DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
Solid and Hazardous Waste Management Section

1370 Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities

August 1, 1991
Amended October 22,1996

1.0 Scope and Applicability

Pursuant to 7 **Del.C.** Ch. 63 Sections 6303(a)(4) and 6305(a)(15), the Department is authorized to develop and promulgate criteria and regulations governing the location of hazardous waste management facilities. This regulation is based on the premise that facilities should be located in areas which minimize the consequences of an unintentional release on public health, safety, welfare, and the environment. The purpose of the location criteria, therefore, is to provide an additional margin of safety beyond the protection already afforded by the design, operational, and monitoring requirements for hazardous waste management facilities contained in the Delaware Regulations Governing Hazardous Waste. The approval of location does not relieve the applicant from compliance with all other applicable federal, state, or local rules and regulations. Except as provided for in Section 6.0 of this regulation, all hazardous waste treatment, storage, or disposal facilities must receive location approval from the Secretary prior to issuance of a hazardous waste permit or written approval for a new unit, or prior to the alteration of an existing unit such that the alterations would require a major modification or a Class 3 modification per Delaware Regulations Governing Hazardous Waste, Sections 122.41 and 122.42.

2.0 Definitions

"**Aquifer**" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"**Board**" means the Environmental Appeals Board.

"**Boiler**" means a device which meets the definition of boiler in Section 260.10 of the Delaware Regulations Governing Hazardous Waste.

"**Carbonate Bedrock Areas**" means those areas in the Piedmont Province where the first bedrock stratum encountered below the land surface is limestone or dolomite.

"**Carbonate Bedrock Drainage Areas**" means the surface of the land in the Piedmont Province draining to the subcrop of limestone or dolomite rock.

"**Cautionary Criteria**" means standards which identify the preferred location of a hazardous waste management facility or unit in relation to onsite and nearby social, environmental, or geographic characteristics.

"**Critical Habitat for Rare and Endangered Species**" means areas in public or private ownership which the Secretary has determined to provide sole or significant support to populations of rare or endangered plant or animal species.

"**Department**" means the Department of Natural Resources and Environmental Control.

"**Disposal**" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"**Drinking Water Well**" means any well which is used to supply potable water.

"**Emergency Response Facility**" means fire control and emergency medical services.

"**Erosion and Mass Movement**" means the relative degree to which the site will be vulnerable to the forces of erosion, landslide, soil creep, or any other mass movements which might breach or carry wastes away from a facility.

"**Exclusionary Criteria**" means standards which identify environmental, geographic or physical characteristics of lands where hazardous waste management facilities or units are prohibited.

"**Existing Hazardous Waste Management Facility**" means a facility which has satisfied the requirements of 7 **Del.C.** Ch. 6307 and the regulations promulgated pursuant to this section on or before the effective date of this regulation.

"**Facility**" or "**Hazardous Waste Management Facility**" means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

"**Flood Hazard Areas**" means those land areas adjacent to open coast, coastal sounds, estuaries, lakes, rivers, and streams which are prone to flooding from storms of a specified annual probability of occurrence. Two such flood hazard areas are used herein:

"**The 100-year Flood Hazard Area**" means the land area inundated by a flood which has a 1% annual probability of occurrence as contained on the flood insurance rate maps published by the Federal Emergency Management Agency.

"**The 500-year Flood Hazard Area**" means the land area inundated by a flood which has a 0.2% annual probability of occurrence.

"**Freshwater Wetlands**" are those wetlands defined in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989, or as amended). They include those non tidal freshwater wetlands and those freshwater tidal wetlands not mapped under Delaware's Wetlands Act of 1973, (Title 7 **Del.C.** Ch. 66).

"**Hazardous Waste**" means a hazardous waste as defined in Section 261.3 of the Delaware Regulations Governing Hazardous Waste.

"**Industrial Furnace**" is defined in accordance with the definition of industrial furnace in Section 260.10 of the Delaware Regulations Governing Hazardous Waste.

