§ 27-1305. Reports by the department; registry of sites.

1. The department shall maintain and make available for public inspection, either at each of its regional offices and regional sub-offices, at the office of the county clerk or register for each county and at the office of the town clerk for each town in Suffolk and Nassau counties, or on its website, a registry of inactive hazardous waste disposal sites in such region or, with respect to the office of the county clerk or register, in such county, or with respect to its website, the entire state. The department shall provide a written copy upon requests by any person. The department shall take all necessary action to ensure that the registry provides a complete and up-to-date listing of all such sites within the region. The department shall, on or before January first, two thousand four, and annually thereafter, transmit the updated registry to the legislature and the governor. A notice of the availability of the updated registry shall be sent to the department of health and the chief executive officer of every county. Upon identification of an inactive hazardous waste disposal site not included in the registry for the immediately preceding year, the department shall notify in writing the chief executive officer of each county, city, town and village and the public water supplier which services the area in which such site is located that such site has been so identified. For the purposes of this section, "water supplier" shall mean any public water system as such term is defined for the purposes of the sanitary code of the state of New York as authorized by section two hundred twenty-five of the public health law. Such registry shall include but need not be limited to those items among the following which the commissioner determines to be necessary:

a. A description of the sites consisting of:

(i) a general description of the site, which shall include the name, if any, of the site, the address of the site, the type and quantity of the hazardous waste disposed of at the site and the name of the current owners of the site;

(ii) an assessment by the department of any significant environmental problems at and near the site;

(iii) an assessment prepared by the department of health of any

serious health problems in the immediate vicinity of the site and any health problems deemed by the department of health to be related to conditions at the site;

(iv) the status of any testing, monitoring or remedial actions in progress or recommended by the department;

(v) the status of any pending legal actions and any federal, state or local government permits or approvals concerning the site; and

(vi) an assessment of the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of wastes at such site;

b. Address and site boundaries including tax map parcel numbers or section, block and lot numbers, and if the site is located within a disadvantaged community;

c. Time period of use for disposal of hazardous waste;

d. Name of the current owner and operator and names of any past and reported owners and operators during the time period of use for disposal of hazardous waste;

e. Names of persons responsible for the generation and transportation of hazardous waste disposed of;

f. Type and quantity of hazardous waste disposed of;

g. Manner of disposal of hazardous waste;

h. Nature of soils at the site;

i. Depth of water table at the site;

j. Location, nature and size of aquifers at the site;

k. Direction of present and historic groundwater flows at the site;

l. Location, nature and size of all surface waters at and near the

site;

m. Levels of contaminants, if any, in groundwater, surface water, air and soils at and near the site resulting from hazardous wastes disposed of at the site or from any other cause and areas known to be directly affected or contaminated by wastes from the site;

n. As determined by the department of health, current quality of all drinking water drawn from or distributed through the area in which the site is located when the department of health determines that water quality may have been affected by the site in question and any known change in the quality of such drinking water over time;

o. Proximity of the site to private residences, public buildings or property, school, daycare, medical, or senior care facilities, places of work or other areas where individuals may be present, or location within a disadvantaged community; and

p. The name, address and telephone number of the public water supplier which services the area in which such site is located.

2. a. The department shall conduct investigations of the sites listed in the registry and shall investigate areas or sites which it has reason to believe should be included in the registry. The purpose of these investigations shall be to develop the information required by subdivision one of this section to be included in the registry.

b. (1) Assessment and classification. The department shall, as part of the registry, assess and, based upon new information received, reassess by March thirty-first of each year, in cooperation with the department of health, the relative need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes at such sites including in such assessment whether sites shall be prioritized under subdivision five of this section due to site location in an area identified as a disadvantaged community; provided, however, that if at the time of such assessment or reassessment, the department has not placed a site in classification 1

or 2, as described in clauses (i) and (ii) of this subparagraph, and such site is the subject of negotiations for, or implementation of, a brownfield site cleanup agreement pursuant to title fourteen of this article, obligating the person subject to such agreement to, at a minimum, eliminate or mitigate all significant threats to the public health and environment posed by the hazardous waste pursuant to such agreement, the department shall defer its assessment or reassessment during the period such person is engaged in good faith negotiations to enter into such an agreement and, following its execution, is in compliance with the terms of such agreement, and shall assess or reassess such site upon completion of remediation to the department's satisfaction. In making its assessments, the department shall place every site in one of the following classifications:

(i) Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment--immediate action required;

(ii) Significant threat to the public health or environment--action required;

(iii) Does not present a significant threat to the public health or environment--action may be deferred;

(iv) Site properly closed--requires continued management;

(v) Site properly closed, no evidence of present or potential adverse impact--no further action required.

