**§ 27-0704. Land burial and disposal in the counties of Nassau and Suffolk; special provisions.**

1. Definitions. As used in this section the following terms shall have the following meanings:

a. "Clean fill" shall mean material consisting of concrete, steel, wood, sand, dirt, soil, glass, or other inert material designated by the commissioner.

b. A "deep flow recharge area" shall mean a sensitive recharge area within the counties of Nassau and Suffolk within the boundaries of hydrogeologic zones I, II and III as defined in the Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight.

c. "Downtime waste" shall mean any treatable or burnable waste accumulated during a scheduled or unscheduled maintenance period of a treatment facility.

d. "Hazardous waste" shall be defined as promulgated by the provisions of section 27-0903 of this article.

e. "Landfill" shall mean a disposal facility at which solid waste, or its residue after treatment, is intentionally placed and at which, waste shall remain after closure.

f. "Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight" shall mean the study prepared by the Long Island Regional Planning Board pursuant to section two hundred eight of the federal water pollution control act.

g. "Treatment facility" shall mean resource recovery, incineration, composting, or other process as approved by the commissioner through which solid waste is put in order to reduce volume and toxicity.

h. "Untreatable waste" shall mean that material that because of its

size or composition cannot be processed by a treatment facility.

2. The Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight shall be kept on file in the office of the commissioner. The hydrogeologic zones and their attendant boundaries as specified in the aforementioned plan are hereby adopted. Any changes made in the boundaries and accepted by the commissioner shall be considered as automatically adopted for the purposes of this section.

3. On or after the effective date of this section and except as provided herein, no person shall commence operation, including site preparation, of a new landfill or of an expansion to an existing landfill which is located in a deep flow recharge area. However, the commissioner, after conducting a public hearing, may approve a limited expansion of any existing landfill in a deep flow recharge area for the sole purpose of providing for solid waste disposal capacity prior to the implementation of a resource recovery system. The commissioner shall not approve any such expansion unless he finds that the owner of such landfill is a municipality that is implementing a resource recovery system which is acceptable to the commissioner and which will be operational no later than seven years after the effective date of this section and that no other feasible means of solid waste management is available, taking into account technological, economic and other essential factors.

4. On or after the effective date of this section, no person shall commence operation, including site preparation, of a new landfill or of an expansion to an existing landfill, which is located in the county of Nassau or Suffolk outside of deep flow recharge areas unless:

a. The commissioner has made an affirmative determination that such landfill will not pose a threat to groundwater quality; and

b. The owner or operator of the landfill has posted a financial guarantee such as, but not limited to, pollution liability insurance, sureties, performance bonds and/or trust funds acceptable to the commissioner securing the cost of corrective treatment, or the

development of alternative water sources, should such landfill become a source of groundwater, surface water, or air pollution. The size of the financial guarantee, the financial stability of the surety, and the terms of posting shall be determined by the commissioner. Financial surety shall also be arranged to ensure the proper operation and maintenance of leachate and other collection and treatment systems for a period of time, as determined by the commissioner, after a landfill is closed; and

c. The landfill is underlain by two or more natural and/or synthetic liners each with provisions for leachate collection, and has a treatment and disposal system, all of which are approved by the commissioner. Any natural clay liners shall have a minimum compacted thickness of two feet and all liners shall have a maximum hydraulic conductivity not to exceed one times ten to the minus seven centimeters per second. If the landfill uses two synthetic liners, the department shall require that the liners are of different chemical compositions; and

d. The landfill is designed and operated to minimize the migration of methane gas or other gases beyond the facility boundaries so as to avert the creation of a nuisance or a danger to property or public health; and

e. The landfill is prohibited from accepting industrial, commercial or institutional solid or liquid waste that is hazardous; and

f. The landfill is not located in a freshwater wetland, tidal wetland or floodplain as identified by the department.

g. Except as provided herein, the landfill accepts only material which is the product of resource recovery, incineration or composting. Downtime waste and wastes that are untreatable by a resource recovery system may be disposed of when handled as provided in this paragraph. Downtime waste and untreatable waste that is landfilled may only be deposited in a special disposal area that is located and constructed so as to segregate these wastes and minimize their effect on residents of the surrounding area. Not more than ten percent of the annual rated capacity of a resource recovery facility may be disposed of as downtime

waste per year. However, up to ten percent of the annual rated capacity of more than one resource recovery facility may be so disposed of at a single landfill.

