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Hazardous Waste Management Facility Siting

Sec. 22a-116-B-1. Purpose, scope, and applicability

These regulations set forth the requirements, standards and application procedures applicable to the grant or denial, amendment, transfer, suspension, revocation, and enforcement of certificates of public safety and necessity by the Connecticut Siting Council required for the siting of hazardous waste facilities. These regulations are promulgated pursuant to Title 22a, chapter 445, of the Connecticut General Statutes; and Title 4, chapter 54, of the Connecticut General Statutes. Additional regulations governing procedures to be followed by the Connecticut Siting Council for hazardous waste proceedings are promulgated pursuant to Title 16, chapter 277a, of the Connecticut General Statutes, and appear in Sections 16-50j and 16-50l of the Regulations of Connecticut State Agencies. Additionally, requirements relating to minimum distances between active portions of hazardous waste facilities and other land uses appear in Section 22a-122-1 of the Regulations of Connecticut State Agencies.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-2. Definitions

As used in Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies and Section 22a-122-1 of the Regulations of Connecticut State Agencies:

(1) “Active Part” for the purposes of minimum distance requirements set forth in Section 22a-122-1 of the Regulations of Connecticut State Agencies means that portion of a hazardous waste facility where handling, storage, treatment, recovery, or disposal of hazardous waste will be, is being, or has in the past been conducted;

(2) “Aquifer” means a geologic formation, group of formations, or part of a formation capable of yielding a usable amount of ground water to wells or springs;

(3) “Certificate” means the certificate of public safety and necessity required by Section 22a-117 of the Connecticut General Statutes to commence construction or modification of a hazardous waste facility;

(4) “Closure Period” means the first 180 days after the hazardous waste facility receives its final volume of hazardous waste or any other period fixed by the Council;

(5) “Construction” means the fabrication, erection, installation, or excavation of a hazardous waste facility which does not constitute a modification;

(6) “Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled;

(7) “Groundwater” means water present in the zone of saturation or an aquifer;

(8) “Incinerator” means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators;

(9) “Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well;

(10) “Land treatment facility” means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure;

(11) “Local project review committee” means the committee which may be established pursuant to Section 22a-127 of the Connecticut General Statutes;

(12) “Management” means the treatment, disposal, or long term storage of hazardous waste;

(13) “Neighboring municipality” means any municipality which: (A) shares a common border with the municipality within which the largest portion of the proposed facility is located; (B) occupies any area within a ten-mile radius of the proposed facility site; or (C) petitions the Council pursuant to Section 22a-116-B-5 of the Regulations of Connecticut State Agencies for consideration as the neighboring municipality likely to be most affected by the proposed facility;

(14) “Operator” means the person responsible for the overall operation of a facility;

(15) “Owner” means the person who owns a facility or part of a facility;

(16) “Surface impoundment” or “impoundment” means a facility or part of facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designated to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons;

(17) “Surface water” means the tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, lakes, ponds, springs, marshes, drainage systems, and all other surfaces, bodies, or accumulations of water, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof;

(18) “Tank” means a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support;

(19) “Thermal treatment” means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge;

(20) “Transferee” means a person who becomes an owner or operator after a certificate has been issued for the facility;

(21) “Waste pile” or “pile” means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-3. Application procedure

(a) Who shall apply.

(1) The owner or operator of a proposed facility subject to the requirement of certification under Section 22a-117 of the Connecticut General Statutes shall apply to the Council for a certificate pursuant to the application provisions of Section 22a-118 of the Connecticut General Statutes. When a proposed facility is to be owned by one person, but operated by another person, both owner and operator, if known at the time of filing, must sign the application.

(b) Public notice.

In addition to the public notice requirements of subsection (e) of Section 22a-118 of the Connecticut General Statutes, such notice shall contain the following sentence: “The chief elected official of any municipality which wishes to be represented on the Council as the most affected neighboring municipality may apply within 20 days for such status to the Council in accordance with Section 22a-116-B-4 of the Regulations of Connecticut State Agencies.”

