

06-096

Department of Environmental Protection

Maine Solid Waste Management Rules

CHAPTER 400

GENERAL PROVISIONS

Last Revised: April 6, 2015

Chapter 400: GENERAL PROVISIONS**TABLE OF CONTENTS**

	Page
1. Definitions	1
2. Applicability	22
A. Applicability of the Rules to Existing Solid Waste Facilities	22
B. Solid Waste Facilities Licenses	23
C. Operation Under a Court Order or Agreement with the Department	23
D. Solid Waste Facilities within the Jurisdiction of the Maine Land Use Planning Commission.....	23
E. Future Commercial Solid Waste Disposal Facilities	23
F. Expansions of Commercial Solid Waste Disposal Facilities.....	23
G. Beneficial Use Licenses.....	23
H. Non-Hazardous Waste Transporter Licenses	23
I. Exemptions	23
3. Solid Waste Licensing Process	23
A. Processing of Applications	23
B. Types of Licenses for Solid Waste Facilities and Activities.....	23
C. Application Requirements	27
D. Licensing Criteria for Solid Waste Facilities	28
E. License Term and Annual Reporting Requirements	29
F. License Conditions	30
4. General Licensing Criteria	30
A. Title, Right or Interest.....	30
B. Financial Ability	30
C. Technical Ability	31
D. Provisions for Traffic Movement	32
E. Fitting the Solid Waste Facility Harmoniously into the Natural Environment	35
F. No Unreasonable Adverse Effect on Existing Uses and Scenic Character	36
G. No Unreasonable Adverse Effect on Air Quality	38
H. No Unreasonable Adverse Effect on Surface Water Quality	39
I. No Unreasonable Adverse Effect on Other Natural Resources.....	40
J. Soil Types That are Suitable and Will Not Cause Unreasonable Erosion	42
K. No Unreasonable Risk That a Discharge to a Significant Ground Water Aquifer Will Occur.....	42
L. Adequate Provision for Utilities and No Unreasonable Adverse Effect on Existing or Proposed Utilities	42
M. Not Unreasonably Cause or Increase Flooding	43
N. Solid Waste Management Hierarchy	44
5. Public Benefit Determination.....	46
A. Applicability	46
B. Rebuttable Presumption of Public Benefit	46
C. State-owned Solid Waste Disposal Facilities	46
D. Determination of Public Benefit Required	46
E. Standards for Public Benefit Determination.....	47
F. Public Benefit Determination Process	47
G. Decision	48
H. Modifications.....	49

6. Recycling.....	49
A. Applicability	49
B. Requirements	49
7. Host Community Agreements and Municipal Intervenor Grants.....	49
A. Host Community Agreements.....	49
B. Municipal Intervenor Grants.....	50
8. Right of Entry.....	55
9. Hazardous and Special Waste Handling and Exclusion Plan	55
A. Standard	55
B. Submissions	55
10. Liability Insurance.....	56
A. Level of Coverage.....	56
B. Exclusion of Legal Costs	56
C. Financial Test	56
11. Financial Assurance For Solid Waste Disposal Facility Closure And Post-Closure Care And Corrective Action	58
A. Financial Assurance for Closure and Post-Closure Care.....	58
B. Financial Assurance for Corrective Action	62
12. Criminal Or Civil Record	64
A. Full Disclosure.....	64
B. Denial of License	65
13. Variances.....	66
A. Variances Affecting Site Standards, Facility Design, and Construction	66
B. Variances Affecting Operation	67
C. Contents of Application	67
D. Terms and Renewal of Conditions	67
Appendix A. Template for Hazardous & Special Waste Exclusion Plan.....	68
Appendix B. Wording for Trust Fund Agreements.....	72
Appendix C. Standard License Conditions for Solid Waste Facilities.....	78
Appendix D. Referenced Sections of the <i>Code of Federal Regulations</i>	80

Chapter 400: GENERAL PROVISIONS

SUMMARY: This Chapter establishes the rules regarding administrative matters and general standards concerning solid waste facilities and solid waste handling. It describes which facilities and activities are subject to the Maine Solid Waste Management Rules and which are exempted. Specifically included in this Chapter are definitions, licensing procedures, and licensing standards.

1. Definitions. The following terms, as used in the Maine Solid Waste Laws and in these rules have the following meanings, unless the context indicates otherwise:

- A. Abutter.** "Abutter" for the purposes of the notice provisions of this rule, means any person who owns property that is both (1) contiguous to the property boundary and (2) within 1 mile of the facility site on which the project will take place, including owners of property directly across a public or private right of way.
- B. Active portion.** "Active portion" of a landfill means that part of the landfill or landfill cell that has not received final cover in accordance with these or prior rules or with Federal rules or was not closed prior to the enactment of any solid waste management rules.
- C. Adequately wetted.** "Adequately wetted" means sufficiently mixed or coated with water or an aqueous solution to prevent dust emissions.
- C-1. Agricultural composting operation.** "Agricultural composting operation" means composting that takes place on a farm and uses only animal manure, animal carcasses and offal, fish waste, leaves, wood chips, animal bedding and other vegetative waste, produce and other vegetable and food waste.
- D. Agricultural waste.** "Agricultural waste," means wastes that result from agricultural activities (the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farmlot wood products, including Christmas trees) that are returned to the soils as fertilizers. It includes waste pesticides when generated by a farmer, provided that the farmer triple rinses each emptied pesticide container in accordance with Departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label. It does not include any material regulated as a residual under 06-096 CMR 419.
- E. Agronomic rate.** "Agronomic rate" means an application rate of plant nutrients that is recommended to provide the optimum plant growth and be utilized by the crop.
- F. Agronomic utilization.** "Agronomic utilization" or "utilization" means the land application of residuals in a controlled manner in order to:
 - (1) Increase the nutrient content of the soil at a rate commensurate with the nutritional needs of the crop to be grown and the assimilative capacity of the soil;
 - (2) Otherwise improve agricultural soil conditions; or
 - (3) Provide some other horticultural benefit.

- G. Airport.** "Airport" means an aircraft landing strip open to the public.
- G-1. Alkaline material.** "Alkaline material" means a high-pH material with a minimum pH of 10.5 standard units, which is not classified as hazardous, such as hydrated lime.
- H. Alter.** "Alter" means to increase the capacity of or to change the siting, design, construction or operation of a solid waste facility or activity in any way not previously approved by the Department.
- I. Amendment.** "Amendment" means a modification to a license that would permit a solid waste facility to significantly increase capacity of the facility; significantly alter the siting, design, construction or operation of the facility; or significantly alter the nature of an activity to an extent that would require the Department to modify any findings with respect to any of the licensing criteria. Amendments do not include minor revisions and other alterations.
- J. Ambient sound.** "Ambient sound" means the all-encompassing sound at a given location, being usually a composite of sounds from many sources at many directions, near and far.
- K. Annual report.** "Annual report" means the report prepared annually by each solid waste facility owner or operator to demonstrate compliance with the license for that facility and the applicable provisions of these rules.
- L. Asbestos.** "Asbestos" means a group of naturally occurring minerals that separate into fibers of high tensile strength and are resistant to heat, wear and chemicals, including, but not limited to the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-gunerite (amosite), anthophyllite, actinolite, tremolite and any of these minerals that have been chemically treated or altered.
- M. Asbestos waste.** "Asbestos waste" means any asbestos-contaminated material or asbestos debris generated from an asbestos abatement activity and any other source, as these terms are defined in 06-096 CMR 425 - Asbestos Management Regulations.
- N. Ash.** "Ash" means the residue or the residual remaining after the combustion of a material such as coal, wood, oil, sludge or municipal solid waste.
- O. Asphalt batching plant.** "Asphalt batching plant" means any continuous flow or non-continuous asphalt plant that uses a rotary kiln, drum dryer, pug mill or drum mix device to process an aggregate-asphalt mix into a final bituminous product.
- P. Assessment monitoring.** "Assessment monitoring" means monitoring conducted to verify water quality and/or to assess the nature and extent of a release of contaminants to ground or surface water.
- Q. A.S.T.M.** "A.S.T.M." means American Society for Testing and Materials.

- R. Attendant.** "Attendant" means the individual who is the on-site supervisor of the day-to-day operations at a solid waste facility.
- S. Barrier layer.** "Barrier layer" means a continuous layer of natural and/or synthetic materials, over, beneath, or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste, any constituents of such waste, and leachate, or which minimizes the infiltration of rainwater to the extent required in these rules.
- T. Beneficial use.** "Beneficial use" means to use or reuse a solid waste or waste derived product:
- (1) As a raw material substitute in manufacturing,
 - (2) As construction material or construction fill,
 - (3) As fuel, or
 - (4) In agronomic utilization.
- T-1. Board.** "Board" means the Maine Board of Environmental Protection.
- U. Buffer strip.** "Buffer strip" means an area of land that is covered by vegetation, capable of regeneration and succession, whether retained as undisturbed vegetation or re-established following disturbance of the site. A buffer strip runs along the border between the facility site and an adjacent piece of land, body of water, or other specified area and serves to protect that area from adverse effects of the facility or preserves some existing quality or use in the area of development.
- V. Bypass.** "Bypass" means any solid waste that is destined for disposal, processing, or beneficial use at a solid waste facility, but which cannot be disposed, processed, or beneficially used at that facility because of malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason.
- W. Cell.** "Cell" means a discrete area within a landfill site which has been designated to facilitate the systematic construction, operation, and closure of the landfill.
- X. Certified copy.** "Certified copy" means a copy of the Department approved operating manual implemented by the owner/operator of a landfill facility that is assigned to be updated and tracked by a person specified by the owner/operator.
- Y. Classified water.** "Classified water" means all ground water and any surface water, inland or tidal, and perennial or intermittent tributaries thereof, that are described and designated pursuant to 38 M.R.S.A. §§ 464 to 470.
- Z. Commercial solid waste disposal facility.** "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

- (1) A solid waste facility owned by a public waste disposal corporation under 38 M.R.S.A. §1304-B(5) as long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;
- (2) A solid waste facility owned by a municipality under 38 M.R.S.A. §1305 as long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed at the facility;
- (3) A solid waste facility owned by a refuse disposal district under 38 M.R.S.A. §§1701 to 1757 as long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;
- (4) A solid waste facility owned and controlled by the Department of Administrative and Financial Services, Bureau of General Services under Title 38 Chapter 24;
- (5) A solid waste facility owned and controlled by a single entity that generates at least 85% of the solid waste disposed of at the facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis. For purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability company that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or
- (6) A private corporation that accepts material-separated refuse-derived fuel as a supplemental fuel and does not burn waste other than its own.

AA. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

BB. Commercial waste. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities. Commercial waste does not include household, process, industrial or special wastes.

CC. Composite liner. "Composite liner" means a geomembrane placed over and in direct and uniform contact with a barrier soil layer and/or geosynthetic clay liner, without a leak detection or leachate collection layer between them.

DD. Compost. "Compost" means a residual that has undergone a composting process.

DD-1. Compost Management Plan. "Compost Management Plan" means a plan developed by an Agricultural Composting Operation to demonstrate compliance with the Department of Agriculture, Food and Rural Resources' best management practices for Agricultural Composting Operations.

- EE. Composting.** "Composting" means the biological decomposition of organic residuals under predominantly aerobic conditions and controlled temperatures between 110° and 160° F.
- EE-1. Composting facility.** "Composting facility" means any land area, structure, equipment, machine, device, system, or combination thereof, which is operated to facilitate the composting of solid waste.
- FF. Construction or demolition debris (CDD).** "Construction or demolition debris" means solid waste resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to: building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. It excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes.
- GG. Construction fill.** "Construction fill" means fill that may contain solid waste utilized to provide material for construction projects such as roads, parking lots, buildings or other structures. It does not include fill needed to re-contour an area within a landfill or where no further construction is occurring. If the construction fill contains solid waste other than inert fill, the use of the fill is regulated under 06-096 CMR 418.
- HH. Contamination or Pollution**
- (1) As applied to ground water, "contamination" or "pollution" means exceeding water quality standards, the concentrations of which are attributable to the solid waste facility, as:
 - (a) Specified in 10-144 CMR 231 - Primary Drinking Water Standards, promulgated pursuant to 22 M.R.S.A. §2611; or
 - (b) Demonstrated by a statistically significant change in measured parameters which indicates deterioration of water quality determined through assessment monitoring.
 - (2) As applied to surface water, "contamination" or "pollution" means an unlicensed discharge to a classified body of surface water that is not exempt from licensing and is attributable to any aspect of the solid waste facility operation.
- HH-1. Conveyance.** "Conveyance" as that term is defined in 38 M.R.S.A. §1303-C(10) means any aircraft, watercraft, vehicle or other machine used for transportation on land, water or in the air. For the purposes of these rule, either the power unit, trailer, semi-trailer, or the container being transported shall be licensed.
- II. Crop for direct human consumption.** "Crop for direct human consumption" means a food crop that is distributed to consumers without prior processing such as blanching, frying or cooking to minimize pathogens.
- JJ. Daytime hours.** "Daytime hours" means the hours between 7:00 a.m. and 7:00 p.m.
- KK. Demolition debris.** See "construction or demolition debris".

- LL. Department.** "Department" means the Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner.
- MM. Department Supervised Clean-up.** "Department Supervised Clean-up" means a clean-up of oil contaminated soil that is undertaken under the direction of a representative of the Department.
- NN. Design leakage rate.** "Design leakage rate" means the amount of leakage expected through the liner system(s) within the solid waste boundary, plus an additional amount of leakage from waste handling areas, to account for factors such as changes in long-term performance of engineered products, operational considerations, and site-specific design features. The design leakage rate includes leakage during the operational, closure, and post-closure periods.
- OO. Detection monitoring.** "Detection monitoring" means monitoring conducted periodically throughout the active life of the facility, and through the closure and post-closure periods, to detect changes in water quality.
- PP. Dewatered septage.** "Dewatered septage" means the solid fraction removed from septage, by mechanical means such as a sand filter, clarifier or belt filter press.
- QQ. Disposal.** "Disposal", means the discharge, deposit, dumping, spilling, leaking, placing or incineration of any solid waste into or on any land, air or water so that the solid waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters. This term does not include beneficial use activities approved or exempted under these rules.
- RR. Dredge materials.** "Dredge materials" means sand, silt, mud, gravel, rock or other sediment or material removed from beneath any surface water.
- SS. E.P.A.** "E.P.A." means the United States Environmental Protection Agency.
- TT. Equipment.** "Equipment" means any item of machinery or implement used in the operation of a solid waste facility to perform site preparation, earth-moving and trucking, hauling, transporting, spreading, compacting or covering of waste.
- TT-1. Equal Protection.** "Equal Protection" means protection of all groups of people, regardless of ancestry, class, disability, ethnicity, income, national origin, or religion, from an unfair burden of environmental hazards resulting from waste facility operations.
- TT-2. Environmental Justice.** "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 shall include the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of waste management laws, regulations, and licensing decisions.

- UU. Environmental monitoring.** "Environmental monitoring" means collecting and analyzing ground and surface water samples, leachate, leak detection and leachate treatment residue samples, air samples, landfill gas samples and/or measurements, waste characterization, and monitoring of solid waste settlement and landfill and/or site stability.
- VV. Existing hourly sound level.** "Existing hourly sound level" means the hourly sound level at a solid waste facility or at protected locations prior to the first expansion of that solid waste facility.
- WW. Expand.** "Expand", as it applies to solid waste landfills, means to dispose of solid waste beyond the horizontal boundaries previously licensed by the Department for solid waste disposal, except when allowed as part of a Department approved closure activity. "Expand", as it applies to solid waste incineration facilities, means to significantly increase the licensed disposal capacity of the facility. "Expand", as it applies to solid waste processing facilities, means to increase the waste handling area beyond the horizontal boundaries-previously licensed by the Department or to significantly increase the previously licensed volume of waste accepted.
- XX. Facility site.** "Facility site" means any developed land area of a solid waste facility, including internal access roads controlled by the facility site owner or operators, structures (including those for erosion and sedimentation control), parking lots, and waste handling areas, or any areas thereof approved by the Department for that development, but excluding monitoring wells.
- XX-1. Farm.** "Farm" means the same as defined in 7 M.R.S.A. § 152 which states that farm means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.
- YY. Fault.** "Fault" means a geologic fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
- ZZ. Feed crop.** "Feed Crop" means a crop produced primarily for consumption by domestic animals.
- AAA. Fiber crop.** "Fiber crop" means a crop grown for fiber content such as straw, trees, flax and cotton.
- BBB. Fines.** "Fines" means the soil material that passes through a #200 U.S. Standard Sieve.
- CCC. Flowable fill.** "Flowable Fill" means a cementitious low-strength material comprised of cement, a non-hazardous ash, fine aggregate, and water and used in place of compacted soil in excavations and/or construction where high strength is not required.
- DDD. Food crop.** "Food crop" means a crop grown primarily for direct consumption by humans, such as fruits and vegetables.
- EEE. Fractured bedrock aquifer.** "Fractured bedrock aquifer" means a fractured consolidated rock formation that is saturated and recharged by precipitation percolating through

overlying sediments to a degree that will permit wells drilled into the rock to produce a sufficient water supply for domestic use.

- FFF. Front-end process residue (FEPR).** "Front-end process residue (FEPR)" means solid waste removed by processing prior to incineration or landfilling, including but not limited to ferrous metals, glass, grit and fine organic matter.
- GGG. Generator.** "Generator" means any person whose act or process produces a solid waste or whose act first causes a solid waste to be subject to regulation under these rules.
- HHH. Handle.** "Handle" means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of, treat, or beneficially use.
- III. Hazardous waste.** "Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the Board under 38 M.R.S.A. §1319-O. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.
- JJJ. Heavy metals.** "Heavy metals" means those metallic elements that have the potential for human, plant or animal toxicity including, but not limited to, the following: arsenic (As), Barium (Ba), cadmium (Cd), copper (Cu), chromium (Cr), mercury (Hg), nickel (Ni), lead (Pb), molybdenum (Mb), selenium (Se), and zinc (Zn).
- KKK. Historic site.** "Historic site" means any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic Resource Inventory, or which is established by qualified testimony or evidence as being of historic significance.
- LLL. Hot loads.** "Hot loads" means solid waste delivered to a solid waste facility that is on fire, smoldering, or releases sufficient heat upon hydration to constitute a fire hazard.
- MMM. Hourly sound level.** "Hourly sound level" means the level of the mean-square A-weighted sound pressure during a one hour period or equivalently the level of the sound exposure during a one hour period.
- NNN. Household hazardous waste.** "Household hazardous waste" means any hazardous waste material excluded from identification as a hazardous waste by 06-096 CMR 850, section 3(A)(4)(vii) because it is generated by households, including single and multiple residences, hotels and motels, bunkhouses, picnic grounds, and day-use recreational facilities.
- OOO. Hydrogeologic unit.** "Hydrogeologic unit" means one or more stratigraphic or lithologic units having similar hydrogeologic properties which are in hydraulic communication, and bounded by either the ground surface or adjacent stratigraphic or lithologic units having differing hydrogeologic properties.

