

## 990 CMR: HAZARDOUS WASTE FACILITY SITE SAFETY COUNCIL

### 990 CMR 2.00: AUTHORITY

#### Section

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#### 2.01: Intent

990 CMR is jointly issued by the Council and the Department pursuant to M.G.L. c. 21D in order to provide a unified body of procedures governing the hazardous waste facility siting process.

#### 2.02: Delineation of Authority

- (1) The following sections of 990 CMR are promulgated by the Council: 990 CMR 2.03, 2.05(1), 4.00 (except 4.02 and 4.05), 5.00 (except 5.05(2)), 7.01, 7.03, 7.04, 8.00 through 14.00, 16.00.
- (2) The following sections of 990 CMR are promulgated by the Department: 990 CMR 2.04, 2.05(2), 5.05(2), 6.00, 7.05, 15.00.
- (3) The following sections of 990 CMR are promulgated jointly by the Council and the Department: 990 CMR 1.00, 2.01, 2.02, 2.06, 3.00, 4.02, 4.05, 7.02.

#### 2.03: Amendments by the Council

The Council shall consult with the Department prior to adopting any amendments to those sections which the Council has promulgated.

#### 2.04: Amendments by the Department

The Department shall consult with the Council prior to adopting any amendments to those sections which the Department has promulgated.

#### 2.05: Waiver

- (1) The Council may waive the application of any section of 990 CMR it has promulgated if it finds that:
  - (a) public health and safety and the environment of all communities in the commonwealth will be protected; and
  - (b) strict application of the section to be waived would undermine the public interest in encouraging the construction of environmentally sound and safe hazardous waste facilities in the commonwealth; and
  - (c) there is no feasible or practical alternative means of compliance with the section to be waived which would allow the activity to proceed; and
  - (d) specific substitute conditions can be placed on the person seeking the waiver which result in the substantial protection of the process established by M.G.L. c. 21D and the rights of the communities affected by the action and the developer; and
  - (e) the action made possible by the waiver will not violate the provisions of M.G.L. c. 21D.
- (2) The Commissioner may waive the application of any section of 990 CMR promulgated by the Department if he finds that:
  - (a) public health and safety and the environment of all communities in the commonwealth will be protected; and

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2.05: continued

- (b) strict application of the section to be waived would undermine the public interest in encouraging the construction of environmentally sound and safe hazardous waste facilities in the commonwealth; and
- (c) there is no feasible or practical alternative means of compliance with the section to be waived which would allow the activity to proceed; and
- (d) specific substitute conditions can be placed on the person seeking the waiver which result in the substantial protection of the process established by M.G.L. c. 21D and the rights of the communities affected by the action and the developer; and
- (e) the action made possible by the waiver will not violate the requirements of M.G.L. c. 21D.

2.06: Retroactivity, Severability and Effective Date

- (1) Retroactivity. For any proceeding pending before the Council as of the effective date of 990 CMR 2.00, any action taken by the Council or the Department or by any party to said proceeding prior to the effective date shall be deemed to have been in compliance with the procedural requirements of 990 CMR 2.00. The substantive criteria set forth in 990 CMR 2.00 are to have prospective application only, and to the extent that said criteria vary in any manner from the criteria employed by the Council or the Department in decisions rendered prior to the effective date of 990 CMR 2.00, such variation is not to be construed as necessitating reconsideration or revocation of those prior decisions.
- (2) Severability. The provisions of 990 CMR 2.00 are severable, and if any provision or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of 990 CMR 2.00.
- (3) Effective Date. 990 CMR 2.00 shall become effective immediately upon their publication by the Secretary of State.

REGULATORY AUTHORITY:

990 CMR 2.00: M.G.L. c. 21D, § 4.