

## **State Environmental Quality Review FINDINGS STATEMENT**

Pursuant to Article 8 (State Environmental Quality Review Act –SEQR) of the Environmental Conservation Law and 6 NYCRR Part 617, the New York State Department of Environmental Conservation as lead agency, makes the following findings.

**Name of Action:** New York State Hazardous Waste Facility Siting Plan

**Description of Action:** The proposed action is to adopt, as written, the New York State Hazardous Waste Facility Siting Plan (Plan) which is required by Article 27, Title 11, Section 27-1102 of the Environmental Conservation Law (ECL). The primary purpose and benefit of the Plan is to assure the availability of facilities that are necessary for the proper management of hazardous waste in New York State and provide guidance to State Agencies, Authorities and Siting Boards in the discharge of their responsibilities on this topic. Any lack of sufficient capacity for the environmentally sound management of hazardous waste could conceivably result in increased improper management of hazardous waste and in increased costs to hazardous waste generators in New York State.

Chapter 618 of the New York Laws of 1987 directed the New York State Department of Environmental Conservation (Department) to develop a Plan to address issues specified in ECL Article 27 Title 11 regarding the siting of hazardous waste treatment, storage or disposal (TSD) facilities. The Plan is to be used as guidance by any Hazardous Waste Facility Siting Board (Siting Board) reviewing proposals for siting certain new or expanded hazardous waste management facilities. It is also to be used by the Department and other State agencies to guide them in meeting their responsibilities and to assure the availability of sufficient hazardous waste facility capacity.

In 2005, ECL Section 27-1109.6 was added stating that no new or pending application for a disposal facility subject to review by a Siting Board can be deemed complete until the Department has determined that the application is consistent with the Hazardous Waste Facility Siting Plan adopted pursuant to ECL 27-1102. As a result, no new or pending application subject to these requirements can be deemed complete until the Plan is adopted.

A Siting Board, established pursuant to ECL Section 27-1105, must consider a number of elements, including the Plan, when evaluating a specific proposal for a new or expanded hazardous waste TSD facility. A Siting Board is convened by the Governor upon request from the Department when a certificate of environmental safety and public necessity is needed for certain new or expanded hazardous waste management facilities. The Siting Board consists of the commissioners of transportation, environmental conservation, health and commerce (now economic development), the Secretary of State and three ad hoc members appointed by the Governor, two of whom must be residents of the county in which the facility is primarily proposed to be located.

In 1987, the need for new or expanded hazardous waste TSD facilities was a particular concern of the Legislature. Therefore, the Department was directed to develop a Plan to provide guidance to decision-making entities and to assure the availability of industrial hazardous waste TSD facilities. However, hazardous waste management as an industry has changed dramatically since the criteria for this Plan was established in 1987. At that time, the State believed that it was necessary to achieve self-sufficiency for the management of hazardous waste generated within the State. The hazardous waste management industry, the associated regulation of this industry, and the status of solid waste under the Commerce Clause of the U.S. Constitution which impacts interstate transportation, were still in their infancy and evolving.

Since that time, the industry of hazardous waste management has significantly matured. Pollution prevention and hazardous waste reduction have become key components of the State's hazardous waste management strategy. The industry has taken on a large regional character which crosses state and international boundaries as dictated by economics. Supreme Court decisions have concluded that interstate transport of waste, including hazardous waste, cannot be inhibited, thus requiring a more national perspective on hazardous waste management needs. In addition, hazardous waste regulations now provide a strong base for assuring proper management and disposal of these materials.

With all this in mind, the Plan provides information on New York hazardous waste generation and management trends, the involvement of other states and nations in the management of New York's hazardous waste, and the evaluation of future needs for siting hazardous waste TSD facilities, and guidance for State Agencies and Authorities and facility Siting Boards on this topic. The Plan meets the requirements of Chapter 618 of the New York Laws of 1987.