- PPP. Incineration.** "Incineration" means the volume reduction of solid waste by means of controlled combustion. This term does not include combustion of solid waste in cone burners or the practice of open burning.
- QQQ. Incorporate.** "Incorporate" as used in 06-096 CMR 419 means the mixing of a sludge or other residual with the soil in the upper horizon by rototilling, harrowing, plowing or sub-surface injection.
- RRR. Inert fill.** "Inert fill" means clean soil material, including soil from road ditching and sand from winter sand cleanup; rock; bricks; crushed clean glass or porcelain; aged, fully-hardened asphalt; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity.
- SSS. Inject.** "Inject" means the direct introduction of sewage sludge or other residual beneath the ground surface by means of specialized equipment.
- SSS-1. Intermittent stream or brook.** "Intermittent stream or brook" means a stream or brook, or portion of a stream or brook that flows only in direct response to precipitation, receiving little or no water from springs, and no continuous supply from melting snow or other sources. An intermittent stream or brook remains dry for a large part of the year, ordinarily more than three months.
- SSS-2. Intersection sight distance.** "Intersection sight distance" is the length of roadway visible to the driver. It must be measured from the intersection (at a point 10 feet back from the edge of the travel way) to the centerline of the opposing lane(s).
- TTT. Key personnel.** "Key personnel" for a solid waste disposal facility means persons in a supervisory role who are accountable and directly involved with the on-site operation of the solid disposal waste facility. Key personnel also includes at least one member of a solid waste disposal facility's engineering or environmental staff.
- UUU. Land application.** "Land application" means spraying or spreading residuals on the ground surface or incorporating residuals below the ground surface.
- VVV. Land clearing debris.** "Land clearing debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material, and rocks.
- WWW. Landfill or solid waste landfill.** "Landfill or solid waste landfill" means a discrete area of land or an excavation used for the disposal of solid waste. This term does not include land application sites used in programs approved by the Department.
- XXX. Landfill gas.** "Landfill gas" means gases, including but not limited to carbon dioxide and methane, produced by decomposition of solid waste.
- YYY. Landfill reclamation.** "Landfill reclamation" means the excavation of a portion or all of a landfill with the goal of reducing the volume of wastes currently disposed in the landfill through separation of materials into recyclable, reusable, and combustible components.

- ZZZ. Leachate.** "Leachate" means liquid that has passed through or emerged from solid waste and contains dissolved, suspended or miscible materials removed from that waste.
- AAAA. Leak detection system.** "Leak detection system" means a high permeability layer between two liners designed to detect, collect, and remove leachate leaking through the upper liner before that leachate discharges to the environment.
- BBBB. Liner or liner system.** "Liner" or "liner system" means a constructed, continuous layer of natural or artificial materials placed beneath or on the sides of a surface impoundment, landfill, or landfill cell, that restrict the downward or lateral movement of leachate.
- CCCC. Lithified earth material** "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.
- DDDD. Liquid waste.** "Liquid waste" means any waste that is determined to contain free liquids according to the Paint Filter Liquids Test (Method 9095 of E.P.A. SW-846, 3rd Edition).
- EEEE. Lower explosive limit (LEL).** "Lower explosive limit" of a combustible gas or mixture of combustible gases means the lowest concentration (by volume) in air that will explode, ignite or burn when there is an ignition source. At concentrations below the LEL, there is insufficient fuel to support combustion or ignition.
- EEEE-1. Maine RAGs.** "Maine RAGs" means the "Maine Remedial Action Guidelines for Sites Contaminated with Hazardous Substances" jointly developed by the Department and the Maine Department of Health and Human Services' revised May 8, 2013.
- FFFF. Maine Solid Waste Laws.** "Maine Solid Waste Laws" means all the laws of the State of Maine relating to the management of solid waste. It includes the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, Subchapters I and IA (38 M.R.S.A. §§ 1301 to 1319-Y); 38 M.R.S.A. §§ 417 and 420; the *Waste Discharge Law* (38 M.R.S.A. §413); 38 M.R.S.A. §590-E; the *Maine Refuse Disposal District Enabling Act* (38 M.R.S.A. §§ 1701 *et seq.*); and the *Solid Waste Management and Recycling Law* (38 M.R.S.A. §§ 2101 *et seq.*).
- GGGG. Maine Solid Waste Management Rules or these rules.** "Maine Solid Waste Management Rules" or "these rules" means 06-096 CMR 400 through 419 inclusive that have been adopted by the Board of Environmental Protection and are in effect pursuant to the requirements of the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 8051 *et seq.*
- HHHH. Material-separated, refuse-derived fuel.** "Material-separated, refuse-derived fuel" means a binder-enhanced, pelletized, solid fuel product made from the combustible fraction of a municipal solid waste stream that has been processed to remove the recyclable material before combustion. The product may not contain more than 6% by weight of plastic, metal, glass or food waste. In addition, the production of material-

separated, refuse-derived fuel may not exceed 40% by weight of the total municipal solid waste stream from which it was derived.

- III. Maximum horizontal acceleration in lithified material.** "Maximum horizontal acceleration in lithified material" means the maximum expected horizontal acceleration, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.
- KKKK. Minor revision.** "Minor revision" means a modification to a license for any proposed alteration that does not require a license amendment but that, in the Department's judgment, requires Department approval due to the need to evaluate whether the proposed alteration could have a potential impact on public health or welfare, the environment, or create a nuisance.
- JJJJ. Monofill.** "Monofill" means a landfill or landfill cell used exclusively for the disposal of a single homogeneous waste stream.
- LLLL.** (Reserved)
- MMMM. Municipality.** "Municipality" means City, Town, Plantation or unorganized township.
- NNNN. Municipal solid waste.** "Municipal solid waste" means solid waste emanating from household and normal commercial sources. Municipal solid waste includes front end process residue from the processing of municipal solid waste.
- NNNN-1. Natural drainage.** "Natural drainage" means the drainage conditions that exist in soil which is undisturbed and which have not been artificially altered. Natural drainage is classified by the USDA Natural Resources Conservation Service as: excessively-drained, somewhat excessively-drained, well-drained, moderately well-drained, somewhat poorly-drained, poorly drained, very poorly-drained.
- OOOO. Nighttime hours.** "Nighttime hours" means the hours between 7:00 p.m. and 7:00 a.m.
- PPPP. Nitrogen loading rate.** "Nitrogen loading rate" means the rate at which residuals are applied to the land to meet the recommended nitrogen requirements for optimum crop growth.
- QQQQ. Non-hazardous waste.** "Non-hazardous waste" means any solid waste, special waste or septage that is not a hazardous waste, biomedical waste, or low-level radioactive waste.
- RRRR. Northern zone.** "Northern zone" includes: Aroostook County; that part of Penobscot County north of and including Medway, TAR7 and Long A; that part of Piscataquis County north of and including TBR10, TBR11, Bowdoin College Grant, Greenville and Little Squaw; that part of Somerset County north of and including Square Town (T2R5), Moxie Gore (T1R5), West Forks Plantation, Lower Enchanted (T2R5), BKPWKR (T3R5), and King & Bartlett (T4R5); and that part of Franklin County north of and including Jim Pond (T1R5), Alder Stream (T2R5), and Seven Ponds (T3R5).

SSSS. (Reserved)

SSSS-1. Offal. "Offal" means organic waste generated at slaughterhouses and not intended for human consumption, such as blood, entrails, skin, feathers, and bones.

TTTT. Oil-contaminated soil. "Oil-contaminated soil" means any soil that has been contaminated with virgin: #1 fuel oil, #2 fuel oil, #3 fuel oil, #4 fuel oil, #5 fuel oil, #6 fuel oil, diesel fuel, gasoline, hydraulic fluid or mineral oil.

UUUU. One hundred year flood plain. "One hundred year flood plain" means the areas adjoining inland and coastal waters, including flood prone areas of offshore islands, which are inundated by a flood that has a 1 percent or greater chance of occurring in a year, or a flood of a magnitude equaled or exceeded once in 100 years on the average.

VVVV. Open Burning "Open Burning" means the combustion of solid waste that does not have all of the following:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion;
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- (3) Control of the emission of the combustion products.

WWWW.Operator. "Operator" means any person who has care, charge or control of a solid waste facility subject to these rules. The operator may be the owner, an agent, or lessee of the owner, or an independent contractor.

XXXX. Owner. "Owner" means any person who alone or in conjunction with others owns the real property on which a solid waste facility subject to these rules is located.

YYYY. Pathogen. "Pathogen" means an organism, chiefly a microorganism, including: viruses, bacteria, fungi, helminth ova, and all forms of animal parasites and protozoa, capable of producing an infection or disease in a susceptible host.

YYYY-1.Pathogen reduction. "Pathogen reduction" means to significantly decrease the number or concentration of pathogens.

ZZZZ. PCBs. "PCBs" means Polychlorinated Biphenyls; a class of chlorinated aromatic hydrocarbons representing a mixture of specific biphenyl hydrocarbons which are thermally and chemically very stable.

Aa. PCDD. "PCDD", also known as "Dioxin", means polychlorinated dibenzo-p-dioxin.

Bb. PCDF. "PCDF", also known as "Furan" means polychlorinated dibenzofuran.

- Cc. Person.** "Person" means any individual; partnership; corporation; firm; federal, state or local government entity; or public or private organization of any character.
- Cc-1. Perennial waterbody/watercourse.** "Perennial waterbody/watercourse" means a stream or brook, or portion of a stream or brook that flows constantly or contains water throughout the year.
- Dd. Pollution.** See "**Contamination or Pollution**" of this section.
- Ee. Pre-development ambient sound.** "Pre-development ambient sound" means the ambient sound at a specified location in the vicinity of a proposed or existing solid waste facility prior to that proposed facility's construction and operation or prior to an existing facility's expansion.
- Ff. Primary sand and gravel recharge area.** "Primary sand and gravel recharge area" means the surface area directly overlying sand and gravel formations that provide direct replenishment of ground water in sand and gravel and fractured bedrock aquifers. The term does not include areas overlying formations that have been identified as unsaturated and are not contiguous with saturated formations.
- Ff-1. Private Well.** "Private Well" means a well which is not part of a public water system.
- Gg. Processing facility.** "Processing facility" means any land area, structure, equipment, machine, device, system, or combination thereof, other than incinerators, which is operated to reduce the volume or change the chemical or physical characteristics of solid waste. Processing facilities include but are not limited to facilities which employ shredding, baling, mechanical and magnetic separation, or other stabilization techniques to reduce or otherwise change the nature of solid waste.
- Hh. Property boundary.** "Property boundary" means the outermost perimeter of the parcel of real property on which a solid waste facility is located.
- Ii. Protected Location.** "Protected location" means:
- (1) Any location within a parcel of land which, at the time a solid waste facility application is submitted, either contains or has local approval for the construction of a residence, residential subdivision, house of worship, academic school, college, library, hospital or nursing home;
 - (2) Any location within:
 - (a) A state park;
 - (b) A National Park;
 - (c) A Historic Site;
 - (d) A nature preserve owned by the Maine or National Audubon Society or the Maine Chapter of the Nature Conservancy;

- (e) The Appalachian Trail;
 - (f) A National Wildlife Refuge;
 - (g) A federally-designated wilderness area; or
 - (h) State wilderness area designated by state statute, such as the Allagash Wilderness Waterway; or
- (3) Any location within consolidated public reserve lands designated as a protected location by rule of the Bureau of Public Lands.

State and National Parks that do not have camping areas, houses of worship, schools, libraries, and historic sites are considered protected locations only during their regular hours of operation.

- Jj. Protected natural resource.** "Protected natural resource" means a coastal sand dune system, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks, as these terms are defined in 38 M.R.S.A. §480-B of the *Natural Resources Protection Act*.
- Kk. Public entity.** "Public entity" means a municipality or group of municipalities, a public waste disposal corporation under 38 M.R.S.A. §1304-B, a refuse disposal district under 38 M.R.S.A. §§1702, *et seq.*, a county, State or Federal agency.
- Ll. Public viewing area.** "Public viewing area" means an area designated for the public to view scenic areas, historical sites, unusual natural features or public monuments. These areas include but are not limited to scenic highways; public easements; scenic turnouts; public monuments; and national, state or municipal parks.
- Ll-1. Public water system.** "Public water system" means any publicly or privately-owned system of pipes, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption, if such system has at least 15 service connections or serves at least 25 individuals daily at least 60 days out of the year. The term "public water system" shall include any collection, treatment, storage or distribution pipes, structures or facilities under the control of the supplier of water and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. The system shall not include the portion of service pipe owned and maintained by a customer of the public water system. A retail store that purifies and bottles water from a "public water system" and sells the water on the premises is not a "public water system."
- Ll-2. Public well.** "Public well" means a well which is part of a public water system.
- Mm. Pug mill.** "Pug mill" means any lined mixing chamber that uses an emulsified or cut-back asphalt binding agent to produce a bituminous product from an aggregate.

- Nn. Putrescible waste.** "Putrescible waste" means solid waste that contains organic matter that can be rapidly decomposed by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease carrying organisms such as rodents and flies.
- Oo. Quantifiable noise standard.** "Quantifiable noise standard" means a numerical limit governing noise that has been duly enacted by ordinance by the municipality.
- Oo-1. Record drawing** "Record drawing" means design drawings depicting the completed project, or a specific portion of the completed project, prepared by an engineer and based on contractors' record copy of all drawings, specifications, additions, addenda, change orders, work changes directives, field orders, and written interpretations and clarifications, as delivered to the engineer and annotated by contractor to show changes made during the construction.
- Pp. R.C.R.A.** "R.C.R.A." means the *Resource Conservation and Recovery Act*, 42 U.S.C.A. §6901 *et seq.*
- Qq. Recycle/Recycling.** "Recycle" and "Recycling" means the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.
- Rr. Refuse-derived fuel.** "Refuse-derived fuel" means municipal solid waste which has been processed prior to combustion to increase the heat input value of the waste.
- Ss. Residual.** "Residual" means solid wastes generated from municipal, commercial or industrial facilities that may be suitable for agronomic utilization. These materials may include: food, fiber, vegetable and fish processing wastes; dredge materials; sludges; dewatered septage; and ash from wood or sludge fired boilers.
- Tt. Residue.** "Residue" means waste generated as a result of the handling, processing, composting, incineration, or recycling of solid waste including, without limitation, front end process residue, fines and other residues from construction demolition debris processing facilities, and ash from incineration facilities and non-compostable compost screenings.
- Uu. Routine operation.** "Routine operation" means, for the purpose of regulating noise, the regular and recurrent operation of a solid waste facility and the sound sources associated with that operation .
- Vv. Sand and gravel deposit.** "Sand and gravel deposit" means a surficial stratigraphic unit, consisting primarily of well-sorted particles of sand size or larger.
- Ww. Scrap metal.** "Scrap metal" means bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be attached or combined together with bolts, welds or solder to form a product (such as scrap automobiles, radiators, or furniture)

which whether worn or outdated can be recycled and which are not otherwise mixed with or contaminated with non-metal solid or hazardous wastes.

- Xx. Secondary material.** "Secondary material" means a solid waste, separated from other solid wastes, that may be suitable for beneficial use.
- Yy. Secure landfill.** "Secure landfill" means a landfill that utilizes a liner system, a leachate collection and treatment system, and a final cover system to prevent discharges of waste or leachate, and control the release of landfill gas, to the environment.
- Zz. Seismic impact zone.** "Seismic impact zone" means an area having a 10 percent probability that the maximum acceleration in lithified earth materials, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 250 years as delineated by U.S.G.S. Seismic Source Zone maps.
- Aaa. Sensitive receptor.** "Sensitive receptor" means public and private water supply aquifers and wellhead protection zone; public and private drinking water supplies; significant ground water aquifers and primary sand and gravel recharge areas; sand and gravel deposits; and Class AA, A, and B surface water bodies and great ponds.
- Aaa-1. Septage.** "Septage" as that term is defined in 38 M.R.S.A. §1303-C(27) means waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities. For the purposes of these rules, septage is further defined as a mixture of liquids and solids derived from residential sanitary wastewater, and includes sanitary wastewater from tanks connected to commercial and institutional establishments which have inputs similar to residential wastewater. Septage also includes wastes derived from portable toilets.
- Aaa-2. Septage land application site.** "Septage land application site" means a land area used for septage non-utilization or septage utilization.
- Aaa-3. Septage storage facility.** "Septage storage facility" means a tank or similar structure designed and used to contain septage.
- Bbb. Shredder residue.** "Shredder residue" means waste generated from the shredding of automobiles, white goods, and other scrap machinery.
- Ccc. Significant ground water aquifer.** "Significant ground water aquifer" means a porous formation of ice contact and glacial outwash sand and gravel supplies or fractured bedrock that contains significant recoverable quantities of water likely to provide drinking water supplies.
- Ddd. Significant sand and gravel aquifer.** "Significant sand and gravel aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water likely to provide drinking water supplies.
- Eee. Significant wildlife habitat.** "Significant wildlife habitat" means the following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife

or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal lists of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Salmon Authority; shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and significant vernal pools as defined and identified by the Department of Inland Fisheries and Wildlife. For the purposes of this definition, "identified" means identified in a specific location by the Department of Inland Fisheries and Wildlife.

- Eee-1. Site.** "Site" as that term is defined in 38 M.R.S.A. §1303-C(28) means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing, as opposed to going along, the right of way. Noncontiguous properties owned by the same person but connected by a right of way which he controls and to which the public does not have access is also considered site property.
- Fff. Site of generation.** "Site of generation" means the same parcel of land or within the same right-of-way where the waste is generated.
- Ggg. Sludge.** "Sludge" means non-hazardous solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or wet process air pollution control facility or any other such waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under section 402 of the *Federal Water Pollution Control Act*, as amended.
- Hhh. Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material, and landscape refuse, but does not include hazardous waste, biomedical waste, septic tank sludge, or agricultural wastes. The fact that a solid waste, or constituent of the waste, may have value, be beneficially used, have other use, or be sold or exchanged, does not exclude it from this definition.
- Iii. Solid waste boundary.** "Solid waste boundary" means the outermost limit of the solid waste, projected on a horizontal plane, where solid waste is disposed or would exist pursuant to the facility's solid waste license, and includes leachate storage ponds, but does not include above-ground leachate storage tanks or leachate transport pipes.
- Jjj. Solid waste disposal facility.** "Solid waste disposal facility" means a solid waste facility for the incineration or landfilling of solid waste. Facilities that burn material-separated, refuse-derived fuel, either alone or in combination with fuels other than municipal solid waste or refuse-derived fuels, are not solid waste disposal facilities.

Kkk. Solid waste facility. "Solid waste facility" means any land area, structure, location, equipment or combination of them, used for the handling of solid waste. These include but are not limited to solid waste transfer stations, landfills, incinerators, processing facilities, composting facilities, storage facilities and agronomic utilization sites. The following facilities are not included:

- (1) A facility that employs controlled combustion to dispose of waste generated exclusively by an institutional, commercial or industrial establishment that owns the facility;
- (2) Lime kilns; wood chip, bark and hogged fuel boilers; kraft recovery boilers and sulfite process recovery boilers which combust solid waste generated exclusively at the facility; and
- (3) An industrial boiler that combusts mixed paper, corrugated cardboard or office paper to generate heat, steam or electricity if:
 - (a) The mixed paper, corrugated cardboard or office paper would otherwise be placed in a landfill;
 - (b) The market value of the mixed paper, corrugated cardboard or office paper as a raw material for the manufacture of a product with recycled content is less than its value to the facility owner as a fuel supplement;
 - (c) The mixed paper, corrugated cardboard or office paper is combusted as a substitute for, or supplement to, fossil or biomass fuels that constitute the primary fuels combusted in the industrial boiler; and
 - (d) The boiler combusts no other forms of solid waste except as provided in this subparagraph.

