

## SOLID WASTE MANAGEMENT FACILITIES LAW

1. **Title.**

This law shall be known as and may be cited as the “Solid Waste Management Facilities Law” of the Town of New Haven.”

2. **Definitions.**

A. Unless defined below or the context otherwise requires, the terms and words used in this law shall have the same meanings as those defined in Article 27 of the Environmental Conservation Law and Title 6, Part 360 of the New York Codes, Rules and Regulations

B. As used in this law, these terms and words shall be defined as follows:

**6 NYCRR** – Title 6 of the New York Codes, Rules and Regulations.

**AGRICULTURAL DISTRICT** – A district created under Article 25AA of the New York State Agriculture and Markets Law.

**APPLICANT** – The person applying for a permit under this law. Such applicant must be the owner or operator of the solid waste management facility.

**AUTHORIZED REPRESENTATIVE** – The individual responsible for the overall operation of a solid waste management facility or an operational unit of a facility, such as the plant manager, superintendent or individual of equivalent responsibility who has authority and knowledge to make and implement decisions regarding operating conditions at the facility.

**BOARD** – Same as the Town Board or the Town of New Haven Board.

**BOUNDARIES OF A WETLAND, WATER BODY OR WATER-COURSE:**

- (1) The mapped boundaries of wetlands which have been delineated by the DEC, pursuant to the New York State Environmental Conservation Law, or the United States Environmental Protection Agency or the United States Army Corps of Engineers pursuant to the Federal Clean Water Act
- (2) The boundaries for a water body or watercourse defined by state or federal law or regulation within the Town of New Haven under the authority of any part of the Environmental Conservation law or the

Federal Clean Water Act or any regulations promulgated under either of those statutes; or

- (3) Any land or waters which is not so mapped or bounded on which the principal vegetation is that set forth on paragraphs (a), (b) or (c) of subdivision 1 of §24-0107 of the New York State Environmental Conservation Law, or which meets the definition in Subdivision (d) therein.

**COMPLETED APPLICATION** – An application in which all necessary information and other approvals, required by any other entity or relevant law or regulation are provided to the Town Board. If the New Haven Town Board is engaged in coordinated review with other regulating agencies, such information may be provided to the Town Board in accordance with the applicable coordinated review procedure.

**DEC** – The New York State Department of Environmental Conservation.

**ECL** – Environmental Conservation Laws of the State of New York.

**DISPOSAL** – The placement, distribution, storage, removal or transportation of solid wastes.

**EPA** – The United States Environmental Protection Agency.

**FACILITY** – Any solid waste management facility.

**MAJOR MODIFICATION** – a modification as defined in 6 NYCRR 621.1 (m) that the DEC determines to treat as a new application in accordance with 6 NYCRR 621.13(e).

**OWNER** – A person who owns a solid waste management facility or part of one.

**PERSON** – Any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the state, municipality, industry, partnership, limited liability company, association, firm, trust, estate or any other legal entity whatsoever.

**PLANNING BOARD** – The Planning Board of the Town of New Haven.

**RELATED CORPORATIONS** – All corporations included with the applicant in one (1) or more chains of corporations connected by stock ownership with a common parent corporation.

**SEQRA** – The State Environmental Quality Review Act and the review procedures required therein.<sup>1</sup>

**SOLID WASTE** – Solid Waste means any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the State of New York and the government of the United States.

**SOLID WASTE MANAGEMENT FACILITY** – Any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; landfills; disposal facilities; solid waste incinerators; refuse-derived fuel processing facilities; pyrolysis facilities; C&D debris processing facilities; land application facilities; composting facilities; surface impoundments; used oil storage, reprocessing, and rerefining facilities; recyclables handling and recovery facilities; waste tire storage facilities; and regulated medical waste treatment facilities. The term includes all structures, appurtenances, and improvements on the land used for the management or disposal of solid waste.

**TOWN** – The Town of New Haven.

**TRANSFER STATION** – A solid waste management facility other than a recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for further processing, treating, transfer or disposal. Transfer of solid waste from vehicle to vehicle for the purpose of consolidating loads, as part of the initial collection process, is not considered a transfer station provided the transfer activity occurs along the collection route where the point of transfer changes from day to day. Transfer of leakproof, closed containers of solid waste from vehicle to vehicle, including truck to train, for the purpose of consolidating loads for shipment to an authorized disposal or treatment facility, is not considered a transfer station provided: the contents of each container remain in their

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<sup>1</sup> Note: See Art. 8 of the Environmental Conservation Law.

closed container during the transfer between vehicles; storage remains incidental to transport at the location where the containers are consolidated; containers are acceptable to the department and maintained in a safe, nuisance-free (e.g., dust, odor, noise, etc.) manner; and, the transfer location is under the ownership or control of the transporter.