(c) Completeness review.

(1) No certificate of public safety and necessity shall be granted to any person until a complete application containing all information deemed relevant by the Council has been filed. Relevant information shall at a minimum include that listed in Section 22a-118 of the Connecticut General Statutes and Section 22a-122-1 of the Regulations of Connecticut State Agencies, unless an explanation of irrelevancy is provided for any item omitted from an application, along with a description of siting criteria and the narrowing process by which other possible sites were considered and eliminated. The Council will reserve final judgment of an item's relevancy.

(2) As soon as practicable after receipt of an application, the Council shall notify the applicant in writing as to the completeness of the application. If an applicant fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the Council, the application may be denied and rejected for lack of proper submission.

(3) A determination by the Council that an application is complete at the initiation of the certification process shall not preclude the Council from requiring the applicant to submit additional information subsequently determined to be necessary for a proper and complete evaluation of the proposed hazardous waste facility.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-4. Designation of most affected neighboring municipality

(a) **Petition.** For the purposes of ad hoc representation on the council and on the local project review committee, any municipality may petition the council in writing for consideration as the neighboring municipality likely to be most affected by the proposed facility. Such a petition shall be filed no later than 20 days after an application for a certificate is filed with the council and shall specifically identify the reasons and provide supporting data, if available, as to why the municipality believes it should be designated as the most affected neighboring municipality.

(b) **Considerations.**

No sooner than 20 days and no later than 30 days after receiving an application for a certificate, the permanent members of the Council shall determine the neighboring municipality likely to be most affected by the proposed facility. In making its determination, the Council may consider any relevant information contained in the application for the certificate or in petitions filed by municipalities pursuant to this section. The Council shall, at a minimum, give reasonable consideration to the following information:

(1) description and location of the proposed facility and proximity to neighboring municipalities;

(2) maps from the Department of Energy and Environmental Protection review regarding air quality and movement, and surface and groundwater conditions and movement, including proximity to water company facilities and property;

(3) human population density for the areas of the proposed facility, including neighboring municipalities; and

(4) traffic data, including road and transportation access.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-5. Fees and assessments

(a) **Payment.**

All application fees required by the Council for a certificate of public safety and necessity for a hazardous waste facility or modification shall be paid to the Council at the time such application is filed.

(b) **Fee schedule.**

The fee schedule for a certificate for new hazardous waste facilities defined in Section 22a-115 of the Connecticut General Statutes or the modification of existing facilities shall be 1% of estimated construction cost, including land, but not less than \$5,250 and not more than \$100,250. The fee for each application for a certificate described in Section 22a-117 of the Connecticut General Statutes shall be used for the administrative expenses of the Council and its staff incurred in processing the application. In the event a hearing shall be held for such application, assessments of the applicant during the proceeding, or thereafter, shall be made for the expenses of the proceeding, and shall be in addition to any fee paid pursuant to this section. The amount of any fees and assessments paid pursuant to this section which are in excess of the actual expenses of the Council in reviewing and acting upon the application shall be refunded within 180 days after all Council obligations regarding the application are resolved.

(c) Amendment assessment.

The costs incurred by the Council in considering and application for an amendment of a certificate of public safety and necessity issued pursuant to Section 22a-117 of the Connecticut General Statutes shall be assessed to the applicant within 180 days after all Council obligations regarding the application are resolved and shall not exceed the actual costs incurred in processing, reviewing, and deciding such application.

(d) Declaratory ruling fee.

The fee for each petition for a declaratory ruling pursuant to Section 16-50j-39 of the Regulations of State Agencies shall be \$625. In the event that a hearing shall be held for a petition for declaratory ruling, assessments on applicants shall be made for expenses incurred and during the proceeding and shall be in addition to any fee paid pursuant to this section.

(e) Declaratory ruling field inspections.