Lll. Source separation. "Source separation" means the separation of materials for recycling from wastes at the point of generation.

Mmm. Southern zone. "Southern zone" includes those areas in Maine that are not in the northern zone.

Nnn. Special waste. "Special waste," means any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

- (1) Ash;
- (2) Industrial and industrial process waste;

- (3) Sludge and dewatered septage;
- (4) Debris from nonhazardous chemical spills and cleanup of those spills;
- (5) Contaminated soils and dredge materials;
- (6) Asbestos and asbestos-containing waste;
- (7) Sand blast grit and non-liquid paint waste;
- (8) High and low pH waste;
- (9) Spent filter media residue; and
- (10) Shredder residue.

Ooo. Springs. "Springs" mean natural places where water flows throughout the year from fractures in rock or from soil onto the surface of the land or into a body of surface water.

Ooo-1. Spent septic system beds. "Spent septic system beds" means sand, stones, rock and other similar waste filter media which has been removed from residential septic systems. Spent septic system beds do not include pipes, filter fabric or other man-made materials.

Ppp. Storage. "Storage" means the placement or containment of solid waste on a temporary basis in such a manner as not to constitute disposal of such wastes.

Qqq. State Plan. "State Plan" or the "State Waste Management and Recycling Plan" means the plan adopted by the former Maine Waste Management Agency pursuant to 38 M.R.S.A. §§ 2121-2125, subsequent plans developed by the former State Planning Office pursuant to 5 M.R.S.A. §3305(1)(L), and subsequent plans adopted by the Department pursuant to 38 M.R.S.A. §2122.

Rrr. Successful corrective action. "Successful corrective action" means that, at a solid waste facility which has previously been found to be contaminating waters of the State, the facility owner or operator has developed and implemented a corrective action program at that facility and the Department has found that:

- (1) The owner/operator has taken all reasonable measures necessary to eliminate the discharge of contaminants or pollutants attributable to the facility;
- (2) The owner/operator has modified the facility's detection monitoring program to include all parameters detected during assessment monitoring;
- (3) Contaminants previously released from the facility do not currently cause non-attainment of surface water quality classifications established in 38 M.R.S.A. §§ 465 through 465-B;
- (4) The owner/operator has documented an actual trend of improving quality in previously contaminated waters and has demonstrated that the trend will continue.

The demonstration may be supported by the use of modeling of corrective actions and hydrogeologic conditions; and

(5) Contaminants previously released from the facility do not threaten public health.

- Sss. Till.** "Till" means non-sorted, usually non-stratified sediment which was carried or deposited by a glacier.
- Ttt. Tires.** "Tires" means a solid waste consisting of any used, scrap, or otherwise discarded rubberized vehicle tires, including whole tires as well as the products derived from the processing of whole tires, including but not limited to shredded or chipped tires or crumb rubber.
- Uuu. Transfer.** "Transfer" means to receive, store, accumulate, and/or consolidate solid waste in sufficient volume to be able to containerize, with or without compaction, for efficient transportation to another facility. It does not include the transport of solid waste.
- Vvv. Transfer station.** "Transfer station" means any solid waste facility constructed and managed for the transfer of solid waste.
- Vvv-1. Transport.** "Transport" means the movement of non-hazardous waste from the point of generation to any intermediate points and finally to the point of ultimate disposition. Movement of non-hazardous waste on the site where it is generated or on the site of a licensed (or exempted) non-hazardous waste facility is not transport.
- Vvv-2. Transporter.** "Transporter" means any person who transports non-hazardous waste in this state other than anyone who transports municipal solid waste on behalf of five or fewer households or any commercial establishment which transports only its own municipal solid waste to a licensed waste disposal facility using three or fewer trips with one conveyance per week. The term includes, without limitation, individuals who own, lease or otherwise control conveyances in which non-hazardous waste is transported, operators of such conveyances, and businesses, regardless of size and form of business organization, which engage in transportation of non-hazardous waste.
- Www. Type IA residual.** "Type IA residual" means a residual from a known source that does not contain hazardous substances above risk based standards in 06-096 CMR418 Appendix A and that has a carbon to nitrogen ratio greater than or equal to 25:1, such as leaf and yard waste, wood chips and some vegetative wastes.
- Xxx. Type IB residual.** "Type IB residual" means a residual from a known source that does not contain hazardous substances above risk based standards in 06-096 CMR 418 Appendix A and that has a carbon to nitrogen ratio greater than 15:1 but less than 25:1, such as animal manure and most produce and vegetable wastes.
- Yyy. Type IC residual.** "Type IC residual" means a residual from a known source that does not contain hazardous substances above risk based standards in 06-096 CMR_418 Appendix A and that has a carbon to nitrogen ratio of 15:1 or less, such as fish wastes.

- Zzz.** **Type II residual.** "Type II residual" means a residual from a known source that does not contain hazardous substances above risk based standards in 06-096 CMR 418 Appendix A and that may contain human pathogens, such as sewage sludge, dewatered septage and disposable diapers.
- AAaa.** **Type III residual.** "Type III residual" means a residual that may contain hazardous substances above risk based standards in 06-096 CMR 418 Appendix A such as non-source-separated residential wastes and petroleum contaminated soils.
- BBbb.** **Unstable area.** "Unstable area" means any area where mass movement of earth materials, such as landslides, rock falls, mud slides, slumps, earth flows, subsidence or debris flows, are likely to occur.
- CCcc.** **Universal waste.** "Universal waste" means any waste listed in 06-096 CMR 858, the Maine Hazardous Waste Management Rules, including but not limited to cathode ray tubes; mercury-containing lamps; mercury-containing thermostats; and totally enclosed, non-leaking polychlorinated biphenyl (PCB) ballasts.
- DDdd.** **Upper explosive limit (UEL).** "Upper explosive limit" of a combustible gas or mixture of combustible gases means the maximum concentration (by volume) in air that will explode, ignite or burn when there is an ignition source. At concentrations above the UEL, there is insufficient oxygen to support combustion.
- EEee.** **Vector.** "Vector" means an organism such as a rodent, bird, or insect, capable of transporting infectious agents to humans.
- EEee-1.** **Vector attraction reduction.** "Vector attraction reduction" means a method or methods used to treat or handle septage such that the attraction of vectors to septage is reduced and offensive odors are minimized.
- FFfff.** **Vegetative wastes.** "Vegetative wastes" means wastes consisting of plant matter. These include plant stalks, hulls, leaves, and tree waste processed through a wood chipper.
- GGgg.** **Waste handling area.** "Waste handling area" means the portion of the facility site used for handling waste, including leachate. It includes that portion of the site within the solid waste boundary plus all associated structures and areas used for handling waste. It does not include the solid waste facility access road, internal roadways, monitoring wells, leachate transport pipelines, or storm water management structures.
- HHhh.** **Waste reduction.** "Waste reduction" or "source reduction" means activities that, singularly or in combination, reduce the quantity or toxicity of solid waste at the point of generation.
- HHhh-1. Waste that is generated within the State.** "Waste that is generated within the State" means waste materials for which the original point of discard is located within the State of Maine. "Waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State, only if the materials creating the residue and bypass had an original point of discard within the State of Maine.

- Iiii. Water bodies most at risk from new development.** "Water bodies most at risk from new development" means the following, as identified in 06-096 CMR 502:
- (1) Lakes most at risk from development;
 - (2) Rivers, streams or brooks most at risk from development;
 - (3) Coastal wetlands most at risk from new development and
 - (4) Direct watersheds of waterbodies most at risk from development and sensitive or threatened regions or watersheds.
- Iiii-1. Waters of the State.** "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through, or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.
- Iiii-2. Water table.** "Water table" means the upper limit of the water-saturated zone in soil.
- Iiii-3. Waterway.** "Waterway" means a naturally-occurring drainage area, such as a drainage swale, which collects and carries surface water runoff.
- Iiii-4. Well.** "Well" means a bored, drilled, or driven shaft or a dug hole, that extends below the seasonal ground water table.
- JJjj. White goods.** "White goods" means large appliances, including but not limited to stoves, refrigerators, freezers, washing machines, clothes dryers, dishwashers and air conditioners.
- KKkk. Wood products facility.** "Wood products facility" means a facility that manufactures products made of wood, including but not limited to: lumber, pulp and paper, wood chips, tongue depressors, toothpicks, clothes pins, wooden recreational equipment and furniture.
- LLll. Wood wastes.** "Wood wastes" means brush; stumps; lumber; bark; wood chips; shavings; slabs, edgings; slash; sawdust; wood from production rejects; and, wood pallets that are not pressure treated or visibly contaminated, and from which fasteners have been removed; that are not mixed with other solid or liquid waste. For the purposes of this definition, "lumber" is entirely made of wood and is free from metal, plastics and coatings.
- MMmm. Work plan.** "Work plan" means a written plan outlining the work items, processes, and schedules for developing detailed submittals in conformance with requirements of the regulations and license.
- NNnn. Yard waste.** "Yard waste" means grass clippings, leaves, and other vegetal matter other than wood wastes and land clearing debris.

2. **Applicability.** It is unlawful for any person to locate, establish, construct, alter, expand or operate a solid waste facility or handle solid waste contrary to the Maine Solid Waste Laws and these rules.

A. Applicability of the Rules to Existing Solid Waste Facilities

- (1) **Licensing.** All existing solid waste facilities must be licensed under the previous solid waste management rules effective May 24, 1989 or under these rules. Pursuant to the provisions of 38 M.R.S.A. §344(1-A), applications for the relicensing of existing solid waste facilities will be processed under the substantive rules in effect on the date the application is determined to be complete for processing. An existing solid waste facility which has been found to be contaminating ground water or classified surface water must demonstrate successful corrective action before a license may be issued pursuant to these rules.
- (2) **Operating Requirements.** All existing solid waste facilities, including facilities previously exempted from the facility licensing requirements and facilities operating pursuant to a license obtained under the previous solid waste management rules in effect on May 24, 1989, must comply with the operating requirements of these rules as specified in the relevant facility chapter.

- B. Solid Waste Facility Licenses.** An application under the Maine Solid Waste Laws and these rules must be submitted to the Department and a license must be issued by the Department prior to siting, constructing or operating any new or expanded solid waste facility, unless that facility is exempt from solid waste licensing under these rules.

- C. Operation under a Court Order or Agreement with the Department.** The operation of a solid waste facility may be approved through a court order, an administrative consent agreement pursuant to 38 M.R.S.A. §347-A that specifies a schedule for closure of the facility or an agreement pursuant to 38 M.R.S.A. §§1310-N(6-B) or (6-F).

- D. Solid Waste Facilities within the Jurisdiction of the Maine Land Use Planning Commission.** When a proposed solid waste facility is located within the jurisdiction of the Maine Land Use Planning Commission, the Department requires compliance with standards and permitting requirements of the Commission.

- E. Future Commercial Solid Waste Disposal Facilities.** The Department may not approve an application for a new commercial solid waste disposal facility.

- F. Expansions of Commercial Solid Waste Disposal Facilities.** The Department may issue a license for the expansion of commercial solid waste disposal facility if:

- (1) The Department has previously licensed the facility prior to October 6, 1989;
- (2) The proposed expansion is contiguous with the existing facility and is located on property owned on December 31, 1989 by the licensee or by a corporation or other business entity under common ownership or control with the licensee; and
- (3) The Department determines, as provided in 38 M.R.S.A. §1310-N(3-A) that the facility provides a substantial public benefit.

- G. Beneficial Use Licenses.** An application under the Maine Solid Waste Laws and these rules must be submitted to the Department and a license must be issued by the Department prior to the beneficial use of any solid waste as specifically regulated under 06-096 CMR 418.
- H. Non-Hazardous Waste Transporter Licenses.** The transportation of solid waste must conform with the containerization, transport, licensing and manifest requirements of 06-096 CMR 411.
- I. Exemptions.** The following facilities and activities are exempt from licensing and operating requirements, unless otherwise stated below, under these rules:
- (1) The open burning by individual homeowners or lessees of leaves, brush, deadwood and tree cuttings accrued from normal maintenance of their residential property, when such burning is not prohibited under State laws and rules and is permitted by the municipality;
 - (2) The burning by an owner of residential property of highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes on that property, when such burning is not prohibited under State laws and rules and permitted by the municipality;
 - (3) The location, establishment and construction of solid waste disposal facilities in existence prior to October 3, 1973, but not the alteration or operation of those facilities;
 - (4) The handling of soils containing incidental bark or woody material generated during the transport, handling or storage of logs prior to the debarking, chipping and sawing of wood;
 - (5) An automobile graveyard or automobile recycling business as defined by 30-A M.R.S.A. §3752, provided that the facility does not shred automobiles, white goods, other scrap metal machinery, vehicles or tires, except that a tire stockpile at these facilities is regulated pursuant to 06-096 CMR 402;
 - (6) Disposal of livestock, poultry, and pet carcasses provided that the carcasses are handled in a manner approved by the Maine Department of Agriculture, Conservation and Forestry;
 - (7) Removal of dead animal carcasses from vehicle travel ways to an appropriate location in the right-of-ways;
 - (8) Facilities which receive pre-separated, uncontaminated, unwanted paper, cardboard, glass, plastic, metal, and universal wastes, and limit their handling of these wastes to sorting, containerizing, compacting, baling, and/or transferring, when these materials will be used by a manufacturer or for universal wastes shipped to a facility approved to recycle universal wastes; and

NOTE: Any facility which handles universal wastes must comply with the requirements of 06-096 CMR 858.

- (9) Redemption centers and collection and recycling facilities for beverage containers regulated under 32-A M.R.S.A. §§ 1861, *et seq.*

3. Solid Waste Licensing Process. The Department shall issue a license for a solid waste facility or activity whenever it finds that the facility or activity satisfies all applicable requirements of the Maine Solid Waste Laws, all applicable requirements of this Chapter, and other chapters of these rules.

A. Processing of Applications. Applications will be processed in accordance with the requirements of 06-096 CMR_2 unless otherwise specified in these rules.

B. Types of Licenses for Solid Waste Facilities and Activities

(1) Permits for new solid waste facilities or activities and for expanded solid waste disposal facilities. Applicants for new solid waste facilities and activities and for expanded solid waste disposal facilities required to be licensed under these rules shall comply with the following:

(a) **Full Facility Licensing.** Full licensing is the application procedure subject to all of the standards and requirements of this Chapter and the relevant facility chapters (06-096 CMR 401 through 419, inclusive). New solid waste facilities and new or expanded solid waste disposal facilities are subject to full facility licensing provisions unless the reduced procedures licensing provisions or permit-by-rule notification provisions of the relevant facility chapter apply;

(b) **Reduced Procedures Licensing.** Reduced procedures licensing is a license application procedure that, depending upon the type of facility or activity, involves fewer requirements in one or more of the following areas:

(i) Siting and/or operational information submitted in the application; or

(ii) Licensing application processing time frame; and

Standards for licensing through reduced procedures for specific solid waste facilities or activities are found in the individual chapters of these rules.

(c) **Permit by Rule Notifications.** The Department has designated certain licensing actions involving solid waste facilities or activities under the permit-by-rule authority of 38 M.R.S.A. §344(7) provided that these facilities or activities strictly conform to the standards prescribed in these rules. A permit-by-rule is generally obtained by notifying the Department of the proposed action by way of a permit-by-rule notification form;

(i) Prior to acceptance of a permit-by-rule notification for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property which is proposed for development or use pursuant to this Chapter, section 4(A).

(ii) Except for specific submission requirements for each type of solid waste facility or activity designated as permit-by-rule in these rules, the Department assumes that those facilities or activities meet the general siting criteria of section 4 because of their small scale or the siting, design, or operational limitations placed on them. No

variances to the standards, criteria, or requirements for facilities licensed under a permit-by-rule process may be granted.

- (iii) Within 30 days prior to filing, an applicant for a permit-by-rule facility or activity shall give public notice of intent to file a permit-by-rule notification with the Department. The notice must be mailed by certified mail or Certificate of Mailing to the municipal office of the municipality(ies) where the project will be located. A copy of the public notice must be submitted to the Department with the permit-by-rule notification.

The public notice must include the following information:

- a. Name, address and telephone number of the applicant;
- b. Citation of the statutes or rules under which the permit-by-rule notification is being processed;
- c. Location of the activity;
- d. Summary of the activity;
- e. Anticipated date for filing the permit-by-rule notification with the Department; and
- f. A statement that public comments on the permit-by-rule notification may be provided to the Department within 10 days of the filing of the permit-by-rule notification, together with the mailing address of the Department.

Public notice for permit-by-rule notifications does not include the publishing of a notice in a newspaper or the serving of a notice upon abutters to the project unless required by specific permit-by-rule provisions of these rules.

- (2) **Alterations to Existing Licensed Solid Waste Facilities.** The license holder of any solid waste facility or activity that has a valid solid waste license from the Department must comply with the following provisions prior to altering the solid waste facility or activity in a manner not previously identified and approved in the license. Alterations fall into one of the following categories:

- (a) **Amendments.** An application for a license amendment must be submitted for any proposal to significantly increase the capacity of the facility; significantly alter the siting, design, construction or operation of the facility; or significantly alter the nature of an activity to an extent that would require the Department to modify any findings with respect to any of the licensing criteria. An application to increase the approved final elevations at solid waste landfills must be processed as a license amendment application;
- (b) **Minor Revisions.** An application for a minor revision must be submitted for any proposed alteration that does not require a license amendment but that, in the Department's judgment, requires Department approval due to the potential of the

proposed alteration to impact the environment, public health or welfare, or to create a nuisance; or

- (c) **Other Alterations.** Other alterations are minor alterations that in the Department's judgment do not have a potential to impact the environment, public health or welfare, or to create a nuisance and therefore do not require a license amendment or minor revision application.
- (3) **License Transfers.** A person may not transfer a solid waste facility license without obtaining Department approval for the transfer. In the case of a solid waste disposal facility, Department approval must be obtained prior to transfer of ownership of the facility. The Department, at its discretion, may require that the proposed new licensee apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new licensee can abide by the license terms and conditions, comply with the provisions of 38 M.R.S.A. §1310-Q, satisfactorily meet the criminal and civil law enforcement background requirements, and satisfactorily meet the technical and financial ability provisions of this Chapter. A license transfer application is subject to all of the application processing requirements of 06-096 CMR 2, including the public notice requirement.
- (4) **Limited Licenses.** The Department may grant any of the following limited licenses. These types of license approvals are only available for one-time or limited term activities as described below.
 - (a) **One-Time Activities.** One-time activity licenses may be issued approving the one-time distribution or use of a solid waste for agronomic utilization or beneficial use, or the one-time disposal of special waste;
 - (b) **Pilot.** A pilot permit may be issued in order for an applicant to collect technical information concerning the environmental and practical feasibility of a proposed innovative disposal or utilization facility or activity; or
 - (c) **Experimental.** An experimental permit may be issued by the Board pursuant to 38 M.R.S.A. §362-A in order for an applicant to undertake fundamental research in an area of solid waste management or pollution control. This would not necessarily lead to the application for a specific permanent facility or activity.
- (5) **Ongoing Special Waste Acceptance Licenses.** An application for a special waste acceptance license must be submitted for any proposal to accept any special waste at a licensed solid waste facility on an ongoing basis, when acceptance of that special waste has not been previously approved by license for that facility. The Department may require an amendment application be submitted instead if the scope of the proposal meets the criteria in section 2(a) above.

