

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

CASE 97-F-0809 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR -- Addition of a new Chapter X, Subchapter A, to implement Article X of the Public Service Law.

NOTICE OF PROPOSED RULEMAKING

(Issued July 22, 1997)

NOTICE is hereby given that the Board on Electric Generation Siting and the Environment is considering the repeal of the existing Chapter VIII (including Subchapter A and Parts 800 through 815) of 16 NYCRR and the addition of a new Chapter X (consisting of Subchapter A and Parts 1000 through 1003) to 16 NYCRR. The addition is necessary to implement Article X of the Public Service Law.

Comments are welcome on these proposed changes. Anyone wishing to comment should submit five copies to John C. Crary, Secretary, Board on Electric Generation Siting and the Environment, Three Empire State Plaza, Albany, NY 12223-1350, not later than September 22, 1997.

JOHN C. CRARY
Secretary

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

PROPOSED RESOLUTION BY THE BOARD

Statutory Authority

Public Service Law Sections 161, 164(1)(g), (6)(b), (7), 165(5),
168(2)

State Administrative Procedure Act 306(2)(4)

CASE 97-F-0809 - In the Matter of the Rules and Regulations of
the Board on Electric Generation Siting and the
Environment, contained in 16 NYCRR -- Addition
of a new Chapter X, Subchapter A, to implement
Article X of the Public Service Law.

At a session of the Board on Electric Generation Siting
and the Environment held in the City of on 1997,
the Board, by a vote of its members present,

R E S O L V E D:

1. That the provisions of Section 202 (1) of the State
Administrative Procedure Act and Section 101-a (2) of the
Executive Law having been compiled with, Title 16 of the official
compilation of Codes, Rules, and Regulations of the State of New
York is amended, effective upon publication of a Notice of
Adoption in the State Register, by the repeal of existing Chapter
VIII (including Chapter A and Parts 800 through 815) and the
addition of a new Chapter X (including a new Subchapter A and new
Parts 1000 through 1003) to read as shown on the following
pages.

CHAPTER X

CERTIFICATION OF MAJOR ELECTRIC GENERATING FACILITIES

SUBCHAPTER A REGULATIONS IMPLEMENTING ARTICLE X

OF THE PUBLIC SERVICE LAW

AS ENACTED BY CHAPTER 519, Section 6, OF THE LAWS OF 1992

PART 1000

GENERAL PROCEDURES

(Statutory Authority: Public Service Law §161, 164(6)(B),
165(5), State Administrative Procedure Act §306(2)(4))

Sec.

- 1000.1 Adoption of Procedures by Reference
- 1000.2 Definitions
- 1000.3 Public Involvement Program (PIP)
- 1000.4 Pre-Application Procedures
- 1000.5 Filing and Service of an Application
- 1000.6 Publication and Service of Notices
- 1000.7 Water Quality Certification Procedures
- 1000.8 Additional Information
- 1000.9 Fund for Municipal and Local Parties
- 1000.10 Filing and Service of Documents
- 1000.11 Incorporation by Reference and Official Notice
- 1000.12 Amendment of an Application
- 1000.13 Dismissal of an Application
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- 1000.15 Amendment, Revocation and Suspension of a Certificate
- 1000.16 Transfer of a Certificate
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Section 1000.1 Adoption of Procedures by Reference.

Unless a provision of PSL Article X, Section 306 of the State Administrative Procedure Act, or this Part conflicts therewith, the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of this Title) that are in force on the effective date of this Part shall apply in connection with each certification proceeding under Article X. When such regulations indicate that the Commission is the decisionmaker, such reference shall be deemed to apply to the Board.

1000.2 Definitions. In addition to the definitions referenced and terms defined in Part 1 of Subchapter A of Chapter I of this Title, unless the context otherwise requires, the following terms have the meanings specified:

- (a) **Applicant:** any person who proposes to submit or who in fact submits an application for a certificate to the Board.
- (b) **Approved Procurement Process:** a program or method of acquiring electric capacity referred to in PSL Section 66-i.
- (b) **Associate ALJ:** an administrative law judge appointed by the DEC.
- (c) **Commission:** The New York Public Service Commission
- (d) **DEC:** The New York State Department of Environmental Conservation.
- (e) **ECL:** The Environmental Conservation Law.
- (f) **Map:** a flat representation of a portion of the earth's surface, which may include digital data used for map generation or geographic analysis, so long as such data are made available (in an appropriate format) to parties upon request.

- (g) **Modification:** an amendment of an application or Certificate which is not a revision;
- (h) **Offsite Electrical Facilities.** Part of a major electric generating facility consisting of all equipment needed for the transmission of the output of such facility, including transmission and distribution lines (whether or not needed for construction or back-up service), substations, switching stations and transformers, that are: (1) not subject to the Commission's jurisdiction under PSL Article VII; and (2) installed in New York State for the integration of such facility with the electric system grid.
- (i) **Onsite Facilities:** Part of a major electric generating facility consisting of ancillary features located on the facility site such as roads, railroads, switchyards, coal storage areas, solid waste disposal areas, waste treatment and disposal facilities, etc.
- (j) **Permanent Board:** the Board on Electric Generation Siting and Environment, exclusive of ad hoc members.
- (k) **Plain Language:** eighth grade reading level or easily understandable to the lay public to the maximum extent possible and written in any language (in addition to English) that is the primary language of more than 20 percent of the public in the affected areas;
- (l) **Private Applicant:** an applicant that does not have the power of eminent domain.
- (m) **PSL:** the Public Service Law.
- (n) **Public Involvement Program (PIP):** a series of coordinated activities that provides a variety of meaningful public participation opportunities at various stages of the decision-making process and establishes communication between stakeholders and an applicant.
- (o) **Revision:** an amendment of an application or Certificate proposing or authorizing a change in the

facility likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility as determined by the Board.

- (p) **Revocation:** termination of the rights granted in a Certificate.
- (q) **Stakeholders:** those persons who may be potentially affected or concerned by any issues within the Board's jurisdiction or the decisions being made about it; and any issue within the Board's jurisdiction relating to the project, and
- (r) **Suspension:** temporary deprivation of some or all of the rights granted in a Certificate.

1000.3 Public Involvement Program (PIP). (a) To ensure that Article X decisions address the concerns of stakeholders and that the Board's consideration of an application is not delayed, the applicant is encouraged to seek public input in the development of the proposed project by means of a PIP (including a notice(s) and a meeting(s) in the project vicinity) before an application has been filed.

(b) After the filing of the application, it shall be the responsibility of the applicant to seek stakeholders' participation actively throughout the certification and compliance filing process.

(c) The applicant may submit its proposed PIP to staff for approval.

1000.4 Pre-Application Procedures.

(a) This Section applies whenever an applicant desires to consult and seek agreement as to the methodology and scope of any study or program of studies in support of its application.

(b) An applicant is encouraged to consult informally and formally with affected agencies and other shareholders.

(c) An applicant shall initiate the formal consultation process by filing with the Secretary, Department of Public Service, Three Empire State Plaza, Albany, New York 12223-1350, an original and ten copies of a pre-application report, consisting of:

(1) as much information as is available concerning the proposed project, generally in the form that it will appear in the application;

(2) a draft scope of an environmental impact analysis containing:

(i) a brief description of the proposed project;

(ii) the potentially significant adverse impacts identified both by the applicant and as a result of any informal consultation with involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be affected;

(iii) the extent and quality of information needed for the applicant to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

(iv) an initial identification of mitigation measures;

(v) any reasonable alternatives to be considered.

(vi) an identification of significant issues raised by the public and involved agencies during any informal consultation and applicants' response to those issues;

(d) At the time it files the pre-application report with the Secretary, the applicant shall serve a copy on the Chief Executive Officer of each agency and municipality listed in PSL Section 164(2) and of any other agency that would (absent PSL Article X) have approval authority with respect to the facility.

(e) In order to attempt to resolve any questions that may arise in the consultation process initiated pursuant to

Subdivision (b) hereof, the Board shall designate a presiding officer, who shall mediate any issue(s) relating to the methodology or scope of any study or program of studies concerning which agreement cannot be reached and receive any stipulation setting forth any agreement that is reached. An original and ten copies of any such stipulation shall be filed with the presiding officer and with a copy to be served contemporaneously on the Chief Executive Officer of each agency and municipality listed in PSL §164 (2) and on any other person who participated in the consultation process after having been notified thereof as a part of the public involvement program discussed in Section 1000.4 of this Part or otherwise.

1000.5 Filing and Service of an Application. (a) The applicant shall file with the Chairman (addressed to the attention of the Secretary) seven copies of its application and original, including a readily reproducible map(s), and the accompanying documents specified in this Section. The applicant shall contemporaneously serve a copy of the application and accompanying documents on DEC and two copies each on other Board member agencies and one copy on the

- (1) Chief Executive Officer of each agency and municipality listed in PSL Section 164(2);
- (2) any other person who participated actively in the pre-application consultation process and has requested such copy; and
- (3) local public library(ies) or other locations accessible to the public in the project vicinity.

(b) At the beginning of each Section of the application, the applicant shall cite the applicable section of Part 1001 or 1002 of this Subchapter that is addressed.

(c) The application shall be accompanied by:

- (1) the testimony of each expert witness whom the applicant intends to offer at the hearing required by PSL Section 165, which testimony shall include the qualifications of the

witness and specify any portion of the application for which such witness was responsible or supports;

(2) an affidavit showing that a copy of the application and accompanying documents were, or will contemporaneously be, sent to all those required to be served;

(3) the notice required pursuant to Section 1000.6(a);

(4) a request for a water quality certification pursuant to Section 401 of the Federal Clean Water Act, if such certification is required, and justification therefor;

(5) any appropriate motion; and

(6) a statement of names, addresses, telephone numbers and (if available) E-mail addresses and telecopier machine numbers of the applicant and its attorney or other representative.

1000.6 Publication and Service of Notices. (a) Publication of required notices shall be satisfied by publication both in the newspaper(s) designated for publication of official notices of each municipality in which the proposed or any reasonable alternative site is located, and in the newspaper of largest circulation in county(ies) in which the proposed or any relative site is located, except that in cases of amendments or transfer of certificates, the appropriate site is that of the certified facility.

(b) Notices shall be:

(1) written in plain language;

(2) in display format in a prominent location in the newspaper;

(3) in no smaller than 10 point type or, if only smaller type is available, in the largest type that is available; and

(c) The applicant shall give notice of its application by serving a copy of such notice as required by PSL Section 164(2), serving a copy on the Chief Executive Officer of any other agency that would (absent PSL Article X) have approval authority with

respect to the facility and publishing a notice(s) as described in Subdivision (a) hereof contemporaneously with the filing of the application. The notice(s) shall include:

- (1) a summary of the application;
- (2) a map(s) at a size and level of detail appropriate to substantially inform the public of the location of the proposed site and any alternative sites listed as reasonable in the application;
- (3) the date on or about which the application will be or was filed;
- (4) a statement that a copy of the application will be or was served on the Chief Executive Officer of each municipality in which is located any portion of a site required to be shown pursuant to Paragraph (2) hereof;
- (5) a statement that the application, when filed, may be examined during normal business hours at the offices of the Department of Public Service at Three Empire State Plaza, Albany, New York, and at specified public locations in the project vicinity;
- (6) a statement that PSL Article X permits the Board to authorize a location for the facility different from the location(s) described in the notice;
- (7) the names, addresses, telephone numbers and (if available) E-mail addresses and telecopier machine numbers of a representative of the applicant and a member of staff who may be contacted for information or assistance; and
- (8) if a water quality certification pursuant to Section 401 of the Federal Clean Water Act will be or was requested from the Board as part of the application, a brief explanation of the reasons for such request.

(d) If an alternative to the applicant's proposal that was not listed as reasonable in the application is subsequently proposed by any party, the applicant shall give prompt notice of such alternative (as described in this Section), unless the presiding officer rules that such alternative is not reasonable

(as described in 1001.2 of this subchapter) or that further notice is unnecessary to substantially inform the public of the location of the proposed alternative. The notice shall include text and a map(s) at a size and level of detail to substantially inform the public of the alternative and the name, address, telephone number and (if available) the E-mail address and telecopier machine number of a representative of the party proposing such alternative from whom further information can be obtained.

(e) At any significant point in the certification process, the presiding officer may require the applicant to publish a notice, as described in this Section, containing appropriate information, such as:

(1) a brief description of the significant events in the certification proceeding that have occurred and those that are expected to occur;

(2) a statement that the record of the proceeding may be examined during normal business hours at the Offices of the Department of Public Service at Three Empire State Plaza, Albany, New York and, where the presiding officer has so required, at specified public locations in the project vicinity; and

(3) a statement that any person may file a statement for the Board's consideration.

(f) The Board, Secretary or presiding officer may require an applicant to publish a notice of a public hearing or oral argument in such newspaper(s) and at such times as will serve to inform the general public of that hearing or oral argument.

