§ 27-0908. Hazardous waste reduction plans.

1. When used in this section, the following terms shall have the following definitions:

a. "Acute hazardous waste" means any waste identified or listed as such in the regulations promulgated under section 27-0903 of this title.

b. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

c. "Hazardous waste" means any waste identified or listed as such in the regulations promulgated under section 27-0903 of this title, including "acute hazardous waste".

2. For the purposes of this section, hazardous wastes generated by any corrective action required pursuant to this title for a release from a hazardous waste treatment, storage or disposal facility, or by the remediation of an inactive hazardous waste disposal site as defined in subdivision two of section 27-1301 of this article, or by the cleanup of a release to the environment reported pursuant to article 17, 37 or 40 of this chapter, or demolition and construction debris, or wastes which are otherwise subject to the requirements of this section shall not be included in the calculation of the amount of hazardous wastes generated by a person annually, nor shall such wastes be subject to the waste reduction planning requirements for this section.

3. a. Any generator of equal to or greater than one thousand tons of hazardous waste in the calendar year nineteen hundred ninety or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

b. Any generator of equal to or greater than five hundred tons of hazardous waste in the calendar year nineteen hundred ninety-one or any subsequent calendar year shall prepare, implement and submit to the

department a written hazardous waste reduction plan on or before July first of the following calendar year.

c. Any generator of equal to or greater than fifty tons of hazardous waste in the calendar year nineteen hundred ninety-two or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

d. Any generator of equal to or greater than twenty-five tons of hazardous waste in the calendar year nineteen hundred ninety-five or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

e. Notwithstanding any other provision of this subdivision, any generator required to hold a hazardous waste storage, treatment or disposal permit for the on-site management of hazardous waste pursuant to section 27-0913 of this title shall prepare and submit to the department, a written hazardous waste reduction plan on or before July first, nineteen hundred ninety-one or as part of any new permit application, and shall thereafter implement the plan.

4. The hazardous waste reduction plan required under this section shall include:

a. an identification of the amounts and types of any acute hazardous waste as reported pursuant to subdivision six of section 27-0907 of this title; and an identification of the amounts and types of hazardous wastes generated during the previous calendar year which are either (i) in amounts greater than five tons or (ii) which account for at least ninety percent of all hazardous wastes generated by such generator at that facility, whichever represents the greater amount of hazardous wastes. For each such hazardous waste, such plan shall also include:

(1) a description of the process, operation or activity that resulted in the generation of such waste;

(2) a calculation of the amount of such waste generated per unit of

production output or raw material used, or other appropriate index, or a demonstration why the calculation cannot be provided; and

(3) an estimate, and bases for such estimate, of the costs incurred for managing such waste, including but not limited to, storage costs, on-site treatment or disposal costs, transportation costs, commercial disposal fees and regulatory fees or a demonstration why such calculation cannot be provided.

b. For each such waste identified pursuant to paragraph a of this subdivision, an evaluation of the technical feasibility and economic practicability, including return on investment, of implementing waste reduction processes, technologies or operational changes to reduce or eliminate the generation of such waste. Such evaluation shall consider the technical feasibility and economic practicability, where applicable, of:

(i) substitution of non-toxic or less toxic inputs to the production process which result in a reduction in the volume or toxicity of such waste;

(ii) reformulation or redesign of end products to eliminate production inputs or production processes that result in the generation of such waste;

(iii) modification or redesign of production processes, technologies or equipment which result in a reduction in the volume or toxicity of such waste;

(iv) changes in materials usage, handling and storage practices, including improved inventory control, preventive maintenance, spill and leak prevention, and waste segregation, which will reduce the volume or toxicity of such waste;

(v) the use of closed loop reclamation, reuse or recycling processes or technologies which directly recycle such wastes back into the production process; and

(vi) the use of on-site or off-site recycling technologies or processes that reduce the amount of such waste that must be treated or disposed of.

c. Establishment and description of a program for implementing technically feasible and economically practicable waste reduction

alternatives. Such program shall include:

(i) establishment of a general corporate, facility or organizational waste reduction policy, including a statement of waste reduction goals, along with a plan for communicating such policy and statement of goals to relevant employees and management personnel;