(2) Prioritization. The department shall, in accordance with subdivision five of this section, prioritize remedial programs at sites placed in classification 1 or 2, as described in clauses (i) and (ii) of subparagraph one of this paragraph, that are located in disadvantaged communities, consistent with the protection of public health and the environment.

c. (1) Any owner or operator of a site listed pursuant to this section may petition the commissioner for deletion of such site, modification of the site classification, or modification of any information regarding such site by submitting a written statement in such form as the commissioner may require setting forth the grounds of the petition.

(2) Within ninety days after the submittal of such petition, the commissioner may convene an administrative hearing to determine whether

a particular site should be deleted from the registry, receive a modified site classification or whether any information regarding the site should be modified. In any such hearing the burden of proof shall be on the petitioner. No less than thirty days prior to the hearing the commissioner shall cause a notice of hearing to be published in the next available environmental notice bulletin, on the department's website, and in a newspaper of general circulation in the county in which the site is located. The commissioner shall also notify in writing any owner or operator of the site, as well as the owners of record of adjacent properties, no less than thirty days prior to the hearing. The cost of any such hearing, including the cost of any public notification, shall be at the petitioner's expense.

(3) No later than thirty days following receipt of the complete record as that term is defined in the state administrative procedure act, or following the decision not to hold a hearing the commissioner shall provide the owner or operator with a written determination accompanied by reason therefor regarding the deletion of such site, modification of the site classification or modification of any information regarding such site. Any final decision rendered by the commissioner shall be reviewable under article seventy-eight of the civil practice law and rules.

(4) The commissioner may not delete any site from the registry without providing public notice no less than sixty days prior to the proposed deletion. Such notice of deletion shall be published in the next available environmental notice bulletin, on the department's website, and in a newspaper of general circulation in the county in which the site is located. The commissioner shall also notify in writing any owner or operator of the site, if applicable, no less than sixty days prior to the proposed deletion. The commissioner shall provide a thirty-day period for submission of written comments and an opportunity for submission of oral comments at a public meeting at or near the site. The commissioner shall summarize any comments received and make the summary available to the public on the department's website. The commissioner may convene an administrative hearing to determine whether a particular site should be deleted from the registry, receive a modified site classification or whether any information regarding the site should be modified.

(5) The department shall notify, as soon as possible and within available resources all public repositories of the registry, including updating its website, of any modifications or deletions to such registry. The department shall also note any such deletions or modifications in the next annual report and publication of the registry.

(6) The department shall, within ten days of any determination notify the local governments of jurisdiction whenever a change is made in the registry pursuant to this subdivision.

d. (1) Within seven months after the effective date of this subdivision the department shall notify by certified mail the owner of all or any part of each site or area included in the registry, of the inclusion of the site or area by mailing notice to such owner at the owner's last known address. Thereafter, fifteen days before any site or area is added to the registry, the department shall notify in writing by certified mail the owner of all or any part of such site or area of the inclusion of such site or area by mailing notice to each such owner at the owner's last known address.

(2) Notice pursuant to paragraph a of this subdivision shall include but not be limited to a description of the duties and restrictions imposed by section 27-1317 of this title and by section one thousand three hundred eighty-nine-d of the public health law.

(3) Non-receipt of any notice mailed to an owner pursuant to this subdivision shall in no way affect the responsibilities, duties or liabilities imposed on any person by this title or title XII-A of article thirteen of the public health law.

e. The department shall, in consultation with the department of health, evaluate existing site evaluation systems and shall develop a system to select and prioritize sites for remedial action. Such system shall incorporate environmental, natural resource and public health concerns, and a site's location within a disadvantaged community.

f. The department shall develop a site status reporting system and utilize such system to ensure that the registry required by subdivision one of this section provides a complete and up-to-date listing of all sites in each region.

3. The department shall, as soon as possible but in no event later than January first, nineteen hundred eighty-four, and annually thereafter prepare and submit in writing a "state inactive hazardous waste remedial plan," hereinafter referred to as "the plan" to the state superfund management board. Such board shall then approve of the plan or make such modification as it is empowered to do pursuant to section 27-1319 of this chapter and submit the approved plan or modified plan, to the governor and the legislature on or before March first, nineteen hundred eighty-four and annually thereafter. In preparing, compiling and updating the plan, the department shall:

a. Conduct or cause to be conducted field investigations of high priority sites listed in the inactive hazardous waste disposal sites registry for the purpose of further defining necessary remedial action. To the maximum extent practicable, the department shall utilize existing information including, but not limited to, subsurface borings and any analyses or tests of samples taken from such sites by owners or operators, other responsible persons and any federal or non-federal agencies.