(g) The applicant shall promptly notify the presiding officer (or, if none, the Secretary) upon discovery of any inadvertent failure of publication or service of a notice under this Section or Section 1000.5 of this Part. The presiding officer (or, if none, the Secretary) shall take such action as may be necessary to ensure fair treatment of a person aggrieved by such inadvertent failure.

(h) If the presiding officer determines that any notice required in this Section was not sufficient to substantially inform potentially affected persons, the presiding officer shall specify any additional steps that are necessary.

(i) Prior to the publication of any notice required by the Board, the presiding officer or these regulations, the applicant may submit a copy of its proposed notice to the Secretary or to the presiding officer for approval. The applicant shall promptly file proof of the publication of any required notice.

1000.7 Water Quality Certification Procedures.

(a) If construction or operation of a proposed major electric generating facility would require a federal permit and result in any discharge into the navigable waters of the United States, a Section 401 Certification is needed.

(b) If an applicant or certificate holder has requested a Water Quality Certification, the Board or a designee will issue, waive or deny such Certification within 60 days after the filing of the application, or post-certification document in which the request is made, unless any federal agency from which the applicant or certificate holder has sought a license or permit to conduct any activity that may result in any discharge into the navigable waters has:

(1) advised the Board that such Certification must either be issued or denied within a specified shorter period or be waived; or

(2) determined that such Certification may either be issued or denied within a specified longer period, not to exceed one year (based on information provided by staff), or be waived.

(c) If it appears that the review of a request for a Water Quality Certification cannot be completed within the applicable period specified in subdivision (b) of this Section, the Board or a designee will deny the Certification without prejudice to a later request for Certification.

(d) A certificate holder or applicant, after a filing of the application that requests a Water Quality Certification shall:

- (1) file an original and ten copies of its request and supporting information;
- (2) serve a copy of such documents on each party to the proceeding and affected landowners;
- (3) publish or serve a notice of such request as would be required if it had been made in an application, and
- (4) state in the request that it and supporting information are available at a specified location(s) such as a library(ies), and that interested persons have the opportunity to be heard by filing comments (within 30 days after the filing of the request) with the Secretary.

(e) In support of any request for a Water Quality Certification, an applicant or certificate holder shall demonstrate compliance with the provisions referenced in 6 NYCRR Section 608.9.

1000.8 Additional information. (a) Upon the request of the Board, the chairman or the presiding officer, the applicant shall submit such additional information as may be reasonably required to reach a decision, or shall state its reason(s) why it is not considered reasonable that it be required to supply such information. Such information may include onsite monitoring data, design parameters and other detailed information.

(b) Upon the motion of any party, the applicant may be required to provide additional information relevant and material to the proceeding. A party making a motion under this subdivision shall:

- (1) clearly state the additional information sought;
- (2) establish its relevance and materiality;

(3) to the best of its ability, estimate its cost of production;

(4) to the best of its ability, demonstrate that the information can be obtained in a timely fashion consistent with the need to conduct the proceeding in an expeditious fashion, and

(5) set forth any other reasons why such information should be supplied by the applicant.

1000.9 Fund for Municipal and Local Parties.

(a) Any municipality (except an applicant) or other local party may request funds for expert witness and consultant fees. The term other local party means any nongovernmental party which represents the interests of persons in the vicinity of the proposed or other alternative sites. Requests for funds shall be submitted to the presiding officer not later than 15 days after the issuance of a notice of the initial prehearing conference.

(b) Subject to the availability of funds, the presiding officer may fix additional dates for submission of fund requests.

(c) Each request for funds shall be submitted to the presiding officer, with copies to the associate ALJ and the other parties to the proceeding, and contain:

(1) the number of persons and the interests and goals the requesting party represents;

(2) a statement of the availability of funds from its own resources and from other sources and of the efforts which have been made to obtain such funds;

(3) the location of the requesting party with respect to any alternative site or a site which it proposes;

(4) to the extent possible, the name and qualifications of each expert to be employed;

(5) if known, the name of any other party who may or is intending to employ such expert;

(6) a detailed statement of the services to be provided by experts and consultants and the basis for their fees;

(7) the contribution of the experts' and consultants' services to the development of an adequate record;

(8) a statement as to the result of any effort made to encourage the applicant to make the proposed studies or evaluations or the reason it is believed that an independent study is necessary; and

(9) a copy of any contract or agreement or proposed contract or agreement with each expert and consultant.

(d) At the initial prehearing conference, or at any other conference held to consider fund requests, the presiding officer shall discuss the allocation of funds and encourage the consolidation of requests.

(e) Not later than 15 days after the close of the initial prehearing conference, the presiding officer shall make an initial allocation, and from time to time thereafter shall make additional allocations, of the fund in relation to the potential for such expenditures to make a contribution to the development of an adequate record. The presiding officer shall ensure that the fund is allocated on an equitable basis in a manner which facilitates broad public participation in the proceeding, and that a fair portion of the fund is allocated to municipal and other local parties from the area of the applicant's proposed site. Up to one half of the fund shall be allocated to municipalities and up to one half of the fund shall be allocated to other local parties.

(f) The fee submitted with each application will be deposited by the Secretary in a separate interest-bearing account(s) in a bank(s) insured by the Federal Deposit Insurance Corporation.

(g) From time to time, as required by the presiding officer, any municipality or local party receiving an allocation from the fund shall:

(1) provide an accounting of the monies which have been spent; and

(2) submit a report to the presiding officer showing:

(i) that the purpose for which the funds were allocated has been achieved and the results of any studies conducted using monies from the fund;

(ii) that reasonable progress toward that goal for which the funds were allocated is being achieved; or

(iii) why further expenditures are not warranted.

(h) Where it appears warranted by the state of the evidence, the presiding officer may incorporate the reports referred to in subdivision (g) of this section into the hearing record as public statements.

(i) Within 60 days after payment by a municipality or other local party, such party shall submit receipts for actual expenditures for expert witnesses and consultants to the Secretary.

(j) Disbursements from the fund to municipal and other local parties shall be made by the department upon audit and warrant of the Comptroller of the State on vouchers approved by the Board. Any funds which have not been disbursed shall be returned to the applicant after the time for applying for judicial review of a Board's decision has expired. If an application has been withdrawn or dismissed, any funds remaining shall be returned within a reasonable time.

(k) An applicant may agree to defray expenses incurred by a municipal or other local party for expert witness or consultant fees. Such amounts as are subsequently approved in accordance with subdivisions (i) and (j) of this section may then be returned to the applicant. Such agreement shall not bind the presiding officer to allocate the monies in the fund in any particular manner.

1000.10 Service of documents.

(a) Parties, other than the staffs of the permanent Board member agencies, shall request of the Secretary those documents they desire to receive during the proceeding. Unless such a party

makes such a request, it will be served only with official notices, rulings, decisions and orders.

(b) The Secretary or presiding officer shall send to all parties a list containing the name and address of each person who has become a party to the proceeding, indicating the extent of each party's request, if any. During the course of a proceeding the Secretary or the presiding officer may send to all parties a revised list to indicate that particular documents (other than official notices, rulings and orders) need not be served on inactive parties.

(c) The service of any document (including a notice, order or opinion of the Board) on a party may be by personal service or by prepaid express or by first class mail. Service upon the attorney or other representative of a party shall be deemed proper service upon the party.

(d) Unless otherwise provided by the Board, Secretary or presiding ALJ, a party filing a written motion, interlocutory appeal, brief or reply to such documents shall (at the time of the filing with the Secretary) submit proof of service of a copy of the document on the required parties.

(e) If the last day for filing or service falls on a day when State offices are not normally open for the conduct of regular business, filing or service shall be completed by the close of business on the next regular business day.

(f) Any order, opinion or other document issued by the Board will be filed in the Albany office of the Board. A copy of each such document will be served upon each party.

(g) For good cause shown, the Board will reproduce and serve documents filed by municipal and other local parties (other than an applicant) and provide such parties access to transcripts.

1000.11 Incorporation by Reference and Official Notice.

(a) Any party may move that evidence, including records and documents, in the possession of the Department, or other public

records, be received in evidence in the form of copies or excerpts or by incorporation by reference.

(b) A party making a motion under subdivision (a) of this Section shall:

(1) clearly identify the record or document to be incorporated;

(2) explain why such record or document is considered material to the proceeding;

(3) provide, upon the request of the Board or presiding officer, a certified copy of any public record; and

(4) provide, upon the request of the Board or presiding officer, additional copies of the record or document sought to be incorporated by reference.

(c) Briefs and other documents that attempt to persuade through argument may not be incorporated by reference into the evidentiary record of a proceeding.

(d) Records or documents incorporated by reference will be available for examination by the parties before being received in evidence.

(e) Any party may move that official notice be taken of:

(1) facts of which judicial notice could be taken pursuant to Rule 4511 of the Civil Practice Law and Rules; and

(2) other facts within the specialized knowledge of the Board.

(f) A party making a motion under subdivision (e) hereof shall:

(1) clearly identify the fact(s) of which official notice is sought; and

(2) explain why official notice should be taken of such fact(s).

(g) When official notice is taken of a material fact of which judicial notice could not be taken and that does not appear in the evidence in the record, every party will be given notice thereof and will, on timely request, be afforded an opportunity

prior to a decision granting or denying a certificate to dispute such fact or its materiality.

1000.12 Amendment of an Application.

- (a) An amendment of an application is material and substantial within the meaning of PSL §164(6)(a) if it is a revision.
- (b) If an amendment of an application is a revision, the Board may require the applicant to submit an additional intervenor fee, in an amount determined by the Board, which shall not exceed fifty thousand dollars.

1000.13 Dismissal of an Application. Whenever it shall appear in the absence of any genuine issue as to any material fact that the statutory requirements for a certificate cannot be met, the Board may dismiss the application seeking such certificate and terminate the proceeding in question upon the motion of any party or upon its own motion.

1000.14 Acceptance of a Certificate. (a) On completion of a proceeding and issuance of a final decision by a Board, an applicant shall, within 30 days after the issuance of such decision, file either a written acceptance of the certificate or petition for rehearing, but not both.

(b) If a petition for rehearing has been granted, an applicant shall, within 30 days after the issuance of the decision on rehearing, file either a written acceptance of the certificate (as modified by such decision) or a petition for judicial review but not both.

(c) If judicial review has been obtained, an applicant shall file a written acceptance of the certificate within 30 days after either:

(1) the expiration of the time for judicial review of the court order:

(i) the Court decision enforcing the Board's decision; or

(ii) the Court decision modifying the Board's decision and enforcing it as so modified; or

(2) any final decision by a Board upon remand for further specific evidence or findings.

(d) A certificate will be vacated unless an applicant has filed a written acceptance in accordance with subdivision (a), (b) or (c) of this section, as the case may be.

(e) Upon the filing of a written acceptance of a certificate following a final decision on an application, rehearing, judicial review or remand, as the case may be, a Board's jurisdiction with respect to such certificate will cease.

1000.15 Amendment, Revocation and Suspension of a Certificate.

(a) (1) A proposed change in a certificate requirement that is expressed in numerical terms, is not likely to result in any material increase in environmental impact (and thus is a modification) if it would change such requirement by less than 20 percent.

(2) A proposed change in the location of all or a portion of: (i) structures enclosing the boiler, reactor or generator; (ii) air pollution control facilities, onsite cooling facilities, water or waste treatment facilities or coal handling facilities; (iii) the coal pile or onsite solid waste storage facilities; (iv) the once-through cooling water intake or once-through cooling water discharge structure; or (v) the switch yard is not substantial (and thus is a modification) if the change would be less than 500 feet or the reduction in the distance between any such portion of a facility and any site boundary would be less than 20 percent, whichever is less.

(3) A proposed change in facility design which would result in a change in the height or size of a component listed in paragraph (2) of this subdivision is not likely to result in any material increase in environmental impact (and thus is a

modification) if it would change such dimension by less than 20 percent.

(4) A proposed change in facility output (given ambient temperature of 59F, an atmospheric pressure of H.7 psi, and a relative humidity of 60%) is not likely to result in any material increase in environmental impact (and thus is a modification) if it would increase the capacity of the facility by less than 20 MW.

(b) A certificate holder shall petition the permanent Board for a change in its certificate. An original and five copies of the petition and accompanying documents shall be filed with the Secretary. The certificate holder shall contemporaneously serve seven copies of the application and accompanying documents on DEC and two copies each on the other Board member agencies. The following requirements apply:

(1) The petition shall describe the change(s) proposed and the engineering design,

(2) To the extent appropriate, the certificate holder shall submit the data and information required by this Subchapter that would otherwise be necessary to support an application for a certificate.

(3) Notice of such petition shall be given to, and copies of such petition shall be served on, any person, municipality or agency entitled by law to be given notice, or to receive a copy, of the application for the original certificate; a copy of such petition shall also be served on any other party to the proceeding in which the original certificate was granted and all property-grantors affected by the proposed amendment.