C. Application Requirements. The application is subject to the following requirements:

- (1) **Title, Right or Interest.** The application, unless otherwise specified in these rules, must show that the applicant demonstrates sufficient title, right or interest in all of the property which is proposed for development or use;

- (2) **All Phases Shown.** The application must describe all phases of the development;
- (3) **Department Forms.** The application must be submitted on current forms provided by the Department;
- (4) **Complete Application.** The application must include all information required under the appropriate chapter and section of these rules for the particular type of facility or activity involved;
- (5) **Requirements of persons preparing application.** All work to support the investigation, design, and construction of solid waste facilities must be undertaken by individuals whose training, experience and professional certification is appropriate to accomplish the specific tasks with accuracy and technical proficiency. Reports, plans or other materials submitted in support of the application must bear the signature and, if appropriate, the seal of the individual who drafted or supervised the drafting of each document;
- (6) **Signatory Requirement.** The application must be signed by the applicant or the applicant's duly authorized officer or agent and must include the certification required in 06-096 CMR 2, section 11(E); and
- (7) **Fees.** The application must be accompanied by the appropriate fee payment as required in 38 M.R.S.A. §§ 352 and 353.

D. Licensing Criteria for Solid Waste Facilities. The Department shall issue a license for a solid waste facility whenever it finds, based upon substantial evidence in the record, that the solid waste facility will not contaminate any water of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. The Department must also find that the solid waste facility satisfies all the applicable requirements and criteria of the Maine Solid Waste Laws and these rules. Licensing standards include those listed in section 4 of this Chapter and those in the relevant facility chapters.

- (1) **Facilities Not Subject to Siting or Design Criteria.** The following solid waste facilities are not subject to the siting and design requirements of these rules:
 - (a) A solid waste disposal facility established prior to October 3, 1973 that does not apply for an expansion under these rules;
 - (b) A solid waste facility previously licensed under the Site Location of Development and Maine Solid Waste Laws;
 - (c) Agronomic utilization sites previously licensed under 06-096 CMR 567, Rules for Land Application of Sludge and Residuals; and
 - (d) An increase in approved final elevations not associated with a lateral development of a licensed solid waste landfill if the applicant demonstrates that the proposed increase will not compromise the physical integrity and functioning of the existing solid waste disposal facility and its systems. The applicant will be required to design the increase in approved final elevations to meet the design requirements of these rules if the Department finds that imposition of design requirements is necessary to prevent

contamination of any water of the State, contamination of the ambient air, a hazard to health or welfare, or a nuisance.

NOTE: All solid waste disposal facility expansions must comply with the siting and design requirements of these rules.

- (2) **Additional Criteria For Solid Waste Disposal Facilities.** In addition to the above requirements, a new or expanded solid waste disposal facility is subject to the following:
- (a) **Public Benefit.** The Department must determine in accordance with 38 M.R.S.A. §1310-N(3-A) and section 5 of this Chapter whether the solid waste disposal facility provides a substantial public benefit;
 - (b) **Recycling and Source Reduction.** Except for expansions of commercial solid waste landfills that accept only special waste, the Department must determine that the facility will be operated so that the volume of waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal, as required under 38 M.R.S.A. §1310-N(5-A) and section 6 of this Chapter;
 - (c) **Host Community Benefits and Intervenor Grants.** The applicant must comply with the provisions required in section 7 of this Chapter;
 - (d) **Liability Insurance.** The applicant must have proof of liability insurance as required under section 10; and
 - (e) **Financial Assurance.** The applicant must meet the financial assurance requirements of section 11.

E. License Term and Annual Reporting Requirements. A solid waste license, issued pursuant to rules in effect on or after May 24, 1989, remains in effect unless modified, revoked or suspended under 38 M.R.S.A. §341-D(3). Such a licensee is subject to the following licensing and reporting requirements:

- (1) The licensee must:
 - (a) Comply with applicable operating rules;
 - (b) Pay the annual license fee pursuant to 38 M.R.S.A. §352; and
 - (c) Comply with annual facility or activity reporting rules and pay all required reporting fees.

NOTE: Failure to pay an annual license fee within 45 days of the billing date contained in the Department's billing notification is sufficient grounds for modification, revocation or suspension of a license.

- (2) Annual reports and annual reporting fees as required by the Department's rules shall be due on the following dates:

February 28

Chapter 419, Agronomic utilization of solid waste
Chapter 418, Beneficial use licenses
Chapter 409, Processing facility licenses
Chapter 410, Composting facility licenses

April 30

Chapter 401, Landfill facility licenses,
Chapter 403, Incineration facility licenses
Chapter 402, Transfer station facility and solid waste storage licenses, unless part of
and reported with another facility.

F. License Conditions. The Department may impose any requirement as a license condition to assure compliance with State law or these rules. Standard license conditions for solid waste facilities are contained in Appendix C.

- 4. General Licensing Criteria.** This section contains general standards applicable to the licensing of solid waste facilities. This section also lists submissions required of applicants for new or expanded facilities in order for the Department to determine if the general licensing criteria are met. All applicants must demonstrate compliance with the criteria of this section and submit the listed submissions unless otherwise provided in the relevant facility chapter. Required submissions for amendments, minor revisions and limited permits will be determined by the Department on a case-by-case basis to determine if the proposal meets the relevant general licensing criteria.

A. Title, Right or Interest

- (1) **Standards.** The applicant must demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property which is proposed for development or use.
- (2) **Submissions.** The applicant must submit evidence of sufficient title, right or interest as provided in 06-096 CMR 2, section 11(D).

B. Financial Ability**(1) Standards**

- (a) The applicant must have the financial ability to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility in a manner consistent with all applicable requirements.
 - (b) The applicant for a solid waste disposal facility shall provide adequate financial assurance for closure, post-closure care, and for corrective action for known releases in compliance with the financial assurance requirements of section 11.
- (2) **Submissions.** The application must include evidence that affirmatively demonstrates that the applicant has the financial ability to undertake the proposed project, including the following information, when appropriate:

- (a) Accurate cost estimates for the design, construction, operation, maintenance, closure and (if applicable) post-closure care of the solid waste facility; and
- (b) Evidence that funds are or will be available to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility, or to contract for the same, including the following:
 - (i) When a financial institution is the funding source, the application must include:
 - a. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified and sufficient amount of funds and the uses for which the funds may be utilized; or
 - b. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution. Evidence of financing must be provided prior to project construction.
 - (ii) When self-financing is a funding source for the solid waste facility, the application must include:
 - a. The most recent corporate annual report indicating availability of sufficient funds to finance the proposed project, through self-financing, together with explanatory material interpreting the report;
 - b. Evidence that funds are available and have been set aside for completion of the proposed project; or
 - c. If the applicant is a governmental entity, evidence that the entity has the bonding or other capacity to finance the proposed project.

C. Technical Ability

(1) Standards

- (a) The applicant shall have the technical ability to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility in a manner consistent with state environmental requirements, including the Maine Solid Waste Laws and these rules.
 - (b) The applicant shall meet the civil/criminal record standards of section 12.
- (2) **Submissions.** The application must include evidence that affirmatively demonstrates that the applicant has the technical ability to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility, including information such as the following:

- (a) A statement of the applicant's prior solid waste management experience or appropriate training or both;
- (b) A description of the personnel who will be employed to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the proposed facility; and
- (c) The proposed owner's and operator's prior conduct as a measure of their willingness and ability to meet all terms and conditions of approval established by the Department including information addressing all of the information required in section 12.

D. Provisions for Traffic Movement

- (1) **Standards.** The applicant for a solid waste facility must make adequate provisions for safe and uncongested traffic movement of all types into, out of, and within the proposed solid waste facility.
 - (a) The major haul routes must be able to safely accommodate the number, weight and types of vehicles transporting waste to and from the proposed solid waste facility.
 - (b) The entrance and exit design for the proposed solid waste facility must have safe sight distances in all directions and provisions for safe turning.
 - (c) Improvements to roads or intersections that are necessary due to the establishment of the proposed solid waste facility must be completed prior to initial operation of the solid waste facility unless an alternative schedule is approved by the Department.
 - (d) Major interior travel lanes must be designed to allow continuous and uninterrupted traffic movement without posing danger to pedestrians or other vehicles.
 - (e) The facility road construction and maintenance must provide safe traffic movement.
 - (f) On-site circulation patterns must be clearly defined.
- (2) **Submissions.** The application must contain evidence that roads and intersections in the vicinity of the proposed solid waste facility will safely and conveniently handle the traffic attributable to the facility. This evidence must include the following:
 - (a) An estimate of the number, weight, and types of vehicles that will be transporting waste to and from the proposed facility;
 - (b) A map clearly delineating the anticipated major haul routes to and from the facility to be used by vehicles serving or using the solid waste facility, with a description of the road characteristics including legal weight limits and restrictions;
 - (c) An identification of all sections of roads and intersections along the projected haul routes that are:
 - (i) Congested locations, or

- (ii) Not rated to handle the weights or types of vehicles expected to transport solid waste to or from the facility;
- (d) Identification of vehicle routing decisions that were made based on these limits and a description of any actions the applicant proposes to take;
- (e) A Maine Department of Transportation inventory and analysis of traffic accidents on roads and at intersections within a quarter mile of the proposed solid waste facility entrances and exits during the most recent 3-year period. The inventory must include identification of high accident locations and identification of feasible countermeasures based on discernible accident patterns at any high accident location;
- (f) Intersection sight distances at the proposed solid waste facility entrances and exits and a copy of the Maine Department of Transportation entrance permit, if applicable, or if the solid waste facility entrance is not located on a state supported highway, evidence that a qualified professional has certified that safe sight distances will exist in all directions. This review must be conducted in conformance with the standards specified in A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials (1994); and the Highway Design Guide, Maine Department of Transportation (September 1990). Intersection sight distance is the length of roadway visible to the driver. It must be measured from the intersection (at a point 10 feet back from the edge of the travel way) to the centerline of the opposing lane(s);

NOTE: Additional information concerning safe sight distances and other access management standards applicable to Maine can be found in, Access Management Improving the Efficiency of Maine Arterials A Handbook for Local Officials, Maine Department of Transportation (1994).

- (g) The nature of the interior roadways, intersections and parking facilities, including the following:
 - (i) Road construction, number of lanes, width of road, speed limit, and traffic circulation of the proposed roads;
 - (ii) Areas of pedestrian use;
 - (iii) How circulation patterns will be defined; and
 - (iv) How the facility roads will be maintained; and
- (h) A traffic study, if required by the Department. The Department will require a traffic study if the application does not contain sufficient information to determine that all of the traffic standards of this section will be met. A traffic study may also be required if a traffic standard that is not met could possibly be corrected by application or design changes that require additional information. The Department's determination that a traffic study is required may be based solely on information or comments submitted to it by the Maine Department of Transportation.

- (3) **Elements of a Traffic Study.** A traffic study must meet the requirements of this paragraph. The year for which the study results are to be characterized is the projected first year of full operation. If the proposed solid waste facility is a multi-phase project with a projected completion date more than 5 years after the year of the study, the Department may require that the study results be characterized for the year that corresponds to the opening of the first major phase or to the timing of transportation system improvements, such as a major bridge construction project.

At a minimum, the traffic study must contain the following:

- (a) A brief description of the physical characteristics of the solid waste facility. This section must identify the size of the facility site, general terrain features and unique terrain features;
- (b) A regional map showing the proposed solid waste facility, each road in the vicinity of the proposed facility and proposed haul routes to and from the facility for the vehicles that will use or serve the facility;
- (c) A description of traffic increases that are expected from sources other than the proposed solid waste facility and that are likely to occur in the vicinity of the proposed solid waste facility during the study period. At a minimum, the study must identify development or redevelopment proposals which have been approved, either locally or by the Department, and development or redevelopment proposals for which complete applications have been filed with and accepted by a local reviewing authority or the Department at the time of the traffic study;
- (d) Trip generation calculations for the proposed solid waste facility and for other proposed development and redevelopment projects in the vicinity of the proposed solid waste facility. If data from the "Trip Generation Guide" of the Institute of Transportation Engineers, is not available for other proposed development and redevelopment projects, trip generation must be estimated in accordance with a methodology approved by the Maine Department of Transportation;
- (e) A diagram of the traffic volume on roads and intersections in the vicinity of the proposed solid waste facility for both the estimated annual average daily traffic and the A.M./P.M. peak hour traffic, including turns during the peak hour. Traffic diagrams must show the following:
 - (i) Traffic attributable to the facility and other developments;
 - (ii) Existing traffic volume. All traffic counts must be actual counts whenever possible. Traffic counts from the Maine Department of Transportation may be used if not more than two years old;
 - (iii) Projected traffic volume for the hours required above at the time the facility will begin full operation; and

- (iv) Documentation, including all new traffic counts and analysis worksheets, as to how the various volumes were derived to accompany the diagrams;
- (f) A capacity analysis must be performed to determine the level of service for each road and intersection in the vicinity of the proposed solid waste facility. Capacity calculations must be made for the 30th highest hour of traffic during the year that the facility would begin operation, or any other appropriate design hour approved by the Maine Department of Transportation. Where it is shown that the capacity analysis methodology will not accurately measure operating conditions or levels of service at a road or intersection, the Department may require an applicant to analyze operating conditions of an intersection or road using another methodology acceptable to the Maine Department of Transportation;
- (g) The need for new traffic signals in the vicinity of the proposed development must be analyzed using the warrants in the Manual on Uniform Traffic Control Devices, US. Department of Transportation, Federal Highway Administration (1988). Although an intersection may meet the MUTCD warrants, the Maine Department of Transportation may determine that a signal is not appropriate;
- (h) A determination of the available intersection sight distances in all directions at each intersection in the vicinity of the proposed development;
- (i) If the study analyses indicate that unsatisfactory levels of service or unsafe conditions exist or will occur at intersections or on roads in the vicinity of the proposed development, a description of the measures recommended to remedy the deficiencies, including the following:
 - (i) **Recommended Improvements.** A description and diagram of the location, nature, and extent of recommended improvements to roads and intersections in the vicinity of the proposed development. Accompanying this list of improvements must be preliminary cost estimates. Of the recommended improvements, those proposed for implementation must be identified; and
 - (ii) **Capacity Analysis after Improvement.** A description of the anticipated results of making these improvements; and
- (j) A clear, concise summary of the study findings.

E. Fitting the Solid Waste Facility Harmoniously into the Natural Environment

(1) Standards

- (a) The solid waste facility must have buffer strips of sufficient size and quality to adequately protect aquatic and wildlife habitat and the natural environment. The facility may not unreasonably adversely affect protected natural resources and rare, threatened and endangered plant and animal species.

- (b) The solid waste facility must have a minimum of 100 feet of buffer between the facility site and those locations and habitats listed above, unless otherwise approved or required by the Department.
- (2) **Submissions.** For solid waste facilities with waste handling areas of less than 3 acres total area, the applicant shall include letters from the Maine Department of Inland Fisheries and Wildlife and from the Natural Areas Program of the Maine Department of Agriculture, Conservation, and Forestry that the facility will not unreasonably adversely impact protected significant wildlife habitat, fragile mountain areas, or rare, threatened and endangered plant or animal species. For all facilities with waste handling areas larger than 3 acres, the applicant shall include evidence that affirmatively demonstrates that the solid waste facility fits harmoniously into the natural environment. This includes the following:
 - (a) The proposal must include adequate buffer strips. This information must include:
 - (i) The location and description of the locations, habitats, and species listed above that are within or adjacent to the facility site;
 - (ii) The nature, location, width, and height of all buffer strips to be retained or enhanced;
 - (iii) The nature, location, width, and topography of all buffer strips that need to be established to restore buffer functions in areas that will be disturbed;
 - (iv) Provisions for the maintenance of all buffer strips and screens;
 - (v) A description of how buffer strips of sufficient area, width, and character will be established, maintained or enhanced to protect the locations and habitats; and
 - (vi) An explanation of how the proposed solid waste facility and activities will not unreasonably adversely affect protected natural resources; and
 - (b) The application must identify all unusual natural areas on or adjacent to the facility site and must include evidence that affirmatively demonstrates that the proposed facility will not unreasonably adversely affect protected natural resources.

F. No Unreasonable Adverse Effect on Existing Uses and Scenic Character

- (1) **Standards.** The solid waste facility may not unreasonably adversely affect existing uses and scenic character. Specifically, the facility may not:
 - (a) Present a bird hazard to aircraft;
 - (b) Have an unreasonable adverse effect on the preservation of historical sites;
 - (c) Unreasonably interfere with views from established public viewing areas;
 - (d) Generate excessive noise at the property boundary or at any protected location; or

- (e) Unreasonably adversely affect existing uses of property neighboring the proposed solid waste facility.
- (2) **Noise Standards.** The following noise standards shall apply to all solid waste facilities. Protected locations shall only include those locations defined in subsection 400(1) for which the hourly sound levels from the facility will be greater than 45 dBA.
 - (a) **Sound Level Limits.** The following hourly sound levels from routine operation of a solid waste facility must be less than or equal to;
 - (i) 75 dBA for daytime and nighttime hours at the facility property boundary;
 - (ii) 60 dBA for daytime hours and 50 dBA for nighttime hours at any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial or industrial; or
 - (iii) 70 dBA for daytime hours and 60 dBA for nighttime hours in an area for which the zoning, or if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial or industrial.
 - (b) **Alternative levels.** If the applicant chooses to demonstrate by measurement that the daytime or nighttime pre-development ambient sound environment at any protected location exceeds the daytime or nighttime limits above, by at least 5 dBA, then the daytime or nighttime limits are 5 dBA more than the measured daytime or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
 - (c) **Existing Facilities.** For any protected location near an existing solid waste facility, the hourly sound level limit for routine operation of the existing facility and all future expansions of that facility is the hourly sound level written above, or at the applicant's election, the existing hourly sound level from routine operation of the facility before any expansions plus 3 dBA.
 - (d) All equipment used in the construction of and maintenance activities at the solid waste facility must comply with applicable local and federal noise regulations, and include environmental noise control devices in proper working condition and maintained as originally provided with the equipment by its manufacturer.
 - (e) Sounds associated with the following are exempt from the sound level limits of this section:
 - (i) Routine engine sounds from registered and inspected motor vehicles:
 - a. While operating on public ways; or
 - b. That enter the facility to make a delivery or pickup and that are moving, starting or stopping, but not when they are parked with the engine running for over 60 minutes in the facility.

- (ii) The unamplified human voice and other sounds of natural origin.
 - (iii) Emergency maintenance and repairs.
 - (iv) Facility and vehicle warning signals and alarms so long as used in appropriate circumstances.
 - (v) Safety and protective devices installed in accordance with the devices' installation instructions.
 - (vi) Boiler start-up, testing and maintenance operations occurring no more frequently than once per month.
 - (vii) Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
 - (viii) Major concrete pours that must extend after 7:00 p. m., when started before 3:00 p. m.
 - (ix) Snow removal, landscaping and street sweeping activities.
 - (x) Sound from a regulated development received at a protected location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.
- (3) **Submissions.** Applications must include evidence that affirmatively demonstrates that the proposed solid waste facility will not unreasonably adversely affect existing uses and scenic character, including the following information:
- (a) The nature, location, design, and size of all buffers and visual screens within those buffers to be established or retained;
 - (b) A description of the existing land uses in the vicinity of the proposed solid waste facility, all airport runways within 10,000 feet of the facility; all historic sites, protected locations and established public viewing areas within 2,000 feet;
 - (c) A demonstration that the solid waste facility will comply with the noise standards in paragraph 2 above and that the applicant will make adequate provision to control noise and the sound levels from each source resulting from the routine operation of the facility at the property boundary and any protected locations within the area; and
 - (d) Evidence that acoustic enclosure for noise, buffer strips and screens, or other noise reduction measures have been considered and implemented in the design of the solid waste facility.