"**Immobile Resident Population**" means individuals residing in public or private institutions such as prisons, hospitals, nursing homes, and mental health care facilities and who cannot be easily evacuated in case of an emergency.

"**Inground Tank**" means a device meeting the definition of "tank" whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"**Land Emplacement Facility**" means any facility involving the placement of hazardous waste into or onto the land and which is designed and operated to contain waste in a manner that prevents the migration of pollutants from the site.Such facilities include but are not limited to:

- Landfills;
- Land farms/land treatment;
- Land burial following solidification or encapsulation;
- Above ground perpetual storage;
- Waste piles;
- Surface impoundments; and
- Onground, inground, and underground tanks.

"**Onground Tank**" means a device meeting the definition of "tank" and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"**Public Water Supply System**" means a water supply system, approved by the Division of Public Health, which provides water to the public for potable or domestic purposes through a piped system directly to the user's free flowing outlet.

"**Public Water Supply Watershed**" means the land area draining to a river, lake, or stream used as a public water supply.

"**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

"**Seismic Risk Zone**" means all lands within five miles of an epicenter of an earthquake of a Modified Mercalli VII or greater intensity.

"**Significant Environmental Lands**" means state parks, state wildlife areas, state forests, national wildlife refuges, or state nature preserves, or privately owned nature preserves dedicated under the Natural Areas Preservation Systems Act (7 **Del.C.** Ch. 73), lands protected under the Conservation and Preservation Easements Act (7 **Del.C.** Ch. 69), and lands on the National Register of Historic Places.

"**Storage**" for the purpose of this regulation means a unit designed to hold hazardous waste where the owner or operator has a permit or written approval or desires to obtain a permit or written approval in accordance with the requirements of Sections 6306(g) and 6307 of 7 **Del.C.** Ch. 63, and the regulations promulgated pursuant to these sections.

"**Subcropping Aquifers and Aquifer Recharge Areas**" means those areas where the major pre quaternary coastal plain aquifers outcrop or subcrop beneath surficial sediments and receive or could receive significant recharge by natural or induced ground water flow. These include areas where sands of the Potomac and Maqothy formations; sands of the Rancocas Group: the Cheswold, Frederica, Manokin and Pocomoke aquifers; and some finer grained aquifers through which substantial leakage may be induced by pumping.

"**Tank**" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"**Transmissivity**" means the rate at which water of the prevailing kinematic viscosity is transmitted through a unit width of an aquifer under a unit hydraulic gradient. It equals the hydraulic conductivity multiplied by the aquifer thickness.

"**Treatment**" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"**Unconfined Aquifer**" means an aquifer in which there are no confining beds between the zone of saturation and the ground surface.

"**Underground Tank**" means a device meeting the definition of "tank" whose entire surface area is totally below the surface of and covered by the ground.

"**Unit**" means a contiguous area of land on or in which hazardous waste is actually proposed to be placed, stored, or treated, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Examples of units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area.

"**Wellhead Protection Areas**" means the surface area designated by the Department which surrounds a drinking water well or well field supplying a public water system within which contaminants, if released to the environment, are likely to move toward and reach such well or well field.

"**Wetlands**" means those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat, or other lowland subject to tidal action in the state along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary, or tributary waterway or any portion thereof, including those areas which are now, or in this century have been, connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the plants, listed in Del.C. Title 7, Chapter 66.

3.0 Location Criteria for Land Emplacement Facilities

3.1 Exclusionary Criteria

3.1.1 Land emplacement units shall be prohibited in the following:

3.1.1.1 The 100-year flood hazard area;

3.1.1.2 Wetlands;

3.1.1.3 Freshwater wetlands;

3.1.1.4 Carbonate bedrock areas;

3.1.1.5 Carbonate bedrock drainage areas;

3.1.1.6 Public water supply watersheds upstream from the points of withdrawal;

3.1.1.7 Subcropping aquifers and aquifer recharge areas;

3.1.1.8 Significant environmental lands;

3.1.1.9 Areas where the transmissivity of the unconfined aquifer is greater than 10,000 ft^2/day;

3.1.1.10 Areas where groundwater under natural conditions could come into contact with the waste;

3.1.1.11 Wellhead protection areas;

3.1.1.12 Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).

