 CMR 16.08.

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

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

5. Absence of assessment or waiver. In the absence of an assessment or waiver of the Technical Fee by the board of health in accordance with 310 CMR 16.30(2)(b)1., 2. or 4., the applicant may satisfy the Technical Fee payment requirements by making a payment in the form of a certified or bank check or money order, in an amount equal to the maximum Technical Fee for the appropriate facility as specified in 310 CMR 16.99.

(c) Technical Review

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

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

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

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

4. Excluded Costs. Allowable costs for technical review shall not include the cost of conducting site, environmental or population sampling and analyses, otherwise generating new data, or performing independent analyses of environmental health impacts. These costs may qualify as allowable costs for technical assistance in accordance with 310 CMR 16.30(d)2.

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(d) Technical Assistance

1. General. The Technical Fee may cover 50% of the cost of providing expert legal, scientific or engineering assistance to the board of health to assure that all points of view are adequately presented and evaluated at the public hearing.
2. Allowable costs. Allowable costs for technical assistance include the cost of hiring consultants, technical experts or legal counsel. Allowable types of technical assistance include:
  - a. legal counsel to represent the board of health at the hearing and to examine witnesses at the hearing;
  - b. scientific and/or engineering experts to help develop evidence, question witnesses and/or testify at the hearing; and
  - c. photographic or graphic expertise.

(e) Extraordinary Expenses

1. Assessment. After commencement of the public hearing, pursuant to the requirements of 310 CMR 16.20, the board of health may assess in writing, an additional Technical Fee payment when the following conditions are satisfied:
  - a. the evidence proposed to be obtained by the expenditure of the fee is likely to be critical to the determination of site suitability; and
  - b. the applicant has failed to provide such evidence upon request by the Hearing Officer; and
  - c. the evidence cannot be acquired without the expenditure by the board of health of funds in excess of the Technical Fee; and
  - d. the evidence did not exist or was not reasonably discoverable through due diligence by the board of health prior to the request; or
  - e. the evidence is based on new scientific or technical standards or criteria which were previously unavailable.
2. Payment or Appeal. The applicant upon receipt of the written request may:
  - a. within three days appeal to the Hearing Officer for a determination as to the appropriateness and reasonableness of the fee assessment; or
  - b. make the appropriate payment as prescribed by the board of health within ten days.
3. Hearing Officer's Decision on Appeals.
  - a. Standard of Decision. The Hearing Officer shall determine that an extraordinary expense request is reasonable only if she or he finds that the conditions in 16.30(2)(e)1. are satisfied.
  - b. Decision by the Hearing Officer. The Hearing Officer shall issue a written determination to the applicant and the board of health. When the Hearing Officer determines the assessment is reasonable the applicant shall make the appropriate payment as directed by the board of health within six days. When the Hearing Officer determines the assessment is not reasonable the applicant shall not be required to make the payment.
4. Non-payment. The board of health may withhold final disposition of the site assignment application until the applicant submits the payment or issue a determination based on the available information.

(3) Public Hearing Fee.

- (a) General. The board of health may use the Public Hearing Fee to cover the cost of conducting a public hearing that meets the requirements of 310 CMR 16.20.
- (b) Assessment and Payment of the Public Hearing Fee. The board of health, upon the receipt of a Department Report on suitability that contains a finding that a site is suitable, may assess a Public Hearing Fee.
  1. Initial Public Hearing Fee Assessment.
    - a. Assessment. The board of health shall prescribe to the applicant in writing the amount and manner of payment of the initial public hearing fee assessment.
    - b. Maximum Amount. The maximum amount of the initial assessment shall be 50% of the maximum allowable Technical Fee for the appropriate size and type of facility, as set in 310 CMR 16.99.
    - c. Payment. The applicant shall pay the initial public hearing fee assessment as prescribed by the board of health within 15 days of receipt of the written request from the board.