**TOWN BOARD** – The Town of New Haven Board.

**WATER BODY** – Any body of standing water which exists at least nine (9) months of the year and which when wet, is customarily more than five thousand (5,000) square feet in water surface area.

**WATERCOURSES** – Any body of water flowing in an identifiable channel or course at least nine (9) months of the year.

**WETLANDS** - All lands and waters in the Town of New Haven that:

- (1) Fall within the definition of freshwater wetlands in the New York State Environmental Conservation Law, as in effect on the date of the enactment of this law,<sup>2</sup> without respect to whether such lands and waters have been mapped by the Department of Environmental conservation and without respect to size, except that such lands and waters must have a contiguous area of at least seven thousand (7,000) square feet; or
- (2) Fall within the definition of wetlands or navigable waters promulgated by the EPA or the United States Army Corps of Engineers pursuant to the Federal Clean Water Act.

3. **Legislative Findings.**

The Town Board finds that while protection of environment and public safety are of paramount importance, current knowledge of environmental science is inadequate to properly evaluate and control pollution from various solid waste management facilities, for example, landfills, ashfills, transfer stations, incineration facilities, resource recovery facilities and recycling facilities. Among other factors, the Board finds as follows:

- A. There is a current inability of geological science to precisely and correctly ascertain the existence of groundwater aquifers and flow of groundwaters, to precisely map the footprint and to establish the presence of any non-aqueous phase liquids in the form of any contaminant plume in these waters;

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<sup>2</sup> Note: See §24-107 of the Environmental Conservation Law.

- B. It is impossible to determine the extent to which land disposal of solid wastes may, or may not, be contaminating groundwaters and other sources of water supply;
- C. If the solid waste management facilities are continued to be built, expanded and allowed to accept more solid wastes than what they have originally been designed and constructed for, they may require very expensive remedial efforts for correction of pollution that may be linked to such facilities. Furthermore, there is no guarantee that such remedial or corrective actions can cure all the contaminations that may be caused by these facilities during the term of their operation and existence. The local water supply, including groundwater aquifers, if they become highly contaminated with toxic and/or hazardous substances, may never be able to serve the community, even after future correction of the solid waste management facilities, as it may fail to meet the groundwater quality standards or criteria set by New York Department State Department of Environmental Conservation.
- D. DEC studies cite solid waste management facilities and other waste disposal operations as major sources of groundwater and surface water contamination.
- E. The Town's need for solid waste disposal are currently being met and is not expected to rise dramatically based on various conservation and recycling programs promoted by the Town. The Town is generally rural with limited commercial and industrial activities. No change in the characteristics is expected in the foreseeable future to warrant a new solid waste disposal management plan.
- F. The Town of New Haven lies in a particularly important and environmentally vulnerable area. The Town contains vast areas of open space and undeveloped, pristine land. There is currently no public water supply system. The residents of the Town derive all their water needs from private wells. As a result, these wells must be protected from any threat of current or potential contamination.

4. **Purpose.**

- A. It is the intent of the Town Board to promote public awareness about possible degradation of environmental quality that may be caused by solid waste management facilities and to provide for just and fair regulation to safeguard against such contamination from the future construction of new and expansion and modification of existing solid waste management facilities located within the town. Specifically, the Town intends to:

- (1) Regulate the siting, construction, expansion and operation of solid waste management facilities within the Town of New Haven in order to promote a clean, wholesome, safe and healthy environment for the community.
- (2) Allow and/or improve the ability of public officials and town residents to fully participate in the process of siting, approving and licensing of solid waste management facilities within the town.
- (3) Reduce the risk of pollution, to the maximum extent practicable, from solid waste management facility operations by regulating the location, as well as the type, size and scope of such operations.
- (4) Ensure that accurate, current information about solid waste management operations within the town is available to public officials and citizens.
- (5) Protect the residents of the town from undesirable effects of solid waste management operations, including:
  - (a) Unaesthetic results, including odors, blowing litter, increased traffic, dust and noise.
  - (b) Deterioration in property values associated with an adjacent or proximate solid waste management operation that may interfere with the orderly development of properties within the town.
  - (c) Threats to public health or the environment by contamination of air, surface water or groundwaters.
- (6) Exercise the town's police powers under the Municipal Home Rule Law<sup>3</sup> and the Town Law for the physical and mental well-being and safety of its citizens and to restrict waste disposal operations within the town that might otherwise be permitted under the ECL. Section 27-0711 of the ECL specifically recognizes and authorizes the right and authority of a town to legislate stricter controls on solid waste management operations than state law requires.