3.1.2 The Department shall deny an application for location approval without further review if the Department determines the proposed unit is located in an excluded area.

3.2 Cautionary Criteria

3.2.1 The location of land emplacement units below shall be considered acceptable.

3.2.1.1 Seismic Risk. A proposed unit within a seismic risk zone shall be designed in accordance with recognized seismic design standards such as API 650 Appendix E.

3.2.1.2 Erosion and Mass Movement. Units should be located where the natural site characteristics and geomorphic processes will have minimal long term effect on the unit, i.e., avoiding highly dissected uplands or interfluves, deeply incised swales, and headwardly eroding streams.

3.2.1.3 Depth to Consolidated Bedrock. At least ten feet of unconsolidated and unsaturated material should lie between the bottommost part of the unit and bedrock.

3.2.1.4 Proximity to Surface Water. The location of a proposed unit shall provide that monitoring and frequency of sampling detect the presence of contaminents, and initiation of appropriate remedial action before degradation of surface water quality.

3.2.1.5 Groundwater Use. Units should be located at least .25-mile from, and not hydraulically upgradient of, any drinking water wells where no effective hydrogeologic barrier to flow exists.

3.2.1.6 Proximity to Population. Sites should be selected such that proposed land emplacement units are more than 1,500 feet from a residential dwelling.

3.2.1.7 Proximity to Immobile Resident Populations. Units handling toxic, explosive, reactive, or flammable and combustible wastes, and which are regulated by the Extremely Hazardous Substances Risk Management Act (7 **Del.C.** Ch. 77), and Delaware Regulations for the Management of Extremely Hazardous Substances, should be more than one mile from an immobile resident population. This criterion is not applicable to units handling other types of hazardous waste.

3.2.1.8 Proximity to Existing Waste Management Units or Industrial Facilities Handling Hazardous Materials. Proposed units should be located near existing waste management units or industrial facilities handling hazardous materials only if the potential environmental effects can be distinguished from those of existing units, and if the wastes are not incompatible or dangerous if inadvertently combined in the environment.

3.2.1.9 Emergency Response Facilities. Sites should be selected where emergency response time is adequate for the types of wastes handled.

3.2.1.10 Critical Habitat for Rare and Endangered Species. Units should not be located on lands providing habitat for species listed by the Federal government under the Endangered Species Act, unless adequate mitigation is provided.

3.2.1.11 Proximity to Significant Environmental Lands. Units should be located more than one half mile from such lands.

3.2.1.12 Proximity to Flood Hazard Area. Sites should be outside of the 500-year floodplain.

3.2.2 If a proposed facility site does not satisfy each criterion in subsection 3.2.1, the applicant shall submit additional information and justification allowing the Department to assess what effect failure to satisfy the criterion has upon the acceptability of the facility site.

3.2.3 The Department shall provide notice to municipal officials and other interested persons in order to solicit additional information regarding potential effects of a failure to meet any of these criteria at the proposed facility site. The Department shall determine whether the proposed design, construction, and operational aspects of the facility mitigate adverse effects which would otherwise be associated with failure to satisfy the criteria.

3.2.4 After evaluating each criterion individually, the Department shall evaluate the facility's overall compliance with these cautionary criteria and shall identify risks that have not been eliminated through mitigative measures. If risks to public health, safety, welfare, and the environment remain, which, in the judgment of the Department, render the proposed site unacceptable for a hazardous waste management facility, the Department may include conditions in the approval which eliminate or reduce the identified risks or may deny site approval altogether.