(ii) a time schedule for implementing each technically feasible and economically practicable waste reduction technology, process or operational change identified pursuant to paragraph b of this subdivision;

(iii) designation of the office or department responsible for implementing the waste reduction plan;

(iv) a method of waste reduction measurement which will provide a basis for charting waste reduction trends over time; and

(v) appropriate employee training programs to assure proper implementation of the economically practicable and technically feasible waste reduction alternatives identified pursuant to paragraph b of this subdivision.

d. An evaluation of the anticipated reduction, in tons or other appropriate measurement, in the amount of hazardous wastes produced by the generator as a result of the implementation of each of the technically feasible and economically practicable waste reduction options identified pursuant to paragraph b of this subdivision.

e. An evaluation of the extent, if any, to which the implementation of each of the technically feasible and economically practicable waste reduction options identified pursuant to paragraph b of this subdivision may result in the transference of hazardous wastes into any other environmental media and the environmental benefits, if any, of the waste reduction option resulting in such transference.

5. The hazardous waste reduction plan required pursuant to this section shall be updated at least biennially to reflect changes in the types and amounts of hazardous wastes produced by the generator. In preparing such update, the generator shall evaluate or reevaluate the technical feasibility and economic practicability of waste reduction alternatives as required pursuant to subdivision four of this section

for each such waste, and, if appropriate, shall revise the schedule for implementing technically feasible and economically practicable waste reduction alternatives; provided, that no evaluation or reevaluation shall be required for such wastes no longer produced by the generator. Such update shall provide continuity with previously prepared plans.

6. As a part of its hazardous waste generator report required pursuant to subdivision six of section 27-0907 of this title, each generator required to prepare a hazardous waste reduction plan pursuant to this section shall submit to the department an annual status report describing such generator's progress in achieving its time schedule for implementing technically feasible and economically practicable waste reduction alternatives, pursuant to paragraph c of subdivision four of this section. If such generator does not implement a waste reduction technology, process or operational change identified in such time schedule, the annual status report shall identify the reason such activity was not implemented and include a reasonable revised time schedule for implementing such waste reduction alternative. If a generator determines that any method of waste reduction chosen and implemented is not achieving the degree of waste reduction anticipated, notwithstanding commitments made in the plan or biennial update, the generator may choose and implement another waste reduction alternative more likely to achieve waste reduction. The generator shall explain such action in the annual status report and account for such action in the biennial updates pursuant to paragraphs c, d and e of subdivision four of this section.

7. On or before January first, nineteen hundred ninety-one, the department shall prepare and distribute a guidance manual to assist generators in complying with the requirements of this section.

8. The department shall review each plan submitted pursuant to this section according to the schedule provided hereafter. The submission of such plan shall not be considered a permit application within subdivision four of section 70-0105 of this chapter and shall not be deemed to be a license application within subdivision four of section one hundred two of the state administrative procedure act.

a. After July first, nineteen hundred ninety-one, the department shall review and may reject, in accordance with the standards set forth in subdivision nine of this section, those portions of such plan which address hazardous wastes which are managed in a land disposal facility.

b. After July first, nineteen hundred ninety-three, the department shall review and may reject, in accordance with the standards set forth in subdivision nine of this section, those portions of such plan which address hazardous wastes which are managed through treatment, including wastes managed through thermal destruction or wastes burned as fuel for the purpose of recovering usable energy; and

c. On or after July first, nineteen hundred ninety-five, the department shall review and may reject, in accordance with the standards set forth in subdivision nine of this section, all plans submitted by a generator utilizing recovery, reuse or recycling, except closed loop recycling directly back into the production process, as management methods.

d. Notwithstanding any other provision of law the department shall not be authorized to reject any plan or biennial update for which a notice of deficiency pursuant to paragraph a of subdivision ten of this section has not been provided to the generator within twelve months of the date such plan or biennial update was submitted.