B. It is not the intent of this law to restrict, obstruct or otherwise hinder the continuation of agricultural production. The Town Board believes that the community is enhanced by the farms that operate within its boundaries. This law affirms the town's commitment to agriculture for this generation and future generations who will work the land.

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<sup>3</sup> L. 1963, c. 843 including amendments provided in L. 1964, c. 78.

- C. It is not the intent of this law to regulate in any way the composting of yard waste and food waste at the personal residence or farms at which such waste is produced.

5. **Applicability.**

- A. This shall apply to all areas within the Town of New Haven.
- B. Nothing in this law shall prohibit the Town Board from entering into an agreement with any facility owner or operator, properly permitted under this law, concerning host fees or contractual services concerning solid wastes.

6. **Permit Requirements.**

- A. No solid waste management facility shall hereafter be sited, constructed, expanded, modified or operated within the Town of New Haven, except as permitted by this law.
- B. Renewals of facility permits, expansions, transfers of permits and major modifications of facility permits shall require a new permit and application. Applications for renewals shall be made no later than six (6) months prior to the expiration of the expiring permit.
- C. Existing solid waste facilities, other than those prohibited by this law, shall apply for a permit under this law within thirty (30) days of the effective date of this law.

7. **Prohibited Facilities.**

- A. The following solid waste facilities may not be constructed, expanded or operated within the Town of New Haven:
  - (1) Disposal facilities, including but not limited to landfills, sanitary landfills, ashfills, construction and demolition debris landfills, industrial waste landfills, disposal facilities and monofills, but not including landfill gas recovery facilities.
  - (2) Incinerators.
  - (3) Land application facilities.
  - (4) Transfer stations.

- (5) Used oil storage, reprocessing and rerefining facilities, but not limited to used engine lubricating oil retention facilities as defined in 6 NYCRR 360.14.
- (6) Waste tire storage facilities.
- (7) Medical waste treatment facilities.
- (8) Composting facilities.
- (9) Construction and demolition debris processing facilities.
- (10) Hazardous waste facilities.
- (11) Surface impoundments.
- (12) Rail-haul and barge-haul facilities.

B. If any part of this section prohibiting certain facilities should be judicially declared to be invalid, void, unconstitutional or unenforceable, applications for said affected facilities may be made in accordance with this law and shall be evaluated in accordance with the application procedures set forth herein and unaffected provisions hereof shall survive such declaration, and this law shall remain in full force and effect as if the invalidated portions had not been enacted.

C. Any facility listed in Subsection A above currently licensed and operating within the town may continue operations until the expiration of the current federal, state or local operating license or permit, as applicable, or five (5) years, whichever is earlier. Nothing in this provision shall authorize the transfer, expansion or major modification of an existing facility.

8. **Permitted Facilities.**

The following solid waste facilities may be constructed, expanded or operated within the Town of New Haven subject to compliance with all permitting requirements set forth in Sections 10 through 14 of this Law and subject to receipt of all required approvals from the Town of New Haven:

- (1) Residential composting facility
- (2) Septic tanks for handling domestic wastes.

However, no open burning of leaves, tree branches and other household trash will be permitted.

9. **Coordination With Other Laws And Regulations.**

- A. The provisions of this law shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this law shall apply.
- B. The Town Board may coordinate all reviews of applications, including the SEQRA process, with other local, state and federal agencies having approval over the application. Nothing in this law shall limit the right or power of the town to participate in any permitting processing held by another agency. Nothing in this law shall bind the town to any decision on any issue concerning any application, nor limit the right and power of the town to conduct any and all inquiries, hearings and investigations it deems necessary in taking an action on an application.