(4) The notice shall:

(i) briefly describe the proposed amendment and state the reasons therefor;

(ii) give the name, address, telephone number and (if available) E-mail address and telecopier machine number of an employee or representative of the petitioner from whom

further information, including a copy of the petition, may be obtained; and

(iii) state that those, in addition to parties to the original certification proceeding, who wish to participate in the proceeding on the amendment must so advise the Secretary by sending a written document (to the appropriate address) to be received within ten days after the giving of such notice.

- (5) An affidavit showing that publication or service of the required notice or copies of the application was accomplished shall accompany the application filed with the Secretary.

(c) If the permanent Board determines that a proposed change is a revision, other than as provided for in the certificate, the Board will hold a hearing following the procedures set forth in this Subchapter.

(d) In the case of a proposed modification, the permanent Board shall establish a reasonable time period (not to exceed 30 days) for interested parties to submit written comments on the proposed modification, and the Secretary shall so notify the persons on whom the petition was served as well as anyone who timely indicated a desire to participate.

(e) The permanent Board may, following the procedures in subdivisions (f) and (g) of this Section, amend or suspend a certificate and may, at any time before the date on which initial compliance filing in connection with the authorized facility is approved revoke a certificate on grounds such as:

- (1) discovery of materially false or inaccurate statements in the application or supporting documents;
- (2) noncompliance with a material term or condition of the certificate or with a provision of the PSL or of this Subchapter; or
- (3) discovery of information that could not have been reasonably discovered at the time of the certification proceeding, except that once the

initial compliance filing is approved, the Board shall not suspend a certificate on the basis of newly-discovered information unless the Board determines that the applicant withheld or misrepresented the new information at the time of the certification proceeding.

(f) If the permanent Board on its own motion is considering the amendment, revocation or suspension of a certificate, it will, in an Order to Show Cause, set forth the alleged facts that appear to warrant the intended action. The time within which comments may be filed shall not exceed 30 days after the issuance of such Order. Such Order will be served on all parties to the certification proceeding. Any commenting party shall:

(1) file an original and ten copies of its comments with the Secretary;

(2) serve a copy of its comments on all parties to the certification proceeding; and

(3) file with the Secretary an affidavit showing that service was made.

(g) Notwithstanding the provisions of subdivision (f):

(1) the permanent Board will hold an evidentiary hearing after issuing the Order to Show Cause, if a revision or revocation is being considered; and

(2) as permitted by Section 401(3) of the State Administrative Procedure Act, the permanent Board may summarily suspend a Certificate if it finds that public health, safety or welfare imperatively requires emergency action and incorporates such finding in an Order; the summary suspension will be effective on the date specified in such Order or upon service of a certified copy of such Order on the certificate holder, whichever shall be later, pending proceedings for revocation or other action, which proceedings will be promptly instituted and determined.

(h) Upon the complaint of any interested person, the staff of the Department of Public Service shall investigate such

complaint and, if the material facts and other available evidence indicate that action may be warranted, forward the complaint with its assessment to the permanent Board for action under subdivisions (f) and (g) of this Section.

1000.16 Transfer of a Certificate.

(a) A certificate may be transferred (subject to the approval of the existing Board or permanent Board, as the case may be) to a person who agrees to comply with the terms, limitations or conditions contained therein and in every subsequent Order issued thereunder.

(b) A certificate holder seeking the transfer of a certificate shall file with the Secretary an original and seven copies of a petition for approval of the transfer of the certificate, together with the accompanying documents described in this Subdivision. The certificate holder shall contemporaneously serve a copy of the application and accompanying documents on DEC.

- (i) state the reasons supporting the transfer;
- (ii) show that the transferee is qualified to carry out the provisions of the certificate and any Orders issued thereunder;
- (iii) be verified by all parties to the proposed transfer; and
- (iv) be accompanied by a copy of the proposed transfer agreement;

(2) an affidavit of service and publication of a copy of the petition on each of the parties to the certification proceeding; and

(3) an affidavit of service and publication of a notice concerning the petition on all property-grantors and all other persons, municipalities or agencies entitled by law to be given notice of, or to be served with a copy of, any application

to construct a major electric generating facility, which notice shall:

(i) briefly describe the proposed transfer and state the reasons therefor;

(ii) give the name, address, telephone number and (if available) E-mail address and telecopier machine number of an employee or representative of the petitioner from whom further information, including a copy of the petition, may be obtained; and

(iii) state that an original and ten copies of any comments on the petition must be sent to the Secretary, to be received no later than 30 days after the date on which the notice was given.

(c) After the time for filing comments has expired, the Board may, without further notice grant or deny the petition, grant the petition upon such terms and conditions as it deems appropriate or conduct such further investigation as it deems necessary.

1000.17 Counsel to the Board. The counsel to the commission shall be counsel to the Board for all purposes, unless the Board determines otherwise.

PART 1001

CONTENT OF AN APPLICATION

(Statutory Authority: Public Service Law §164(1)(g),(7))

Sec. 1001.1 Description of Proposed Site and Facility.

1001.2 Description and Evaluation of Reasonable Alternatives

1001.3 Studies of the Expected Environmental Impact of the
Facility and its Compatibility with Public Health
and Safety

1001.4 Estimated Cost Information

1001.5 Statement Concerning Energy Planning Objectives

1001.6 Evidence to Enable the Board to Evaluate the
Facility's Pollution Control Systems

1001.7 Additional Information Required

1001.8 Adoption of Requirements by Reference

Section 1001.1 Description of Proposed Site and Facility.

The application shall contain a description of the proposed site and facility to be built thereon, consistent with PSL Section 164(1)(a). Such description shall include:

- (a) a discussion of the environmental setting,
- (b) an assessment giving supporting details of the economic considerations, reliability and feasibility of the preferred source(s) of power.

1001.2 Description and Evaluation of Reasonable Alternatives.

(a) The application shall contain a description and evaluation of reasonable alternatives to the proposed facility, if any, consistent with PSL § 164(1)(b), in sufficient detail to permit the board to make the findings required by PSL § 168(2)(c)(e).

(b) With respect to a facility that has not been selected pursuant to an approved procurement process, a description and evaluation of reasonable energy supply source alternatives and, where appropriate, demand-reducing measures to the proposed

facility. The application shall contain a description and evaluation consistent with PSL Section 164(1)(b); the description shall include an assessment, giving supporting details, of economic considerations, reliability and feasibility of alternate sources of power that might reasonably be expected for all or a substantial portion of the proposed facility.

(c) The description (referred to Subdivision (a)) shall also take into account the objectives and capabilities of the applicant and be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed facility.

(d) For a private applicant, consideration of demand reducing measures to the proposed facility is inappropriate; site alternatives may be limited to parcels owned by, or under option to, such applicant;

(e) The range of alternatives may also include, as appropriate, alternative:

- (1) sites;
- (2) technology;
- (3) scale or magnitude;
- (4) design;
- (5) timing;
- (6) use; and
- (7) types of action.

1001.3 Studies of the Expected Environmental Impact of the Facility and its Compatibility with Public Health and Safety.

(a) The application shall contain studies of the expected environmental impact of the facility and its compatibility with health and safety of the facility, consistent with PSL Section 164(1)(c), in sufficient detail for the Board to make the

findings required by PSL Section 168(2)(b), (c)(i) and (ii), (d) and (e).

(b) The format for this Section of the application may be flexible, but must include:

- (1) a statement and evaluation of the potential significant adverse impact on the environment, public health and safety, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, that identifies and discusses:

- (i) land uses -- existing and approved residential, commercial, industrial, institutional, noise-sensitive, conservation, recreational, agricultural and agricultural districts;

- (ii) significant ecosystem resources -- highly erodible soils, wetlands, flood plains, streams, mapped springs used for potable water supplies, wells, unique old-growth forests, trees listed in the Registry of Big Trees in New York State, occupied habitats of rare, threatened or endangered species, forest stands or tree farms managed for timber production and active or developing sugarbushes;

- (iii) visual resources -- designated scenic sites, areas or features, including landmark landscapes;

- (iv) cultural resources -- identified historic, community and archeological resources listed or eligible to be listed in the National or State Registers of Historic Places;

- (v) air quality and meteorology, geology and seismology, solid, liquid, gaseous and hazardous wastes, and water quality and quantity; and

- (2) An evaluation of the resources listed in the proceeding paragraph in relation to:

- (i) reasonable related short-term and long-term effects;

(ii) any adverse impact on the environment, public health and safety that cannot be avoided should the proposed facility be constructed;

(iii) any irreversible and irretrievable commitment of resources that would be involved in the construction and operation of the facility;

(iv) mitigation measures proposed to minimize impact on the environment, public health and safety associated with items (i) through (iii) above.

(c) The application shall contain a precise citation to any substantive local legal provision that the applicant believes is unreasonably restrictive in view of factors set forth in PSL §168(2)(d), together with an explanation of its belief.

1001.4 Estimated Cost Information.

The application shall contain estimated cost information, if the facility was not selected pursuant to an approved procurement process consistent with PSL Section 164(1)(d).

1001.5 Statement Concerning Energy Planning Objectives Plan.

(a) The application shall contain a statement demonstrating that construction of the proposed facility is reasonably consistent with the energy policies and long range energy planning objectives and strategies contained in the most recent state energy plan, or that the proposed facility was selected pursuant to an approved procurement process.

(b) The statement referred to in Subdivision (b) detail to permit the Board to make the finding required by PSL Section 168(2)(a).

1001.6 Evidence to Enable the Board to Evaluate the Facility's Pollution Control Systems.

(a) The application shall contain evidence to enable the Board to evaluate the facility's pollution control systems, consistent with PSL Section 164(1)(f) in sufficient detail to enable the Board to make the findings and determinations required by PSL Section 168(2)(c)(iii), (iv), (v), (vi) and (3).

(b) The term of any permits issued as part of a certificate shall be five years, unless otherwise specified by the Board.

1001.7 Additional Information Required.

(a) The application shall: identify any permit, consent, approval or license which will be required for the construction or operation of the facility. The application shall specify the date application for any such approval was made or the estimated date on which it will be made. The applicant shall notify the Secretary, presiding officer and each party of any change in the status of each such application.

(b) describe any security fund and any insurance in place or to be obtained.

(c) describe the financial resources available to the applicant to restore any disturbed area(s) in the event the project cannot be completed.

(d) describe the public involvement program conducted by the applicant to date, setting forth the issues raised by stakeholders.

(e) contain an analysis that need not reiterate information contained elsewhere in the application, but shall be used as the vehicle for including information not provided elsewhere and for analyzing or synthesizing the information provided in the application.

The analysis must assemble relevant and material facts upon which the Board's decision is to be made. It must analyze the significant adverse impacts and evaluate all

reasonable alternatives. The analysis must be analytical and not encyclopedic.

The analysis must be clearly and concisely written in plain language that can be read and understood by the public, and limited to those potential significant adverse environmental impacts that can reasonably be anticipated and/or have been identified previously by parties or the general public. Highly technical material should be summarized and if it must be included in its entirety, should be referenced in the analysis and included in an appendix.

(f) In collecting, compiling and reporting data required by this Part, endeavor to establish a basis for a statistical comparison with data which will subsequently be obtained under any program of post-certification monitoring.

1001.8 Adoption of Requirements by Reference.

In connection with the content of applications, the substantive requirements of the ECL and implementing regulations that are applicable to air, solid waste, hazardous waste, terrestrial and water resources which are potentially affected by a proposed facility shall apply in connection with certification proceeding under PSL Article X.

PART 1002

STATE POLLUTANT PERMIT REQUIREMENTS AND PROCEDURES

(Statutory authority: Public Service Law, §§ 161, 164(7);

Sec.

- 1002.1 Requirements for state pollutant discharge elimination system wastewater discharge permits
- 1002.2 Requirements for cooling water intake structure certification
- 1002.3 Requirements for discharge of pollutants from an aquaculture project
- 1002.4 Requirements for disposal of dredge and fill materials

- 1002.5 Procedures for approval of wastewater discharge permits
- 1002.6 Procedures for early approval of wastewater discharge permits
- 1002.7 Procedures for renewal and modification of wastewater discharge permits
- 1002.8 Procedures for 401 water quality certification
- 1002.9 Requirements for air contamination source construction permits, operating certificates and prevention of significant deterioration permits
- 1002.10 Procedures for approval of air contamination source construction permits, operating certificates and prevention of significant deterioration permits
- 1002.11 Procedures for early approval of air contamination source construction permits and operating certificates
- 1002.12 Procedures for renewal and modification of air contamination source construction permits and operating certificates
- 1002.13 Requirements for solid waste and hazardous waste management facility permits
- 1002.14 Procedures for approval of solid waste and hazardous waste management facility permits
- 1002.15 Procedures for early approval of solid waste and hazardous waste management facility permits
- 1002.16 Renewal of state pollutant permits

1002.1 Requirements for State Pollutant Discharge. Elimination System Wastewater Discharge Permits. (A) The Application constitutes a request for a wastewater discharge permit, which shall meet the substantive requirements of Title 8 of Article 17 of the ECL and the substantive requirements of regulations implementing such Article. Any other requirements which the Board and Commission may have agreed to meet to comply with Federal law, as set forth in any memorandum of understanding between the Board, the commission and EPA regarding major electric generating facilities. The applicant shall file:

- (1) the completed forms otherwise required by DEC;
 - (2) the relevant information required by Part 1001 of this Subchapter or needed to meet the substantive applicable requirements of 6 NYCRR Parts 750-757;
 - (3) a proposed fact sheet, which shall include a brief description of plant operations that will contribute liquid wastes, the proposed liquid waste collection, treatment and disposal facilities and their operation;
 - (4) a proposed discharge permit which shall, among other things, provide for any alternative thermal effluent limitation, cooling water intake structure, aquaculture project, runoff from disturbed areas or dredge and fill material resulting from construction and runoff and leachate from any coal pile or onsite or offsite solid waste disposal area; and
 - (5) a proposal for the disposal of sewage, industrial waste sludge, solid waste or dredge and fill material by a method of use or disposal which will prevent pollution of surface and groundwaters.
- (b) If an alternative thermal effluent limitation is to be requested, at least 90 days prior to the time studies attempting to justify such alternative thermal effluent limitation are to begin, the applicant shall provide:
- (1) a study plan describing the methodologies and data to be employed to demonstrate that the normal applicable thermal effluent limitation is more stringent than necessary and that the alternative effluent limitation will satisfy any regulations established by DEC to ensure compliance with the requirements of section 316(a) of the Clean Water Act; and
 - (2) a proposed list of representative important species (RIS).