Chapters 1 through 8 of the Plan address the specific issues required by ECL 27-1102.2. Chapter 9 then considers the information presented in the previous chapters to provide guidance for State Agencies and Authorities and facility Siting Boards, as required by ECL 27-1102.1.

**Location:** Statewide

**Statutory Authority:** Environmental Conservation Law 27-1102.

**Date Final EIS Filed:** October 6, 2010

**Facts and Conclusions in the EIS Relied Upon to Support the Decision:** The Department has not identified any significant adverse environmental impacts from the Plan. The development of any major planning document is subject to the requirements of the New York State Environmental Quality Review Act (SEQR). SEQR is a process that introduces the consideration of environmental factors into the early planning stages of actions directly undertaken, funded, or approved by local, regional, and state agencies. The primary tool of the SEQR process for activities such as this Plan is the Generic Environmental Impact Statement (GEIS). A GEIS is an assessment of a broad based action or a group of related actions and is more conceptual in nature than a site-specific EIS.

The enabling statute mandates that the Plan consider Statewide issues. Existing hazardous waste facilities can be found throughout the State, with greater concentrations in the vicinity of the more industrialized areas (see Table 1-1 of the Plan for the regional distribution of TSD facilities). This is also true for the distribution of hazardous waste generators across the State (see Table 5-5 of the Plan for regional distribution of large quantity generators).

However, the Plan goes beyond this level of analysis to look at the movement and management of New York's hazardous waste throughout the northeast area of the United States and even internationally. While New York may have no legal authority over activities outside of State boundaries, the impact of import and export of hazardous waste across State boundaries must be considered when evaluating trends in hazardous waste management and potential future needs for additional TSD facilities.

The Plan is a guidance document. Based on the capacity data and analysis, the Plan finds sufficient capacity within and beyond New York's borders for the management of the hazardous waste presently generated within New York State. The Plan itself does not prescribe type, size or location for new hazardous waste TSD facilities, rather, in anticipation of the potential for siting such facilities in the future, it provides information on hazardous waste generation and management trends to assist the Siting Board and government agencies in evaluating future proposals.

Many decisions that regulatory agencies face today require that risks be evaluated in the context of impacts on public health and environment by a specific event. When analyzing transportation risk for a site specific analysis, specifics of transportation route and site characteristics, such as proximity to ground water, surface water, wetlands, schools and other structures, along with the ability of the existing community and facility infrastructure and equipment to accommodate potential hazards, can be incorporated into the analysis.

From the Statewide perspective of the Plan, in the case of hazardous waste transport, site specific criteria are not applicable. In general, the characteristics of hazardous waste transport, including the design features of roads and rail, and the design and operation of transport vehicles used in rail or trucking, along with emergency response protocols in place throughout the state, work together to minimize potential risks no matter which route combination or mode of transportation is used. The Plan does not replace the need for a detailed evaluation of transportation issues in the context of a site specific environmental assessment.

There are no unavoidable adverse impacts resulting from the Plan itself. Unavoidable impacts associated with a specific new facility must be addressed in the facility-specific EIS as such impacts, if any, are very dependent on the location and nature of the new facility.

**Alternatives Considered:** The GEIS looks at the following alternatives: the no action alternative, different scales of action, and similar action with different assumptions.

Under the no action alternative, no Plan would be written or adopted. This option is unacceptable because ECL 27-1102 requires the Department to write and adopt a Plan.

The second possible alternative would involve a different scale of the proposed action, that is, less information or more information than is presented in the Plan. This choice is not viable because ECL 27-1102 requires the Plan to address a very specific list of elements, including:

“a. an inventory and appraisal including the identification, location and life expectancy of all industrial hazardous waste treatment, storage and disposal facilities located within the state.

b. a compilation and analysis of existing inventories, reports and studies of the sources, composition and quantity of industrial hazardous waste generated within the state and of existing programs for waste reduction, recycling and reuse.

c. long-range projections of at least twenty years of the amounts and composition of hazardous waste which will be generated within the state and, to the extent feasible, in neighboring states.