G. No Unreasonable Adverse Effect On Air Quality

(1) **Standards.** The solid waste facility may not unreasonably adversely affect air quality:

- (a) The applicant must obtain an air emission license if required by 38 M.R.S.A. §§ 581 *et seq.* The air emissions produced from either point or non-point sources must be in conformance with the current State Implementation Plan, as approved by the Environmental Protection Agency.
- (b) The applicant must control fugitive dust and nuisance odor.
- (c) Open burning of solid waste other than clean or painted wood waste, is prohibited. Wood that has been treated and other wastes, such as tires or waste oil, shall not be open burned.

(2) **Submissions.** Applications must include evidence that affirmatively demonstrates that the proposed facility will not unreasonably adversely affect air quality, including the following information, when appropriate:

- (a) Evidence that an air emission license has been or will be obtained if required;
- (b) Description of the actions that the operator will undertake to control fugitive dust from the solid waste facility when a problem attributable to the facility occurs beyond the property boundary;
- (c) The identification of any sources of nuisance odors from the facility;
- (d) An estimation of the area that would be affected by the nuisance odor, based on general experience in dealing with the material or process that is the source of the odors;
- (e) Proposed systems for enclosure of nuisance odor-producing materials and processes, and proposed uses of technology to control, reduce or eliminate odors; and

NOTE: ASTM E 679-79 can be used for guidance for control of nuisance odors.

- (f) Evidence that the solid waste facility will not unreasonably alter climate if the facility has or is proposed to have water cooling towers.

H. No Unreasonable Adverse Effect on Surface Water Quality

(1) **Standards.** A solid waste facility:

- (a) May not discharge any water pollutants, directly or indirectly, that affect the state classification of a surface water body, as specified in 38 M.R.S.A. §464;
- (b) May not discharge any pollutant without first obtaining a license pursuant to 38 M.R.S.A. §413;
- (c) May not degrade water quality by contributing to the phosphorous concentrations in "waterbodies most at risk from new development" as defined in 06-096 CMR 502; and

- (d) May not cause the discharge of a nonpoint source of pollution to waters of the United States that violates any requirement of an area-wide or State-wide water quality management plan that has been approved in compliance with section 319 of the *Federal Water Pollution Control Act*, as amended.
- (2) **Submissions.** Applications must include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on surface water quality, including evidence that:
 - (a) The applicant will comply with all applicable stormwater management standards of 06-096 CMR 500, if the proposed facility is in the direct watershed of "waterbodies most at risk from new development"; and
 - (b) A waste water discharge license has been obtained or will be obtained, if required by 38 M.R.S.A. §413.

I. No Unreasonable Adverse Effect On Other Natural Resources

- (1) **Standards.** The solid waste facility may not have an unreasonably adverse effect on other natural resources in the municipality or in neighboring municipalities. The proposed solid waste facility:
 - (a) Must conform to the standards of the *Natural Resource Protection Act*, 38 M.R.S.A §§ 480-A to 480-Z, if proposed to be located in, on, over, or adjacent to a protected natural resource; and
 - (b) Must be permitted by the federal government for any activities that require a Federal Wetlands permit.
- (2) **Submissions.** An application must include the following information, when appropriate:
 - (a) Evidence that a *Natural Resource Protection Act* application has been submitted or will be obtained when required under that Act (38 M.R.S.A. §§480-A to 480-Z); and
 - (b) Complete information as to whether a Federal Wetlands permit is required and on whether a Federal Wetlands permit application has been submitted.

J. Soil Types That Are Suitable and Will Not Cause Unreasonable Erosion

- (1) **Standards.** The solid waste facility must be located on soils suitable for the nature of the undertaking and the facility must not cause unreasonable sedimentation or erosion of soil. To meet this requirement:
 - (a) The soils on the facility site must be suitable for the proposed solid waste facility;
 - (b) The design and implementation of erosion control measures must be conducted in accordance with "The Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices," prepared by the Cumberland County Soil & Water Conservation District and Maine Department of Environmental Protection (March 1991), unless other measures are approved by the Department:

- (i) Sediment caused by accelerated soil erosion must be minimized from runoff water before it leaves the proposed solid waste facility site or enters a protected natural resource. Suitable erosion control measures must be in place prior to any disturbance of soil;
 - (ii) Any temporary or permanent structure designed and constructed for the conveyance of water around, through, or from the solid waste facility must be designed to limit the water flow to a non-erosive velocity;
 - (iii) All earth changes must be designed, constructed, and completed so that the exposed area of any disturbed land is minimized and is limited to the shortest reasonable period of time possible given the construction requirements. Permanent soil erosion control measures for all slopes, channels, ditches, and disturbed land area must be completed as specified by the Department, after final grading has been completed. Seeding must occur within 15 calendar days of final grading unless otherwise approved by the Department because of seasonal conditions. When it is not possible or practical to immediately and permanently stabilize disturbed land, temporary stabilization measures will be implemented as approved by the Department. In sensitive watersheds or on highly erodible soils or slopes of 20 percent or greater, the Department may require a more restrictive schedule for temporary and permanent stabilization of soil;
 - (iv) When vegetative cover is to be established as a temporary or permanent erosion control measure:
 - a. Plant species and seeding rates must take into account soil, slope, climate, duration and use of the vegetative cover;
 - b. Mulch must be provided at rates appropriate to ensure a minimum of soil and seed loss until vegetative cover is established; and
 - c. Reseeding must be done within a reasonable period of time if permanent vegetation is not established;
- and
- (v) All development plans must utilize existing topography and natural surroundings to the fullest extent possible.

(2) Submissions

- (a) An application must include a comprehensive erosion and sedimentation control plan that includes the following information:
 - (i) A statement of whether the proposed facility or activity is in the direct watershed of waterbodies most at risk from new development. For the purposes of this submission requirement, the Department will consider the direct watershed of a waterbody to be

the land area that drains, via overland flow, natural or manmade drainage systems, other waterbodies or wetlands to that waterbody;

- (ii) A description and location of all proposed construction activities that may result in soil disturbance;
 - (iii) A description and location of all existing and proposed on-site drainage;
 - (iv) The timing and sequence of all proposed land disturbances;
 - (v) A description and location of all proposed temporary and permanent erosion and sedimentation control measures, including the timing and sequence of completion and an indication of the suitability of the proposed measures to address the problems that are expected;
 - (vi) Calculations for erosion control measures in accordance with best management practices; and
 - (vii) A proposed program for the maintenance of all erosion and sedimentation control facilities that will remain after construction is completed.
- (b) Where applicable, the application must include a report showing that the soils are suitable to the undertaking including:
- (i) Test pit and soil boring information; and
 - (ii) An evaluation by an engineer, soil scientist, or other qualified individual.

K. No Unreasonable Risk That a Discharge to a Significant Ground Water Aquifer Will Occur

- (1) **Standards.** The proposed solid waste facility may not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur. Additionally, a solid waste disposal facility:
- (a) May not overlie any significant sand and gravel aquifers;
 - (b) May not pose an unreasonable threat to the quality of a significant sand and gravel aquifer; and
 - (c) May not pose an unreasonable threat to the quality of an underlying fractured bedrock aquifer.
- (2) **Submissions.** An application must contain the information that is required under the appropriate chapter of these rules for the particular type of facility involved.

L. Adequate Provision for Utilities and No Unreasonable Adverse Effect on Existing or Proposed Utilities

- (1) **Standards.** The applicant shall provide for adequate utilities and the proposed solid waste facility may not have an unreasonable adverse effect on existing or proposed utilities in the municipality or area served by those utilities.
 - (a) There must be adequate water supplies for the solid waste facility; and
 - (b) Appropriate sanitary waste water disposal must exist for the solid waste facility.
- (2) **Submissions.** An application must include evidence that affirmatively demonstrates that the applicant has made adequate provision for utilities, including water supplies, sewerage facilities and solid waste disposal, and that the proposed solid waste facility will not have an unreasonable adverse effect on existing or proposed utilities in the municipality or areas served by those utilities, including the following information, when appropriate:
 - (a) Verification that the facility will be served by the appropriate utilities;
 - (b) Evidence that a sufficient and healthful water supply will be provided; and
 - (c) The identification of all aspects of the proposed solid waste facility that require access to or use of utilities, along with the provisions that have been made to use those utilities and to comply with any requirements and provisions of the utility.

M. Not Unreasonably Cause or Increase Flooding

- (1) **Standards.** A solid waste facility may not unreasonably cause or increase flooding on-site or on adjacent properties nor create an unreasonable flood hazard to a structure.
 - (a) Except for an agronomic utilization site, a solid waste facility may not be located in a 100 year flood plain or restrict the flow of a 100 year flood.
 - (b) A solid waste facility must include a stormwater management system that controls run-on and run-off, and infiltrates, detains, or retains water falling on the facility site during a storm of an intensity up to and including a 25-year, 24-hour storm, such that the rate of flow of stormwater from the facility after construction does not exceed the rate of outflow of stormwater from the facility site prior to the construction of the facility.

NOTE: Section 3(F) and the standard conditions found in Appendix C of this Chapter require compliance with all applicable laws. Facilities licensed under these Rules may also be subject to federal stormwater regulations.

- (2) **Submissions.** An application must include evidence that affirmatively demonstrates that the facility will not unreasonably cause or increase flooding of the facility site or adjacent properties, will not create an unreasonable flood hazard, and will have no unreasonable effect on run-on, run-off, and/or infiltration relationships, including information such as the following, when appropriate:
 - (a) The most recent U.S. Geological Survey, Army Corps of Engineers or Federal Flood Insurance Administration 100-year frequency flood plain map of the area, if applicable;

- (b) A narrative describing how the facility site is oriented within the watershed, identifying downstream ponds, lakes, and mapped wetland areas, and addressing the effects of facility site runoff on the watershed and nearby properties. The narrative shall also identify areas, buildings and facilities that historically flood or which may be affected by the facility site run-off and shall discuss the assumptions used in determining run-off curve numbers, time of concentration and travel time calculations for each drainage sub-area;
- (c) Pre-construction drainage study plans showing existing contours, and all topographic features including but not limited to: buildings and facilities, natural and man-made drainage ways, streams, channels, culverts, cover type, elevation benchmarks and datum, catch basins, roads, drainage easements, hydrologic flow lines, hydrologic soil groups, and watershed boundaries (on and off site);
- (d) Post-construction or phased drainage study plans showing final or phased contours, all relevant existing contours, and all proposed topographic and other features including but not limited to: buildings and other facilities, natural and manmade drainage ways, streams, channels, culverts, catch basins, roads, drainage easements, cover type, elevation bench marks and datum, hydrologic flow lines, hydrologic soil groups, and final or phased watershed boundaries (on and off site);
- (e) Pre-construction stormwater calculations for 25-year, 24-hour storms including runoff curve numbers, time of concentration, and travel times for each sub-area;
- (f) Post-construction or phased stormwater calculations for 25-year, 24-hour storms including: run-on controls, runoff curve numbers, time of concentration, and travel times for each sub-area along with calculations for routing the stormwater through detention areas and detention basins;
- (g) Basin storage values and sizing calculations, including stage-storage curves and outlet velocities for each detention basin;
- (h) Outlet and spillway detail and sizing calculations for each detention basin; and
- (i) Detail sheets showing plan and cross sectional views of the detention basins, outlet structures, emergency overflow structures, and associated riprapped areas. Basin cross sections must show and identify the water level elevations for the 25-year, 24-hour storms.

N. Solid Waste Management Hierarchy

- (1) **Standards.** The purpose and practices of the solid waste facility must be consistent with the State's solid waste management hierarchy set forth in 38 M.R.S.A. §2101, which establishes that it is the policy of the State to actively promote and encourage waste reduction measures and the maximization of waste diversion efforts, and which sets forth an integrated approach to the management of solid waste generated in and imported to the State, based upon the following order of priority:
 - (a) Reduction of waste generated at the source, including both amount and toxicity of the waste;

- (b) Reuse of waste;
 - (c) Recycling of waste;
 - (d) Composting of biodegradable waste;
 - (e) Waste processing that reduces the volume of waste needing land disposal; including incineration; and,
 - (f) Land disposal of waste.
- (2) **Submissions.** The application must include evidence that affirmatively demonstrates that the purpose and practices of the solid waste facility are consistent with the solid waste management hierarchy including, but not limited to:
- (a) **Solid waste disposal facility.** Notwithstanding the provisions of section 6 of this Chapter, evidence that demonstrates that the waste has been reduced, reused, recycled, composted, and/or processed to the maximum extent practicable prior to incineration or landfilling, in order to maximize the amount of material recycled and reused, and to minimize the amount of waste being disposed. Such evidence shall include, but is not limited to, a description of the reduction, reuse, recycling, composting and/or processing programs/efforts that the waste is or will be subject to, and that are sufficiently within the control of the applicant to manage or facilitate, including relevant metrics to evaluate effectiveness; and a description of ongoing efforts to increase the effectiveness of these programs/efforts.
 - (b) **Solid waste processing facility subject to the provisions of 06-096 CMR 409(2)(C).** Evidence of consistency with the standards of 06-096 CMR 409(2)(C); and, evidence of the feasibility of recycling or processing all proposed waste streams into a fuel, raw material substitute or other product in conformance with the applicable provisions of 06-096 CMR 409 and 418.

NOTE: 06-096 CMR 409(2)(C) provides that for the purposes of that subsection, “recycle” includes, but is not limited to: reuse of waste as shaping, grading or alternative daily cover materials at landfills, aggregate material in construction, and boiler fuel substitutes, when such reuse is consistent with all applicable requirements of the Solid Waste Management Rules, 06-096 CMR 400 to 419.

- (c) **All other solid waste facilities except composting, beneficial use and agronomic utilization.** Evidence that the facility will, to the maximum extent practicable, incorporate into its design and operation, the implementation of reduction, reuse, recycling, and other waste diversion approaches in order to maximize the amount of waste recycled and reused, and minimize the amount of waste disposed. Such evidence shall include, but is not limited to, a description of the reduction, reuse, recycling, composting and/or other diversion programs that the waste is or will be subject to and that are sufficiently within the control of the applicant to manage or facilitate, including relevant metrics to evaluate effectiveness; and, a description of ongoing efforts to increase the effectiveness of these programs/efforts.

NOTE: Composting, beneficial use and agronomic utilization facilities are not required to make a demonstration of consistency with the solid waste management hierarchy, given their purpose and nature and their placement in the hierarchy.

For the purposes of this section, reducing, reusing, recycling, composting and/or processing waste to the “maximum extent practicable” prior to disposal means handling the greatest amount of waste possible through means as high on the solid waste management hierarchy as possible, resulting in maximizing waste diversion and minimizing the amount of waste disposed, without causing unreasonable increases in facility operating costs or unreasonable impacts on other aspects of the facility’s operation. Determination of the “maximum extent practicable” includes consideration of the availability and cost of technologies and services, transportation and handling logistics, and overall costs that may be associated with various waste handling methods.

- 5. Public Benefit Determination.** Pursuant to the provisions of 38 M.R.S.A. §1310-AA, proposals for new or expanded solid waste disposal facilities, or for the acceptance by publicly owned solid waste landfills of waste generated out of state, must be found by the Commissioner to provide a substantial public benefit.

A. Applicability. Except as otherwise provided below, the requirements of this section apply to:

- (1) Proposed new or expanded solid waste disposal facilities, other than State-owned facilities;
- (2) State-owned solid waste disposal facilities, as further provided in section 5(C) below; and
- (3) Proposed acceptance by publicly owned solid waste landfills of waste generated out of state, as further provided in Section 5(D) below.

B. Rebuttable Presumption of Public Benefit. For the following solid waste disposal facilities, substantial public benefit is determined at the time of facility licensing employing a rebuttable presumption of public benefit:

- (1) Solid waste disposal facilities less than 6 acres in size that accept only inert fill, construction and demolition debris, debris from land clearing and wood wastes; and
- (2) Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, waste not generated by the owner provided that the amount so accepted does not exceed 15% of all solid waste accepted on an annual basis.

C. State-owned Solid Waste Disposal Facilities. The following provisions apply to solid waste disposal facilities owned by the State:

- (1) Acquired by the State After January 1, 2007. 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.
- (2) Acquired by the State Before January 1, 2007. 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. 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.

Acceptance by Publicly Owned Solid Waste Landfills of Waste Generated Out-of-State. A facility is subject to this section if it is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to 38 M.R.S. §1303-C(6)(A-2, B-2 or C-2). ~~For purposes of this section and pursuant to 38 M.R.S. §1310-AA, “waste that is generated within the State” includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability in accordance with all applicable rules and licenses; and waste generated within 30 miles of the solid waste disposal facility.~~

D. Determinations of Public Benefit Required. A positive determination of substantial public benefit must be made by the Commissioner for any solid waste disposal facility subject to the provisions of this section prior to:

- (1) Submission of an application for a license for a new or expanded solid waste disposal facility, including State-owned solid waste disposal facilities;
- (2) Acceptance by a publicly owned solid waste landfill of waste generated out of state; or
- (3) Submission of an application for a new, expanded, modified or amended license for a solid waste disposal facility acquired by the State after January 1, 2007 if that facility has not previously applied for and received a determination of public benefit.

The Department will not accept an application for processing under the provisions of 38 M.R.S.A. §1310-N for a solid waste disposal facility subject to the requirements of this section unless and until the Commissioner makes a positive determination of substantial public benefit.

E. Standards for public benefit determination. The Commissioner shall find that a proposed solid waste disposal facility or expansion that is subject to the provisions of this section provides a substantial public benefit if it meets the following standards:

- (1)-The facility 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;
- (2) Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, the facility is consistent with the State Waste Management and Recycling Plan and promotes the Solid Waste Management Hierarchy as set out in 38 M.R.S.A. § 2101;

- (3) The facility is not inconsistent with local, regional, or state waste collection, storage, transportation, processing, or disposal; and
- (4) For proposals to accept, by a publicly owned solid waste landfill, waste generated out of state, the proposal 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.
- (5) The facility operation is not inconsistent with protecting the health and welfare of local communities and is not inconsistent with ensuring equal protection and environmental justice for communities where the waste facility is proposed or operating.

F. Public Benefit Determination Process

- (1) **Application procedure.** Within five days prior to submitting an application for a determination of public benefit, the applicant shall give public notice of intent to file the application. This public notice shall be mailed by certified mail to the facility abutters and to the municipal office of the municipality(ies) in which the facility is located or is proposed to be located. The notice must also be published once in a newspaper circulated in the area where the project is located.

The application for a determination of public benefit shall be made on a form provided by the Department. It shall include a demonstration that the facility meets the standards in paragraph E above and a copy of the public notice.