10. **Application Procedure.**

- A. Applicants, including new, renewal, major modification, transfer and expansion applicants, shall submit ten (10) copies of any application, including any required application fee, which shall be filed with the Town Clerk.
- B. Upon receipt of all of the requisite application materials, the Town Clerk shall notify the Town Board, which shall declare the application complete or incomplete within thirty (30) days of such notification. If the Town Board does not so declare within thirty (30) days of notification, the applicant may submit a demand for determination letter (“demand letter”) to the Town Board. If the Town Board does not so declare within thirty (30) days after the receipt of the demand letter, the application will be deemed complete. The time periods noted within this section shall not otherwise begin until the application has been declared complete. If, in accordance with § 86-11A(13), the Town Board requests additional information of the applicant, the time period within this section to determine the application incomplete or complete shall commence with receipt of the additional information, and all time periods within this section shall be tolled until such additional information is deemed complete. If the Town Board does not so declare within thirty (30) days of receipt of the additional information, the applicant may submit a letter to the Town Board. If the Town Board does not declare the additional information complete or incomplete within thirty (30) days after the receipt of the demand letter, the additional information will be deemed complete. The Town Board shall give written reasons if the application or additional information is found to be incomplete.
- C. The approving authority with respect to all aspects of all applications hereunder shall be the Town of New Haven Town Board.
- D. The Town Board has the right to obtain, in the manner established by General Municipal Law § 101 et seq., legal and/or engineering consultation from consultants of the Town Board’s choice, with the cost of such consultation to be borne by the applicant. Additionally, the Town Board has the right to obtain, pursuant to 6 NYCRR 617.17, consultants for assisting in the SEQRA review with the cost of such consultation to be borne by the applicant. If the Town Board or other agency, acting as lead agency in the case of a coordinated SEQRA review, determines that an environmental impact statement shall be prepared, all time periods within this section shall be tolled until the completion of the SEQRA process. A separate account shall be established for each applicant. Fees shall be paid in advance, and the time periods in this section shall be tolled while such fees are unpaid. Interest earned, if any, on such accounts shall belong to

the applicant, and all excess funds at the close of the application process shall be repaid to the applicant.

- E. The Town Board has the right to promulgate by resolution regulations establishing application fees and annual permit fees. Application fees shall be initially set at five hundred dollars (\$500.00) per application, including new, renewal, expansion, major modification and transfer applications, and are due upon submission of the application. Rejected applications may be resubmitted within one (1) year of the date of rejection by the Town Board without requiring payment of another application fee. Permit fees shall be initially set at five hundred dollars (\$500.00) annually, and are due upon issuance of the permit and on that date annually thereafter.
- F. The Town Board may refer any application submitted to it pursuant to this law to the New Haven Planning Board for review and report. The Planning Board shall report back to the Town Board within thirty (30) days after the date of referral or within such greater period as may be specified by the Town Board at the time of referral. Failure to comply within the specified time periods shall be interpreted by the Town Board as indicating no objection to the application.
- G. A public hearing shall be held by the Town board within sixty (60) days after an application, including the receipt of requested additional information, is deemed complete, or if the Town Board determines to obtain such consultation as described in Subsection D above, within one hundred eighty (180) days after an application including the receipt of requested additional information, is deemed complete, upon no less than twenty (20) days' notice. The public hearing may be adjourned to subsequent dates if, in the opinion of the Town Board, such adjournment is necessary to allow full public participation.
- H. A determination shall be made to approve, approve with modifications, approve with conditions or disapprove an application within sixty (60) days following completion of the public hearing or sixty (60) days after the completion of the SEQRA process, whichever is later.

11. **Application Contents.**

- A. Any person who desires and intends to establish, construct, operate, expand or maintain a solid waste management facility in the Town of New Haven shall, for an application, submit the information listed herein, including a transmittal letter with an oath that, subject to the penalties of perjury, the information in the application is correct:

- (1) The name and address of the applicant, including the name, address and telephone number of the applicant's authorized representative, if any.
- (2) All information required to be submitted to the DEC or EPA for all state or federal permits required to locate, construct, expand, transfer or operate the facility, including copies of all applicable county, state, and federal permits or permit applications required for the facility.
- (3) A description of the operations, including the type of waste streams, the type of storage, treatment, disposal or processing that will occur to each waste stream, the machinery and equipment which will be used and the number of employees expected to be engaged in the operations.
- (4) The maximum volume and the expected average volume of each waste stream the applicant will accept for disposal, processing, treatment or storage, on a weekly and on a monthly basis. Included should be the maximum volume of each waste stream to be stored at the facility at any one (1) time.
- (5) The name and address of the owner of the land upon which the site is to be located and, if the applicant is not the owner, the nature of his or her right of occupancy of such land.
- (6) If the applicant is a corporation, the names of all parent, related and subsidiary corporations engaged in waste management activities, the names of shareholders owning a ten percent (10%) or greater voting interest and, if the applicant is a partnership or limited liability company, the names of each partner holding a greater than ten percent (10%) general or limited partnership or other interest.
- (7) Site map or maps, prepared by a New York licensed engineer or land surveyor, showing the following:
  - (a) Title of drawing, including the name and address of the applicant.
  - (b) North arrow, scale and date.
  - (c) The exact location of the area intended for use as a facility, including buffer zones.