Any such landfill may also accept wastes other than those authorized in this subdivision whenever such disposal is approved by the commissioner based upon a finding made after the opportunity for a public hearing that (i) no resource recovery facility is available to accept such waste; (ii) the owner of the landfill is making all reasonable efforts to implement a resource recovery system acceptable to the commissioner; and (iii) that the landfilling of such wastes will not have significant adverse environmental impacts. In granting any such approval, the commissioner shall impose conditions necessary to mitigate any adverse environmental impacts to the maximum extent practicable and shall impose a schedule under which the municipality shall implement an acceptable resource recovery system.

5. Within seven years of the effective date of this section, no person shall operate a landfill existing on the effective date of this section in the counties of Nassau and Suffolk unless:

a. The owner or operator of the landfill has posted a financial guarantee such as, but not limited to, pollution liability insurance, sureties, performance bonds and/or trust funds acceptable to the commissioner securing the cost of corrective treatment, or the development of alternative water sources, should such landfill become a source of groundwater, surface water or air pollution. The size of the financial guarantee, the financial stability of the surety, and the terms of posting shall be determined by the commissioner. Financial surety shall also be arranged to ensure the proper operation and maintenance of leachate and other collection and treatment systems for a period of time, as determined by the commissioner, after a landfill is closed; and

b. The landfill is underlain by two or more natural and/or synthetic liners each with provisions for leachate collection, and has a treatment and disposal system, all of which are approved by the commissioner. Any

natural clay liners shall have a minimum compacted thickness of two feet and all liners shall have a maximum hydraulic conductivity not to exceed one times ten to the minus seven centimeters per second. If the landfill uses two synthetic liners, the department shall require that the liners are of different chemical composition; and

c. The landfill is designed and operated to minimize the migration of methane gas or other gases beyond the facility boundaries so as to avert the creation of a nuisance or a danger to property or public health; and

d. The landfill does not accept industrial, commercial or institutional solid or liquid waste that is hazardous; and

e. The landfill is not located in a freshwater wetland, tidal wetland or floodplain as identified by the department.

f. Except as provided herein, the landfill accepts only material which is the product of resource recovery, incineration or composting. Downtime waste and wastes that are untreatable by a resource recovery system may be disposed of when handled as provided in this paragraph. Downtime waste and untreatable waste that is landfilled may only be deposited in a special disposal area that is located and constructed so as to segregate these wastes and minimize their effect on residents of the surrounding area. Not more than ten percent of the annual rated capacity of a resource recovery facility may be disposed of as downtime waste per year. However, up to ten percent of the annual rated capacity of more than one resource recovery facility may be so disposed of at a single landfill.

If the landfill is located outside of the deep flow recharge area, such landfill may also accept wastes other than those authorized in this subdivision whenever such disposal is approved by the commissioner based upon a finding made after the opportunity for a public hearing that (i) no resource recovery facility is available to accept such waste; (ii) the owner of the landfill is making all reasonable efforts to implement a resource recovery system acceptable to the commissioner; and (iii) that the landfilling of such wastes will not have significant adverse

environmental impacts. In granting any such approval, the commissioner shall impose conditions necessary to mitigate any adverse environmental impacts to the maximum extent practicable and shall impose a schedule under which the municipality shall implement an acceptable resource recovery system.

6. Notwithstanding the other provisions of this section, the commissioner may allow, by permit, the disposal of clean fill material in the counties of Nassau and Suffolk. Such material shall not be contaminated with hazardous wastes.