1002.2 Requirements for Cooling Water Intake Structure

Certification. (a) An applicant proposing to withdraw water from a surface water source for once-through cooling or for evaporative cooling tower makeup purposes shall demonstrate that

the location, design, construction and capacity of its cooling water intake structure reflects the best technology available for minimizing adverse environmental impact. The demonstration shall include:

- (1) a description of the proposed cooling water intake structure;

- (2) a description of any alternative intake structure considered;

- (3) an estimate of the cost of the intake structure and its effect on the cost of plant operation and a comparison with any alternative considered;

- (4) an assessment of the present distribution and density of any critical aquatic organism(s)(CAO) potentially subject to entrainment or impingement; and

- (5) an estimate of the effect the proposed intake structure and water withdrawal, and any alternative intake structure(s) considered, will have on local and water bodywide populations of aquatic organisms.

(b) The applicant shall:

- (1) consult with the staffs of the department and DEC as to any study to be made to determine the effect of the proposed cooling water intake on aquatic life in the vicinity of the intake; and

- (2) at least 90 days prior to the time studies attempting to show that the best available technology will be applied are to begin, provide:

- (i) a study plan describing the methodologies and data to be employed to demonstrate that the cooling water intake structure proposed reflects the best technology available for minimizing adverse environmental impact as required by any regulations established by DEC to ensure compliance with section 316(b) of the Clean Water Act; and

- (ii) a proposed list of CAO.

(c) The applicant shall use the same data in both the study demonstrating the application of best intake technology

available and the study of alternative effluent limitations whenever possible.

1002.3 Requirements for Discharge of Pollutants from an Aquaculture Project.

(a) An applicant proposing to develop an aquaculture project in connection with a facility shall include a request for approval of such project in its application and shall demonstrate that the proposed project will meet any regulations established by DEC to ensure compliance with the requirements of section 318(a) and (b) of the Clean Water Act. The request shall include:

(1) a description of the aquaculture project and any modification of the wastewater discharge structure to be made to accommodate the project;

(2) the estimated capital and operating costs of the project;

(3) the estimated effect on aquatic life of the facility's cooling water treatment and/or disposal structures;

(4) the expected economic value of the aquatic life to be harvested from the aquaculture project; and

(5) a description of any special procedures to be used to protect other beneficial uses of the receiving waters.

(b) The applicant shall identify:

(1) any proposed variations from the effluent limitations or receiving water quality standards otherwise applicable under other applicable DEC Regulations;

(2) any special monitoring to be conducted to control discharges from a proposed aquaculture project; and

(3) any reports proposed to demonstrate compliance with any effluent limitations applied to the project.

(c) Technology based effluent limits may be waived to the extent necessary to carry out an aquaculture project, except that requirements with respect to toxic pollutants may not be waived.

1002.4 Requirements for Disposal of Dredge and Fill Materials.

(a) An applicant proposing to dredge, dispose of dredged materials or place fill in surface waters or adjacent wetlands shall include a request for approval of such activities in its application. The request shall include:

- (1) a description of the activities proposed;
- (2) a description of the water quality in the areas to be dredged or filled;
- (3) a description of the materials to be disposed of or filled in surface waters or on adjacent wetlands;
- (4) a statement of the alternatives considered for the disposal of any dredged material;
- (5) a comparison of the estimated costs of the proposed and alternative disposal methods;
- (6) an assessment of the effects the proposed and alternative disposal methods will have on water quality and aquatic populations;
- (7) a projection of any other effects which the disposal of dredge or fill material may have on the site; and
- (8) any other information required by any regulations established by DEC, or by the Adirondack Park Agency with respect to a facility located within the Adirondack Park, with respect to dredge and fill activities.

(b) The applicant shall demonstrate that the dredging, filling and construction in navigable waters requested will not result in substantial impairment of the waters for use for navigation or anchorage.

(c) When available, the applicant shall provide the staffs of the department and DEC (and the Adirondack Park Agency with respect to a facility located within the Adirondack Park) with three copies each of any application filed with the Corps of Engineers for construction or fill activities in navigable waters.

1002.5 Procedures for Approval of Wastewater Discharge Permits.

(a) Upon receipt the request for consultation, for approval of a study plan for an alternative thermal effluent limitation or for a certification that a proposed cooling water intake structure conforms to the best technology available, the staffs of the department and DEC shall promptly meet with the applicant, review the proposed study plan (s), provide comments and identify any requirements which shall be met for its approval.

(b) Upon receipt of a request for the designation of a list of RIS or CAO, the staff of the department and DEC shall promptly review the proposed list(s), provide the applicant with comments on any additions or deletions which might be desirable and identify any additions which shall be made before approval can be given.

(c) If an agreement cannot be reached, any person participating in a preapplication consultation process may petition the Board for the appointment of an ALJ, in accordance with section 1000.4 of this Subchapter, to mediate any unresolved issue.

(d) Upon receipt of a request(s) for a wastewater discharge permit, an alternative thermal effluent limitation, a certification that a proposed cooling water intake structure reflects the best technology available or a 401 certification, the staffs of the department and DEC shall promptly review the request(s) and (if complete) the staff of the department, after consideration of the views of DEC staff, shall provide the Secretary with a draft public notice indicating:

(1) the name and address of the applicant;

(2) the name of a representative of the applicant who may be contacted for further information and his or her address and telephone number;

(3) the name of a person on the department staff who may be contacted for further information and his or her address and telephone number; and

(4) that:

(i) the request for the discharge permit, including any associated request for alternative thermal effluent limitations, approval of a proposed cooling water intake structure or 401 certification, is complete;

(ii) a tentative determination as to whether the discharge permit should be issued or denied is available;

(iii) a fact sheet indicating that the discharge permit will be a part of the certificate, if issued by the Board, and describing the wastes expected, the treatment to be provided, the wastewater discharges to be expected and the anticipated effects upon water quality and aquatic life in the receiving waters is available;

(iv) a draft wastewater discharge permit incorporating the provisions which are proposed for inclusion in the final wastewater discharge permit is available;

(v) written comments may be filed with the Secretary within 30 days; and

(vi) an opportunity for further comment will be given in the hearings to be held on the submittal.

(e) The Secretary shall:

(1) cause a notice of the completeness of the material regarding water pollution control, the availability of the tentative determination, fact sheet and draft permit and the opportunity for public comment to be included in the Weekly Bulletin published by the department and Environmental Notice Bulletin published by DEC;

(2) serve copies of these documents on:

(i) each party to the proceeding;

(ii) the EPA administrator;

(iii) the director of the water pollution control agency of any other state whose waters might be affected by discharges from the facility; and

(iv) persons who have requested that they be informed of any application in the area where the discharge would

be made or who request the material in response to the public notice; and

(3) serve a copy of the material regarding water pollution control on the EPA administrator.

(f) The applicant, by direction of the Secretary, shall publish the notice referred to in the preceding subdivision once a week for two consecutive weeks in a newspaper(s) of general circulation in the area in which the facility would be located. When possible, such notice shall be consolidated with other notices regarding the facility.

(g) The administrator and the director of the water pollution control agency of any other state whose waters might be affected by discharges from the facility shall be allowed 45 days to comment on the draft permit, unless within 30 days they request the full 90 days which can be allowed for such comment under the Clean Water Act.

(h) The staff of the department shall include in its direct testimony the tentative determination (to recommend issuance or denial of the discharge permit), the fact sheet, the draft discharge permit and any comments received on the tentative determination and draft permit, together with their responses to it. Such direct testimony will be served on each person identified in paragraph (e)(2) of this section.

(i) A final decision with respect to the substantive water pollution control requirements and the wastewater discharge permit will be rendered as a part of the determination on the application. Copies of the recommended decision of the presiding officer, the report of the associated ALJ (if any) and the decision of the Board shall be provided to each person identified in paragraph (e) (2) of this section within 30 days of their issuance. The decision of the Board on the wastewater discharge permit, alternative thermal effluent limitation (if any) or certification that a proposed cooling water intake structure conforms to the best technology available issued as a part of the certificate shall not be effective unless the

administrator concurs in writing, except where 30 days have elapsed following the administrator's receipt of the Board's decision.

(j) If, within 30 days of receipt of the Board's decision, the administrator raises a general objection to the wastewater discharge permit and, within 90 days of the receipt of the Board's decision, provides the specific grounds for the objection(s) and the action(s) the Board shall take to eliminate the objection(s), the permit shall not become effective until the administrator withdraws the objection(s).

(k) Any objection(s) of the administrator shall be served on all parties, who may comment thereon to the Board. If the Board accepts the objection(s) of the administrator and modifies the wastewater discharge permit as requested, the permit shall then be effective. If the Board attempts to justify its previous decision or some modification thereof, the permit shall not be effective unless the administrator withdraws the objection(s). If the Board rejects the objection(s) of the administrator and (within 90 days after receipt of the objections) asks that a public hearing be held on the section(s) of the permit to which the administrator has objected, the permit shall not become effective until issued in accordance with subdivision (n) of this section.

(l) If the Board does not resubmit the permit revised to meet the administrator's objection(s) within 90 days of the receipt of the objection(s) or request that the administrator hold a public hearing, the administrator may issue the permit.

(m) If the administrator does not withdraw the objection(s) and a public hearing is held and the Board does not resubmit a permit revised to meet the administrator's objection(s) or modified objection(s) within 30 days of the administrator's notification to the Board of the decision following the public hearing, the administrator may issue the permit.

(n) Exclusive authority to issue the permit passes to EPA when the times set forth in subdivisions (l) and (m) of this section have expired.

(o) The wastewater discharge permit issued as a part of the certificate shall be in full force and effect for five years from the date of acceptance of the certificate as provided in section 100.15 of this Title.

1002.6 Procedures for Early Approval of Wastewater Discharge Permits.

(a) An applicant may make a motion to the presiding officer for an early determination on the wastewater discharge permit, alternative thermal effluent limitation or certification that the cooling water intake structure conforms to the best technology available. The presiding officer shall rule on the motion and certify the motion, together with his ruling, to the Board. Any early determination by the Board to grant such motion shall be void if objected to by the EPA administrator in accordance with section 1002.5(i) of this Part or if the Board subsequently rejects the application for a certificate.

(b) A request for early approval of a cooling water intake structure, alternative thermal effluent limitation or wastewater discharge permit may be granted upon a showing by the applicant that:

(1) all applicable requirements of these regulations have been satisfied; and

(2) failure to grant such request will substantially delay completion of the proposed generating facility.

(c) A filing including a previously approved cooling water intake structure, thermal wastewater discharge structure or wastewater discharge permit shall:

(1) demonstrate that such prior approval meets the substantive requirements of these regulations; and

(2) assess the need for additional conditions or requirements to comply with any subsequent change in the laws,

rules and regulations applicable at the time the current filing is made.

1002.7 Procedures for Renewal and Modification of Wastewater

Discharge Permits. (a) Except as provided in section 1002.15 of this Part, a certificate holder intending to continue to discharge liquid wastes beyond the termination date of its wastewater discharge permit shall apply to the existing Board or, if its jurisdiction with respect to a certificate has ceased, to the permanent Board for renewal of such permit at least 180 days prior to such expiration date. A certificate holder desiring a change in its permit shall apply to the permanent Board as soon as possible after it is determined that a change is necessary. Except as provided in subdivision (d) of this section, the applicant shall provide the permanent Board (as the case may be) with:

(1) a completed application on the form (s) otherwise prescribed by DEC;

(2) a proposed fact sheet;

(3) a proposed draft permit or modification thereof, as the case may be;

(4) information on the status of any studies required to be completed under the existing permit;

(5) a comparison of the results of any studies with the estimate (s) made when the certificate was granted or when the existing permit was issued;

(6) an interpretation of any studies conducted as to the impact of facility operation on water quality and on aquatic life; and

(7) any other information which would otherwise be required under applicable to deregulation or would assist the decision maker in evaluating the request for renewal or modification.