At the time of filing with the Department, a copy of the application, its supporting documents and all amendments to an application must be filed by the applicant with the appropriate town clerk, city clerk, or, if the disposal facility is in an unorganized area, with the county commissioners.

In making a determination of substantial public benefit, the Commissioner shall consider the State Waste Management and Recycling Plan, the solid waste management hierarchy as set out in 38 M.R.S. §2101, written information in support of the application, all written comments received concerning the application, and any other written information the Commissioner considers relevant.

The Commissioner shall accept written public comment during the course of processing the application. The Commissioner shall hold a public meeting in the vicinity of the proposed facility or the publicly owned landfill to take public comments, and shall consider those comments in making the determination.

- G. Decisions.** The Commissioner shall issue a decision within 60 days of receipt of a public benefit determination application. The Commissioner's decision on a public benefit determination may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision to be made under this section. The Commissioner's decision is not subject to review by the department or the board as part of the facility licensing process.

H. 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.

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

- (1) May issue a full or partial approval of an application, with or without conditions; and
- (2) 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.

H. 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.

6. Recycling. Except as provided below, in order to receive a license for a new or expanded solid waste disposal facility a person must receive a determination by the Department that the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to being landfilled or incinerated.

A. Applicability. This section applies to the licensing of any new or expanded solid waste disposal facility, except for the following:

- (1) To the extent that solid waste disposal contracts in effect on June 29, 1987 are inconsistent with the provisions of 38 M.R.S.A. §1310-N(5-A)(A), those provisions apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts; or
- (2) An expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling is exempt from the requirements of this section.

B. Requirements. The recycling and source reduction requirements of this section are satisfied when an applicant demonstrates that all of the following requirements have been satisfied.

- (1) **Consistent with state recycling programs.** The proposed solid waste disposal facility will only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by provisions of state law; and

- (2) **State Plan.** Except for solid waste disposal facilities established prior to October 3, 1973, an applicant shall demonstrate compliance with the recycling provisions of the State Plan.

7. Host Community Agreements and Municipal Intervenor Grants

A. Host Community Agreements. This subsection applies to all applications for new or expanded commercial solid waste disposal facility licenses.

- (1) **Licensing Requirements.** An applicant for a new or expanded commercial solid waste disposal facility license shall demonstrate one of the following:
- (a) The applicant is complying with municipal ordinances requiring host community benefits;
 - (b) The applicant has negotiated in good faith, including mediation and binding arbitration if appropriate, with the municipality(ies) in which the facility is proposed to be located to formulate a host community agreement;
 - (c) The applicant has developed and will implement a host community agreement; or
 - (d) The applicant has renegotiated, if appropriate, the terms of an existing host community agreement.
- (2) **Provisions of host community agreements.** Based upon the nature, size, and projected impacts of the proposed facility, host community agreements must, when applicable, include provisions regarding the following:
- (a) Improvements, maintenance, and repair of local roads directly affected by traffic to and from the facility and of other infrastructure elements in the community directly affected by the facility;
 - (b) Development and maintenance of adequate local emergency response capacity to accommodate the facility;
 - (c) Financial support for personnel or other means to provide technical assistance to the municipality during the license period in interpreting the data and to advise the municipality on other technical issues concerning the facility; and
 - (d) Other issues determined on a case-specific basis by the applicant and the municipality to be appropriate given the nature of the facility.
- (3) **Expenditure of funds for direct technical support.** Financial support allocated under provision (2)(c) above may only be expended by the host community for direct technical support necessary for the conduct of municipal planning and decision making. This includes, but is not limited to, costs associated with services provided by hydrogeologists, geotechnical engineers, environmental engineers, and other environmental professionals as appropriate.

B. Municipal Intervenor Grants. This subsection establishes procedures for the use of funds by a municipality that has requested intervenor status, pursuant to 38 M.R.S.A. §1310-S, in the

Department's licensing proceedings for a new or expanded solid waste disposal facility proposed to be located in that municipality. A municipal intervenor may request financial assistance, consistent with the provisions of this subsection, to pay for direct expenses associated with its substantive participation in the Department's application review process.

- (1) **Applicability.** This subsection applies to all new and expanded solid waste disposal facilities, except for the following:
 - (a) A facility that is permitted by rule under any chapter of these rules; or
 - (b) Where the applicant is a municipality that, either singly or in cooperation with other parties, applies to locate a facility within its borders.
- (2) **Notification of Potential Municipal Intervenors.** In addition to the requirements of 06-096 CMR 2, an applicant for a new or expanded solid waste disposal facility must provide the following:
 - (a) Preliminary notice. At least sixty days prior to submitting an application with the Department for a solid waste disposal facility license, the applicant shall notify by certified mail the Department and the municipal officers of the municipality in which the facility site is to be located or, in the unorganized territories, the county commissioners with jurisdiction over the proposed facility site; and
 - (b) This preliminary notice must include a description of the right of the municipal officers to apply for municipal intervenor status, their right to receive grants not exceeding \$50,000 to support certain activities to intervene before the Department, and the requirement that they must request intervenor status within 60 days of this notification or be deemed to have waived the right to receive municipal intervenor grants.
- (3) **Municipal Intervenor Status.** The municipal officers of the municipality in which the proposed solid waste facility is to be located, or their designees, have automatic intervenor status if they request it within 60 days of being notified under subsection 7(B)(2) above. Upon the Department's receipt of the request, the intervenors have all rights and responsibilities commensurate with this status.

The host municipality loses its right to the municipal intervenor grant if it fails to notify the Department within 60 days after being notified by the applicant under subsection 7(B)(2) above.
- (4) **Fees Paid by the Applicant.** In addition to the licensing and processing fees required under 38 M.R.S.A. §§352 and 353, applicants for a solid waste disposal facility shall pay a \$50,000 fee at the time of filing. Applications are not complete for processing until this fee has been submitted to the Department, to be deposited in the Maine Environmental Protection Fund. These funds shall be disbursed by the Department to a municipal intervenor or its designees for documented direct expenses associated with its substantive participation in the Department's application review process.

The Department may require the applicant to pay the Department an additional fee not to exceed \$50,000 for an application for the expansion of a commercial solid waste disposal

facility that accepts special waste for landfilling when the municipal intervenor demonstrates to the Department that the size, nature, location, geological setting or other relevant factors warrant additional expenditures for technical assistance.

- (5) **Grant Procedures.** The following procedures are established for the issuance of grants to municipal intervenors in solid waste disposal facility license proceedings before the Department.
- (a) **Grant Documents.** The Department shall draft a grant agreement as soon as possible after a qualified municipality has requested intervenor status. All grant agreements must be made with the municipal intervenor. This agreement will formalize the type of services to be used; the frequency and conditions of billing, grant payment or reimbursement; the required documentation of costs and work output; and audit and grant repayment conditions.
- (b) **Eligible Costs.** The major consideration for evaluating whether an expense is eligible for grant funds is whether it is a direct cost that contributes to the municipal intervenor's substantive participation in the Department's application review process. These expenses may include:
- (i) Payment or retainer for expert witnesses or hiring qualified professionals in environmentally-related fields and other fields including, but not limited to, engineering, geology, public health, finance or law;
 - (ii) The cost of using professional services in these fields to evaluate the application, to determine whether to oppose or support it, and to represent or intervene on behalf of the municipality;
 - (iii) The cost of examining all aspects of the project or license application which must be considered by the Department in determining whether the proposed project may be licensed or not; and
 - (iv) The direct costs of the municipal officers and their consultants meeting with Department staff, attending hearings, and participating in Department meetings relating to the application or its proceedings.
- (c) **Qualified Professionals.** For the purposes of this subsection "qualified professionals" are defined as individuals, companies, and agencies whose primary occupation is to provide the service or expertise in question. A qualified professional may include college professors and other individuals having expertise in the areas or issues being examined. If required by the State of origin, that individual, company, or agency must have all necessary certification to provide the professional service in question.

In selecting and acquiring qualified professionals and expert witnesses, the municipal officers, county commissioners, assessors, or designee may not have any direct or indirect pecuniary interest in the selection or acquisition of any of these services. Direct or indirect pecuniary interest in this case means that the public official is an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity with which the municipality, county government, or quasi-

municipal entity contracts, or the public official is directly or indirectly the owner of at least a 10 percent interest in the business or other economic entity.

- (d) **Ineligible Costs.** Costs not eligible for grant funds are costs that do not contribute to substantive participation in the Department's application review process and costs that are required of the applicant under a substantially similar financial requirement established through local ordinance. Ineligible expenses include, but are not limited to:
- (i) The costs of developing or amending local ordinances or of processing local applications;
 - (ii) The costs of developing and submitting evidence for Board appeal proceedings which is ruled to be not admissible;
 - (iii) The costs of court appeals;
 - (iv) The costs of negotiating a host community agreement with the applicant;
 - (v) The costs of assisting other interested parties or intervenors with their inquiries or testimony;
 - (vi) Any costs not documented by the intervenor to the Department;
 - (vii) Any otherwise eligible costs that are recoverable from the applicant under a substantially similar financial requirement established through local ordinance; or
 - (viii) "In kind" services. "In kind" services include such items as the rent, maintenance, or overhead of buildings or municipal, county, or plantation operations. In addition, these services include the salaries of any municipal, county, or plantation officers or employees who are involved in the intervenor process as part of their overall duties. The salaries of any officers, members, or employees of any designees are also not eligible for grant reimbursement or payment unless that designee is a qualified professional hired by the municipality, county or plantation to provide specific services.
- (e) **Grant Payments.** Upon approval of a grant agreement, grant payments must be made upon the request of the municipal intervenor unless payment is denied for one of the reasons in subparagraph (f) below. Grant payments may be made to the municipal intervenor or, upon written request by the municipality, to its designees.
- (f) **Denial of Grant Payments.** A request for payment of grant funds may be denied in whole or part for the following reasons:
- (i) The work was undertaken: before the municipality requested intervenor status; after the withdrawal of the solid waste disposal facility application and the municipality has been notified by the applicant that the application was withdrawn; or after withdrawal of the intervenor;

- (ii) Expenses otherwise eligible that are incurred by the municipality but the license application is never accepted by the Department;
 - (iii) Breach of the grant agreement;
 - (iv) False statements made in any grant submission; or
 - (v) Expenses are ineligible for payment under subparagraph (d).
- (g) **Records, Audits, and Grant Recovery**
- (i) **Records.** The municipal intervenor and its designee shall maintain all books, documents, payrolls, papers, accounting records, work product, travel expenses, retainers, and other evidence pertaining to costs incurred under the grant agreement. These materials must be available at their offices at all reasonable times and must be kept for three years following conclusion of all substantive proceedings before the Department and all licensing appeal proceedings for inspection by the Department or any authorized representative of the State of Maine. Copies must be furnished if requested. The municipal intervenor may avoid the need to retain all records for a three year period by turning over all original documents or certified accurate and complete copies of documents to the Department.
 - (ii) **Audits.** The applicant does not have any right to audit the municipal intervenor's spending. Upon request, the Department shall provide an audit report to the applicant after all the application and appeal proceedings before the Department have concluded.
 - (iii) **Grant Recovery.** The municipal intervenor must reimburse the Department within 60 days of any determination by the Department that grant funds have been mistakenly paid for ineligible work or any other reason enumerated in subparagraph (f) above. The amount of the reimbursement required shall be the difference between the total grant funds paid and the intervenor's documented eligible expenses.
- (h) **Reduction of Grant Total.** A municipal intervenor has the right to utilize all intervenor grant money for direct expenses associated with its substantive participation in the Department's application review process, unless otherwise eligible costs are required of the solid waste disposal facility applicant under substantially similar financial requirements through local fee requirements or ordinances. Any such money required from the applicant for intervention must be subtracted from the grant total. No other funds raised or committed locally or awarded through another grant process may be subtracted from the available grant total.
- (i) **Return of Unexpended Grant Funds.** Any grant funds not spent by the municipal intervenor for eligible costs must be returned to the solid waste disposal facility applicant within 60 days of the Department's final disbursement to the intervenor but in no case later than 120 days after final Department action.
 - (j) **Right of Municipal Intervenors to Gain Entry.** On reasonable notice, officers and qualified professionals hired by a municipal intervenor are permitted entry to a proposed

solid waste disposal facility site to accomplish reasonable inspection and investigation of the facility site. Access to the facility site must be during normal working hours and agreed to by the applicant, property owner and the municipal intervenor.

- (i) **Reasonable Inspection and Investigation.** Reasonable inspection and site investigation includes: visual inspection and measuring, conducting soil analyses with a handheld soil auger, surveying, photographing, sampling, and other work that will not alter the physical characteristics of the facility site or interfere with the applicant's activity on the property.
- (ii) **Restrictions.** An applicant or property owner may require the intervenor to wear and use reasonable safety equipment, remain in the presence of the applicant's representative, only take samples in the presence of the applicant, split samples with the applicant, indicate the analysis and testing to be undertaken, and sign an agreement outlining reasonable conditions of indemnity and liability of each party.
- (iii) **Disputes.** The Department shall attempt to resolve disputes regarding reasonable inspection and site investigations under this section.

8. Right of Entry. Pursuant to 38 M.R.S.A. §§ 347-C and 1304(4-A), any duly authorized agent or employee of the Department, upon presentation of appropriate credentials, may enter any property at reasonable hours and may enter any building with the consent of the property owner, occupant or agent in order to:

- A. Inspect the property and/or inspect or obtain samples of any solid waste including samples from any conveyance in which solid waste is being or has been transported, as well as samples of any containers or labels;
- B. Inspect and copy any records, reports, information or test results required by license or rule relating to solid waste;
- C. Take photographs or measurements of any solid waste facility;
- D. Obtain samples of the materials of construction; or
- E. Conduct environmental monitoring.

9. Hazardous And Special Waste Handling And Exclusion Plan

- A. **Standard.** Only wastes permitted by Department order may be accepted for handling at a solid waste facility. The operator shall comply with all applicable Federal and State laws regarding the detection, identification, handling, storage, transportation and disposal of special wastes, biomedical wastes and hazardous wastes.

Unless exempted by other sections of these rules, the operator shall develop and implement a Hazardous and Special Waste Handling and Exclusion Plan for the detection, identification, handling, storage, transportation and disposal of any and all wastes that may be delivered to the facility.

B. Submissions. A Hazardous and Special Waste Handling and Exclusion Plan for a facility must be submitted to the Department for review and approval prior to implementation. At a minimum, the plan must include the following information:

(1) Detection

- (a) A description of the wastes to be received and the methods to be used for detection, identification, handling, storage, and transportation of unpermitted special and hazardous wastes delivered to the solid waste facility; and also, for solid waste facilities that are not generator-owned, all of below;
- (b) A description of surveillance equipment and materials to be used in the detection and identification of special and hazardous wastes at the facility and an evaluation of personnel safety equipment and measures to be used;
- (c) Procedures for conducting random inspections of incoming loads of solid waste and preparing reports on the inspections; and
- (d) A plan of the facility site showing the location, size, design, and construction of an interim storage area for any unpermitted special and hazardous wastes that may be delivered to the facility.

(2) General Administration

- (a) A designated Facility Safety Officer responsible for all safety concerns including the dissemination of safety related information to employees during all facility operations for detecting, identifying, handling, storing, and transporting unpermitted special and hazardous wastes at the facility;
- (b) A description of emergency access routes, nearby hospitals and other emergency information;
- (c) An initial training program and subsequent refresher training programs for personnel in the detection, identification, handling, storing and transporting of special and hazardous wastes; and
- (d) A report format to be used during random inspections or upon the detection of suspicious loads of solid waste.

(3) Notification

- (a) A description of emergency notification procedures for the Department and other emergency response agencies for any and all hazardous waste delivered to the facility; and
- (b) A procedure for the notification of appropriate local and state officials if special wastes not licensed for handling at the facility or hazardous wastes are discovered.

NOTE: A sample Hazardous and Special Waste Handling and Exclusion Plan is appended to this Chapter as Appendix A.

- 10. Liability Insurance.** All applicants for a new or expanded solid waste disposal facility license, except public entities, shall submit with the application, and annually thereafter, proof of liability insurance for sudden and accidental occurrences for the solid waste disposal facility. Coverage must be provided for bodily injury and property damage and must be provided for the active life and closure of the solid waste disposal facility.
- A. Level of Coverage.** The level of coverage must be at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, unless, because of a greater risk, a higher minimum coverage is required by the Department for a particular facility.
- B. Exclusive of Legal Costs.** All liability insurance coverage amounts must be exclusive of legal defense costs.
- C. Financial Test.** The owner or operator of a private, non-commercial, solid waste disposal facility may use a financial test in lieu of liability insurance coverage. To use this option, the owner or operator must meet the following conditions:
- (1) **Demonstration of Financial Responsibility.** The owner or operator must provide the Department with a letter from the owner's or operator's chief financial officer or other appropriate corporate official that demonstrates their financial responsibility for liability coverage and a copy of an independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year;
 - (2) **Other Income.** The owner or operator of the solid waste disposal facility must derive more than 50 percent of its income from activities not associated with the handling, transportation, or disposal of solid waste or hazardous waste; and
 - (3) **Federal Requirements.** The owner or operator must meet the financial test for liability coverage in 40 CFR 264.147(f)ⁱ as amended up to July 1, 2014, for an aggregate liability coverage of at least \$2 million.
 - (4) **Endorsement Requirements.** The wording of liability insurance endorsements and other terms is subject to approval by the Department. All endorsements must contain the following language:
 - (a) **Reimbursement.** The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer;
 - (b) **Copies of Policy.** The insurer agrees to furnish a signed duplicate original of the policy and all endorsements upon request by the Department;
 - (c) **Cancellation.** Cancellation of this endorsement, whether by the insurer or the insured, is only effective upon written notice and only sixty (60) days after the receipt by the Department of the written notice; and

- (d) **Other Termination.** Any other termination of this endorsement is effective only upon written notice and only after thirty (30) days after the receipt by the Department of the written notice.
- (5) **Bankruptcy or Insolvency.** Bankruptcy or insolvency of the insured does not relieve the insurer of its obligations under the policy.
- (6) **Discovery Period; Public Notice.** If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least twelve (12) months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public according to the following requirements:
- (a) **Notification of Abutters.** At least sixty (60) days prior to policy expiration or cancellation date, give written notification to all owners of property abutting the solid waste disposal facility and to the chief elected official in the municipality in which the facility is located and in each of the municipalities immediately abutting the municipality in which the facility is located. The notice must state that insurance for the facility will expire or be canceled, giving the date of expiration or cancellation, and that claims against the insured must be filed within twelve (12) months from the date of expiration or cancellation. The notice must specify where and how claims can be filed.
- (b) **Public Notice.** During the first, third, sixth and ninth month subsequent to the date of expiration or cancellation, place in each of the State's major newspapers and in all local newspapers published or widely distributed in the municipality where the facility is located an advertisement designed to attract notice and containing the information specified in subparagraph 1. Major newspapers include the Portland Press Herald, Bangor Daily News, Lewiston Sun, Kennebec Journal, and Waterville Sentinel.

11. Financial Assurance for Solid Waste Disposal Facility Closure and Post-Closure Care and Corrective Action

A. Financial Assurance for Closure and Post-Closure Care

- (1) **Applicability.** An owner or operator of a solid waste disposal facility shall provide financial assurance sufficient to ensure that funds are available to pay for the anticipated costs of compliance with all facility closure, post-closure maintenance, and post-closure monitoring requirements. State or federally owned solid waste disposal facilities, and landfills regulated under the provisions of 06-096 CMR 401, section 7, are not subject to the requirements of this section. Financial assurance must be provided in accordance with the requirements of this section.

