

## §1310-AA. Public benefit determination

**1. Application for public benefit determination.** Prior to submitting an application under section 1310-N for a license for a new or expanded solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed facility provides a substantial public benefit. [PL 1995, c. 465, Pt. A, §22 (NEW); PL 1995, c. 465, Pt. C, §2 (AFF).]

**1-A. Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state.** Prior to accepting waste that is not waste generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

- (1) Section 1303-C, subsection 6, paragraph A-2;
- (2) Section 1303-C, subsection 6, paragraph B-2; or
- (3) Section 1303-C, subsection 6, paragraph C-2. [PL 2007, c. 338, §3 (NEW); PL 2007, c. 338, §5 (AFF).]

B. A facility that is subject to this subsection may not accept waste that is not waste generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit. [PL 2019, c. 619, §6 (AMD).]

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3. [PL 2007, c. 338, §3 (NEW); PL 2007, c. 338, §5 (AFF).]

D. [PL 2019, c. 619, §6 (RP).]

[PL 2019, c. 619, §6 (AMD).]

**1-B. State-owned solid waste disposal facilities.** This subsection applies to public benefit determinations for solid waste disposal facilities owned by the State.

A. The department may not process or act upon any application for a new, modified or amended solid waste license for a solid waste disposal facility acquired by the State after January 1, 2007, including an application to expand, until the facility has applied for and received a public benefit determination. [PL 2013, c. 243, §2 (NEW).]

B. A solid waste disposal facility owned by the State before January 1, 2007 is deemed to hold a public benefit determination for the licensed disposal capacity at the facility on the effective date of this subsection. The department may require the holder of a public benefit determination under this paragraph to submit an application for a modified public benefit determination if the department finds that a material change in the underlying facts or circumstances has occurred or is proposed, including, but not limited to, a change in the disposal capacity or a change of the owner or operator of the facility. The department may not process or act upon any application to expand a solid waste disposal facility owned by the State before January 1, 2007 until the facility has applied for and received a public benefit determination. [PL 2013, c. 243, §2 (NEW).]

[PL 2013, c. 243, §2 (NEW).]

**2. Process.** Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The applicant shall provide public notice of the filing of an application under this section in accordance with department rules. The department shall accept written public comment during the course of processing the application. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not waste generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the

commissioner considers relevant. The commissioner shall hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

[PL 2019, c. 619, §7 (AMD).]

**3. Standards for determination.** The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not waste generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not waste generated within the State:

A. Meets immediate, short-term or long-term capacity needs of the State. For purposes of this paragraph, "immediate" means within the next 3 years, "short-term" means within the next 5 years and "long-term" means within the next 10 years. When evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors; [PL 2011, c. 566, §4 (AMD).]

B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101; [PL 2011, c. 566, §5 (AMD).]

C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; [PL 2021, c. 626, §3 (AMD).]

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted; and [PL 2021, c. 626, §4 (AMD).]

E. For a proposed facility or the expansion of a facility, is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.

As used in this paragraph, "environmental justice" means the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of ancestry, class, disability, ethnicity, income, national origin or religion. "Environmental justice" includes the equal protection and meaningful involvement of all people with respect to the development, implementation and enforcement of waste management laws, rules, regulations and licensing decisions. [PL 2021, c. 626, §5 (NEW).]

[PL 2021, c. 626, §§3-5 (AMD).]

**4. Application.** This section does not apply to facilities described in section 1310-N, subsection 3-A, paragraph A.

[PL 2009, c. 348, §1 (AMD); PL 2009, c. 348, §3 (AFF).]

**5. Modifications.** Public benefit determinations may be revised by the department if the department finds that a material change in the underlying facts or circumstances upon which a public benefit determination was based has occurred or is proposed, including, but not limited to, a change related to disposal capacity or a change of the owner or operator of a facility. The department may require the holder of a public benefit determination to submit an application for modification of that determination if the department finds that a change in the underlying facts or circumstances has occurred or is proposed.

[PL 2011, c. 566, §6 (AMD).]

**6. Substantial public benefit.**

[PL 2013, c. 243, §3 (RP).]

**7. Decision making.** When making a decision on an application for a determination of public benefit, the commissioner:

A. May issue a full or partial approval of an application, with or without conditions; and [PL 2011, c. 566, §7 (NEW).]

B. For an application related to a state-owned solid waste disposal facility, shall conduct a review that is in accordance with the provisions of this section and is independent of any other contract or agreement between the State and the facility operator or any other party concerning the operation or development of the facility. [PL 2011, c. 566, §7 (NEW).]

[PL 2011, c. 566, §7 (NEW).]

#### SECTION HISTORY

RR 1995, c. 1, §33 (COR). PL 1995, c. 314, §1 (NEW). PL 1995, c. 465, §A22 (NEW). PL 1995, c. 465, §C2 (AFF). PL 2007, c. 338, §3 (AMD). PL 2007, c. 338, §5 (AFF). PL 2007, c. 414, §§4, 5 (AMD). PL 2007, c. 655, §10 (AMD). PL 2009, c. 348, §§1, 2 (AMD). PL 2009, c. 348, §3 (AFF). PL 2011, c. 566, §§2-7 (AMD). PL 2013, c. 243, §§2, 3 (AMD). PL 2019, c. 619, §§6-8 (AMD). PL 2021, c. 626, §§3-5 (AMD).

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