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2. Additional Public Hearing Fee Assessments.
    - a. General. In the event that the initial Public Hearing Fee assessment is insufficient to cover the allowable costs described in 310 CMR 16.30(3)(d) the board of health may require additional Public Hearing Fee payments.
    - b. Assessment. The board of health shall prescribe to the applicant, in writing, the amount and manner of payment of the additional public hearing fee assessments.
    - c. Payment. The applicant shall pay the additional assessment within six days of receipt of the written request from the board of health.
  3. Fee Waiver. The board of health may waive all or a portion of the Public Hearing Fee.
- (c) Non-payment of Fees
1. Suspension of Hearings. In the event that any fee assessment is not paid as required, the board of health may suspend the public hearing, or, in the case of the initial payment, delay the opening of the public hearing.
  2. Resumption of Hearings. Any hearing delayed or suspended because of non-payment of fees shall be commenced or resumed within seven days of receipt of payment or resolution of a fee dispute in accordance with 310 CMR 16.30(6).
  3. Exception. When the applicant is the municipality itself or an agency thereof, the public hearing shall not be delayed or suspended because of non-payment of any public hearing fee assessment.
- (d) Allowable Costs. The only allowable costs that may be paid from the Public Hearing Fee are:
1. the cost of any notice required under 310 CMR 16.20;
  2. the cost of recording, through a stenographic record, tape recording, or other means as determined by the Hearing Officer the record of the proceedings;
  3. the cost of having a Hearing Officer perform the duties set forth in 310 CMR 16.20;
  4. the cost of producing any copies required under 310 CMR 16.20; and
  5. the cost of renting a hall, chairs and/or public address system when the municipality has no such facilities or equipment which are adequate for the purpose of the public hearing.
- Transcription of the proceedings shall not be paid for from the Hearing Fee except by order of the Hearing Officer prior to a final decision on site assignment by the board of health. The cost of transcribing or otherwise preparing an official transcript for appeal shall not be paid by the Public Hearing Fee.
- (4) Expenditure of the Application Fee
- (a) General. All expenditures of the Application Fee shall be reasonable. The amount paid for any service shall not exceed the usual and customary amount for such service.
  - (b) Obligation of Funds. The board of health shall not spend or enter into obligations to spend any or all of the Technical Fee without a scope of work. The scope of work shall detail proposed contractor's services and include cost estimates for each service and describe whether the proposed service is for technical review or technical assistance.
  - (c) Record Keeping. The board of health shall make and retain or require all persons paid from the Application Fee to make and retain written records which set forth:
    1. a description of each of the services performed and work products developed; and
    2. the amount expended for each such service or work product.
  - (d) Production of Records. The board of health, upon written request from the applicant, the Hearing Officer or the Department, shall provide or cause their contractor to provide, within a reasonable time not to exceed 14 days, a copy of said records.
  - (e) Cessation of Expenditures. The board of health shall not spend any additional amount of the Application Fee and shall make reasonable efforts to halt all work on any activities that would be covered by the Application Fee, when the board of health receives either:
    1. a Department Report on Suitability that finds a site not suitable; or
    2. a notice from the applicant withdrawing the application from consideration.

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(5) Reimbursement of Unexpended Fees

(a) Request for Reimbursement. After a final decision on the application or upon the withdrawal of an application, the applicant may submit a written request to the board of health to provide a final accounting of all funds expended or owed from the Application Fee and to return all unexpended and uncommitted funds. For the purpose of 310 CMR 16.30, a final decision shall be either:

1. the Department Report on Suitability finding a site to be not suitable; or
2. a determination by the board of health to assign a site or to refuse to assign a site after a public hearing.

(b) Accounting. The board of health shall provide a full accounting of all expenditures within 45 days of receipt of the request.

(c) Reimbursement. The board of health shall return the unencumbered funds within a reasonable time period.

(6) Fee Disputes

(a) The board of health shall expend and, if applicable, reimburse to the applicant all fees in accordance with the requirements of 310 CMR 16.30.

(b) Any claims by the applicant against the board of health for improper disposition of fees shall be adjudicated in a court of competent jurisdiction or, if mutually agreed upon by the parties, by arbitration or mediation.

Preamble

310 CMR 16.40 establishes the criteria and decision making process the Department shall utilize in determining whether a site is suitable for a proposed solid waste management facility and upon which boards of health shall base a determination to grant or refuse to grant a site assignment.

16.40: Site Suitability Criteria

(1) Determination of Suitability.