d. a schedule for phasing out land disposal, other than treated residuals in compliance with the policy established in section 27-0105 of this article.

e. the identification, if appropriate, of areas of the state which have compatible hazardous waste generation streams and similar interests in providing regional hazardous waste management and disposal capacity to primarily service such areas.

f. a determination of the number, size, type and location by area of the state of new or expanded industrial hazardous waste treatment, storage and disposal facilities which will be needed for the proper long-term management of hazardous waste consistent with the assurances required pursuant to subdivision one of this section and an equitable geographic distribution of facilities.

g. an analysis of transportation routes and transportation risk and costs from industrial hazardous waste generators to existing or potentially suitable sites for industrial hazardous waste treatment, storage and disposal facilities.

h. recommendations on regional and statewide coordination of methods and procedures to encourage cooperative treatment, storage, disposal and transportation of industrial hazardous waste and other such hazardous waste management methods.

i. recommendations on procedures for periodically updating the statewide hazardous waste facility siting plan and for future coordination of hazardous waste management and planning on a regional basis.”

The scope and scale of the Plan is sufficient to address these elements.

The last alternative is to use different assumptions in developing the Plan. Different choices for these assumptions are discussed below:

1. The first assumption deals with facility life expectancy. The Department assumed non-landfill facilities such as treatment, storage or incineration facilities, to have an indefinite life expectancy and landfills to only last as long as it takes to reach capacity. Alternatives for this presumption include assuming different life spans for each facility. However, due to the nature of non-landfill facilities, it is impossible to estimate when they will close. Also, a landfill has limited space and thus it is realistic to estimate that it will last only until the landfill reaches capacity.

2. A second assumption is that companies that now manage their wastes on-site of generation will continue the same practice in the future. A different approach would be to assume that all facilities currently managing their waste on the site of generation would stop their on-site management and send their waste to commercial facilities. This option, particularly when considering the amount of on-site treatment of hazardous wastewater, would result in a tremendous increase in commercial treatment needs.

Since these companies have a large investment in their management units, it is not likely they would abandon such facilities and still continue to generate the hazardous waste needing treatment. For wastewater, fiscally and practically, transporting large volumes of hazardous waste water off-site is not a viable alternative.

The reduction in on-site treatment facilities over the last few years has been largely caused by the closing of manufacturing operations or the implementation of hazardous waste reduction activities.

3. The third assumption is that companies that now manage their wastes at captive facilities will continue the same practice in the future. A different approach would be to assume that all facilities currently treating their waste at captive facilities would stop this treatment and send their waste to commercial facilities in the future. This option would result in an increase in commercial treatment needs.

Due to the small number of remaining captive facilities and the relatively small amount of waste being managed by these facilities, this assumption would not change the conclusions of the Plan.

**Effective Date:** Date of signature by the Commissioner.

#### **Certification of Findings to Undertake an Action:**

Approval of the Plan will not result in any significant adverse environmental impacts. The Plan meets the goal to provide guidance to State agencies and authorities and any facility siting board established pursuant to CEL 27-1105 in the discharge of their responsibilities. However, the Plan does not commit any agency, board, commission, authority or private entity to a definite course for specific future decisions. Accordingly, each specific Hazardous Waste Facility action by any agency, commission, authority or private authority is independently subject to SEQR.

This GEIS does not replace the need for a separate and distinct site specific SEQR determination and likely EIS for any hazardous waste management facility that is proposed to be sited or expanded in New York State in the future.

Having considered the draft, revised draft and final GEIS and having considered the preceding written facts and conclusions relied on to meet the requirements of section 6 NYCRR 617.9, this statement of findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement;
3. Consistent with social, economic or other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable; and
4. Consistent with the applicable policies of Article 42 of the Executive Law as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

New York State Department of Environmental Conservation

Name of Agency



Signature

Alexander B. Grannis

Name

Commissioner

Title

OCT 18 2010

Date

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