For a petition for a declaratory ruling regarding a hazardous waste facility, the person submitting such request or petition shall make payment of a fee of \$625 to the Council for a field inspection. This fee shall be paid within 30 days after the Council's inspection and shall be in addition to any fee paid pursuant to this section.

(f) D&M field inspections.

Expenses incurred for field inspections in reviewing the D&M plan of a hazardous waste facility shall be billed quarterly to the applicant.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-6. Local project review grant

(a) Deposit.

Upon the filing of an application with the Council, or thereafter if project costs are revised, the applicant shall deposit with the Council for the local project review grant an amount calculated as 1% of the total project costs, but not less than \$1,250 and not more than that authorized by Section 22a-127 of the Connecticut General Statutes.

(b) Disbursement.

Upon the filing by the local project review committee established pursuant to Section 22a-127 of the Connecticut General Statutes of receipts for expenses for technical assistance including professional, environmental, scientific, financial and legal assistance incurred by such committee for its review of the proposed hazardous waste facility, the Council shall reimburse the local project review committee a

sum not exceeding that deposited by the applicant pursuant to subsection (a) of this section.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-7. Rendering a decision

(a) Requirements for written decision.

(1) Within twelve months of receipt of a complete application, the Council shall render its decision upon the record by an affirmative vote of not less than seven Council members either granting or denying the application as filed, or granting it upon such terms, limitations, or conditions as the Council may deem appropriate. The twelve month time limit may be extended by 180 days by agreement of the Council and the applicant.

(2) The Council shall file, with its decision, an opinion stating in full the reasons for its decision. The decision shall include a statement describing the items of negotiation between the applicant and local project review committee which the Council has accepted and incorporated into any approval and those negotiated items it has rejected and the reasons therefor.

(3) The Council shall file, with its decision, copies of the reports on negotiations filed by the applicant and the local project review committee, and the record of any Council meeting held with the applicant and committee.

(b) Considerations for decision.

(1) In making its decision to grant or deny a certificate, the Council shall, consistent with applicable requirements of Sections 4-166 to 4-185, inclusive, of the Connecticut General Statutes, consider among other relevant facts and circumstances, the following factors:

(A) The impact of the proposed facility on the municipality and affected geographic area in which it is to be located in terms of public health, safety, and welfare including, but not limited to:

(i) The protection of the public and the environment from risk and impact of accident during transportation of hazardous waste;

(ii) The protection of the public and the environment from risk and impact of fires and explosions from improper storage or disposal methods;

(iii) The protection of the public and the environment from risk and impact of exposure of persons to hazardous wastes and their degradation products during facility operation and after its operational life;

(iv) The degree of consistency of the proposed facility with local and regional land use plans and regulations and the state conservation and development plan in effect at the time the applicant applies to the commissioner for the environmental licenses, permits or approvals necessary to construct and operate the facility, and with existing and proposed development in the area;

(v) The protection of the public and the environment from adverse impacts including but not limited to, adverse economic and environmental impacts of the facility during construction and operation, and after its operational life;

(vi) The protection of the public and the environment from risk and impact by the proposed facility on public and private drinking water supplies; and

(vii) The protection of the public and the environment from risk and impact by the proposed facility on scenic, historic and recreational areas; wetlands; flood plains; wildlife areas; habitat for endangered species; and other environmentally sensitive areas.

(B) The population density in the area of the proposed facility and its proximity to residential areas.

(C) The public benefits of the proposed hazardous waste facility including, but not limited to:

- (i) The need for the additional disposal capacity provided by the facility;
- (ii) The energy and resource recovery benefits, if any, which will be derived from the facility;
- (iii) The economic benefit of the facility to the state and its citizens;
- (iv) The capability of the proposed facility to accommodate hazardous wastes which would otherwise be disposed of in a less environmentally suitable site or manner;
- (v) Economic incentives and benefits which will accrue to the municipality in which the proposed facility is to be located; and
- (vi) Any aspects of the proposed facility which would enhance environmental quality.