(a) Department's Determination. The Department shall determine whether a site for a new or expanded facility of the type and scope proposed is suitable or not suitable based upon the criteria set forth in 310 CMR 16.40(3), (4) and (5). In reviewing these criteria, no site shall be deemed to be suitable where the impacts from the solid waste management facility will by itself, or in combination with impacts from other sources within the affected area, constitute a danger to public health or safety or the environment. In determining whether or not a proposed facility meets the criteria, set forth in 310 CMR 16.40(3), (4) and (5);

1. the Department shall rely upon the application and information supplied by the applicant or any other information made available to the Department;
2. the applicant bears the burden of showing that the proposed facility meets the criteria set forth in 310 CMR 16.40(3), (4) and (5).
3. if the Department determines that the facility is located within a Restricted Area, the applicant shall receive a negative Site Suitability Report;
4. if the Department determines that the facility is not located within a Restricted Area, the Department shall evaluate the criteria set forth in 310 CMR 16.40(3), (4) and (5), using such existing state and federal standards, criteria, guidelines or allowable limits and technical health reports which are intended to protect the public health, safety, and the environment;
5. the Department shall consider whether the site is in a preferred municipality as defined herein; and
6. the Department shall consider whether the site use promotes integrated solid waste management in accordance with 310 CMR 16.40(5).

(b) Site Assignment by Boards of Health. The board of health shall assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility which has received a positive site suitability report from the Department unless it makes a finding that the siting thereof would constitute a danger to public health, safety, or the environment. The finding shall be supported by the record of evidence and shall be based upon the relevant criteria set forth at 310 CMR 16.40(3), (4) and (5). The board of health shall not impose any condition pertaining to facility design except in accordance with conditions placed by the Department pursuant to 310 CMR 16.40(1)(c)3.



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(c) Facility Design Review.

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

(2) Application of the Site Suitability Criteria. Facility specific site suitability criteria are set forth in 310 CMR 16.40(3) for each of the following types of solid waste management facilities:

- (a) landfill facilities;
- (b) single waste landfills (Reserved)
- (c) solid waste combustion facilities; and
- (d) solid waste handling facilities.

Generally applicable criteria are set forth in 310 CMR 16.40(4) and apply equally to all types of solid waste management facilities.

(3) Facility Specific Site Suitability Criteria.

- (a) Criteria for Landfill Facilities (Restricted Areas). No site shall be determined to be suitable or be assigned as a landfill facility where:
  1. any area of waste deposition would be within a Zone II area of an existing public water supply well;
  2. any area of waste deposition would be within the Interim Wellhead Protection Area (IWPA) of an existing public water supply provided that the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the facility would be beyond the Zone II of the public water supply well in question;
  3. any area of waste deposition would be within a Zone II or Interim Wellhead Protection Area (IWPA) of a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR;
  4. any area of waste deposition would be within 15,000 feet upgradient of the existing public water source well or proposed drinking water source area for which a Zone II has not been calculated; the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the facility would be beyond the Zone II of the public water supply well or proposed drinking water source area in question;
  5. it is determined by the Department that a discharge from the facility would pose a danger to an existing or proposed drinking water source area;
  6. any area of waste deposition would be over the recharge area of a Sole Source Aquifer, unless all of the following criteria are met:
    - a. there are no existing public water supplies or proposed drinking water source areas downgradient of the site;
    - b. there are no existing or potential private water supplies downgradient of the site; however, the applicant may have the option of providing an alternative public water supply to replace all the existing or potential downgradient private groundwater supplies; and
    - c. there exists a sufficient existing public water supply or proposed drinking water source area to meet the municipality's projected needs;