(b) A request for a change in a wastewater discharge permit shall be filed as described in section 1000.15 of this Subchapter.

(c) Except as provided in section 1002.15 of this Part, applications for renewal or for modification of a wastewater discharge permit, other than for a minor change as specified in subdivision (d) of this section, will be reviewed in accordance with the procedures set forth in section 1002 of this Part, except that the notice described in section 1002 of this Part shall indicate that a hearing will only be held if the chairman finds that a significant degree of public interest exists.

(d)(1) Except as provided in section 1002.15 of this Part, a request for approval of a minor change in a wastewater discharge permit, a wastewater disposal facility, its location, its operation or its discharges, as defined in the existing permit, may be made by letter to the Secretary, with a copy to DEC, and shall:

- (i) describe the change(s) proposed;
- (ii) provide an estimate of the impact of the proposed change on the quantity and concentration of wastes discharged and on the receiving waters; and
- (iii) provide an estimate of the effect of any change on the visual impact of the facility.

(2) A minor change in a wastewater discharge permit is a change which:

- (i) corrects a typographical error;
- (ii) modifies a monitoring or reporting requirement without reducing its frequency or changing the applicable effluent limitation or the assurance that the facility will be properly operated;
- (iii) modifies a compliance date which does not delay compliance with any control requirement;
- (iv) deletes an outfall or a discharge when the discharge is terminated and the discharge of other outfalls is not changed, except in accordance with applicable permit limits;

(v) covers the use or substitution of minor quantities of chemicals or minor changes in operation which will not result in a violation of any effluent limitation which will be applicable as a result of such use; or

(vi) allows transfer of ownership where no change in applicable effluent limitations is requested and a written agreement regarding the date of transfer of permit responsibility, coverage and liability is provided.

(e) If the chairman (or his designee), after considering any views expressed by DEC, agrees that the proposed change(s) is minor, a letter may be issued by the chairman (or his designee) making appropriate changes in the discharge permit. Neither a public notice nor a hearing will be required for such a change(s). If the chairman does not agree that the proposed change is minor, the applicant may apply to the existing or permanent Board in accordance with Subdivision (a) of this section.

(f) A wastewater discharge permit may be amended, modified, revoked, or suspended in accordance with section 1000.15(e) of this subchapter.

(g) If an applicant has made timely and sufficient application for permit renewal, the existing permit remains in force pursuant to section 401(2) of the State Administrative Procedure Act while the request is being reviewed.

1002.8 Requirements for Air Contamination Source Construction Permits, Operating Certificates and Prevention of Significant Deterioration Permits.

(a) The application constitutes a request for an Air Contamination source Construction Permit and Operating Certificate and (where applicable) a Prevention of Significant Deterioration Permit (PSD), which shall meet the substantive requirements of Title 3 of article 19 of the ECL, the substantive requirements of regulations implementing such Title and any other requirements which the Board and commission may have agreed to

meet to comply with Federal law, as set forth in any memorandum of understanding between the Board, the Commission and EPA regarding major electric generating facilities. The applicant shall file:

- (1) the completed forms otherwise required by DEC;
- (2) the relevant information required by Part 1001 of this Subchapter or needed to meet the substantive applicable requirements of DEC regulations;
- (3) a brief description of the proposed air contaminant source and its operation;
- (4) a proposed air contamination source construction permit;
- (5) a proposed air contamination source operating certificate; and
- (6) a proposal for the disposal of all air contaminants removed from the facility wastes which will prevent their reentry into the air or into surface or ground waters, except that the latter requirement may be satisfied by reference to provisions for their safe disposal in a proposed wastewater discharge permit.

(b) Any major electric generating facility subject to these regulations, except a nuclear facility, shall be considered a "major stationary source."

1002.9 Procedures for Approval of Air Contamination Source Construction Permits, Operating Certificates and Prevention of Significant Deterioration Permits. (a) Upon receipt of any request for advance consultation as to studies concerning ambient air quality conditions related to a construction permit or an operating certificate for air contamination source control facilities, or for a PSD permit, the staffs of the department and DEC shall promptly meet with the applicant, review any proposed study plan, provide comments and identify any requirements which shall be met for their approval. For any facility which may affect Federal lands, the staff of the department shall notify

all affected Federal land managers and consider any comments received within 30 days from a Federal land manager.

(b) If an agreement cannot be reached, any person participating in a preapplication consultation process may petition the Board for the appointment of a presiding officer, in accordance with section 1000.4 of this Subchapter, to mediate any unresolved issue.

(c) The staffs of the department and DEC shall promptly review the filing and the staff of the department, after consideration of the views of DEC staff, shall provide the Secretary with a draft public notice indicating:

(1) the name and address of the applicant;

(2) the name of a representative of the applicant who may be contacted for further information and his or her address and telephone number;

(3) the name of a person on the department staff who may be contacted for further information and his or her address and telephone number; and

(4) that:

(i) the request for the construction permit, operating certificate and PSD permit is complete;

(ii) a preliminary determination (including the degree of increment consumption that is expected from the source) as to whether the permits and certificate should be issued is available;

(iii) the construction permit, operating certificate or PSD permit(s) for any emission source control facilities will be a part of the certificate, if issued by the Board;

(iv) written comment may be filed with the Secretary within 30 days; and

(v) an opportunity for further comment will be given in the hearings to be held on the application.

(d) The Secretary shall:

(1) cause a notice of the completeness of the material regarding air pollution control, the availability of additional material and the opportunity for public comment to be included in the Weekly Bulletin published by the department and the Environmental Notice Bulletin published by DEC;

(2) serve copies of these documents on:

(i) each party to the proceeding;

(ii) the EPA administrator;

(iii) the chief executive officer of any city or county in which the facility would be located;

(iv) the director(s) of the air pollution control agency of any other state, any local air pollution control agency, or any comprehensive regional land use agency, any Federal land manager, the Federal official charged with direct responsibility for management of any land in a class I area, and any Indian governing body, the lands of which may be affected by emissions from the facility; and

(v) persons who have requested that they be informed of any application in the area where the facility would be located or who request the material in response to the public notice; and

(3) serve a copy of the material regarding air pollution control on the EPA administrator.

(e) The applicant, by direction of the Secretary, shall publish the notice referred to in the preceding subdivision once a week for two consecutive weeks in a newspaper(s) of general circulation in the area in which the facility would be located. When possible, such notice shall be consolidated with other notices regarding the facility.

(f) In consultation with DEC staff, the staff of the department shall:

(1) evaluate whether the proposed air pollution control facilities constitute best available control technology (BACT) and either provide for required pollution offsets in

nonattainment areas or prevent significant deterioration of ambient air quality in attainment areas and meet the substantive requirements of applicable DEC regulations; and

(2) provide the EPA administrator with copies of any public comments received and of the testimony containing its evaluation and recommendations.

(g) A final decision with respect to the substantive air pollution control requirements for the construction and operation of the facility shall be rendered as a part of the determination on the application, except that the decision on air pollution control issues shall be made within one year of the determination that the application is complete. If such final decision cannot be rendered within one year, the Board may grant conditional approval based on the applicant's commitment to comply with all conditions of the construction permit and the operating certificate subsequently issued for the facility. A final decision with respect to air pollution control requirements issued as a part of the certificate for which EPA has reserved review authority shall not become effective until the EPA administrator has approved the decision in accordance with any memorandum of understanding with the Board and Commission.

(h) The air contamination source construction permit, operating certificate and PSD permit issued as a part of the certificate shall be in full force and effect for five years from the date of acceptance of the certificate as provided in section 1000.15 of this Subchapter.

1002.10 Procedures for Early Approval of Air Contamination Source Construction Permits and Operating Certificates.

(a) An applicant may make a motion to the presiding officer for an early determination on the Air Contamination Source Construction Permit and Operating Certificate or the Prevention of Significant Deterioration Permit. The presiding officer shall rule on the motion and certify the motion, together with his ruling, to the Board. Any early determination by the

Board to grant such motion shall be void if objected to by the EPA administrator in accordance with section 1002.9(g) of this Part or the Board subsequently rejects the application for a certificate.

(b) A request for an early approval of a PSD permit or of an air contamination source construction permit and operating certificate may be granted upon a showing by the applicant that:

(1) all applicable requirements of these regulations have been satisfied; and

(2) failure to grant such request will substantially delay completion of the proposed generating facility.

(c) A filing including a previously approved PSD permit or a previously approved air contamination source construction permit or operating certificate shall:

(1) demonstrate that such prior approval meets the substantive requirements of these regulations; and

(2) assess the need for additional conditions or requirements to comply with any subsequent change in the laws, rules and regulations applicable at the time the current filing is made.

1002.11 Procedures for Renewal and Modification of Air Contamination Source Construction Permits and Operating Certificates.

(a) A certificate holder intending to resume construction of an air contamination source that has been interrupted for more than 18 months or, except as provided in section 1002.15 of this Part, to continue operation of an air contamination source beyond the termination date of its operating certificate shall apply to the existing Board or, if its jurisdiction with respect to a certificate has ceased, to the permanent Board for renewal of the construction permit or operating certificate at least 180 days prior to such expiration date. A certificate holder designating a change in its permit or certificate shall apply to the existing or permanent Board as the case may be) as soon as possible after

it is determined that a change is necessary. Except as provided in subdivision (e) of this section, the applicant shall provide the existing or permanent Board, as the case may be, with:

- (1) a completed application(s) on the form(s) otherwise prescribed by DEC;
- (2) a proposed draft permit or certificate or modification thereof, as the case may be;
- (3) information on the status of construction, including any studies required to be completed under the existing construction permit, if construction has not yet been completed;
- (4) information on the status of any studies required to be completed under the existing operating certificate, if operation has commenced;
- (5) a comparison of the results of any studies with the estimate(s) made when the certificate was granted or when the existing permit or certificate was issued; and
- (6) any other information which would otherwise be required under applicable to DEC regulation or would assist the decisionmaker in evaluating the request(s) for renewal or modification.

(b) In addition to physical activities on an approved site, construction of an air contamination source approved under these regulations shall include active efforts to:

- (1) respond to any continuation of the siting proceeding;
- (2) resolve any legal challenge to the certificate;
- (3) complete the acquisition of property on which the facility will be located;
- (4) complete any engineering report or detailed design; or
- (5) negotiate contracts for the scheduled purchase of engineering services or equipment.

(c) A request for a change in an air contamination source construction permit, operating certificate or PSD permit shall be filed as described in section 1000.6 of this Subchapter.

(d) Except as provided in section 1002.15 of this Part, applications for renewal or for modification of an air contamination source construction permit or operating certificate, other than a minor change as specified in subdivision (e) of this section, will be reviewed in accordance with the procedures set forth in section 1002.9 of this Part, except that the notice described in section 1002.9(c) of this Part shall indicate that a hearing will only be held if the chairman finds that a significant degree of public interest exists.

(e) (1) Except as provided in section 1002.16 of this Part, a request for approval of a minor change in an air contamination control facility, its location or its operation, or a facility plan, as defined in the existing permit or operating certificate, may be made by letter to the Secretary, with a copy to DEC, and shall:

- (i) describe the change(s) proposed;
- (ii) provide an estimate of the impact of the proposed change on the quantity and concentration of waste emissions and on the environment; and
- (iii) provide an estimate of the effect of any change on the visual impact of the facility.

(2) A minor change in an air contamination source facility construction permit or operating certificate is a change which:

- (i) corrects a typographical error;
- (ii) modifies a monitoring or reporting requirement(s) without changing the applicable control requirement or the assurance that the facility will be properly operated;
- (iii) modifies a compliance date which does not delay compliance with any control requirement;
- (iv) deletes a control requirement when an emission is terminated and other emissions are not changed,

except in accordance with applicable construction permit or operating certificate limits;

(v) covers the use of minor quantities of chemicals or minor changes in operation which will not result in violation of any control requirement in the construction permit or operating certificate; or

(vi) allows transfer of ownership where no change in applicable control requirements is requested and a written agreement regarding the date of transfer of permit responsibility, coverage and liability is provided.

(f) If the chairman (or his designee), after considering any views expressed by DEC, agrees that the proposed change is minor, a letter may be issued by the chairman (or his designee) making appropriate changes in the construction permit or operating certificate, or both. Neither a public notice nor a hearing will be required for such a change(s). If the chairman does not agree that the proposed change is minor, the applicant may apply to the existing or permanent Board in accordance with section 1002.11(a) of this Part.

(g) An air contamination source construction permit, operating certificate or PSD permit may be amended, modified, revoked or suspended in accordance with section 1000.16 of this Subchapter.

(h) If an applicant has made timely and sufficient application for permit renewal, the existing permit remains in force pursuant to section 401(2) of the State Administrative Procedure Act while the request is being reviewed.