(D) The extent to which the location of the facility minimizes the need to transport hazardous wastes long distances.

(E) The extent to which any reasonably available alternative disposal method or site minimizes detriment to the public health or safety, or the quality of the environment.

(F) The applicant's qualifications and previous experience with hazardous waste disposal, as well as the applicant's financial capabilities.

(G) Whether the applicant has prepared, and agreed to implement, an environmentally sound development and management plan which includes all elements required by Section 22a-116-B-9 of the Regulations of Connecticut State Agencies.

(H) Whether the applicant complies with the minimum distances between active parts of the facility and other land uses established pursuant to Section 22a-122-1 of the Regulations of Connecticut State Agencies.

(2) The Council may give such consideration to other state laws, municipal ordinances, and regulations as it shall deem appropriate.

(3) In making its decision as to whether or not to issue a certificate, the Council shall in no way be limited by the fact that the applicant may have already acquired land or an interest therein or any necessary permits, certificates, or orders for the purpose of constructing the facility which is the subject of its application.

(c) Findings required for the issuance of a certificate.

The Council shall not grant a certificate unless it finds and determines:

- (1) That there is a public need for the facility and explains the basis of such need.
- (2) The nature of the probable environmental impact of the facility, including but not limited to impacts due to the construction, operation, transportation of wastes to, and closure and post-closure provisions for the facility.

(3) In the case of a proposed land disposal facility, that there is no other feasible alternative disposal method available.

(4) Every significant single and cumulative adverse effect on and conflict with state policies on the subjects listed below and reasons why such adverse effects or conflicts are not sufficient for denial of the certificate:

- (A) The natural environment;
- (B) The public health and safety;
- (C) Ecological balance;
- (D) Scenic, historic, and recreational values;
- (E) Forests and parks;
- (F) Air and water purity including impact on present and future sources of water supply.

(5) That the applicant meets the financial responsibility requirements set forth in Section 22a-122(d) of the Connecticut General Statutes and in Sections 22a-116-B-1 to 22a-116-B-11 of the Regulations of Connecticut State Agencies.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-8. Transferability of certificates

(a) No certificate may be transferred without the approval of the permanent Council.

(b) Any person desiring to transfer a certificate shall jointly submit with the proposed transferee an application to the Council on such forms as may be prescribed from time to time by the permanent Council members. Such application shall, at a minimum, include the date on which such transfer was agreed upon by the parties to the transfer, an explanation of the reasons for the proposed transfer, and the same information about the transferee which is required of an applicant for a certificate by Section 22a-118 of the Connecticut General Statutes.

(c) The proposed transferee shall agree, in writing, to comply with the terms, limitations, and conditions contained in the certificate.

(d) The permanent Council shall not approve any such transfer if it finds:

(1) That such transfer was contemplated at or prior to the time the certificate was issued and that such fact was not adequately disclosed during the certification proceeding; or

(2) That the transferee lacks the financial, technical, or management capabilities to comply fully with the terms, limitations, or conditions of the certificate.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-9. Development and management plan

(a) **Purpose.**

The Council may require the preparation of a full or partial D&M plan for any certificated hazardous waste facility or any modification to a hazardous waste facility, where the preparation of such a plan would help to protect the health and safety of Connecticut's citizens and the environmental and economic interests of the state.

(b) **Procedure for preparation.**

The D&M plan shall be prepared by the applicant in consultation with Council staff.

(c) **Timing of the plan.**

The D&M plan shall be submitted to the Council and all parties in one complete filing. The D&M plan shall be approved, modified or denied by the Council not later than 60 days of receipt of it and prior to the commencement of construction.