9. The review of hazardous waste reduction plans conducted by the department pursuant to the schedule set forth in subdivision eight of this section shall be subject to the following standards. The department may reject any plan or biennial update thereof which:

a. fails to contain all the components required pursuant to subdivision four of this section;

b. fails to apply generally accepted engineering, scientific or economic principles and practices;

c. accomplishes waste reduction by transference to other environmental media without an environmental benefit from such transference;

d. is inconsistent with the preferred hazardous waste management practices hierarchy set forth in section 27-0105 of this article;

e. involves conduct which is prohibited by any applicable law or regulation;

f. fails to provide a basis for charting waste reduction trends over time;

g. beginning with the submission of the first biennial update, fails to demonstrate reasonable progress in implementing those technically feasible and economically practicable waste reduction alternatives chosen by the generator according to the time schedule developed pursuant to paragraph c of subdivision four of this section; or

h. beginning with the submission of the first biennial update, fails to demonstrate reasonable progress in waste reduction employing the methods of waste reduction and calculation provided in the plan, or as modified in the annual report, or fails to reevaluate the technically feasible and economically practicable waste reduction alternatives as required pursuant to subdivision five of this section.

10. a. In proposing to reject any plan or biennial update thereof, the department shall provide to the generator a notice detailing the specific deficiencies the department has identified consistent with the standards set forth in subdivision nine of this section.

b. Upon receipt of such notice, the generator shall have up to sixty days to prepare a rebuttal or to modify the plan or biennial update to address the deficiencies identified in the notice and to submit such rebuttal or modified plan or update to the department.

c. If the department determines that the plan or update should not be rejected, it shall notify the generator within thirty days of submittal

of a rebuttal or modified plan or update. If the department determines that the rebuttal or modified plan or update has not adequately addressed the specific deficiencies identified in the notice, or if the rebuttal or modified plan or update is not submitted within the time period specified in paragraph b of this subdivision, the department in its discretion may require further modifications, consistent with the specific deficiencies identified in the notice, within a time to be determined by the department, or make a determination to reject such plan or update. Any determination to require further modifications shall be made and provided to the generator within thirty days of submittal of a rebuttal or modified plan or update.

d. Immediately upon making a determination to reject a plan or biennial update the department shall provide to the generator a notice of final rejection. Such notice of final rejection shall detail the specific deficiencies consistent with the standards set forth in subdivision nine of this section.

e. Within fifteen days of the date of a notice of final rejection from the department pursuant to this subdivision, a generator may request a hearing pursuant to article three of the state administrative procedure act. The department shall notify the generator of a date and place for a hearing, to be commenced not later than sixty days from the date of such notification, unless an extension of time has been agreed to pursuant to paragraph j of this subdivision.

f. The department may not require any modification to the plan or biennial update or raise any issue at hearing not identified in the notice of final rejection provided pursuant to paragraph d of this subdivision.

g. The certification prohibition in subdivision eleven of this section shall not be effective until a determination is made by the department after hearing, or until time to request such hearing has expired.

h. Any final determination of the department is reviewable pursuant to article seventy-eight of the civil practice law and rules.

i. Such review shall be commenced within the time limits set forth in section two hundred seventeen of the civil practice law and rules.

j. Any time period specified in this subdivision may be extended in writing by mutual consent of the generator and the department.

11. Any generator who has submitted a hazardous waste reduction plan according to the time schedule set forth in subdivision three of this section, which plan has not been rejected by the department, is authorized to make the certifications required under sections 27-0907 and 27-0913 of this title; provided, however, that no such generator shall make such certifications if such plan has been rejected by the department. These restrictions shall not apply to hazardous waste generated prior to the date the plan was rejected.

12. Information required to be provided to the department under this section shall be subject to the provisions of section 27-0919 of this title.

13. On or before January first, nineteen hundred ninety-three, the department shall prepare and present to the governor and the legislature a report analyzing the desirability of requiring waste reduction pursuant to this section on the part of generators of greater than fifteen tons and less than twenty-five tons of hazardous waste per calendar year. Such report shall include the number of generators in this category, the amount of wastes produced by such generators, the environmental benefit likely to be achieved, an evaluation of the potential economic impact on industry and a description of the additional resources that the department would require to analyze and approve waste reduction plans submitted by this group of generators.

14. The department shall not impose planning and reduction requirements other than those authorized pursuant to this section for those hazardous wastes which are managed in a land disposal facility, managed through treatment, or managed through recovery, reuse or recycling and which are subject to the requirements of this section.

Provided however, nothing herein shall be construed to limit the department's authority contained elsewhere in this chapter to require planning and reductions in emissions, discharges or other releases.