4.0 Location Criteria for Non Land Emplacement Storage, Treatment and Disposal Facilities

4.1 Exclusionary Criteria

4.1.1 Non land emplacement storage, treatment, and disposal units shall be prohibited in the following:

4.1.1.1 The 100 year flood hazard area;

4.1.1.2 Wetlands;

4.1.1.3 Freshwater wetlands;

4.1.1.4 Carbonate bedrock areas;

4.1.1.5 Carbonate bedrock drainage areas;

4.1.1.6 Public water supply watersheds upstream from reservoirs;
4.1.1.7 Significant environmental lands;
4.1.1.8 Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault);
4.1.1.9 Wellhead protection areas.

4.1.2 The Department shall deny a permit application without further review if the Department determines the proposed unit is located in an excluded area.

4.2 Cautionary Criteria

4.2.1 The location of non land emplacement storage, treatment, and disposal units meeting the criteria listed below shall be considered acceptable.

4.2.1.1 Seismic Risk. A proposed unit within a seismic risk zone shall be designed in accordance with recognized seismic design standards such as API 650 Appendix E.

4.2.1.2 Depth to Groundwater. If, under natural conditions, groundwater may encroach upon any subsurface unit, then that groundwater shall be kept below the bottom of the facility by means of properly designed drainage.

4.2.1.3 Depth to Consolidated Bedrock. At least ten feet of unconsolidated and unsaturated material should lie between the bottommost part of the unit and bedrock.

4.2.1.4 Groundwater Use. Units should be located at least .25 mile from, and not hydraulically upgradient of, any drinking water wells where no effective hydrogeologic barrier to flow exists.

4.2.1.5 Proximity to Population. Sites should be selected such that storage and treatment units are more than 1,500 feet from a residential dwelling.

4.2.1.6 Proximity to Immobile Resident Populations. Units handling toxic, explosive, reactive, or flammable and combustible substances or which are regulated by the Extremely Hazardous Substances Risk Management Act (7 **Del.C.** Ch. 77) and Delaware Regulations for the Management of Extremely Hazardous Substances should be more than one mile from an immobile resident population. This criterion is not applicable to units handling other types of wastes.

4.2.1.7 Proximity to Existing Waste Management Units or Industrial Facilities Handling Hazardous Materials. Proposed units may be located near existing waste management units or industrial facilities handling hazardous materials only if the potential environmental effects can be distinguished from those of existing units, and if the wastes are not incompatible or dangerous if inadvertently combined in the environment.

4.2.1.8 Emergency Response Facilities. Sites should be selected where emergency response time is adequate for the types of wastes handled.

4.2.1.9 Critical Habitat for Rare and Endangered Species. Units should not be located on lands providing habitat for species listed by the Federal government under the Endangered Species Act, unless adequate mitigation is provided.

4.2.1.10 Proximity to Significant Environmental Lands. Units should be located more than 1,500 feet from such lands.

4.2.1.11 Subcropping Aquifers and Aquifer Recharge Areas. Units should not be located in areas where major pre quaternary coastal plain aquifers outcrop or subcrop beneath surficial sediments and receive or could receive significant recharge by natural or induced ground water flow. These include areas where sands of the Potomac and Maqothy formations; sands of the Rancocas Group: the Cheswold, Frederica, Manokin, and Pocomoke aquifers; and some finer grained aquifers through which substantial leakage may be induced by pumping.

4.2.2 If a proposed facility site does not satisfy each criterion in subsection 4.2.1, the applicant shall submit additional information and justification for the facility's inability to meet each criterion so as to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.

4.2.3 The Department shall provide notice to municipal officials and other interested persons in order to solicit additional information regarding potential effects of a failure to meet any of these criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, shall determine whether the proposed design, construction, and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criteria.

4.2.4 After evaluating each criteria individually, the Department shall evaluate the facility's overall compliance with these cautionary criteria and shall identify risks that have not been eliminated through mitigative

measures. If risks to public health, safety, welfare, and the environment remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste management facility, the Department may include conditions in the approval which eliminate or reduce the identified risks or may deny site approval altogether.