- (d) Existing and proposed contours at intervals of not more than ten (10) feet.
- (e) Building orientation, footprint and elevations.
- (f) Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees and flood hazard areas within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- (g) The location of all boundary lines and/or streets and highways abutting the facility and all dwellings situated within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- (h) The location of any adjoining property boundary within two thousand (2,000) feet of the area intended to be used as a facility, excluding buffer zones.
- (i) Location of any property boundary of an active farm within two thousand (2,000) feet of the area intended to be used as a facility, including buffer zones.
- (j) The location of water wells within two thousand (2,000) feet of the area to be used as a facility.
- (k) Provision for buffer areas and other landscaping.
- (l) Location of all parking and truck loading areas, showing access and ingress drives.
- (m) Zoning district and agricultural district boundaries within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- (n) Grading and erosion control measures, including the proposed location of sediment sink/settling pond and interceptor swales, etc.
- (o) Location and design for stormwater management facilities.
- (p) The topography of the site.

- (q) A soils overlay, if general site grades exceed ten percent (10%) or if portions of the site have susceptibility to erosion, flooding or ponding.
  - (r) Such other topographical and perimeter surveys, hydrological computations, engineering studies and other factual or scientific data and reports as deemed necessary by the Town Board.
- (8) A full environmental assessment form as developed by the DEC. If the Town Board or other agency issues a positive declaration of environmental impact for the proposed impact, no consideration of the application will occur prior to the completion of the SEQRA process.
  - (9) Where applicable, a plan for the storage and/or disposal of collected leachate, including written commitments from any facility or facilities where such leachate would be disposed.
  - (10) A drainage report, including support design data and copies of engineering computations used to determine the design capacities and performance requirements of drainage facilities.
  - (11) A report outlining the vehicular traffic impact of the project, including recommendations for mitigating such impacts.
  - (12) Description of all violations of any federal, state or local statute or regulation by the applicant, its parent corporation, subsidiaries or related corporations, owners, shareholders (or their parent corporation, subsidiaries or related corporations) owning more than ten percent (10%) of the applicant, or partners owning more than ten percent (10%) of the applicant, including the affected statute or regulation involved, the circumstances of the violation, penalties assessed and remedial action required.
  - (13) Such other information as deemed necessary by the Town Board, including information necessary for compliance with SEQRA.
- B. A waiver from any of the application content requirements of this section may be granted by the Town Board in its discretion and on such conditions as it may reasonably establish, when the Town Board determines that the information requested is not necessary to carry out the purposes of this law or is otherwise available to the town.

12. **Decision Criteria.**

- A. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this law.
- B. In approving, disapproving or approving with modifications any application, the Town Board shall exercise its discretion in consideration of the following factors:
  - (1) The environmental impact of the proposed action.
  - (2) The overall need for the proposed action.
  - (3) The alternatives to the proposed action.
  - (4) Irreversible and irretrievable commitments of resources that would be involved in the proposed activity.
  - (5) The character and degree of injury to or interference with safety, health or the reasonable use of property that is caused or threatened.
  - (6) The suitability or unsuitability of such activity to the area for which it is proposed, including current land uses, zoning and natural features of the site.
  - (7) The effect of the proposed activity with reference to the protection or enhancement of the town's natural resources, including but not limited to agricultural uses and districts, wildlife, flora, recreation, wetlands, water bodies and watercourses.
  - (8) The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations.
  - (9) The availability of mitigation measures or safeguards that could feasibly be added to the plan or action.
  - (10) The extent to which the exercise of property rights and the public benefit derived from such use may outweigh or justify the possible degradation of the site, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.
  - (11) Compliance with the local solid waste management plan and the regional solid waste management plan, if any.