1002.12 Requirements for Solid Waste and Hazardous Waste Management Facility Permits.

(a) The application constitutes a request for solid waste management facility construction and operation permits when solid wastes will be produced by a proposed major electric generating station. Such application shall meet the substantive requirements of Title 7 of Article 27 of the ECL, the substantive

requirements of regulations implementing such title and any other requirements which the Board and commission may have agreed to meet to comply with Federal law, as set forth in any memorandum of understanding between the Board, the commission and EPA regarding major electric generating facilities. The applicant shall file:

- (1) the completed forms otherwise required by DEC;
- (2) the relevant information required by Part 1001 of this Subchapter and any other information needed to meet the substantive requirements of DEC regulations;
- (3) a brief description of the proposed solid waste management facility and its operation;
- (4) a proposed solid waste management facility construction permit;
- (5) a proposed solid waste management facility operation permit;
- (6) a proposal for the disposal of all surface runoff and leachate from the facility which will prevent entry of excessive amounts of contaminants into surface or ground waters, except that the latter requirement may be satisfied by reference to provisions for the safe disposal of such runoff and leachate in a proposed wastewater discharge permit required by section 1002.1(a)(4) of this Part; and
- (7) proof of service of the materials required to be filed by this subdivision on the Chief, Solid Waste Facilities Branch, U.S. EPA.

(b) The application constitutes a request for a hazardous waste management facility permit when hazardous wastes otherwise requiring a permit under applicable DEC regulations will be produced, utilized, stored, transported, treated or disposed of by a major electric generating facility. Such application shall meet the substantive requirements of Title 7 of Article 27 of the ECL, the substantive requirements of regulations implementing such title and any other requirements which the Board and commission may have agreed to meet to comply with Federal law, as

set forth in any memorandum of understanding between the Board, the commission and EPA regarding major electric generating facilities. The applicant shall file:

- (1) the completed forms otherwise required by DEC;
- (2) the information required by Part 811 of this Title and any other information needed to meet the substantive requirements of DEC regulations;
- (3) a brief description of the proposed hazardous waste management facility and its operation;
- (4) a proposed hazardous waste management facility permit;
- (5) a description of the security procedures to be applied (or a request for a waiver of security requirements which would otherwise be required under applicable DEC regulations);
- (6) a contingency plan required under applicable DEC regulation;
- (7) a description of the procedures, structures or equipment to be used to:
 - (i) prevent hazards in handling of the wastes;
 - (ii) prevent runoff from hazardous waste handling areas from reaching the environment without proper treatment;
 - (iii) prevent contamination of water supplies;
 - (iv) mitigate the effects of equipment failure; and
 - (v) prevent undue exposure of personnel to the hazardous waste; and
- (8) proof of service of the materials required to be filed by this subdivision on the Chief, Hazardous Waste Facilities Branch, U.S. EPA.

(c) Whether fly ash, bottom ash, flue gas emission control facility sludge or other wastes resulting primarily from the combustion of coal or other fossil fuels are considered hazardous wastes will be determined in accordance with applicable DEC regulations.

1002.13 Procedures for Approval of Solid Waste and Hazardous Waste Management Facility Permits.

(a) Upon receipt of any request for advance consultation as to studies concerning a solid waste management facility construction or operation permit or a hazardous waste management facility permit, the staffs of the department and DEC shall promptly meet with the applicant, review any proposed study plan, provide comments and identify any requirements which shall be met for its approval.

(b) If agreement cannot be reached, any person participating in a preapplication consultation process may petition the Board for the appointment of a presiding officer, in accordance with section 1000.4 of this Subchapter, to mediate any unresolved issue.

(c) Upon receipt of a request for a solid waste management facility construction permit, a solid waste management facility operation permit or a hazardous waste management facility permit, the staffs of the department and DEC shall promptly review the request(s) and (if complete) the staff of the department, after consideration of the views of DEC staff, shall provide the Secretary with a draft public notice indicating:

(1) the name and address of the applicant;

(2) the name of a representative of the applicant who may be contacted for further information and his or her address and telephone number;

(3) the name of a person on the department staff who may be contacted for further information and his or her address and telephone number; and that:

(i) the request(s) for the permit(s) is complete;

(ii) a preliminary determination as to whether the permit(s) should be issued is available;

(iii) a brief description of the proposed solid waste or hazardous waste management facility(ies) and its (their) operation is available;

(iv) the solid waste or hazardous waste management facilities permit(s) will be a part of the certificate, if issued by the Board;

(v) written comment may be filed with the Secretary within 45 days; and

(vi) an opportunity for further comment will be given in the hearings to be held on the submittal.

(d) The Secretary shall:

(1) cause a notice of the completeness of the material regarding solid waste or hazardous waste management facilities, the availability of additional material and the opportunity for public comment to be included in the Weekly Bulletin published by the department and the Environmental Notice Bulletin published by DEC;

(2) serve copies of these documents on:

(i) each party to the proceeding,
(ii) the EPA administrator;
(iii) the chief executive officer of any city or county in which the facility would be located; and
(iv) persons who have requested that they be informed of any application in the area where the facility would be located or who request the material in response to the public notice; and

(3) serve a copy of the material regarding solid waste or hazardous waste management facilities on the EPA administrator.

(e) The applicant, by direction of the Secretary, shall publish the notice referred to in the preceding subdivision once a week for two consecutive weeks in a newspaper(s) of general circulation in the area in which the facility(ies) would be located. When possible such notice shall be consolidated with other notices regarding the facility. In the case of an application for an hazardous waste management facility, the applicant shall arrange for radio announcements concerning the proposed facility which shall include:

- (1) the name and address of the applicant;
- (2) a brief description of the hazardous waste management facility and its operation;
- (3) an address where documents relevant to the facility may be reviewed;
- (4) the name of a representative of the applicant who may be contacted for further information and his or her address and telephone number; and
- (5) the name of a person on the department staff who may be contacted for further information and his or her address and telephone number.

(f) In consultation with DEC staff, the staff of the department shall:

(1) evaluate whether the proposed solid waste or hazardous waste management facility(ies) will meet the applicable design and operation requirements of regulations implementing such title and Parts 370-374 by the specific means set forth in the submittal; and

(2) provide the EPA administrator with copies of any public comments received and of the testimony containing its evaluation and recommendations.

(g) A final decision with respect to the requirements for the construction and operation of solid waste or hazardous waste management facilities will be rendered as a part of the determination on the application submittal. A decision with respect to solid waste or hazardous waste management facilities issued as a part of the certificate for which EPA has reserved review authority shall not become effective until the EPA administrator has approved the decision.

(h) Any solid waste management facility permit or hazardous waste management permit issued as a part of the certificate shall be in full force and effect for five years from the date of acceptance of the certificate as provided in section 1000.17 of this Title.

(i) Construction of solid waste or hazardous waste management facilities shall be under the supervision of a person(s) or firm(s) registered to practice professional engineering in the State of New York. Upon completion of construction said person or firm shall provide the commission with written certification that construction was in accordance with the permit(s) and any plan(s) approved thereunder.

1002.14 Procedures for Early Approval of Solid Waste and Hazardous Waste Management Facility Permits. (a) An applicant may make a motion to the presiding officer for an early determination on the solid waste management facility construction and operation permits or hazardous waste management facility permit. The presiding officer shall rule on the motion and certify the motion, together with his ruling, to the Board. Any early determination by the Board to grant such Motion shall be void if the Board subsequently rejects the application for a certificate.

(b) A request for early approval of solid waste management facility construction and operation permits or a hazardous Waste management facility permit may be granted upon a showing by the applicant that:

(1) all applicable requirements of these regulations have been satisfied; and

(2) failure to grant such request will substantially delay completion of the proposed generating facility.

(c) A filing including previously approved solid waste management facility construction and operation permits or a hazardous waste management facility permit shall:

(1) demonstrate that such prior approval meets the substantive requirements of these regulations; and

(2) assess the need for additional conditions or requirements to comply with any subsequent change in the laws, rules and regulations applicable at the time the current filing is made.

1002.15 Procedures for Renewal and Modification of Solid Waste or Hazardous Waste Management Facility Permits.

(a) A certificate holder intending to resume construction of a solid waste management facility which has been interrupted for a period of 12 consecutive months (other than for conditions beyond its reasonable control) or, except as provided in section 1002.15 of this Part, to resume operation which has been interrupted for a period of 12 consecutive months or to continue operation of a solid waste management facility beyond the termination date of its operation permit shall apply to the existing Board or, if its jurisdiction with respect to a certificate has ceased, to the commission for renewal of the solid waste management facility construction or operation permit(s) at least 180 days prior to such expiration date. A certificate holder desiring a change in its current permit(s) shall apply to the existing or permanent Board as soon as possible after it is determined that a change is necessary. Except as provided in subdivision (f) of this section, the applicant shall provide the existing or permanent Board, the Commission and DEC with:

- (1) a completed application(s) on the form(s) otherwise prescribed by DEC;
- (2) a proposed draft permit or modification thereof, as the case may be;
- (3) information on the status of construction, including any studies required to be completed under the existing construction permit, if construction has not yet been completed;
- (4) information on the status of any studies required to be completed under the existing operation permit, if operation has commenced;
- (5) a comparison of the results of any studies with the estimates made when the certificate was granted or when the existing permit(s) was issued; and
- (6) any other information which would otherwise be required under applicable DEC regulation or would assist the

decision maker in evaluating the request(s) for renewal or modification.

(b) Except as provided in section 1002.15 of this Part, a certificate holder intending to continue operation of a hazardous waste management facility beyond its termination date shall apply to the existing Board or, if its jurisdiction with respect to a certificate has ceased, to the commission for renewal of the hazardous waste management facility permit at least 180 days prior to such expiration date. A certificate holder desiring a change in its current permit shall apply to the existing or permanent Board, as soon as possible after it is determined that a change is necessary. Except as provided in subdivision (f) of this section, the applicant shall provide the existing or permanent Board, the commission and DEC with:

(1) a completed application on the form(s) otherwise prescribed by DEC;

(2) a proposed draft permit or modification thereof, as the case may be;

(3) information on the status of construction, including any studies required to be completed under the existing permit, if construction has not yet been completed;

(4) information on the status of any studies required to be completed under the existing permit, if operation has commenced;

(5) a comparison of the results of any studies with the estimates made when the certificate was granted or when the existing permit was issued; and

(6) any other information which would otherwise be required under applicable DEC regulations or would assist the decision maker in evaluating the request for renewal or modification.

(c) In addition to physical activities on an approved site, construction of a solid waste or hazardous waste management facility approved under these regulations shall include active efforts to:

- (1) respond to any continuation of the siting proceeding;
- (2) resolve any legal challenge to the certificate;
- (3) complete the acquisition of property on which the facility will be located;
- (4) complete any engineering report or detailed design; or
- (5) negotiate contracts for the scheduled purchase of engineering services or equipment.

(d) A request for a change in a solid waste management facility construction or operation permit(s) or a hazardous waste management facility permit shall be filed as described in section 1000.15 of this Subchapter.

(e) Except as provided in section 1002.15 of this Part, applications for renewal or for modification of a solid waste management facility construction or operation permit(s) or a hazardous waste management facility permit, other than for a minor change as specified in subdivision (f) of this section, will be reviewed in accordance with the procedures set forth in section 1002.13 of this Part, except that the notice described in section 1002.13 (c) of this Part shall indicate that a hearing will only be held if the chairman finds that a significant degree of public interest exists.

(f) (1) A request for approval of a minor change in a solid waste or a hazardous waste management facility, its location, its operation or its discharges as defined in the existing permit(s), may be made by letter to the Secretary, with a copy to DEC, and shall:

- (i) describe the change(s) proposed;
- (ii) provide an estimate of the impact of the proposed change on the quantity and characteristics of the solid wastes or hazardous wastes produced and on the environment; and
- (iii) provide an estimate of the effect of any change on the visual impact of the facility.

(2) A minor change in a solid waste management facility permit or in a hazardous waste management facility permit is a change which:

- (i) corrects a typographical error;
- (ii) modifies a monitoring or reporting requirement(s) without changing the applicable control requirement or the assurance that the facility will be properly operated;
- (iii) modifies an interim compliance date by no more than 120 days but does not delay compliance with any control requirement;
- (iv) deletes a control requirement when the use of an area is terminated and the use of other areas is not changed, except in accordance with applicable permit requirements;
- (v) covers the use of minor quantities of chemicals or minor changes in operation which will not result in violation of any control requirement in the permit;
- (vi) changes the list of hazardous waste facility emergency coordinators or the list of available emergency equipment in any hazardous waste management facility contingency plan;
- (vii) changes any estimate of maximum hazardous waste inventory in storage and in any treatment process at any time during the life of a hazardous waste management facility;
- (viii) changes the expected year of closure or the schedule for final closure of an hazardous waste management facility;
- (ix) allows periods longer than 90 days for the removal of all hazardous wastes from or the onsite disposal of all hazardous wastes at an hazardous waste management facility or periods longer than 180 days for the completion of all closure activities, provided that notification is given at least 30 days prior to such periods and that the permittee is and will continue to take all steps necessary to prevent threats to the public

health and the environment from such wastes or facility, including compliance with all applicable permit requirements;

(x) changes the operating requirements (or the allowable ranges for such requirements) set in the permit to reflect the result of any trial burn (provided the change is minor);

(xi) grants one extension of the time period for demonstrating operational readiness following completion of construction of a hazardous waste management facility, for up to 720 hazardous waste treatment operating hours;

(xii) changes the treatment control requirements for land treatment to improve treatment of hazardous constituents (provided the change is minor);

(xiii) changes a condition specified in a permit for land treatment to reflect the results of field tests or laboratory analyses used to make a treatment demonstration (provided the change is minor);

(xiv) allows a second demonstration of the adequacy of land treatment when the results of the first demonstration have not shown that the waste can be treated satisfactorily, provided that the conditions for the second demonstration are substantially the same as for the first demonstration; or

(xv) allows transfer of ownership or change in operational control of a facility where no other change in the permit is requested and a written agreement containing the specific date of transfer of permit responsibility, coverage and liability between the current and new owners (or operators) has been provided.

