§ 27-1105. Siting industrial hazardous waste facilities.

1. After the publication of siting criteria pursuant to subdivision one of section 27-1103 of this title, no person may commence construction or operation of the following industrial hazardous waste treatment, storage and disposal facilities, hereinafter referred to as "facility", without having received a certificate of environmental safety and public necessity from the facility siting board as hereinafter provided: (a) any new off-site facility;

(b) any new commercial facility, wherever situated;

(c) any new incineration facility, wherever situated;

(d) any new land disposal facility, wherever situated; and

(e) any expansion, wherever situated, of the aggregate land disposal capacity of an existing land disposal facility.

2. Notwithstanding the provisions of subdivision one of this section, the following industrial hazardous waste treatment, storage and disposal facilities shall not be subject to the provisions of this title:

(a) A facility that does not require permits pursuant to title nine of this article;

(b) A land disposal facility located at the site of an existing land disposal facility where both the existing facility is or was and the proposed facility will be used solely for the disposal of non-incinerable residues from the on-site thermal destruction or chemical or aqueous treatment of wastes generated at the site of such facilities;

(c) A facility that has been determined by the department to have no significant environmental impact pursuant to article eight of this chapter; and

(d) Additional facilities, other than land disposal facilities, to be located at the site of an existing facility, the operation of which will be substantially similar to that of the existing facility with respect to the mode of waste management and the type and quantity of hazardous waste being managed.

3. To obtain the certificate of environmental safety and public necessity required pursuant to subdivision one of this section, the

following procedures shall be followed:

(a) An application must be submitted to the department in the form required pursuant to subdivisions one and three of section 27-1103 of this title.

(b) On or before fifteen calendar days after the receipt of such application, the department shall mail written notice to the applicant whether or not the application is complete. If the application is not complete, the provisions of paragraphs (c) and (d) of subdivision one of section 70-0109 of this chapter shall be applicable. If, or when, the application is complete, the department shall, concurrent with notification to the applicant, send the application and written notice to the office of the governor requesting that a facility siting board be constituted consistent with this subdivision.

(c) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such notice and shall provide notice to the chief executive officer of each municipality in which the proposed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Such notice shall also be given to all property owners of record within three hundred feet of the subject facility. In addition, notice shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

(d) On or before fifteen calendar days after the receipt of such notification the governor shall constitute a facility siting board to be composed of the commissioners of transportation, environmental conservation, health and commerce, the secretary of state and three ad hoc members appointed by the governor, two of whom must be residents of the county in which the facility is primarily proposed to be located. The three ad hoc members shall be employees of the state for the purposes of section seventeen of the public officers law. Each of the three ad hoc members shall receive the sum of two hundred dollars for each day in which he is actually engaged in the performance of his duties herein plus actual and necessary expenses incurred by him in the

performance of such duties. The terms of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they were appointed. Each ex officio member of the board may by written instrument filed with the board designate an employee or officer of his department to act on his behalf relating to any or all business of the board. Five of the eight persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of five members of the board shall constitute action of the board. In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. The governor shall appoint the chairman of the board and the commissioner of environmental conservation shall make staff available to support the board in carrying out its responsibilities.

(e) The commissioner of the department of environmental conservation shall appoint a hearing officer who shall conduct an adjudicatory public hearing upon the application. Such hearing shall commence on or before sixty calendar days after the facility siting board is constituted. Such hearing shall be preceded by public notice, in the same form and manner as provided in paragraph (c) of this subdivision, published not less than thirty days prior to such hearing. The members of the board may at their option participate in the adjudicatory hearing. Such participation may include, but is not limited to, examination of witnesses and requesting the production of documents or witnesses.

(f) The board shall render a decision based upon the record either granting the application, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the board may deem appropriate. The board shall deny an application to construct or operate a facility if residential areas and contiguous populations will be endangered, if it otherwise does not conform to the siting criteria established for such facility pursuant to section 27-1103 of this title or, upon final adoption of the statewide hazardous waste facility siting plan established pursuant to section 27-1102 of this title, if it is not consistent with such plan or if the need for such facility is not identified in such plan and the board finds that the facility is not otherwise necessary or in the public interest.

(g) The board shall make the final decision on an application for a

certificate of environmental safety pursuant to this title, upon the record made before the hearing officer, after receiving briefs from the parties to the hearing and exceptions to the recommended decision of such hearing officer and after hearing such oral argument as the board shall determine to be necessary. The chairman of the facility siting board shall mail its decision to the applicant, to the department, and to all parties to the hearing on or before sixty calendar days after receipt by the board of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section 302 of the state administrative procedure act.

(h) The provisions of article 70 of this chapter shall apply to applications pursuant to this title, to the extent such provisions are not inconsistent herewith.