38 §1310-AA. PUBLIC BENEFIT DETERMINATION

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1. Application for public benefit determination. Prior to submitting an application under section 1310-N for a license for a new or expanded solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed facility provides a substantial public benefit.

[1995, c. 465, Pt. A, §22 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

1-A. Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state. Prior to accepting waste that is not generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

(1) Section 1303-C, subsection 6, paragraph A-2;

(2) Section 1303-C, subsection 6, paragraph B-2; or

(3) Section 1303-C, subsection 6, paragraph C-2. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

B. A facility that is subject to this subsection may not accept waste that is not generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

D. For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability; and waste generated within 30 miles of the solid waste disposal facility. [2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF).]

[2007, c. 338, §3 (NEW); 2007, c. 338, §5 (AFF) .]

2. Process. Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The commissioner shall provide public notice of the filing of an application under this section and shall accept written public comment on the application for 20 days after the date of the notice. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner may hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

[2007, c. 338, §3 (AMD); 2007, c. 338, §5 (AFF) .]

3. Standards for determination. The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

A. Meets immediate, short-term or long-term capacity needs of the State; [1995, c. 465, Pt. A, §22 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan; [2007, c. 338, §3 (AMD); 2007, c. 338, §5 (AFF).]

C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and [2007, c. 338, §3 (AMD); 2007, c. 338, §5 (AFF).]

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted. [2007, c. 655, §10 (AMD).]

[2007, c. 655, §10 (AMD) .]

4. Application. This section does not apply to facilities described in section 1310-N, subsection 3-A, paragraph A .

[2009, c. 348, §1 (AMD); 2009, c. 348, §3 (AFF) .]

5. Modifications. Public benefit determinations may be revised by the department if the department finds that a material change in the underlying facts or circumstances upon which a public benefit determination was based has occurred or is proposed, including, but not limited to, a change related to disposal capacity. The department may require the holder of a public benefit determination to submit an application for modification of that determination if the department finds that a change in the underlying facts or circumstances has occurred or is proposed.

[2007, c. 414, §5 (NEW) .]

6. Substantial public benefit. The department may not process or act upon any application for a new or expanded solid waste disposal facility owned by the State pending before the department on or after January 15, 2009 unless the commissioner determines, in accordance with this section, that the proposed facility provides a substantial public benefit.

[2009, c. 348, §2 (NEW); 2009, c. 348, §3 (AFF) .]

SECTION HISTORY
RR 1995, c. 1, §33 (COR). 1995, c. 314, §1 (NEW). 1995, c. 465, §A22 (NEW). 1995, c. 465, §C2 (AFF). 2007, c. 338, §3 (AMD). 2007, c. 338, §5 (AFF). 2007, c. 414, §§4, 5 (AMD). 2007, c. 655, §10 (AMD). 2009, c. 348, §§1, 2 (AMD). 2009, c. 348, §3 (AFF).

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