- (12) Potential litter, noise, odor, rodent and other vermin infestation, air pollution and water (surface and groundwater) pollution problems from the project.
  - (13) Effect of the project on vehicular traffic within the town, including adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access.
  - (14) Adequacy of drainage and flood prevention.
  - (15) Adequacy of stormwater and sanitary waste disposal.
- C. Permits will be issued by the Town Board only if the Town Board shall find that the proposed regulated activity is consistent with the policy of this law.
  - D. Nondiscrimination requirement. In evaluating the application request or permit condition under this law, the Town Board shall not consider and shall not base any decision on the source, origin or destination of any waste stream nor on the method or route of transporting any waste stream. No decision of the Town Board under this law shall favor in-town interests over out-of-town interests nor act to subsidize local interests. No decision of the Town Board under this law shall require any applicant to provide different services or prices for town residents or businesses.
  - E. The Town Board shall be authorized to deny a permit application or renewal if it determines, after a public hearing and affording the applicant an opportunity to present evidence on the issue, that the applicant, including the applicant's parent, subsidiary and other related corporations or partnerships, has such a record of violations of applicable federal, state or local laws that, in the judgment of the Town Board, the applicant is unsuitable to operate a solid waste management facility.
  - F. As part of any permit, the Town Board may impose such reporting requirements as it deems necessary to fully inform the public and public officials on the operation of the facility. The Town Board may also designate a location for deposition of such reports for public inspection. All reports, tests, correspondence, notices, etc., in connection with the facility, sent by the operator or owner to the DEC, EPA or other state or federal agency shall also be provided to the town.

13. **Permit Requirements.**

- A. Any permit issued hereunder shall at all times be displayed conspicuously at or near the entrance to the site.

- B. Any permit issued hereunder shall be effective from the date of its issuance until the lesser of December 31 of the fifth year following its issuance or, so as to allow coordinated review, the date of the next renewal of the applicable state or federal permit. A permit hereunder may be renewed for the lesser of additional five-year periods or the period of applicable facility state or federal permit, provided that the operations are in conformance with this law and the permit would be approved as an original application if submitted at the time. The granting of an original or renewed permit shall in no way create vested rights for the permittee or the site.
- C. No permit issued under this law shall be transferable or assignable without the prior written approval of the Town Board. For the purpose of this subsection, if the permittee or licensee is a corporation whose stock is not sold to the general public on any recognized stock exchange or over the counter, and any type of transfer or assignment of the ownership of a share or shares of stock in said corporation is made, voluntarily or involuntarily, which transfer or assignment would cause the controlling interest in said corporation to be vested in a party other than the party holding controlling interest in the corporation before such transfer, the Town Board must be notified in writing by the corporate licensee or permittee as to any transfer or assignment of ownership of controlling interest in the shares of stock in said licensee or permittee. Any transfer or assignment as defined in this section will cause an automatic revocation of any permit issued hereunder, unless the Town Board, in its sole discretion, consents in writing to such transfer.
- D. Such permit may be revoked, modified or suspended by the Town Board for the violation of any regulation, but only after the conclusion of a public hearing at which the permittee shall have an opportunity to be heard.
- E. Such permit may be revoked, modified or suspended by the Town Board, for the reasons listed in 6 NYCRR 621.14 and in accordance with the procedures listed therein.

14. **General Regulations.**

- A. A person who shall operate a facility site for which a permit is granted hereunder shall be responsible for the operation, management and security of said site.
- B. No disposal facility shall employ ash or ash residue of any kind as daily cover.

- C. The area designed to be used as a solid waste management facility, including any type of disposal facility, including associated buildings, utilities, construction staging areas and other appurtenant physical features and buffer areas, shall be:
- (1) No less than two thousand (2,000) feet from active farm land.
  - (2) Not within and no less than two thousand (2,000) feet from the boundary of an agricultural district.
  - (3) No less than two thousand (2,000) feet from any aquifer or adjacent recharge area, as determined by the Division of Water of the DEC.
  - (4) No less than two thousand (2,000) feet from the first water-bearing unit.
  - (5) No less than two thousand (2,000) feet from the boundary of the one-hundred-year floodplain.
  - (6) No less than two thousand (2,000) feet from any wetland, water body or watercourse.
  - (7) No less than two thousand (2,000) feet from any public water wellhead.
  - (8) Not within and no less than two thousand (2,000) feet from the boundary of any residential zoning district.
- D. The area designed to be used as an incinerator, including associated buildings, utilities, construction staging areas and other appurtenant physical features and buffer areas, shall be, in addition to the requirements of Subsection C of this section:
- (1) No less than two thousand (2,000) feet from any public or private school.
- E. The applicant shall execute a document binding itself, its successors, assigns and parent corporations or entities to indemnifying and holding harmless the Town of New Haven for any costs associated with clean-up or remediation arising out of the operation of any solid waste management facility, including liability for such clean-up or remediation under current or future state or federal law or by decree out of a private civil legal action heard in a state court of competent jurisdiction. The Town Board may impose such financial security requirements as it determines are necessary, when the financial security of the applicant is in question.