(d) **Elements of a D&M plan.**

A D&M plan shall be a precise and complete description of the site and facility to be built and shall include, but not be limited to, the following information:

(1) The original application as revised by the applicant during the proceeding showing all additions, deletions, and changes, with page references, to the original proposal;

(2) A separate statement of the proposed methods, equipment, and schedule for construction or for each section of construction if construction is to continue through the life of the facility, with descriptions of possible adverse construction impacts and methods of minimizing or mitigating such impact;

(3) A description of the effects of construction on site characteristics, such as the effects of grading on surface drainage, and of soil removal or compaction on erosion, permeability and surface drainage;

(4) A statement of the management and administrative program for the operation of the proposed facility;

(5) The names and qualifications of supervisors assigned to the construction project;

(6) The identity of the person to be responsible for operation and a resume of that person's qualifications and experience; and

(7) A statement of the number, duties, qualifications, and experience of all personnel job classifications to be involved in the processing, treatment, transfer, storage, recovery, or disposal of hazardous waste.

(e) **Supplemental requirements.**

(1) Notices and reports of construction.

(A) The applicant shall provide the Council, in writing, with a minimum of two weeks advance notice of the beginning of:

(i) clearing, road construction, and site preparation; and

(ii) facility construction or each section of facility construction.

(B) The applicant shall provide the Council, in writing, with a monthly construction progress report indicating:

(i) changes and deviations from the approved D&M plan;

(ii) any notices required by and provided to other state agencies; and

(iii) the status of construction schedule.

(2) Significant D&M plan changes.

(A) The certificate holder shall notify the Council whenever a significant change of the approved D&M plan is anticipated. The certificate holder shall not implement such change without prior approval of the Council.

(B) A significant change in the D&M plan shall be any change in:

(i) the location of the facility or its components on the site;

(ii) the proposed grade and drainage characteristics of the site;

(iii) the design of the facility or its component structure;

(iv) a permit required to be considered by the Council in its decision that is issued by the Department of Energy and Environmental Protection for discharge to ground water, surface water, or air;

(v) proposed operation or management of the facility that may adversely affect the environment or the health and safety of employees or the general public; or

(vi) a condition required by the decision and order. Routine maintenance or replacement of parts with equivalent parts shall not be considered a significant change requiring approval.

(C) The Council shall review proposed changes and shall approve, modify, or disapprove the changes not later than 60 days.

(3) Final report and approval.

(A) The applicant shall file with the Council a final report not later than 60 days after completion of construction or of each section of construction, landscaping and rehabilitation, and operational testing, which final report shall include the following information:

(i) identification of all significant changes in the D&M plan identified pursuant to these regulations;

(ii) certification by the facility owner and a professional engineer, whose selection is subject to Council approval, that the facility has been constructed in conformity with the specifications and requirements contained in the development and management plan as specified pursuant to this section;

(iii) dates waste shipments to the site will commence;

- (iv) results of operational tests;
- (v) the date full-time continuous operation will begin;
- (vi) the actual construction cost of the facility, including but not necessarily limited to the costs of site acquisition; site preparation, including erosion control and other measures to mitigate construction impacts; facility construction; and landscaping and rehabilitation.

(B) Not later than 90 days of receipt of the final report or notice of full time operation of the facility or of each section if construction is to continue throughout the life of the facility, whichever is later, the Council shall review the facility and issue a final approval of completion of the D&M plan, or section thereof, or the Council shall make recommendations to the certificate holder indicating what actions or procedures are necessary to conform to the certificate and receive final approval of completion of the D&M plan or section thereof. A letter of completion of the D&M plan shall be issued when the Council determines that the facility was constructed and is being operated in accordance with the certificate.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-10. Enforcement by the council

Whenever the Council becomes aware of any unauthorized construction or modification of a hazardous waste facility subject to the requirements of Chapter 445 of the Connecticut General Statutes or determines that there has been noncompliance with any terms, limitations, or conditions of a certificate, the Council, pursuant to Section 22a-123 of the Connecticut General Statutes, will take appropriate enforcement action. Such action may include issuing a cease and desist order, suspending or revoking a certificate, or requesting the Attorney General to bring an enforcement proceeding in superior court.

(Effective March 7, 1989; amended September 7, 2012)

Sec. 22a-116-B-11.

Repealed, March 7, 1989.