§ 27-0913. Permits and registrations for storage, transportation, treatment, or disposal of hazardous wastes.

1. a. No person shall engage in storage, treatment, or disposal, including storage at the site of generation, of hazardous wastes without first having obtained a permit pursuant to title seven of this article. Such permits shall require corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at a permitted treatment, storage or disposal facility, regardless of the time at which waste was placed in such unit, and shall contain schedules of compliance for such corrective action where such corrective action cannot be completed prior to issuance of the permit.

b. Where appropriate and consistent with the provisions of RCRA, the commissioner may by regulation provide for interim status for hazardous waste treatment, storage or disposal facilities. Such regulation may include, but shall not be limited to, termination provisions, corrective action provisions and requirements for modification of such facilities as may be necessary to protect human health and the environment. The condition of interim status shall not be deemed to be a permit within subdivision four of section 70-0105 of this chapter, and shall not be deemed to be a license within subdivision four of section one hundred two of the state administrative procedure act.

2. No person shall engage in the transportation of hazardous wastes without first complying with the requirements of title three of this article.

3. The commissioner shall assure that permits authorizing hazardous waste treatment, storage, disposal or transportation are not issued to nor held by unqualified or unsuitable persons. To effectuate this purpose, and in addition to any other available grounds, the commissioner may, consistent with the policies of article twenty-three-A of the correction law and the provisions of section 70-0115 of this chapter, deny, suspend, revoke or modify any permit, renewal or

modification thereto for the treatment, storage, disposal or transportation of hazardous waste, after determining in writing that such action is required to protect the public health and safety. Some of the factors which the commissioner may consider in arriving at his determination include the following:

a. The permit holder or applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of this article, any related order or determination of the commissioner, any regulation promulgated pursuant to this article, the condition of any permit issued thereunder, or any similar statute, regulation, order or permit condition of the federal or other state government.

b. Such permit holder or applicant has been denied a permit for the same or substantially similar activity based upon one or more of the provisions of this subdivision, or a similar provision of federal or other state law.

c. Such permit holder or applicant has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting hazardous waste.

d. Such permit holder or applicant has been convicted of a criminal offense under the laws of any state or of the United States which involves a violent felony offense, fraud, bribery, perjury, theft, or an offense against public administration as that term is used in article one hundred ninety-five of the penal law.

e. Such permit holder or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact or knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department.

f. Such permit holder or applicant is either:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title;

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title; or

(iii) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder had such other corporation, partnership, association or organization applied for a permit under this title.

For the purposes of this subdivision, "high managerial agent" has the same meaning as is given that term in section 20.20 of the penal law, and "substantial interest" shall be defined in regulations promulgated by the commissioner.

4. Any act or failure to act which serves as a basis for denial or revocation of a permit pursuant to this subdivision shall have occurred within two years from the date on which the application for a permit, renewal or modification is submitted to the department or from the date on which the department serves notice of intent to revoke or modify a permit issued by the department in relation to an existing permit.

5. Any person denied a permit, renewal or modification on the grounds

specified in this subdivision shall be entitled to a hearing within sixty days of such denial in the case of a new permit, or within fifteen days in the case of a renewal or modification of an existing permit. The conduct of such hearing shall be governed by article seventy of this chapter and regulations promulgated thereunder.

6. It shall be a condition of any permit issued under title 7 of this article for the treatment, storage or disposal of hazardous waste on the premises where such waste is generated that the permittee certify, in its annual report, that:

a. the generator has in place a program to reduce the volume or quantity and toxicity of hazardous wastes to the degree determined by the generator to be economically practicable or, if a hazardous waste reduction plan is required by and reviewable under section 27-0908 of this title, a program that meets the requirements of that section; and

b. the method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes present and future threats to human health and the environment.