5.0 Site Suitability Report

5.1 Land Emplacement Facilities and Non Land Emplacement Treatment, Storage and Disposal Facilities. A detailed geologic, hydrogeologic, and environmental study shall be performed for any site proposed. The submitted study must be signed by the owner/operator of the site and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Secretary upon request. At a minimum, the following information shall be presented in the form of a report describing the site in detail, and evaluating the onsite data obtained:

5.1.1 Topography

5.1.1.1 A detailed topographic map of the site, at scale of no greater than 1:2,400, and contour interval of no greater than two feet.

5.1.2 Geology

5.1.2.1 A comprehensive subsurface geological investigation including soil and bedrock borings to the bedrock aquifer in the Piedmont, and into the uppermost major confined aquifer in the Coastal Plain.

5.1.2.2 A structural geological map showing the surface geological formation and all faults, fractures, bedding attitudes, fold axes, cleavage, or foliation directions within 1,500 feet of the site boundaries.

5.1.2.3 Geological cross sections showing the subsurface geology beneath the site.

5.1.2.4 Assessment of the stability of the site related to geological processes such as erosion, mass movement, earthquakes and landslides.

5.1.2.5 A map showing the 100- and 500-year floodplains, if any, on the site.

5.1.3 Hydrogeology

5.1.3.1 A detailed hydrogeological investigation using a series of wells sufficient to define groundwater flow, both vertical and horizontal, and all groundwater systems hydraulically connected to the site.

5.1.3.2 Identification of all points of discharge for groundwater leaving the site.

5.1.3.3 Calculation of groundwater flow rates and volumes, and vertical groundwater leakage rates and volumes in all flow systems hydraulically connected to the site.

5.1.3.4 An assessment of regional hydrogeology as it relates to potential off site effects of a facility.

5.1.3.5 A water budget using long term meteorological data to determine recharge, discharge, and evapotranspiration rates to obtain maximum, average, and minimum seasonal variations.

5.1.3.6 Assessment of any secondary permeability (joints, fractures, cleavages), weathering, or depositional features which can affect rates and directions of groundwater flow under existing or stressed (pumping, reduced groundwater recharge, groundwater mounding) conditions.

5.1.4 Water Quality

5.1.4.1 Assessment of existing groundwater quality in all groundwater flow systems hydraulically connected to the site.

5.1.4.2 Assessment of existing water quality in all surface waters receiving groundwater discharge or runoff from the site.

5.1.4.3 Identification of all groundwater use within 1,500 feet, all uses downgradient and an assessment of potential effects of the site use on existing and future groundwater use.

5.1.4.4 Assessment of all downstream uses in surface waters receiving groundwater discharge or runoff from the site, and the potential effects on those waters.

5.1.5 Soil Properties

5.1.5.1 Quantitative assessment of the capabilities of the earth materials to attenuate or renovate any contamination which might emanate from any land farming facility.

5.1.5.2 Assessment of the compatibility of the site soil chemistry with any artificial liner or containment structure.

5.1.5.3 Assessment of soil stability during seismic events if the site is in an area of seismic risk.

5.1.6 Cultural

5.1.6.1 Assessment of existing and projected population densities and land use activities within a minimum of one mile radius of the site.

5.1.6.2 Assessment of the effects of the facility on any cultural or historic resources on or adjacent to the site.

5.1.6.3 Assessment of the proximity to airports and other land uses which require a buffer by statute or policy.

5.1.6.4 Assessment of effects of the proposed facility on nearby property values.

5.1.7 Transportation and Emergency Response Plans

5.1.7.1 Assessment of transportation facilities and access to the site particularly with regard to the traffic volume, road capacity, road hazards, alternate routes, the potential for accidents, and proposed remedies.

5.1.7.2 Description of existing or proposed emergency response needs and capabilities and, if appropriate, emergency evacuation plans.

5.1.8 Biological

5.1.8.1 Assessment of the extent and location of any critical wildlife habitat on or adjacent to the site.

5.1.8.2 Assessment of the effects on downstream shellfish beds or any nearby coastal or freshwater wetlands, if any.

5.1.8.3 Assessment of the effects on rare, threatened, or endangered species.

5.1.8.4 Assessment of the effects on significant environmental lands.

5.2 Reduction in Scope of Site Suitability Report

5.2.1 An applicant may petition the Department to reduce the scope of the site suitability report outlined in subsection 5.1. This petition must accompany any reduced site suitability submittal, and shall clearly set forth the rationale for any omission of information described under subsection 5.1.