(g) If the chairman (or his designee), after considering any views expressed by DEC, agrees that the proposed change is minor, a letter may be issued by the chairman (or his designee) making appropriate changes in the construction or operation permit, or both. Neither a public notice nor a hearing will be required for such a change(s). If the chairman does not agree

that the proposed change is minor, the applicant may apply to the existing or permanent Board in accordance with section 1002.15 of this Part.

(h) A solid waste or a hazardous waste management facility permit may be amended, modified, revoked or suspended in accordance with section 1000.15 of this subchapter.

(i) If an applicant has made timely and sufficient application for permit renewal, the existing permit remains in force pursuant to section 401(2) of the State Administrative Procedure Act while the request is being reviewed.

1002.16 Renewal of State Pollutant Permits Following Commercial Operation.

(a) After the date of commencement of commercial operation of a facility with respect to which a certificate was granted a certificate holder intending to continue to exercise authority granted by a wastewater discharge permit, air contamination source operating certificate, solid waste management facility operating permit or hazardous waste management facility operating permit, issued with respect to such facility, beyond its termination date, shall submit its application for renewal of such permit to DEC at least 180 days before its expiration (for action in accordance with its regulations) and serve a copy on the commission; so long as any applicable studies required in the certificate or any permit issued as a part thereof are substantially complete.

PART 1003

COMPLIANCE FILINGS

(Statutory authority: Public Service Law, §§ 161, 168(2))

Sec.

1003.1	Purpose
1003.2	Definitions
1003.3	General procedures

1003.4 General requirements

1003.5 Verifications

Section 1003.1 Purpose. This Part establishes procedures for assuring, before substantial work has begun, that the facility described in the conceptual design presented to the Board will be built as proposed or as modified by the Board in its certificate authorizing the facility.

1003.2 Definitions.

(a) applicant includes a certificate holder.

(b) compliance filing means a presentation by the applicant which describes how the proposed or certified facility will be constructed and operated to comply with the certificate granted by the Board and consists of an initial compliance filing and a series of licensing packages.

(c) compliance filing means a document which contains a construction management program, a schedule for the submission of licensing packages, and a general description of the environmental protections measures which will be applied during the construction and operation of the facility.

(d) licensing package means a document which provides detailed plans for meeting environmental and other requirements for a particular phase of the construction and operation of the facility (such as clearing and grubbing, excavation and spoil disposition, erosion control, intake facilities, liquid waste collection, treatment and disposal facilities, air pollution control facilities, solid waste disposal facilities, site restoration, etc.).

(e) plant site means the area on which the major electric generating facility, is to be located including offsite electrical facilities but excluding offsite electrical facilities.)

(f) construction site means the plant site and any other land and water areas that may be physically modified in any way

by the proposed construction activities whether or not contiguous to the plant site.

(g) site means the area owned or controlled by the applicant, associated with the facility, including the "construction site."

1003.3 General procedures.

(a) The applicant shall submit its initial compliance filing and licensing packages to the Board or to the commission (if the Board's jurisdiction has ceased). The licensing packages pertaining to early phases of construction may be submitted at the same time as the initial compliance filing; subsequent licensing packages shall be submitted in accordance with the schedule of compliance included in the initial compliance filing, as approved by the Board or the commission.

(b) The applicant shall not undertake any construction activity (except for surveying, digging test pits, boring and such related activities as are necessary to prepare final design plans) before the Board or commission has approved the initial compliance filing, except as may be specifically authorized in the certificate issued by the Board.

(c) The applicant shall not undertake any construction activity which is the subject of a licensing package before the Board or the commission has approved that particular licensing package, except as may be specifically authorized by the Board or the commission.

(d) The initial compliance filing and individual licensing packages may be filed before or after the issuance of a certificate.

(e) At least 20 days prior to submitting the initial compliance filing and each subsequent licensing package, the applicant shall give written notice of its intention to file the particular document(s) to the Board or the commission, and to all parties to the certification proceeding. At least 10 days prior to such filing, the applicant shall also publish a copy of such

notice in a newspaper(s) of general circulation in the vicinity of the site. The notice shall contain:

(1) a general description of the document(s) to be filed, including the company's name, a brief description of the project and its location;

(2) the approximate date the document(s) will be filed;

(3) the location of a library(ies) or other location in the town(s) where the site is located where the document(s) will be available for public inspection.

(4) a statement that a person wishing to receive any document may do so by notifying a company representative (whose name, addresses, and telephone number shall be provided and if available e-mail address and telecopier machine number);

(5) a statement that any person desiring additional information may contact a company representative or department staff member (whose names, addresses, and telephone numbers and if available e-mail addresses and telecopier machine number provided); and

(6) a statement that any person wishing to comment on the document(s) may do so by filing 10 copies of the comments with the Secretary and serving one copy on the applicant within 30 days of the filing of the document.

(f) When the applicant submits the initial compliance filing or subsequent licensing packages, it shall file two copies with the Board or the commission and serve five copies on staff of the department, three copies on DEC (one on the appropriate regional office and two on the central office), one copy on the library(ies) or other locations specified in the notice required by subdivision (e) of this section and one copy on each person who has notified the applicant of a desire to receive all or particular compliance documents.

(g) The initial compliance filing and each subsequent licensing package shall be accompanied by a copy of the notice required by subdivision (e) of this section.

(h) Hearings on the initial compliance filing and on subsequent licensing packages may be conducted if it is demonstrated to the satisfaction of the existing Board or the commission, as the case may be, that good cause exists why written comments are not sufficient.

(i) As soon as practical after the comment period (or hearing) has closed, the existing Board or the commission will approve, modify, condition or disapprove the initial compliance filing or any subsequent licensing package, provided that such approval shall be consistent with the certificate issued by the Board.

(j) A request for approval of, or a change in, the initial compliance filing or a licensing package (other than a minor change as specified in subdivision [1] of this section), shall be filed, served and reviewed as provided in subdivisions (f) through (i) of this section.

(k) A request for approval of, or a change in, an initial compliance filing or licensing package, which is determined to be a request for an amendment of the certificate shall be reviewed, as provided in section 1000.16 of this Subchapter, unless such request is withdrawn or modified so as not to constitute a request for an amendment.

(l) Notice of minor changes in the initial compliance filing (including changes in the schedule for filing licensing packages) or a licensing package, i.e., changes which have no discernable potential for increased environmental impact or material increase in project cost, shall be provided to the Secretary, staffs of the department and of DEC, and any other party who specifically requests such notices, on a monthly basis (commencing promptly after the initial compliance filing is approved) until such request is terminated or the Board or commission authorizes a different schedule.

1003.4 General Requirements.

(a) The initial compliance filing shall contain:

(1) a description of how the applicant will audit and control construction activities to ensure implementation, verification and enforcement of the requirements imposed by the Board or the commission in the certificate, the initial compliance filing and subsequent licensing packages;

(2) the title and qualification of an individual who will:

(i) have onsite responsibility for assuring that all clearing, excavation, spoil disposal and site restoration activities are carried out in accordance with the certificate and approved compliance filing;

(ii) have stop-work authority for activities having adverse environmental impact exceeding that authorized by the certificate and approved compliance filing; and

(iii) have at least four years training in the ecological sciences and experience in assessing the impacts on the environment caused by construction activities.

(3) the titles and qualifications of all other individuals who will be responsible for auditing construction, their relations to the contractor(s), their positions in the company, and the responsibility and authority of each person involved in each audit and control program.

(4) the recordkeeping and report schedules which will be followed by each individual.

(5) the stop-work authority of each individual who will have responsibilities for compliance with the certificate and approved compliance filing, detailing the circumstances under which that authority may be exercised.

(6) a schedule for construction activities and procurement of major components, with milestone dates and the latest available estimate of construction costs;

(7) the schedule of compliance required by any permit issued as part of the certificate;

(8) a schedule of the licensing packages the applicant intends to file together with:

(i) a description of each package and its specific objectives;

(ii) the expected date each package will be submitted; and

(iii) the expected date that the activity which is the subject of that licensing package will begin and be completed; and

(9) a schedule of reports on compliance.

(b) The initial compliance filing shall include the general procedural and substantive guidelines which will be used by the applicant to limit or mitigate adverse environmental impacts; including:

(1) a map showing the entire site, on which are shown the location of major construction activities, the location of all major plant facilities, and any railroad and vehicular access and storage areas.

(2) a map showing the entire plant site, major plant facilities and adjacent properties;

(3) sufficient drawings at suitable scales to show details required by subsequent sections of this Part;

(4) plan and elevation views of onsite transmission facilities showing the location of the switchyard, transmission structures, access road(s), fabrication area(s) and conductor pulling site(s).

(5) a description of the methods of clearing, slash disposal and erosion control;

(6) a map showing the extent of clearing the site and the maximum area to be disturbed by construction activity with a statement of the total area to be cleared, the total acreage to be disturbed by construction and the procedure which will be used to limit construction activities to the designated areas; and

(7) appropriate maps and a description of all offsite construction activities which will be undertaken as a result of

the construction of the facility, including additional roads and modifications of roads, additional transmission facilities or associated facilities, additional railroads or modifications of railroads, the transportation and disposal of excess spoil material to offsite areas, the excavation and transportation of offsite fill material to the site, any offsite cooling water intake or discharge facilities, any offsite sewage or other waste treatment and disposal facilities, etc. together with an identification of any licenses or permits which will be obtained for their approval.

(c) The applicant shall provide licensing packages covering the topics specified in the remaining subdivisions of this section, any other topics specified by the Board and any other topics which the applicant believes will facilitate its demonstration that the conditions of certification will be carried out during the construction and operation of the facility.

(d) A construction management licensing package(s) shall include:

(1) a description of the procedures to be used to audit and control project costs and maintain the schedule of construction; and

(2) a demonstration that the engineering design plans and specifications of each major component of the facility is consistent with the conceptual design upon which the certification was based or that the modified design is better adapted to assuring the production of electric at as low a cost and in as environmentally acceptable a way as possible.

(e) An air quality and meteorology licensing package(s) shall include:

(1) plans for the minimization of dust during the construction and operation of the facility;

(2) procedures to be used for the disposal of slash and combustible construction debris, including procedures to

assure that open burning (if approved by the Board and to be used) conforms to State guidelines for open burning;

(3) a demonstration that any onsite concrete and asphalt batch plants will be capable of operating in compliance with applicable DEC regulations;

(4) a demonstration that the final design specifications for the main and auxiliary boilers, stacks and air pollution control requirement are:

(i) similar to the conceptual designs used to predict probable impacts in the proceedings (except as the certificate may permit modifications); or

(ii) capable of limiting the environmental impact of atmospheric emissions to substantially the same levels as were set forth in the record of the proceeding at no greater cost and with equal or better reliability;

(5) for boilers exceeding 250 million Btu/hr input capacity, manufacturers' guarantees that the boilers and associated air pollution controls equipment have the ability to meet:

(i) best available control technology requirements for the prevention of significant air quality deterioration;

(ii) any other applicable State emission limitation or Federal limitation which DEC has agreed to apply; and

(iii) any other limitation imposed in the certificate;

(6) if available, test data on similarly designed equipment demonstrating its ability to limit atmospheric emissions;

(7) a showing that the fuel contracted for conforms to the fuel specifications in the certificate;

(8) a plan for emission tests to demonstrate that the commercial operation of the facility meets applicable Federal and State emission limitations contained in the certificate;

(9) if required by the Board; a plan (to be submitted at least one year before the expected start of commercial operation) for the collection of one year of post-operational meteorological data (to be commenced no later than 12 months after the start of commercial operation) in the vicinity of the facility;

(10) for fossil-fueled facility, if required by the Board, a plan (to be submitted at least one year before the expected start of commercial operation) for the collection of one year of post-operational air quality data (to be commenced no later than 12 months after the start of commercial operation and to be coincident with the collection of meteorological data) in the vicinity of the facility;

(11) for a fossil-fueled facility, an action plan for dealing with air pollution episodes occurring during plant operation that conforms with applicable DEC regulations; and

(12) an emergency operation plan for ensuring that primary health-related ambient air quality standards will not be violated when air pollution control equipment malfunctions.