This section does not apply to a municipally owned or operated solid waste disposal facility that accepts exclusively special waste, construction and demolition debris, land clearing debris or any combination of those types of waste.

(2) **Time-line for Meeting Financial Assurance Requirements.** Adequate financial assurance as approved by the Department must be provided by the solid waste disposal facility owner or operator according to the following schedules:

- (a) For new facilities, prior to the receipt of solid wastes;
- (b) For transfer of ownership, the financial assurance of the original owner or operator must remain in place until the transfer of ownership takes place. A new owner must provide financial assurance that is received and approved by the Department in compliance with these rules before the transfer of ownership;
- (c) For all solid waste disposal facilities not excluded in paragraph A(1) above and not currently providing financial assurance under the solid waste management rules or under conditions of the facility's license, within 120 days of the effective date of this rule.

(3) **Cost Computation**

- (a) Based on Third Party Work. The amount of financial assurance required of a solid waste disposal facility owner or operator must be approved by the Department. The amount may be adjusted from time to time as required by subparagraph A(4)(c). The amount of the financial assurance must be at least equal to the estimated cost of a third party:
 - (i) Closing the incinerator or landfill in accordance with the closure criteria of these rules;
 - (ii) Conducting post-closure care and maintenance of the facility, including environmental monitoring and reporting as required by law;
 - (iii) Collecting and treating all leachate or other contaminants generated by the facility during the post-closure period; and
 - (iv) Collecting, controlling, and treating landfill gases during the post-closure period.
- (b) **Thirty Year Post-Closure Period.** The cost estimates must be based on projections for the entire expected time that the facility is expected to be generating leachate, methane or other gases, contaminants or otherwise potentially creating an adverse environmental impact, but in no case less than 30 years after a landfill facility closes. The financial assurance cost estimates must be made in accordance with established estimating practices and may not incorporate any salvage or other value that may be realized by the sale of materials, wastes, facility structures or equipment, land, or other assets associated with the facility.

(4) **Financial Assurance Funding**

- (a) **Initial Payment for a New Facility.** A solid waste disposal facility owner or operator shall provide financial assurance in accordance with this section, as approved by the Department, and prior to the facility receiving wastes, in the following amounts:

- (i) If financial assurance is provided with a letter of credit, surety bond, or reserve account, the current estimate of the amount required for closure and post-closure care as established in paragraph A(3) above; and
 - (ii) If financial assurance is provided with a cash trust fund, an amount equal to the current cost estimate for closure and post-closure care to close the facility after the first year of operation. Annual payments after that will be the total cost of closure and post-closure care, divided by the number of years in the pay-in period. The pay-in period shall be the years of expected operation of the landfill minus one year. Trust fund payments in subsequent years must be determined calculating the then current cost for closure and post-closure care, subtracting the current value of the trust fund minus all taxes, brokerage commissions and other expenses paid from the fund and dividing the remainder by the number of years remaining in the pay-in period.
- (b) **Initial Payment for Existing Facilities.** The owner or operator of an existing solid waste disposal facility, if financial assurance for closure and post-closure care and maintenance of that facility is not already being provided, shall provide financial assurance in compliance with the provisions below.
 - (i) If financial assurance is provided with a letter of credit, surety bond, or reserve fund, the amount provided in subparagraph (4)(a)(i) above;
 - (ii) If financial assurance is provided with a cash trust fund, an initial payment into the trust fund of at least the amount that the fund would contain if the trust fund had been established when the solid waste disposal facility became operational and had received annual payments made according to the specification of subparagraph (4)(a)(ii).
- (c) **Annual Update of Costs**
 - (i) **Modifications.** The amount of financial assurance must be calculated annually throughout the operating life of the solid waste disposal facility. Without limitation, changes in the amount of financial assurance are required due to modifications to the license, changes in operation, changed financial or site conditions, inflation, changes in the number of years remaining before anticipated closure, and changes in legal requirements for closure or post-closure maintenance and care. The owner or operator shall amend the financial assurance calculation annually based upon current costs of a third party undertaking the closure and post-closure care and other work required by the Department in accordance with then applicable rule or an approved Closure Plan. This calculation shall be reported in writing to the Department as part of the disposal facility's annual report and is subject to Department review and approval. Upon approval, the owner/operator must obtain financial assurance for any calculated increase within 60 days. The amount of financial assurance may also be adjusted downward in accordance with these provisions.
 - (ii) **Annual Inflation Adjustment Method.** When computing the annual inflation adjustment for closure and post-closure trust funds, the owner or operator must use the current Implicit Price Deflator for Gross Domestic Product as published by the

US. Department of Commerce in "Survey of Current Business" a successor index, or other Department approved index.

(d) **Other Requirements**

- (i) **Funds Available when Needed.** All financial assurance mechanisms must ensure that the funds necessary to meet the costs of closure and post-closure care will be available within 30 days of the Department's request for, or approval of, release of funds.
- (ii) **Valid Mechanism.** Each financial assurance mechanism must be legally valid, binding, and enforceable under State and federal law. Trust fund arrangements must be formalized in an agreement that is acceptable to the Department. Such a trust fund should have substantially the same wording and conditions as the example agreement in Appendix B of this Chapter. If an owner or operator elects to use a form of trust agreement that differs materially from Appendix B of this Chapter, the owner or operator shall pay the Department's reasonable costs of review of the agreement which may include an outside independent attorney or trust officer of the Department's choosing that has expertise in financial assurance mechanisms. Each trust agreement must include a schedule that contains the payment commitment of the owner or operator.
- (iii) **Standby Trust Requirements.** If a facility owner or operator chooses to meet the financial assurance requirements of this section through the use of letter(s) of credit and/or surety bond(s), the owner or operator must also establish a standby trust fund that stands ready to receive funds from the surety bond(s) or letter(s) of credit unless this requirement is waived by the Department.

A standby trust shall be established that provides for administration and oversight identical to those for an active trust fund.

- (iv) **Department as Beneficiary.** The Department (or approved trustee for the benefit of the Department) must be named as beneficiary of any financial assurance agreement, with the right to withdraw funds and to use part or all of the funds in its discretion in order to carry out legally required closure, post-closure care, and monitoring and all costs related thereto. Withdrawal of any funds must be approved in writing by the Department.
- (e) **Allowable Assurance Mechanisms.** Unless otherwise specified in this section, the owner or operator of a solid waste disposal facility that must provide financial assurance under subsection A(1) above, must comply with the requirements of 40 CFR section 258.70 through 40 CFR 258.72ⁱⁱ as amended up to July 1, 2014. The provisions of 40 CFR 258.70 through 40 CFR 258.72 and 40 CFR 258.74(a), (b), and (c) effective as of July 1, 2014ⁱⁱⁱ, are hereby adopted and incorporated by reference, provided however that a standby trust fund must also be established by the owner or operator of a solid waste disposal facility when providing financial assurance through a letter of credit or a surety bond.

Financial assurance may also be provided by the establishment of a reserve account for closure and post-closure care costs established in accordance with the *Internal Revenue*

Code. This method shall only be available to owners/operators having book net worth shown on audited financial statements in excess of \$50,000,000 and tangible assets in Maine excluding any landfill related assets, having depreciated book value in excess of ten times the projected cost of closure and post-closure costs. This method shall not be available after closure of the facility unless the operator continues business operations in Maine that satisfy the foregoing financial standards. The owner/operator must submit a sworn statement annually in accordance with the annual reporting requirements of this section whether these provisions are met and to provide sufficient information to confirm that sworn statement. If, at any time, the owner/operator no longer meets the reserve account provisions required above, the owner/operator must notify the Department by registered mail within 7 days of becoming aware that the standard is no longer met and must provide adequate alternative financial assurance within not more than 23 days after the required notification date.

For a municipally-owned solid waste disposal facility, financial assurance may also be provided by meeting all provisions of 40 CFR 258.74(f)^{iv} as amended up to July, 2014.

The owner or operator of a solid waste disposal facility may, subject to Department approval, satisfy the requirements of this subsection by establishing more than one financial assurance mechanism per facility. Each mechanism must comply with the provisions of this section except that it is the combination of these mechanisms, rather than a single mechanism, which must provide financial assurance in an amount at least equal to the total cost of closure and post-closure care.

B. Financial Assurance for Corrective Action

- (1) **Applicability.** An owner or operator of a solid waste disposal facility shall provide financial assurance at least equal to the cost of a third party conducting all of the corrective action activities for known releases, violations, or environmental damage, as approved by the Department in the corrective action plan for the entire corrective action period. State or federally owned solid waste disposal facilities and landfills regulated under the provisions of 06-096 CMR 401, section 7 are not subject to the requirements of this section.
- (2) **Time-line for Meeting Financial Assurance Requirements.** Unless otherwise required as a license condition, the owner or operator of an existing solid waste disposal facility must comply with the provisions of this subsection within 120 days of the effective date of this Chapter.
- (3) **Financial Assurance Funding**
 - (a) **Initial payment.** The initial amount of financial assurance deposited into a Department approved financial assurance mechanism must be the estimated cost of corrective action as approved by the Department in the owner's or operator's corrective action plan, as allocated below. Financial assurance in this amount must be made no later than 120 days after the corrective action plan has been approved by the Department.

- (i) If financial assurance is provided with a letter of credit, surety bond, or reserve account, the amount shall be the full cost, as estimated by the operator and approved by the Department, of the corrective action; or
 - (ii) If financial assurance is provided with a trust fund, the first payment into the trust fund shall be at least equal to one-half of the full cost of corrective action.
- (b) **Annual trust fund payments.** Unless modified under subparagraph (c) below, remaining payments into the trust fund must be made annually at a uniform rate, so that all the remaining payments for corrective action will be made in their entirety on or before one-half of the estimated length of time, as estimated by the operator and approved by the Department, remaining in the approved corrective action plan.

NOTE: The following example outlines the payment schedule for a \$4 million corrective action that is projected to last 5 years. Initial payment into the trust fund would be \$2 million. The remaining payments would be made annually over one-half of the remaining estimated time that the corrective action program would take. This means that payments of \$1 million would be made annually for a period of 2 years to bring the total trust fund to \$4 million.

- (c) **Annual Adjustments.** The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed. The owner or operator must also increase the corrective action cost estimate and the amount of financial assurance provided whenever changes in the corrective action program or conditions at the site increase the maximum anticipated costs of corrective action. The owner or operator may decrease the cost estimate of financial assurance to the extent costs have been incurred and paid. The annual adjustment for inflation and adjustments due to changes in the corrective action program or facility conditions must be approved by the Department.

Upon approval, the owner/operator must obtain financial assurance for any calculated increase within 60 days. The amount of financial assurance may also be adjusted downward in accordance with these provisions.

(4) Other Requirements

- (a) **Funds Available when Needed.** All financial assurance mechanisms must ensure that the funds necessary to meet the costs of corrective action will be available within 30 days of the Department's request for, or approval of, release of funds.
- (b) **Valid Mechanism.** Each financial assurance mechanism must be legally valid, binding, and enforceable under State and federal law. Trust fund arrangements must be formalized in an agreement that is acceptable to the Department. Such a trust fund should have substantially the same wording and conditions as the example agreement in Appendix B of this Chapter. If an owner or operator elects to use a form of trust agreement that differs materially from Appendix B of this Chapter, the owner or operator shall pay the Department's reasonable costs of review of the agreement which may include an independent outside attorney or trust officer of the Department's choosing that

has expertise in financial assurance mechanisms. Each trust agreement must include a schedule that contains the payment commitment of the owner or operator.

Financial assurance may also be provided by the establishment of a reserve account for corrective care established in accordance with the *Internal Revenue Code*. This method shall only be available to owners/operators having book net worth shown on audited financial statements in excess of \$50,000,000 and tangible assets in Maine excluding any landfill related assets, having depreciated book value in excess of ten times the projected cost of closure and post-closure costs. This method shall not be available after closure of the facility unless the operator continues business operations in Maine that satisfy the foregoing financial standards. The owner/operator must submit a sworn statement annually in accordance with the annual reporting requirements of this section that these provisions met and to provide sufficient information to confirm that statement. If at any time, the owner/operator no longer meets the reserve account provisions required above, the owner/operator must notify the Department by registered mails within 7 days of becoming aware that the standard is no longer met and must provide adequate alternative financial assurance within not more than 23 days after the required notification date.

For a municipally- owned solid waste disposal facility, financial assurance may also be provided by meeting all provisions of 40 CFR 258.74(f)^{iv} as amended up to July, 2014.

- (c) **Standby Trust Requirements.** If a facility owner or operator chooses to meet the financial assurance requirements of this section through the use of letter(s) of credit and/or surety bond(s), the owner or operator must also establish a standby trust fund that stands ready to receive funds from the surety bond(s) or letter(s) of credit, unless this requirement is waived by the Department.

A standby trust shall be established that provides for administration and oversight identical to those for an active trust fund.

- (d) **Department as Beneficiary.** The Department (approved Trustee for the benefit of the Department) must be named as beneficiary of any financial assurance agreement, with the right to withdraw funds and to use part or all of the funds in its discretion in order to carry out legally required corrective action and all costs related thereto. Withdrawal of any funds must be approved in writing by the Department.

- (5) **Allowable Financial Assurance Mechanisms.** In providing financial assurance for corrective action, the owner or operator must comply with the requirements of 40 CFR 258.74(a), (b) and (c)^v as amended up to July, provided however that a standby trust fund must also be established by the owner or operator of the solid waste disposal facility for a letter of credit or a surety bond.

The owner or operator of a solid waste disposal facility may, subject to Department approval, satisfy the requirements of this subsection by establishing more than one financial assurance mechanism per facility. Each mechanism must comply with the provisions of this section except that it is the combination of these mechanisms, rather than a single mechanism, which must provide financial assurance in an amount at least equal to the total cost of corrective action.

12. Criminal or Civil Record. The Department may refuse to grant, or approve the transfer of, a license for a solid waste facility or activity if it finds that the owner or the operator or any person having a legal interest in the applicant or the facility has been convicted of any criminal law or adjudicated or otherwise found to have committed any civil violation of environmental laws or rules of the State, other states, the United States, or another country. Such an adjudication or finding can be by means of a court order or consent decree, or by means of an administrative order or agreement.

A. Full Disclosure

- (1) **Persons.** All applicants for a new or amended license, or transfer of a solid waste license, shall submit, at the time of application, a disclosure statement with the Department containing information about the following persons:
 - (a) The individual applicant; or
 - (b) If the applicant is a business entity:
 - (i) Any officers, directors, and partners;
 - (ii) All other persons or business concerns, having managerial or executive authority and holding more than 5 percent of the equity in or debt of that business unless the debt is held by a chartered lending institution;
 - (iii) All other persons or business concerns other than a chartered lending institution having a 25 percent or greater financial interest in the applicant; and
 - (iv) The managerial person with operational responsibility for the facility or activity; or
 - (c) If the applicant is a public entity, all persons having managerial or executive authority over the solid waste facility or activity.
- (2) **Applicant Information.** The full name, business address, home address, date of birth, social security number (if requested) and Federal Employer Identification number of the persons required to disclose under this section;
- (3) **Related Companies.** The full name and business address of any company that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any of the persons required to disclose under this section holds at least a 5% equity interest;
- (4) **Criminal Convictions.** A listing and explanation of any criminal convictions of the State, other states, the United States, or another country of the persons required to disclose under this section;
- (5) **Civil Violations.** A listing and explanation of any adjudicated civil violations of environmental laws or rules administered by the State, other states, the United States, or another country by any of the persons required to disclose under this section in the 5 years immediately preceding the filing of the application;

- (6) **Consent Decrees and Administrative Orders or Agreements.** A listing and explanation of administrative agreements or consent decrees entered into by, or administrative orders directed at, any of the persons required to disclose under this section for violations of environmental laws administered by the Department, the State, other states, the United States or another country in the 5 years immediately preceding the filing of the application;
- (7) **Other Proceedings.** A listing and explanation of any ongoing court proceeding, administrative consent agreement negotiation, or similar ongoing administrative enforcement action not already provided in which the applicant or any of the persons required to disclose under this section is a party and which concerns environmental laws administered by the Department or the State; and
- (8) **Other Information.** A listing of any agencies outside of Maine that have regulatory responsibilities over the applicant in connection with its collection, transportation, treatment, storage or disposal of solid or hazardous wastes and any other information required by the Department or the Office of the Attorney General that relates to the enforcement history or character of the applicant.
- B. Denial of License.** The Department may deny a solid waste license because of any convictions, adjudications, orders, or findings based on the Department's judgment of the offense in question and whether the person has demonstrated rehabilitation by clear and convincing evidence.
- (1) **Consideration.** In making this determination the Department may consider all relevant evidence including the following:
- (a) The nature and responsibilities of the position that the individual would hold;
 - (b) The nature and seriousness of the offense;
 - (c) The date and circumstances under which the offense occurred;
 - (d) The age of the individual when the offense was committed;
 - (e) Whether the offense was an isolated or repeated incident; and
 - (f) Any evidence of rehabilitation.
- (2) **Rehabilitation.** In the case of any person found to have violated any federal or state environmental protection laws or rules, the Department will consider the seriousness of the violation, the rehabilitation of that person based on whether he, she, or it has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities that resulted in a conviction, adjudication, order or finding, and whether any restitution has been made to injured parties.
- (3) **Approval Required.** A solid waste licensee may not knowingly hire as an officer or director or knowingly allow to acquire an equity interest or debt interest, any person found guilty of a felony or who has committed any violation of environmental law or rules, without first obtaining the approval of the Department.

- (4) **Compliance Required.** The Department will not issue a license or approve a license transfer if the applicant refuses to comply with the requirements of this section or if the information supplied for these inquiries is untrue or misleading as to the facts pertaining to the criminal or civil record of any person required to disclose under this section.

13. Variances. Except where specifically prohibited, any applicant or licensee may seek a variance to the requirements of these rules for establishing, altering, operating or closing a solid waste facility or handling solid waste by using the procedures described below. It is the responsibility of the applicant or licensee to demonstrate that its proposal will comply with the intent of State laws and these rules. The Department shall consider the variance as part of its comprehensive review of an application for a new or expanded facility or activity, or as a minor revision or amendment application for an existing facility or activity.

NOTE: The Department intends, through this section on "Variances", to allow for flexibility and creativity in meeting the requirements of these rules. Differences in waste characteristics, facility size, geologic conditions, and management alternatives may be taken into consideration.

- A. Variances Affecting Site Standards, Facility Design, and Construction.** The Department has determined that the requirements of these rules for solid waste facilities are best able to ensure that a facility will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. Whenever a facility applicant or licensee seeks to vary from the requirements of these rules relating to siting standards, facility design, or construction, the applicant or licensee must present clear and convincing evidence that the facility site's proposed location, design, or construction is distinctive in some way that allows for compliance with State laws and the purpose and intent of these rules.
- B. Variances Affecting Operation.** Whenever any facility owner or operator seeks to vary any aspect of a facility's or an activity's operation from the operating requirements of these rules. The owner or operator must affirmatively demonstrate that the facility or activity will not contaminate any waters of the State, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and that the proposed operation will comply with State law and the purpose and intent of these rules.
- C. Contents of Application.** Requests for a variance must include at a minimum:
- (1) **Applicable Requirement.** Identification of the specific provisions of these rules from which a variance is sought;
 - (2) **Alternative Procedure or Design.** The alternative procedure or design proposed and the reasons why it meets the purpose and intent of the rule;
 - (3) **Reasons for Variance.** The reasons for which a variance is requested, including the environmental, financial and technological justifications; and
 - (4) **Other Information.** Any other relevant information the Department may request or the applicant may wish to provide.