5.2.2 The petition shall be subject to review by the Department and the citizens advisory committee established pursuant to Section 11.0. If agreement on the scope of the site suitability report cannot be reached among the parties, the Department shall make the final determination.

5.2.3 All modifications to the scope of the site suitability report approved by the Department shall be subject to the hearing and appeal procedures set forth in Sections 9.0 and 10.0.

5.3 The analysis and assessment contained in the site suitability report must demonstrate that all exclusionary criteria have been met without exception.

5.4 The Department recognizes that it is unlikely that any site can meet all of the cautionary criteria. These criteria are to be used as guidelines to the applicant. Cautionary criteria are intended to provide a sense of the preferable conditions for a site. However, site conditions not meeting these criteria will be given special consideration in the review process. In such cases, the applicant must demonstrate that positive site conditions and the proposed facility design and operation will offset the negative implications of the cautionary criteria which are not met. The Department's review shall be based on analyses of all of the pertinent cautionary criteria. The Department may impose design and operational requirements which are necessary to mitigate possible adverse effects on human health, safety, welfare, and the environment which may result from not meeting the cautionary criteria.

6.0 Exemptions

6.1 The following units shall be exempt from these regulations.

6.1.1 On site reclamation units where the principle activity at the facility is not the management of wastes.

6.1.2 Industrial boilers and furnaces that burn hazardous waste fuels for energy recovery.

6.1.3 Units authorized in accordance with Sections 122.60 and 122.61 of the Delaware Regulations Governing Hazardous Waste concerning facilities that have permits by rule and/or approval to operate under an emergency administrative order.

6.1.4 Units subject to Class Three (3) Modifications at existing facilities that upgrade pollution control equipment for the purpose of reducing emissions. This exemption only applies to changes found in DRGHW Section 122.42, Appendix I, Item L., entitled "Incinerators, Boilers, and Industrial Furnaces", pertaining to:

6.1.4.1 a substantial change in the design of any component used to reduce HCl/Cl_2, metals or particulates from the combustion gases, or

6.1.4.2 an upgrade of the pollution control equipment that increases the units capability to meet the regulatory performance standards.

6.2 Existing hazardous waste units that do not require a major modification or a Class 3 modification per Delaware Regulations Governing Hazardous Waste Sections 122.41 and 122.42 shall be exempt from these regulations. For modified units requiring location approval, the public participation requirements of Sections 7.0 and 9.0 may be implemented jointly with the public participation requirements of the DRGHW.

7.0 Procedures

7.1 The process is initiated when an applicant submits a notice of intent to seek location approval. The notice shall identify the site for which location approval will be sought and the types of units which the applicant intends to locate. In addition, the applicant shall, if appropriate, notify the Department of the intent to seek a reduction in scope of the site suitability report in accordance with subsection 5.2.

7.2 Upon determination that the notice of intent is complete, the Secretary shall, within 30 days, initiate the community participation requirements of Section 11.0 and provide the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

7.2.1 Submit a request for nomination for the citizens advisory committee.

7.2.2 Appoint a citizens advisory committee and chairperson.

7.3 Upon receipt of the a site suitability report, the Secretary shall, within 30 days of determination that the report is complete, notify the applicant and forward the report to the chairperson of the citizens advisor committee. The notice to the applicant shall also include a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

7.3.1 Complete review of the site suitability report;

7.3.2 Furnish the local government a non-biding feasibility determination in accordance with subsection 8.3;

7.3.3 Advertise receipt of the application and provide opportunity for public comment in accordance with the requirements of Section 9.0; and

7.3.4 Make a final location determination.

8.0 Local Government Land Use Approval

8.1 The Department shall not issue a location approval for any new or expanded hazardous waste management facility until the local governing body having land use planning and zoning authority certifies in writing to the Department that the applicant complies with local land use plans and zoning regulations.