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7. any area of waste deposition is within the zone of contribution of an existing public water supply or proposed drinking water source area, or the recharge area of a surface drinking water supply, pursuant to a municipal ordinance or by-law enacted in accordance with M.G.L. c. 40A, § 9;
  8. any area of waste deposition would be within the Zone A or Zone B of a surface drinking water supply;
  9. any area of waste deposition would be less than 400 feet upgradient, as defined by groundwater flow or surface water drainage, of a perennial water course that drains to a surface drinking water supply which is within one mile of the waste deposition area;
  10. any area of waste deposition would be within a Potentially Productive Aquifer unless:
    - a. the proponent demonstrates to the Department's satisfaction, based on hydrogeological studies, that the designation of the area as a potentially productive aquifer is incorrect;
    - b. the proponent demonstrates to the Department's satisfaction, based on hydrogeological studies, that the aquifer cannot now, nor in the reasonably foreseeable future, be used as a public water supply due to existing contamination of the aquifer; or
    - c. the area has been excluded as a "Non-Potential Drinking Water Source Area" pursuant to 310 CMR 40.0932, or as otherwise defined at 310 CMR 40.0006: *The Massachusetts Contingency Plan*.
  11. any area of waste deposition would be within 1000 feet upgradient, and where not upgradient, within 500 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application; provided, however, the applicant may show a valid option to purchase the restricted area, including the well and a guarantee not to use the well as a drinking supply, the exercise of which shall be a condition of any site assignment;
  12. the maximum high groundwater table is within four feet of the ground surface in areas where waste deposition is to occur or, where a liner is designed to the satisfaction of the Department, within four feet of the bottom of the lower-most liner;
  13. the outermost limits of waste deposition or leachate containment structures would be within a resource area protected by the Wetlands Protection Act, M.G.L. c. 131, § 40, including the 100 year floodplain;
  14. any area of waste deposition or the leachate containment structures would be less than 400 feet to a lake, or 200 feet to a Riverfront Area as defined in 310 CMR 10.00, that is not a drinking water supply;
  15. any area of waste deposition would be within 1000 feet of an occupied residential dwelling, health care facility, prison, elementary school, middle school or high school or children's pre-school, licensed day care center, senior center or youth center, excluding equipment storage or maintenance structures; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment; or
  16. waste deposition on the site would result in a threat of an adverse impact to groundwater through the discharge of leachate, unless it is demonstrated to the satisfaction of the Department that a groundwater protection system will be incorporated to prevent such threat.
- (b) Criteria for Single Waste Landfills (Reserved)
- (c) Criteria for Solid Waste Combustion Facilities. No site shall be determined to be suitable or be assigned as a solid waste combustion facility where:
1. the waste handling area would be within the Zone I of a public water supply;
  2. the waste handling area would be within the Interim Wellhead Protection Area (IWPA) or Zone II of an existing public water supply, or within a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR, unless restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either
    - a. the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or

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- b. there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.
  3. the waste handling area would be within the Zone A of a surface drinking water supply;
  4. the waste handling area would be within 500 feet upgradient, and where not upgradient, within 250 feet, of an existing or potential private water supply well existing or established as a Potential Private Water Supply at the time the application was submitted; provided however, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.
  5. the maximum high groundwater table is within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two foot separation can be designed to the satisfaction of the Department;
  6. the waste handling area would be within 500 feet of an occupied residential dwelling, prison, health care facility, elementary school, middle school or high school, or children's preschool, excluding equipment storage or maintenance structures, licensed day care center, senior center or youth center; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment; or
  7. the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00.
- (d) Criteria for Solid Waste Handling Facilities. No site shall be determined to be suitable or be assigned as a solid waste handling facility where:
1. the waste handling area would be within the Zone I of a public water supply;
  2. the waste handling area would be within the Interim Wellhead Protection Area (IWPA) or a Zone II of an existing public water supply well within a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR, unless restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either
    - a. the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or
    - b. there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.
  3. the waste handling area would be within the Zone A of a surface drinking water supply;
  4. the waste handling area would be within 500 feet upgradient, and where not upgradient, within 250 feet, of an existing or potential private water supply well existing or established as a Potential Private Water Supply at the time of submittal of the application, provided however, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.
  5. the waste handling area of;
    - a. a transfer station that proposes to receive less than or equal to 50 tons per day of solid waste and utilizes a fully enclosed storage system such as a compactor unit, is 250 feet from;
      - i. an occupied residential dwelling; or
      - ii. a prison, health care facility, elementary school, middle school or high school, children's preschool, licensed day care center, or senior center or youth center, excluding equipment storage or maintenance structures.
    - b. any other transfer station or any handling facility is 500 feet from:
      - i. an occupied residential dwelling; or