b. Make any subsurface borings and any analyses or tests of samples taken as may be necessary or desirable to effectuate the field investigations of sites as required under this section subject to the requirements of this title.

c. Make any record searches or document reviews as may be necessary or desirable to effectuate the purposes of this section subject to the requirements of this title.

d. Consider the effects on the health, environment and economy of the state when assessing the relative priority of sites as required by this section, especially any actual or significant threat of direct human contact or contamination of groundwater or drinking water.

e. Detail the recommended strategy, methods and time frame by which remedial action at sites shall be carried out, except that no

information or work product associated with actual or pending litigation shall be divulged unless otherwise required by law.

f. Estimate, with reasonable specificity, based upon the field investigations, assessments, analyses, document reviews and other appropriate data gathering, the costs of remedial action for sites included in the plan, considering the appropriate methods and techniques as currently exist in the field of hazardous waste management and any such estimates or recommendations shall reflect such costs as are reasonably necessary to contain, alleviate or end the threat to life or health or to the environment.

4. On or before July first, nineteen hundred eighty-six and July first of each succeeding year, the department shall prepare a status report on the implementation of the plan, and an update of the policies, program objectives, methods and strategies as outlined in the plan which guide the overall inactive hazardous waste site remediation program. Such status report shall reflect information available to the department as of March thirty-first of each year, and shall include an accounting of all monies expended or encumbered from the environmental quality bond act of nineteen hundred eighty-six or the hazardous waste remedial fund during the preceding fiscal year, such accounting to separately list:

a. monies expended or encumbered for the purpose of conducting site investigations;

b. monies expended or encumbered for the purpose of conducting remedial investigations and feasibility studies;

c. monies expended or encumbered for the purpose of conducting remedial design studies;

d. monies expended or encumbered for the purpose of conducting remedial construction activities;

e. monies expended or encumbered for operation, maintenance, and monitoring activities;

f. monies expended or encumbered for interim remedial measures;

g. monies expended or encumbered for administrative personnel costs associated with activities conducted at inactive hazardous waste disposal sites;

h. monies expended or encumbered for oversight activities at inactive hazardous waste disposal sites;

i. monies expended or encumbered in stand-by contracts entered into pursuant to section 3-0309 of this chapter and the purposes for which these stand-by contracts were entered into; and

j. an accounting of payments received and payments obligated to be received pursuant to this title, and a report of the department's attempts to secure such obligations.

5. Site cleanup prioritization. The department shall, no later than January first, two thousand twenty-six, submit to the governor and legislature and publish on its website site cleanup prioritization criteria. The department shall review and update criteria as necessary. The department shall describe the criteria and processes it uses to determine the relative prioritization of sites, and an explanation of the rationale of such criteria and processes. In preparing and updating such criteria, the department shall consider the effects on the health, environment and economy of the state, with particular consideration for the effects on disadvantaged communities.

6. Status report. The department no later than December thirty-first of each year, shall, using the information available to it, submit to the governor and legislature, and make public on the department's website an inactive hazardous waste remedial program status report for the previous fiscal year. Such report shall include a status update of all registered sites and an accounting of all monies expended or encumbered from the environmental quality bond act of nineteen hundred eighty-six, the hazardous waste remedial fund, the department's natural

resource damages fund, or any other monies otherwise appropriated for the implementation of this title, during the preceding fiscal year, such accounting to separately list:

(i) monies expended or encumbered for the purpose of conducting site investigations;

(ii) monies expended or encumbered for the purpose of conducting remedial investigations and feasibility studies;

(iii) monies expended or encumbered for the purpose of conducting remedial design studies;

(iv) monies expended or encumbered for the purpose of conducting remedial construction activities;

(v) monies expended or encumbered for operation, maintenance, and monitoring activities;

(vi) monies expended or encumbered for interim remedial measures;

(vii) monies expended or encumbered for oversight activities, including personnel and contractor costs, at inactive hazardous waste disposal sites;

(viii) monies expended or encumbered in stand-by contracts entered into pursuant to section 3-0309 of this chapter and the purposes for which these stand-by contracts were entered into;

(ix) an accounting of payments received and payments obligated to be received pursuant to this title, and a report of the department's attempts to secure such obligations; and

(x) an accounting of all response costs recovered statewide and natural resource damages recovered at each site, including through settlement or agreement, commissioner order, judicial determination and award, a required instrument of financial responsibility, or an environmental lien.