(f) an aquatic ecology licensing package(s) shall include:

(1) a report showing that the cooling water intake (including provisions for diverting or removing aquatic life from the intake or screen area), aquatic biota return system (including bypass channels, bypass pumps, pump flows and fish return piping) and operational measures to be employed are consistent with certificate provisions implementing section 316(b) of the Clean Water Act;

(2) plans for two years of preoperational monitoring of the seasonal and spatial occurrence of fish eggs, larvae, juveniles and adults in the vicinity of the intake, the discharge and at least one point remote from the intake and discharge (but similar as far as habitat characteristics are concerned), at least one year of which shall cover a full spawning and growth season immediately before initial facility operation;

(3) plans for two years of post-operational monitoring of the seasonal and spatial occurrence of fish eggs, larvae, juveniles and adults at the same locations as were sampled under paragraph (2) of this subdivision, which shall cover two full spawning and growth seasons commencing not more than 12 months after the initiation of commercial operation of the project; and

(4) a demonstration that the aquatic sampling program will provide a statistically valid basis for assessing any significant change in aquatic life populations in the vicinity of the facility.

(g) An environmental noise licensing package(s) shall include:

(1) an assessment of the facility design showing:

(i) that the potential for the production of noise from all major sources during construction and operation has been minimized; and

(ii) that the design plans comply with all provisions of the certificate and Board orders pertaining to noise;

(2) a description of acoustical monitoring and noise analyses to be carried out to demonstrate the facility's compliance with the terms and conditions of the certificate; and

(3) a description of the procedure to be used for receiving, documenting, and responding to any noise complaints received during the construction and operation of the facility.

(h) A geology licensing package(s) shall include:

(1) a general outline of measures to be used for construction dewatering;

(2) a description of procedures for prompt reporting of any geologic features not anticipated in the certification proceeding that are uncovered during foundation excavation;

(3) a report showing that critical structures have been designed to withstand seismic events that may be anticipated at the site;

(4) a plan for monitoring shoreline erosion and the implementation of shoreline stabilization measures, if needed; and

(5) a description of any major offsite sand, gravel or borrow excavations to be used, the haul roads to be used and the planned period(s) of operation.

(i) A land use and aesthetics licensing package(s) shall include:

(1) a report indicating the material and color scheme to be used for the facility, which shall include an annotated sketch and "bird's eye" perspective of the total facility shown within its environs;

(2) a plan for the preservation and enhancement of areas of the site adjacent to river banks or lake shores and site boundaries;

(3) a plan for the preservation of existing screening and the placement of screen plantings so as to minimize the intrusion of construction and operation activities;

(4) when required by the certificate, a plan for the development of onsite recreational opportunities in cooperation with local authorities;

(5) a plan for the display of applicant, contractor, and vendor signs (or logos) used during and after construction;

(6) a plan for the protection or salvage and appropriate disposition of historic archaeological resources known to be located on the site or discovered during site preparation or construction;

(7) a plan for monitoring and mitigating socioeconomic impacts upon neighboring communities resulting from the displacement of existing economic activities and the imposition of new economic activities derived from the construction or operation of the proposed facility, including:

(i) a description of the qualifications and duties of a project coordinator;

(ii) periodic surveys of impacts during construction and operation; and

(iii) periodic reports of the results of facility construction and any mitigation activities which are implemented;

(8) a plan for transportation to and on the site (developed in conjunction with Department of Transportation and local officials), including:

(i) a map showing onsite and offsite access roads and parking areas;

(ii) a description of the consideration given to anticipated construction vehicle, employee commuting and material delivery traffic volumes, local traffic patterns, truck weights and volumes, road and bridge characteristics, population densities in areas traversed, school bus traffic on or adjacent to the project site, etc.;

(9) a plan for monitoring and, when appropriate, mitigating:

(i) loss of attendance at nearby public or private recreational facilities;

(ii) degradation of visual and aesthetic values of areas adjacent to the facility; and

(iii) loss of property values in the vicinity of the facility;

(10) a map showing the location of all structures to be relocated, demolished or destroyed; and

(11) where applicable, a plan for:

(i) removal or relocation of residents now living on the site;

(ii) use through lease-back of agricultural lands on the site; and

(iii) preservation of wildlife conservation areas on and adjacent to the site.

(j) A solid waste management facility licensing package(s) shall include:

(1) engineering drawings and operational plans for any landfill disposal site(s), including measures for preventing the leaching of materials from pyrites and ash to ground water, as required by applicable DEC Regulation;

(2) a plan for conducting and reporting chemical analyses and compaction and permeability tests on the solid wastes produced by the facility (the results of which shall be filed within 90 days after use of the disposal site is begun); and

(3) a plan for the ultimate use of any solid waste disposal site(s), including a figure showing present and final contours and how the design and operation of each site will be consistent with the plan for its ultimate use.

(k) A hazardous waste management facility licensing package(s) shall include:

(1) engineering drawings and operational plans for any hazardous waste management facility which will be located on the site, as required by applicable DEC Regulation;

(2) a plan for periodically conducting chemical and other analyses of any hazardous wastes received, produced, used, stored or disposed of at the certified generating facility (including any offsite disposal area) and for reporting annually the type and quantities managed, which shall be consistent with applicable DEC regulations; and

(3) a plan for the ultimate closure of any hazardous waste management facility, including an expected closure date and any other information relevant to the termination of use of a hazardous waste management facility established in connection with the certified facility, which shall be consistent with applicable DEC regulation.

(1) A terrestrial ecology licensing package(s) shall include:

(1) procedures for road de-icing during construction and operation;

(2) procedures for the use of herbicides during construction and operation;

(3) a description of and justification for the clearing and slash disposal techniques to be used, including a map showing where particular techniques will be applied;

(4) a plan for the protection and long-range management of ecologically significant areas, including:

(i) demarcation of areas to be left undisturbed;

(ii) limitation of activities in areas which must be partially disturbed; and

(iii) protection of such areas from erosion, siltation or other damage by providing buffer zones and prompt final grading and revegetation after necessary work has been completed;

(5) plan for the restoration of areas disturbed by excavation or grading, including:

(i) temporary grading during construction;

(ii) temporary and permanent spoil disposal;

(iii) final grading;

(iv) erosion control; and

(v) revegetation; and

(6) a plan for monitoring and (if found to be desirable) mitigating bird collisions with project structures, which shall include an assessment of the magnitude of bird collisions with project structures during construction and through the first year of commercial operation.

(m) A water quality licensing package shall include:

(1) an erosion control plan, which shall include:

(i) a map showing the areas to be cleared, excavated or filled, their acreage, the direction of drainage flows and the location of all discharges;

(ii) provisions to be made in the construction schedule to minimize the exposure of erodible soils, including

temporary flow barriers, temporary vegetative cover and grading to final elevations with early final revegetation, where applicable;

(iii) provisions for the collection, treatment and discharge of runoff from cleared, excavated or filled areas, including exclusion of drainage from nonexcavated areas, installation of flow barriers, installation of settling basins, use of surface treatments such as hydroseeding, etc.; and (iv) provisions for the minimization of silt from:

(a) dredging or filling in surface waters of wetlands;

(b) disposal of dredged materials; and

(c) control of silt from runoff from such disposal areas;

(2) an intake facility design, which shall include:

(i) the location and plan and elevation views of the intake structure;

(ii) the approach velocities immediately in front of any bar racks or screens;

(iii) the velocities through the clear openings of any bar racks or screens;

(iv) the velocities in the intake piping; and (v) any specific measures provided to permit modification of the operation of the intake facilities in response to the season, plant load or aquatic life present (or being impinged or entrained);

(3) provisions for chemical, mechanical or thermal condenser cleaning;

(4) if the facility will use once-through cooling, a report showing that the cooling water discharge is consistent with the certificate provisions implementing section 316(a) of the Clean Water Act;

(5) plans for preoperational monitoring of water quality in the vicinity of the cooling water intake, cooling water discharge, and an area remote from the intake and

discharge, which shall be the same area as that selected under paragraph (e)(4) of this section;

(6) plans for post-operational monitoring of cooling water discharges in accordance with the requirements of the wastewater discharge permit;

(7) provisions for boiler cleaning, including:

(i) chemicals to be used;
(ii) volume of cleaning water to be discharged;
(iii) cleaning waste holding facilities to be provided; and

(iv) cleaning waste treatment to be applied (i.e., grease removal, naturalization, solids removal, heavy metals removal, etc., as appropriate);

(8) provisions for process waste control, including:

(i) collection, treatment and disposal of all process wastes not otherwise specified;

(ii) recycle of process wastes where possible;
and

(iii) the functional design of all process waste treatment facilities, including:

(a) plans, profiles, and capacities of each treatment unit; and

(b) the volumes, velocities, weir overflow rates, durations of discharge, etc.;

(9) provisions for the collection and treatment (or offsite disposal) of sanitary wastes;

(10) provisions for solid waste disposal area discharges, including:

(i) volumes of potentially contaminated runoff and seepage;

(ii) runoff and seepage control measures;
(iii) waste treatment; and
(iv) ground water or surface water quality monitoring for solids, heavy metals and other chemicals;

(11) provisions for the discharge of uncontaminated water and of treated water, including:

(i) the location and plan and elevation views of any discharge facilities;

(ii) provisions for achieving required discharge limitations under normal operating conditions and major plant maintenance outages; and

(iii) any provisions for discharge facility modification if monitoring indicates that it is needed; and

(12) plans for monitoring the volume and concentrations of wastes in construction and operational discharges to meet wastewater discharge permit limitations.

1003.5 Verification.

(a) The applicant shall file reports on compliance, as specified by the Board. Ten copies of such reports shall be filed with the Board or the commission after its jurisdiction has ceased; five copies shall be served on the staff of the department, three copies on DEC (one on the appropriate regional office and two on the central office), one copy on the library(ies) or other locations specified in the notice required by section 1003.3(d) of this Part and one copy on any other party who has notified the applicant of a desire to receive a particular report(s).

(b) The engineering reports shall contain:

(1) an updated schedule for the submission of remaining licensing packages;

(2) an updated construction schedule;

(3) an explanation of the slippage of the schedule;

(c) The air quality and meteorology reports shall contain the results of the studies conducted in accordance with the plans filed pursuant to section 1003.4(e)(9) and (10) of this Part. At the completion of the collection of the meteorological and air quality data, a summary report shall contain a comparison of the facility's impact on air quality and meteorology (as determined

by the post-operational monitoring results) with the applicant's predictions.

(d) The aquatic ecology reports shall contain the results of the studies conducted in accordance with the plans filed pursuant to section 1003.4(f) (4) and (5) of this Part. At the completion of the collection of the aquatic ecology data, a summary report shall contain a comparison of the facility's impact on aquatic life (as determined by the postoperational monitoring results) with the applicant's predictions.

(e) The environmental noise report shall contain the results of the studies conducted in accordance with the plans filed pursuant to section 1003.4(g)(2) of this Part.

(f) The shoreline erosion reports shall contain the results of the monitoring conducted in accordance with the plan filed pursuant to section 1003.4 of this Part. A report on a comparison of foundation conditions found with those anticipated shall be filed within 90 days after completion of major foundation excavation.

(g) The land use and aesthetics reports shall contain the results of monitoring of economic and recreational activities in the vicinity of the site, in accordance with section 1003.4(i)(7)(ii)-(iii) and (i)(9) of this Part. An archaeological report shall contain a description of any significant discoveries made and the disposition of any materials recovered.

(h) The solid waste disposal reports shall contain the results of the analyses and tests conducted in accordance with the plans filed pursuant to section 1003.4(j)(2) of this Part.

(i) The hazardous waste management reports shall contain the results of any analyses, tests and inventories conducted in accordance with any plan filed pursuant to section 1003.4(k)(2) of this Part.

(j) The bird collision report, if required, shall contain the results of the studies conducted in accordance with the plan filed pursuant to section 1003.4 of this Part.

(k) The water quality reports shall contain the results of studies conducted in accordance with the plans filed pursuant to section 1003.4(m)(1)(5), (6) and (12) of this Part. If satisfactory plant operating efficiency cannot be maintained using the originally permitted amount of chlorine or other biocide, a report shall be filed containing the results of observations made to determine the minimum amount of chlorine or other biocide that should be applied to the main circulating water system (in combination with other appropriate control measures) to maintain plant operating efficiency.

(1) The construction site and all construction records shall be open to inspection by the chairman, or the representative(s) of the chairman, during normal working hours. Information requested by the chairman, or the representative(s) of the chairman, shall be provided in a timely fashion, and in all cases at least 10 days prior to the initiation of any activity with regard to which the information is requested.

(m) If any activity on which information is requested has already been initiated, such information shall be provided within three working days.

2. That the Secretary is directed to file a copy of this resolution with the Secretary of State.