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- ii. a prison, health care facility, elementary school, middle school or high school, children's preschool, licensed day care center, or senior center or youth center, excluding equipment storage or maintenance structures.
  - 6. the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00; or
  - 7. the maximum high groundwater table would be within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two foot separation can be designed to the satisfaction of the Department.
- (4) General Site Suitability Criteria. The following Site Suitability Criteria shall apply to all types of solid waste management facilities.
- (a) Agricultural Lands. No site shall be determined to be suitable or be assigned as a solid waste management facility where:
    - 1. the land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service; or
    - 2. the land is deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and
    - 3. a 100 foot buffer would not be present between the facility and those lands classified at 310 CMR 16.40(4)(a)1. or 2.
  - (b) Traffic and Access to the Site. No site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:
    - 1. traffic congestion;
    - 2. pedestrian and vehicular safety;
    - 3. road configurations;
    - 4. alternate routes; and
    - 5. vehicle emissions
  - (c) Wildlife and Wildlife Habitat. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:
    - 1. have an adverse impact on Endangered, Threatened, or Special Concern species listed by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
    - 2. have an adverse impact on an Ecologically Significant Natural Community as documented by the Natural Heritage and Endangered Species Program in its database; or
    - 3. have an adverse impact on the wildlife habitat of any state Wildlife Management Area.
  - (d) Areas of Critical Environmental Concern. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:
    - 1. would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or
    - 2. would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC.
  - (e) Protection of Open Space. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have an adverse impact on the physical environment of, or on the use and enjoyment of:
    - 1. state forests;
    - 2. state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution;
    - 3. MDC reservations;
    - 4. lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or
    - 5. conservation land owned by private non-profit land conservation organizations and open to the public.

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- (f) Potential Air Quality Impacts. No site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:
1. the concentration and dispersion of emissions
  2. the number and proximity of sensitive receptors; and
  3. the attainment status of the area.
- (g) Potential for the Creation of Nuisances. No site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:
1. noise;
  2. litter;
  3. vermin such as rodents and insects;
  4. odors;
  5. bird hazards to air traffic; and
  6. other nuisance problems.
- (h) Size of Facility. No site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility. The minimum distance between the waste handling area or deposition area and the property boundary shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility.
- (i) Areas Previously Used for Solid Waste Disposal. Where an area adjacent to the site of a proposed facility has been previously used for solid waste disposal the following factors shall be considered by the Department in determining whether a site is suitable and by the board of health in determining whether to assign a site:
1. the nature and extent to which the prior solid waste activities on the adjacent site currently adversely impact or threaten to adversely impact the proposed site;
  2. the nature and extent to which the proposed site may impact the site previously used for solid waste disposal; and
  3. the nature and extent to which the combined impacts of the proposed site and the previously used adjacent site adversely impact on the public health, safety and the environment; taking into consideration:
    - a. whether the proposed site is an expansion of or constitutes beneficial integration of the solid waste activities with the adjacent site;
    - b. whether the proposed facility is related to the closure and/or remedial activities at the adjacent site; and
    - c. the extent to which the design and operation of the proposed facility will mitigate existing or potential impacts from the adjacent site.
- (j) Existing Facilities. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:
1. the extent to which the municipality's or region's solid waste needs will be met by the proposed facility; and
  2. the extent to which the proposed facility incorporates recycling, composting or waste diversion activities.
- (k) Consideration of Other Sources of Contamination or Pollution. The determination of whether a site is suitable and should be assigned as a solid waste management facility shall consider whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department, and whether the proposed facility will mitigate or reduce those sources of pollution or contamination.

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

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

(5) Promotion of Integrated Solid Waste Management.

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

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

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

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

(d) Site assignment applications which incorporate significant recycling or composting uses, in accordance with the goals of the statewide plan, shall receive preferred consideration

(6) Waiver

(a) General. The Commissioner may waive any of the facility specific site suitability criteria contained in 310 CMR 16.40(3) not specifically required by law, or the setback distance at 310 CMR 16.40(4)(h), when the Commissioner finds that strict compliance with such criteria would result in undue hardship and would not serve to minimize or avoid adverse impact. Hardship based on delay in compliance by the proponent, increased facility construction or operational costs or reduced facility revenue generation will not be sufficient, except in extraordinary circumstances, to invoke 310 CMR 16.40(6).

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

(c) Considerations. In determining whether a waiver should be granted, the Commissioner shall consider, in addition to the criteria contained in 310 CMR 16.40(6)(b) the following factors:

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

(d) Filings. All requests for waivers shall be filed and documented in accordance with 310 CMR 16.08(5)(c).

16.99: APPENDIX A

TECHNICAL FEE

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

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

TABLE 1. MAXIMUM TECHNICAL FEE FOR LANDFILLS

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

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

TABLE 2. MAXIMUM TECHNICAL FEE FOR HANDLING FACILITIES

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

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

TABLE 3. MAXIMUM TECHNICAL FEE FOR COMBUSTION FACILITIES

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

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

ADJUSTMENT OF TECHNICAL FEE FOR INFLATION

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

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

Where:

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

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

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

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

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

REGULATORY AUTHORITY