§ 27-0707. Permits for new solid waste management facilities.

1. On and after the effective date of the initial rules and regulations of the department promulgated pursuant to subdivision one of section 27-0703, no person shall commence operation, including site preparation and construction, of a new solid waste management facility until such person has obtained a permit pursuant to this title.

2. The rules and regulations adopted by the department to implement this article and the provisions of article seventy of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article. The administration of such permit applications shall be in accordance with article eight of this chapter. The rules and regulations adopted by the department to implement this article shall specify, at a minimum:

a. that an application for a permit to construct, or to renew a permit to operate, a solid waste management facility shall not be complete unless the application includes a description of how the proposed facility is consistent with the state solid waste management policy identified under section 27-0106 of this article.

b. that on or after April first, nineteen hundred ninety-one an application for a permit to construct a solid waste management facility made by or on behalf of a municipality in a planning unit shall not be complete until a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article is in effect for such municipality; provided, however, that this requirement may be waived by the commissioner for a permit to construct a solid waste management facility designed for the treatment, storage or disposal of sewage sludge and needed to implement a project described in subparagraph one of paragraph (c) of subdivision three of section ninety-seven-m of the state finance law that will expedite compliance with the Ocean Dumping Ban Act of 1988. For any such permit application submitted by a municipality prior to April first, nineteen hundred ninety-one, the department shall, upon issuance

of a permit, require as a permit condition that the municipality or planning unit of which it is a part have in effect a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article by a date certain, which shall be no sooner than April first, nineteen hundred ninety-one, unless otherwise agreed by the municipality, and which shall be no later than April first, nineteen hundred ninety-two. For any such permit application submitted on behalf of a municipality prior to April first, nineteen hundred ninety-one, the department shall require as a permit condition that the proposed solid waste management facility shall be prohibited from accepting waste from such municipality by a date certain, which shall be no sooner than April first, nineteen hundred ninety-one and no later than April first, nineteen hundred ninety-two, unless such municipality or the planning unit of which it is a part has in effect a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article. For purposes of this paragraph, "planning unit" shall have the same meaning as set forth in subdivision one of section 27-0107 of this article.

c. that a permit will be issued only if:

(1) the proposed facility will be in full compliance with the applicable rules and regulations in effect on the date of submission of the permit application; and

(2) there has been opportunity for public review and comment at relevant stages of the project planning process; and

(3) a determination has been made that the proposed facility will not result in unfair competition between municipalities and scrap dealers, processors and consumers; and

(4) the applicant has received or will receive the written opinion of counsel to each muncipality or public authority which has entered into a contract, lease or rental agreement with the proposed facility that such contract, lease or rental agreement is in compliance with the applicable requirements of sections one hundred one, one hundred three and one hundred twenty-w of the general municipal law.

2-a. No exemption from the permit requirements imposed by this title

shall be allowed for the establishment of a new solid waste management facility for the disposal of nonputrescible construction and demolition debris when such facility will be used for the deposition of construction and demolition debris from an offsite source when a fee or any other form of consideration is required for the privilege of using the facility for the disposal of construction and demolition debris.

2-b. The department of environmental conservation shall not issue a permit to construct or a permit to operate a facility in Nassau county to process sewage sludge into a pellet-like product unless and until a full environmental review of the proposed facility has been conducted, including but not limited to full consideration of the impacts such facility may have upon the proximity of schools, churches, hospitals, residences, commercial districts to such facility; ambient air quality, traffic, community character and growth patterns, local aesthetics and economics, and public health and safety in the vicinity of such facility; and unless and until all relevant adverse impacts identified through the review process have been addressed by the applicant and avoided as necessary to protect the public health and safety of residents and others residing and/or working in the vicinity of any such proposed facility. The department shall conduct a minimum of one public hearing in Nassau county, as a part of such full environmental review of the proposed facility.

2-c. No permit for a solid waste management facility shall be issued for a facility located on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of the agriculture and markets law. Nothing contained herein, however, shall be deemed to prohibit the issuance of such permit after appropriate review by the department when:

a. the owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or

b. the applicant for the permit has made a commitment in the permit

application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased; or

c. the commissioner of agriculture and markets has made a determination and the commissioner concurs that the agricultural land to be taken constitutes less than five percent of the project site.

For purposes of this subdivision, "solid waste management facility" shall have the same meaning as provided in this title, but shall not include solid waste transfer stations, or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date and initial determination is made, pursuant to article eight of this chapter, as to whether an environmental impact statement needs to be prepared for the proposed project.

3. Where a permit for a solid waste management facility has been granted, the commissioner may upon request make available such department personnel and expertise as may be needed to inform the public as to the nature of the facility which has been granted a permit, the nature of the facility operations authorized by the permit, and the effect of the permit conditions, if any, which are imposed in connection with the permit.

4. Where the commissioner denies a permit application, he shall provide to the applicant a written statement of the reasons for this determination.

5. Receipt of a permit pursuant to this section shall not relieve any person of the responsibility of constructing such facility in full compliance with any applicable laws, rules or regulations or of operating the facility in full compliance with all applicable laws, rules and regulations, including rules and regulations of the department promulgated pursuant to subdivision one of section 27-0703 and taking effect after the date application was made to the department.

6. Nothing herein shall relieve any person of the responsibility of fully complying with all applicable laws, rules and regulations, including regulations of the department, promulgated pursuant to subdivision one of section 27-0703, in the operation of a solid waste management facility not subject to the department's review under this section.

7. Notwithstanding any provision of law or order to the contrary, no permit to construct and/or operate a solid waste management facility shall be issued for any incinerator for which a permit application was deemed complete by the department before April first, nineteen hundred eighty-six and for which no such permit was issued by the department before April first, nineteen hundred ninety-six. For the purpose of this subdivision, the term "incinerator" shall mean an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid, liquid or gaseous wastes, including refuse-derived fuel, producing residue that contains little or no combustible materials.