D. Term and Renewal of Conditions. A variance is concurrent with the term of the license for the facility, unless the Department issues the variance for a shorter time frame.

AUTHORITY: 38 MRSA sections 341-D(1-B), 1304(1,1-B, 13 & 13-A),
1310-N(9) and 1301 *et seq.*

EFFECTIVE DATE: August 3, 1976

AMENDED: April 3, 1976

REFILING UNDER APA: December 28, 1978

AMENDED: December 6, 1983

May 24, 1989

EFFECTIVE DATE

(ELECTRONIC CONVERSION): May 4, 1996

AMENDED: November 2, 1998

September 6, 1999

January 23, 2001

MINOR CORRECTIONS: March 5, 2001

AMENDED: February 18, 2009 – filing 2009-71

July 20, 2010 – filing 2010-310

MINOR CORRECTIONS: March 5, 2001

AMENDED: February 18, 2009 – filing 2009-71

July 20, 2010 – filing 2010-310

AMENDED: April 6, 2015 – filing 2015-059

APPENDIX A:**TEMPLATE FOR HAZARDOUS & SPECIAL WASTE HANDLING AND EXCLUSION PLAN**

1. **Facility Safety Officer.** _(name a person--first selectman, operator,. . .)_____ shall be designated as the "facility safety officer". Annually, the facility safety officer shall work with the _(name of town)_ Fire Chief to provide training to the operator's staff on:
 - A. Detection of hazardous and special waste;
 - B. Appropriate notification procedures; and
 - C. Appropriate handling procedures.
2. **Identification/Notification of Unpermitted Wastes.** Unpermitted hazardous and special wastes shall not be accepted at the solid waste facility. To ensure this, the attendant shall check all waste being deposited at the solid waste facility. The type of container and origin of the waste can help identify hazardous wastes and special wastes. People are allowed to deposit normal household quantities of household hazardous wastes with their general refuse. However, larger quantities of household pesticides and hazardous wastes generated by commercial and industrial establishments are not acceptable at this solid waste facility.

The following list will help with the identification and handling of materials of concern.

- A. **Asbestos:** Friable insulation material but can take other forms. Can be combined with other materials to sometimes make non-friable siding, flooring, or other products. If suspected to be or contain friable asbestos, contact Department of Environmental Protection asbestos abatement program personnel at telephone number 207-287-2651. Avoid inhalation of particles.
- B. **Bio-medical Wastes:** May be red bag waste from hospitals, laboratories, clinics, nursing homes and occasionally doctor's offices. Includes blood, body parts, disposable instruments, linens and other soiled items. Keep people away, follow hazardous waste procedures, including notifying the appropriate responder either a qualified fire department or the Department of Environmental Protection (DEP). If accidentally contacted, disinfect contact area with 1:3 bleach to water solution.
- C. **Calcium Hypochlorite:** Used for disinfecting swimming pools but is reactive when wet. **Can release chlorine gas and cause fire when wetted.** Treat as hazardous; prevent wetting or contact with moisture; if wetted, evacuate area. Keep away from petroleum and other organic materials.
- D. **Electrical Capacitors and Transformers:** May be removed from white goods and other electrical equipment by individuals, scrap metal firms, or firms which work on appliances or motors. Avoid skin contact and breathing exposure; follow hazardous waste procedure.
- E. **Industrial Chemicals:** Generally, liquid in five gallon or larger pails or drums of either plastic or steel. Occasionally lined cardboard barrels are used. Also some solids, especially flakes or

granular materials, can cause excessive corrosion or be reactive with liquids. Solids may be in any form of container including loose. Avoid skin contact and breathing exposure; treat as hazardous.

F. Laboratory Chemicals: Usually in smaller containers of one pint to one gallon, glass or plastic bottles. Can be severe irritants, highly toxic or explosive. Avoid skin contact and breathing exposure; do not open or jar containers. Treat as hazardous.

G. Sandblast Grit: Generally fine sand or garnet mixed with paint, brick and/or masonry chips. Avoid breathing; handle as special waste.

(delete the following if solid waste facility will have waste oil collection)

H. Waste Oil: Includes used motor oils, hydraulic fluid, and other lubrication oils from individuals, farm operations, and vehicle and heavy equipment repair firms. Avoid skin contact; treat as special waste.

Excluded items are not limited to the above specifically listed items.

3. Finding and Reacting to an Unknown Waste. When unknown material is found at the solid waste facility, the attendant shall identify the material to determine whether it is licensed solid waste, special waste, or hazardous waste. If hazardous waste, the attendant shall attempt to identify the person who has left, delivered, or attempted to deliver the hazardous waste and notify the DEP.

A. While keeping a safe distance upwind from the material, the attendant may attempt to determine the following, if safe to do so:

- (1) Look for container or waste labeling;
- (2) Determine the physical state of the material (solid, liquid, or gas);
- (3) Estimate container size or amount of waste; and
- (4) Determine the type and condition of the container or packaging.

B. If the material is determined to potentially be hazardous, the attendant shall:

- (1) Evacuate and secure the area of the facility site around the material;
- (2) If safely feasible, determine if there is any release of the material to the soil, water, or air;
- (3) If safely feasible, determine if any release found has been confined or is ongoing.; and
- (4) Undertake the appropriate notification procedure below.

4. Notification

- A. When hazardous waste or suspected hazardous waste is found left at the solid waste facility, the attendant shall:
- (1) Notify the DEP anytime at 1-800-482-0777 or the Maine State Police at 1-800-452-4664, or
 - (2) If the attendant knows that the local fire department has received training and is qualified to respond to hazardous materials, notify the fire department at _____.
- B. When unpermitted special waste is found left at the solid waste facility, the attendant shall notify a solid waste staff person at the DEP regional office between 8 a.m. to 5 p.m., Monday through Friday and the appropriate municipal official to authorized qualified removal.
- C. If the attendant cannot identify the material, notify the __ (name of town) _ Fire Department and DEP at the numbers listed above for assistance in identification. If sampling and further detection of hazardous or special waste is required, a qualified hazardous waste handling firm or solid waste contractor must be used, as appropriate.

5. Clean-up/decontamination

- A. Only trained personnel shall handle hazardous wastes. Such training shall follow the guidelines of 29 CFR 1910.120^{vi} as amended up to April 1, 2014.
- B. Unpermitted special wastes shall be removed from the area where found and transported to a special waste disposal facility licensed to accept that special waste within sixty days.
- C. A hazardous and special waste interim storage area will be designated on site. Because hazardous wastes require special training to handle, and to minimize the area of potential contamination, it is recommended that any hazardous waste found at the solid waste facility be removed by qualified personnel from the solid waste facility directly, without placement and storage in the interim storage area.

6. Emergency Information

- A. The attendant shall have the following telephone numbers available at the solid waste facility to telephone notifications or radio requests for notifications to the dispatchers:
- (1) DEP, Bureau of Remediation & Waste Management appropriate regional office number during normal business hours and DEP emergency spill number: 1-800-482-0777 for after hours or on weekends.
 - (2) __ (name of town) _ Fire Department: (number of local Fire Department)
 - (3) __ (name of county) _ County Sheriff: (number of County Sheriff)
 - (4) Ambulance: (number of local ambulance)
 - (5) Maine State Police: 1-800-452-4664 for reporting hazardous waste, and

(6) Maine Poison Center: 1-800-442-6305

B. The closest location for emergency medical care is _(name of facility)_. To get there, (give description of most direct route from the solid waste facility).

7. **Written reports.** A written spill report shall be filed with the DEP, Bureau of Remediation & Waste Management within 15 days of any incident involving hazardous waste or material. The report must indicate:

- A. Date and time of incident;
- B. Location;
- C. Material lost or spilled;
- D. Amount lost or spilled;
- E. Amount recovered;
- F. Cause of the incident;
- G. Corrective action taken;
- H. Clean-up methods used;
- I. Disposition of recovered materials;
- J. List of agencies notified;
- K. Time agency responded on site.

APPENDIX B**WORDING FOR TRUST FUND AGREEMENTS****TRUST AGREEMENT**

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of owner or operator], a [name of State] {insert "corporation". "partnership". "association", or "proprietorship"}, the "Grantor", and [name of corporate trustee], {insert "incorporated in the State of " or "a national bank"}, the "Trustee".

Whereas, the Maine Department of Environmental Protection, "DEP", an agency of the State of Maine, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste disposal facility shall provide assurance that funds will be available when needed for corrective action or closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in the Agreement:

- A. The term "Grantor" means the owner or the operator who enters into the Agreement and any successors or assigns of the Grantor,
- B. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the DEP solid waste disposal facility license number, name, address, and the current corrective action or closure and post-closure cost estimates, or portions thereof, for which financial assurance is provided for by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of DEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by DEP.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the DEP Commissioner shall, in his sole discretion, direct in writing, to provide for the payment of the costs of corrective action or closure and/or post-closure care of the facilities covered by this Agreement or for other costs determined by the Commissioner to be payable from the proceeds of the Fund. Without limitation of the foregoing, the Trustee shall reimburse the Grantor or other persons as specified by the DEP Commissioner from the Fund for corrective action or closure and post-closure expenditures in such amounts as the DEP Commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the DEP Commissioner shall direct in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee. In addition to or in lieu of payments of money or securities provided to the Trustee by the Grantor hereunder, Grantor may provide, subject to the agreement of the Department, one or more irrevocable letters of credit issued by a qualified financial institution in accordance with the terms hereof. The Trustee shall hold, renew and administer the letter(s) of credit and any replacement(s) thereof in accordance with section 19.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines consistent with its fiduciary duty subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- A. Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80A-2(A), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State Government;
- B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof, to be commingled with the assets of other trusts participating therein; and
- B. To purchase shares in any investment company registered under the *Investment Company Act of 1940*, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to

which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, subject to the other provisions hereof, the Trustee is expressly authorized and empowered:

- A. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- B. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- C. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- D. To deposit any cash in the Fund in interest-bearing accounts maintained or saving certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with and as paid directly by the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor, with the Department's approval, has appointed a qualified successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the DEP Commissioner, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid by the Grantor.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions provided that they comply with the terms hereof. All orders, requests, and instructions by the DEP Commissioner to the Trustee shall be in writing, signed by the DEP Commissioner or his/her designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or DEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or DEP, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the DEP Commissioner or Commissioner's designee, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust of the amount of any payment received from the Grantor, or if no payment is received from the Grantor, during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the DEP Commissioner, or by the Trustee and the DEP Commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in section 16 and by State law, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the DEP Commissioner, or by the Trustee and the DEP Commissioner if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or the DEP if directed by the Commissioner.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the DEP Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its

official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Letters of Credit. If the Grantor and Department agree, one or more letters of credit may be deposited by the Grantor as part of the Trust Fund hereunder. The issuer of the letter(s) of credit, and of any replacement thereof, together with the form of the letter(s), shall meet such credit-worthiness and other requirements as the Department shall direct. If at any time the issuer of the letter fails to meet these requirements or otherwise upon call by the Department, the Trustee shall immediately notify the Grantor, liquidate the letter(s) and deposit the proceeds into the Trust Fund. In the event that any letter of credit held by the Trustee hereunder is about to expire, the Trustee shall immediately liquidate the letter, prior to its expiration, and deposit the proceeds into the Trust Fund.

Section 20. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Maine.

Section 21. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written:

[Signature of Grantor]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

State of Maine

County of _____

On this [date] , before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he knows the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

_____[Signature of Notary public]_____

APPENDIX C**STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES**

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the license. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, statutes, regulations, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.

ADDITIONAL STANDARD CONDITIONS FOR SOLID WASTE DISPOSAL FACILITIES

10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by State law.

11. Deed Requirements for Solid Waste Disposal Facilities. Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following information must be recorded in the Registry of Deeds:

- A. The type of facility located on the lot and the dates of its establishment and closure.
- B. A description of the location and the composition, extent, and depth of the waste deposited.
- C. The disposal location coordinates of asbestos wastes must be identified.

APPENDIX D

This appendix lists each of the federal rules incorporated by reference in this Chapter and denotes each by an endnote.

ⁱ **40 CFR 264.147(f)**

- (f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii):
- (i) The owner or operator must have:
- (A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and
- (B) Tangible net worth of at least \$10 million; and
- (C) Assets in the United States amounting to either: (1) At least 90 percent of his total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
- (ii) The owner or operator must have:
- (A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and
- (B) Tangible net worth of at least \$10 million; and
- (C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
- (D) Assets in the United States amounting to either: (1) At least 90 percent of his total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
- (2) The phrase "amount of liability coverage" as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section.
- (3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Regional Administrator:
- (i) A letter signed by the owner's or operator's chief financial officer and worded as specified in §264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in §264.151(g) to cover both forms of financial responsibility; a separate letter as specified in §264.151(f) is not required.
- (ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
- (iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

- (A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
- (B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Regional Administrator at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.
- (5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.
- (6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
- (7) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

ii 40 CFR 258.70 to 40 CFR 258.72

§258.70 Applicability and effective date.

- (a) The requirements of this section apply to owners and operators of all MSWLF units, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.
- (b) The requirements of this section are effective April 9, 1997 except for MSWLF units meeting the conditions of §258.1(f)(1), in which case the effective date is October 9, 1997.
- (c) The Director of an approved State may waive the requirements of this section for up to one year until April 9, 1998 for good cause if an owner or operator demonstrates to the Director's satisfaction that the April 9, 1997 effective date for the requirements of this section does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

§258.71 Financial assurance for closure.

- (a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under §258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the State Director that the estimate has been placed in the operating record.
- (1) The cost estimate must equal the cost of closing the largest area of all MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see §258.60(c)(2) of this part).
- (2) During the active life of the MSWLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.
- (3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.
- (4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator must notify the State Director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (b) The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with §258.74. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with §258.60 (h) and (i).

§258.72 Financial assurance for post-closure care.

- (a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under §258.61 of this part. The post-closure cost estimate used to demonstrate financial assurance in paragraph (b) of this section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must notify the State Director that the estimate has been placed in the operating record.
- (1) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.
- (2) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

-
- (3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.
 - (4) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must notify the State Director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.
 - (b) The owner or operator of each MSWLF unit must establish, in a manner in accordance with §258.74, financial assurance for the costs of post-closure care as required under §258.61 of this part. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with §258.61(e).

iii **40 CFR 258.70 to 258.72 and 40 CFR 258.74 (a), (b), and (c)**

See note ii for §258.70 to 258.72

§258.74 Allowable mechanisms.

The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in paragraphs (a) through (j) of this section.

- (a) *Trust Fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.
- (2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.
- (3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{CE} - \text{CV}]/Y$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{RB} - \text{CV}]/\text{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58.
- (6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.
- (7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.
- (8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §§258.71(b), 258.72(b), or 258.73(b).
- (b) *Surety Bond Guaranteeing Payment or Performance.* (1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or

October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. The owner or operator must notify the State Director that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- (2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in §258.74(k).
 - (3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - (4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of §258.74(a) except the requirements for initial payment and subsequent annual payments specified in §258.74 (a)(2), (3), (4) and (5).
 - (5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.
 - (6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.
 - (7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with §258.71(b), §258.72(b) or §258.73(b).
- (c) *Letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. The owner or operator must notify the State Director that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- (2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.
 - (3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one

year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.

- (4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with §258.71(b), §258.72(b) or §258.73(b).

^{iv} **40 CFR 258.74(f)**

- (f) *Local government financial test.* An owner or operator that satisfies the requirements of paragraphs (f)(1) through (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (f)(4) of this section:
- (1) *Financial component.* (i) The owner or operator must satisfy paragraph (f)(1)(i)(A) or (B) of this section as applicable:
- (A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or
- (B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
- (1) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
- (2) A ratio of annual debt service to total expenditures less than or equal to 0.20.
- (ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).
- (iii) A local government is not eligible to assure its obligations under §258.74(f) if it:
- (A) Is currently in default on any outstanding general obligation bonds; or
- (B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or
- (C) Operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or
- (D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (f)(1)(ii) of this section. However, the Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the

financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(iv) The following terms used in this paragraph are defined as follows:

- (A) *Deficit* equals total annual revenues minus total annual expenditures;
 - (B) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;
 - (C) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;
 - (D) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and
 - (E) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.
- (2) *Public notice component.* The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.
- (3) *Recordkeeping and reporting requirements.* (i) The local government owner or operator must place the following items in the facility's operating record:
- (A) A letter signed by the local government's chief financial officer that:
 - (1) Lists all the current cost estimates covered by a financial test, as described in paragraph (f)(4) of this section;
 - (2) Provides evidence and certifies that the local government meets the conditions of paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this section; and
 - (3) Certifies that the local government meets the conditions of paragraphs (f)(2) and (f)(4) of this section.
 - (B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited

-
- statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;
- (C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (f)(1)(i)(B) of this section, if applicable, and the requirements of paragraphs (f)(1)(ii) and (f)(1)(iii) (C) and (D) of this section. The CPA or State agency's report should state the procedures performed and the CPA or State agency's findings; and
- (D) A copy of the comprehensive annual financial report (CAFR) used to comply with paragraph (f)(2) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.
- (ii) The items required in paragraph (f)(3)(i) of this section must be placed in the facility operating record as follows:
- (A) In the case of closure and post-closure care, either before the effective date of this section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later, or
- (B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of §258.58.
- (iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
- (iv) The local government owner or operator is no longer required to meet the requirements of paragraph (f)(3) of this section when:
- (A) The owner or operator substitutes alternate financial assurance as specified in this section; or
- (B) The owner or operator is released from the requirements of this section in accordance with §258.71(b), 258.72(b), or 258.73(b).
- (v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.
- (vi) The Director of an approved State, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director of an approved State finds, on the basis of such reports or other information, that
-

the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this section.

- (4) *Calculation of costs to be assured.* The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph is determined as follows:
- (i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.
 - (ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.
 - (iii) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (f)(4) (i) and (ii) of this section.

^v **40 CFR 258.74 (a), (b), and (c)**

- (a) *Trust Fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.
- (2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.
- (3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{CE} - \text{CV}] / \text{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

-
- (4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = [\text{RB} - \text{CV}]/\text{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58.
- (6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.
- (7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.
- (8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §§258.71(b), 258.72(b), or 258.73(b).
- (b) *Surety Bond Guaranteeing Payment or Performance.* (1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. The owner or operator must notify the State Director that a copy of the bond has been placed in the operating

-
- record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
- (2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in §258.74(k).
 - (3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - (4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of §258.74(a) except the requirements for initial payment and subsequent annual payments specified in §258.74 (a)(2), (3), (4) and (5).
 - (5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.
 - (6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.
 - (7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with §258.71(b), §258.72(b) or §258.73(b).
- (c) *Letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of §258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. The owner or operator must notify the State Director that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- (2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.
 - (3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.
-

- (4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with §258.71(b), §258.72(b) or §258.73(b).

^{vi} **29 CFR 1910.120**

The full text of the rule can be found at

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and selecting the appropriate year then the appropriate section.