- F. The slope of any facility shall be no steeper than four to one (4:1). The height of any facility shall not exceed ninety (90) feet, measured from its highest point to its base.
- G. The area designated to be used for facility purposes shall be enclosed with a suitable fence and entrance gate to contain blowing papers and to secure the area during nonoperational hours. All unloading of solid waste shall be conducted in such a manner as to eliminate odor and litter outside of the facility. Such litter and odor outside of the facility that are detectable at the nearest residence or commercial establishment will automatically require a temporary suspension of the permit until the violation is remedied.
- H. Refuse shall not be unloaded when weather conditions, e.g., high winds, make it probable that the litter may be carried beyond the limits of the facility.
- I. At the discretion of the Town Board, baseline testing and surface water monitoring systems may be required at any proposed or existing facility, at the permittee's expense.
- J. Recyclable items, e.g., glass, aluminum, tin, newspaper, etc., shall not be deposited in any disposal facility. Such items shall be removed from any deposits of refuse by the permittee and delivered to any appropriate recycling center for disposal.
- K. The Town of New Haven reserves the right to promulgate rules and regulations applicable to permittees and the operation of facilities consistent with this law in order to clarify its terms and/or to monitor compliance with its provisions and/or promote enforcement thereof. Violation of any such rules and regulations shall be a violation of any of the provisions of this law.
- L. Variances from the requirements of this section may be granted by the Town Board, upon a demonstration of practical difficulties and unnecessary hardship due to unique circumstances not caused by the applicant, at the sole discretion of the Town Board, only upon a supermajority [majority plus one(1) of all seats, regardless of whether then vacant] of the Town Board. No variance shall be granted if the site in question could yield a reasonable return if used for other purposes allowable under town law. No variance shall be granted to allow a facility or operation otherwise prohibited by this law.

15. **Penalties For Offenses; Enforcement.**

- A. Any violation of this law or regulations or provisions thereof shall create a liability to the people of the town for a civil penalty not to exceed ten thousand dollars (\$10,000.00), only after a hearing or opportunity to be heard, upon due notice and with the right to specification of the charges and representation by counsel at such hearing. Each and every day that a violation of this law occurs or continues shall constitute a separate violation for purposes of civil liability.
- B. Upon any violation of this law by any person, the town shall be entitled to obtain an injunction against such persons prohibiting further violations and, in addition, ordering that any solid or liquid waste disposed or stored in violation hereof be removed from the town and ordering that any land on which solid or liquid waste is disposed of in violation of this law be restored as nearly as possible to its former condition by the removal of any waste illegally disposed of and by such other restorative measures as are available, and further ordering that the operator remedy any effects of the violation of surrounding or adjacent properties or resources, including, without limitation, air, trees, crops, water bodies, wetlands and groundwaters.
- C. Any person who has been found by a judicial tribunal of the State of New York to have intentionally violated this law shall, in addition to the provisions found in Subsections A and B above, be liable to reimburse the town and citizens of New Haven for its costs and expenses associated with bringing a particular prosecution to enforce this law, including but not limited to its reasonable attorney fees.
- D. The Town of New Haven shall have the authority to appoint an enforcement officer(s) authorized to act on behalf of the Town of New Haven to enforce the provisions of this law. Any peace officer, the Town Supervisor and members of the Town Board or their duly authorized representatives shall be granted access to any facility site permitted hereunder to inspect the same during business hours for compliance herewith, upon reasonable notice.

16. **Repealer, Effect On Other Laws.**

All town ordinances and local laws or parts thereof in conflict herewith are superseded by this law; provided, however, that the provisions of this law shall not be interpreted as obviating any requirements or restrictions wherever it is possible to conform to the provisions of both this law and any other law or ordinance.