§ 23-1719. Non-conforming facilities; conformance to safety criteria; moratorium.

The legislature finds that existing facilities have been constructed and are in the process of being used which by reason of their construction in residential areas or in dangerous proximity to contiguous populations, or otherwise, are in violation of the terms of this act, and, having been constructed before its enactment, have not been approved in accordance with the procedures herein required. Taking into account the needs of the service areas involved, the substantial capital investment of the utilities therein, and the changes in corporate plans that compliance with this title will entail, as against the hazards posed to surrounding and contiguous areas and their populations by the potential mishandling or accidental discharge of liquefied natural or petroleum gas in its cryogenic state, the following procedure is established to conform existing facilities to the safety criteria herein prescribed, or, in the alternative, to reexamine the necessity of their use in current locations, and to require alternative siting.

1. Effective on passage hereof, and until regulations pursuant to section 23-1709 are adopted and filed, no liquefied natural or petroleum gas facility may be constructed, reconstructed, enlarged in storage capacity, or, if constructed but unused, put into actual use and operation in this state, and no environmental safety permit pursuant to section 23-1707 of this title shall be issued for such facility.

2. With regard to any non-conforming liquefied natural or petroleum gas storage or conversion facility in actual use and operation on September first, nineteen hundred seventy-six, the following special procedures shall apply:

a. On or before September first, nineteen hundred seventy-six, or the thirtieth day after the effective date of this title, whichever shall be later, the department shall notify any such non-conforming facility of the provisions of this section and of this title, and shall advise it of the procedures to be followed hereunder in terms of conformance to

safety criteria or alternative siting.

b. Within thirty days after this title shall become effective, such non-conforming facility shall give the initial notice required under subdivision two of section 23-1717, specifying by geographical description the municipality or municipalities, or parts thereof, within the state within which it is handling or otherwise using liquefied natural or petroleum gas, with the nature of such use, storage, transportation, or conversion, with the amounts thereof in each location, on a monthly and annual basis, with any projected increase or decrease in the use or handling thereof at such location or locations within the state on a five year basis from date of report.

c. Within sixty days thereafter, the department shall complete the consultation and report required by subdivisions three and four of section 23-1717, and the notification required by the first sentence of subdivision five of that section. Thereafter, further proceedings under subdivision five shall be integrated with the hearing hereinafter directed to be had with regard to the non-conforming facility; and the implementation of the balance of section 23-1717, with regard to training and qualification of municipal fire department personnel, shall be effected in accordance with the determination of the department with regard to the non-conforming facility.

d. Within one hundred and eighty days after this title shall become effective, a public hearing or hearings shall be held in the area or areas in which the non-conforming facility or facilities are located. Such hearing or hearings shall be held on sixty days' notice and as otherwise provided in subdivisions two and three of section 23-1711. Notice shall be given by the facility or facilities in accordance with subdivision three thereof, and public participation shall be afforded by appropriate location and scheduling, and the opportunity to submit oral or written statements for the record.

e. In the adjudicatory phase of the hearing or hearings, evidence may be received relating to the criteria set forth in section 23-1709 as they relate to the non-conforming facility, and with regard to the

capability of municipal fire department personnel to control and extinguish fire resulting from mishandling and accidental release of liquefied natural and petroleum gas during its storage, transportation, or conversion. At the time of the notice of hearing the department shall make public its report under paragraph c of subdivision two of this section, together with all information secured by it with respect to the training and qualification of the municipal fire department or departments and their personnel to control or extinguish fires related to the use of the non-conforming facility, and additional oral testimony by the municipal fire department or departments with respect thereto shall be required at the hearing.

3. Upon the basis of the record the department shall render a decision, (a) permitting the facility to continue at the location, under such terms, conditions, or modification of procedures as the department may deem appropriate; or (b) directing discontinuance of the facility upon a showing of alternate means of meeting the service needs currently satisfied thereby, or upon a showing that the service needs currently satisfied thereby are not sufficient to outweigh the public interest in safety within the terms of section 23-1711. Location within a residential area or in dangerous proximity to contiguous populations shall not, in and of themselves, be determinative with respect to the department determination, but shall be considered along with the other factors set forth in section 23-1709 as criteria for siting, and the information elicited before and at the hearing with respect to the training and qualification of municipal fire department personnel to control or extinguish fires related to the facility under subdivision two of this section, in determining whether or not to permit continuation of the facility at the existing location. In the event it is determined to permit continuation of the facility, it shall be under such limitations in terms of time and conditions as will permit the department currently to review the status of the facility, and to integrate its continued operation with the regulation of other facilities and activities subject to this title to be certified under sections 23-1707 and 23-1713. In the event it is determined to direct discontinuance of the facility, it may be effected over the course of a phase-out period not to exceed three years from the date of

determination, in order to arrange for alternate facilities or other means of meeting approved service needs of the area currently served by the facility. In connection with the foregoing, it shall be appropriate at the hearing or hearings provided under this section to receive evidence with regard to capital investment in any such non-conforming facility, the extent of amortization and of tax writeoff thereof, adaptability for alternate use, availability of alternate siting or means of meeting demonstrated and approved service needs of the area. With regard thereto, it shall be appropriate to solicit information and recommendations from the public service commission with respect to consumer needs and the meeting thereof in economical fashion consistent with the requirements of this title, and from the state energy office, if established, with regard to state energy policy. The cost of the hearing and of allocated departmental overhead shall be assessed against the non-conforming facility pursuant to subdivisions two and three of section 23-1715. It is anticipated that any hearing or hearings held under this section with regard to non-conforming facilities will also relate to the function of the department in adopting regulations establishing criteria for the siting of liquefied natural and petroleum gas facilities, and such shall also be considered in the allocation of expense with regard to hearing or hearings held under this section.