8.2 An applicant who requires a change to a land use plan, a change of zoning, a conditional use or special exemption permit, or a zoning variance to legally carry out the proposed activity shall submit the site suitability report to both the Department and the appropriate local authorities simultaneously.

8.3 In accordance with Section 7.0, the Department shall prepare a non-binding preliminary feasibility review and submit it to the local land use authorities for their consideration.

9.0 Public Notice and Hearings

9.1 The Secretary shall advertise the receipt of the application in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State. The advertisement shall include:

9.1.1 the fact that the site suitability report has been received,

9.1.2 a brief description of the nature of the site suitability report and the Petition for Reduction in Scope if applicable, and

9.1.3 the place at which a copy of the petition or report may be inspected.

9.2 The Secretary shall hold a public hearing if he receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case a longer time shall be stated. A public hearing may also be held if the Secretary deems it to be in the best interest of the State to do so. Notice of a public hearing shall be sent by mail to any person who has requested such notification from the Department. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the petition or report and a reasoned statement of the permit's probable effects.

9.3 Hearings held pursuant to this regulation shall be conducted as follows:

9.3.1 Not less than 20 days notice shall be published in a newspaper of general circulation in the county in which the activity is to occur, and in a daily newspaper of general circulation throughout the State.

9.3.2 Such notification shall include:

9.3.2.1 a brief description of the subject of the hearing;

9.3.2.2 time, date, and place of hearing; and

9.3.2.3 time and place where copies of material may be obtained.

9.3.3 The parties may appear personally or by counsel at the hearing and produce any competent evidence on their behalf. The Secretary or the Board or its duly authorized designee may administer oaths, examine

witnesses, and issue, in the name of the Department or the Board, notices of hearings or subpoena requiring the testimony of witness and production of books, records, or other documents relevant to any matter involved in such hearing. In case of refusal to obey a notice of hearing or subpoena under this Section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary or the Chairman of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

9.3.4. A record from which a verbatim transcript can be prepared shall be made of all hearings, and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary or the Board or a duly authorized designee shall make findings of fact based on the record. The Secretary or the Board shall then enter an Order approving or denying the proposed Hazardous Waste Storage, Treatment or Disposal Facility location. The Secretary shall promptly give written notice to the persons affected by such Order.

9.3.5 The applicant is required to reimburse the Department for all costs associated with the administration of a public hearing held in accordance with the requirements of subsection 9.3.

10.0 Appeals

Any person whose interest is substantially affected by any action of the Secretary may appeal the action in accordance with the requirements of 7 **Del.C.** Sections 6313(a) and (b).

11.0 Community Participation

11.1 Findings and Purpose. The Department finds that local community participation is important in locating proposed hazardous waste management facilities and reviewing the proposed design, construction, operation, and closure of such facilities. The Department shall appoint a citizens advisory committee in accordance with subsection 11.2 for each proposed facility. The purpose of the committee is to provide a forum for citizen comments, questions, and concerns about the site(s) and facility and to promote discussions between the community and the person interested in siting a facility.

11.2 The Secretary shall appoint a committee composed of residents living near to, or along transportation routes to, the proposed facility location. Appointments shall include nominees submitted by the local government body(ies) with land use jurisdiction. The Secretary shall appoint the chairperson of the committee.

11.3 The committee shall prepare a written report summarizing local citizen concerns and the manner in which the company is addressing these concerns. The report shall be evaluated by the Department and the local government during the consideration of the proposed facility.

11.4 When issuing a location approval pursuant to these regulations, or when issuing a storage, treatment, or disposal permit pursuant to the Delaware Regulations Governing Hazardous Waste, the Department may impose additional requirements to protect the public health, safety, welfare, and the environment.

12.0 Severability

Should any section, paragraph or other part of these regulations be declared invalid for any reason, the remainder shall not be affected.