

MASS DEP'S STATED MISSION:

MassDEP's mission is to protect and enhance the Commonwealth's natural resources - air, water, and land - to provide for the health, safety, and welfare of all people, and to ensure a clean and safe environment for future generations. In carrying out this mission MassDEP commits to address and advance environmental justice and equity for all people of the Commonwealth, to provide meaningful, inclusive opportunities for people to participate in agency decisions that affect their lives; and to ensure a diverse workforce that reflects the communities we serve.

MASS DEP SITE SUITABILITY CRITERIA

16.40: Site Suitability Criteria

(1) Determination of Suitability.

(a) Department's Determination. The Department shall determine whether a site for a new or expanded facility of the type and scope proposed is suitable or not suitable based upon the criteria set forth in 310 CMR 16.40(3), (4) and (5). In reviewing these criteria, no site shall be deemed to be suitable where the impacts from the solid waste management facility will by itself, or in combination with impacts from other sources within the affected area, constitute a danger to public health or safety or the environment. In determining whether or not a proposed facility meets the criteria, set forth in 310 CMR 16.40(3), (4) and (5);

1. the Department shall rely upon the application and information supplied by the applicant or any other information made available to the Department;

2. the applicant bears the burden of showing that the proposed facility meets the criteria set forth in 310 CMR 16.40(3), (4) and (5).

3. if the Department determines that the facility is located within a Restricted Area, the applicant shall receive a negative Site Suitability Report;

4. if the Department determines that the facility is not located within a Restricted Area, the Department shall evaluate the criteria set forth in 310 CMR 16.40(3), (4) and (5), using such existing state and federal standards, criteria, guidelines or allowable limits and technical health reports which are intended to protect the public health, safety, and the environment;

5. the Department shall consider whether the site is in a preferred municipality as defined herein; and

6. the Department shall consider whether the site use promotes integrated solid waste management in accordance with 310 CMR 16.40(5).

(3) Facility Specific Site Suitability Criteria.

(a) Criteria for Landfill Facilities (Restricted Areas). No site shall be determined to be suitable or be assigned as a landfill facility where:

1. any area of waste deposition would be within a Zone II area of an existing public water supply well;
2. any area of waste deposition would be within the Interim Wellhead Protection Area (IWPA) of an existing public water supply provided that the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the facility would be beyond the Zone II of the public water supply well in question;
3. any area of waste deposition would be within a Zone II or Interim Wellhead Protection Area (IWPA) of a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR;
4. any area of waste deposition would be within 15,000 feet upgradient of the existing public water source well or proposed drinking water source area for which a Zone II has not been calculated; the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the facility would be beyond the Zone II of the public water supply well or proposed drinking water source area in question;
5. it is determined by the Department that a discharge from the facility would pose a danger to an existing or proposed drinking water source area;
6. any area of waste deposition would be over the recharge area of a Sole Source Aquifer, unless all of the following criteria are met:
 - a. there are no existing public water supplies or proposed drinking water source areas downgradient of the site;
 - b. there are no existing or potential private water supplies downgradient of the site; however, the applicant may have the option of providing an alternative public water supply to replace all the existing or potential downgradient private groundwater supplies; and
 - c. there exists a sufficient existing public water supply or proposed drinking water source area to meet the municipality's projected needs;
7. any area of waste deposition is within the zone of contribution of an existing public water supply or proposed drinking water source area, or the recharge area of a surface drinking water supply, pursuant to a municipal ordinance or by-law enacted in accordance with M.G.L. c. 40A, § 9;
8. any area of waste deposition would be within the Zone A or Zone B of a surface drinking water supply;
9. any area of waste deposition would be less than 400 feet upgradient, as defined by groundwater flow or surface water drainage, of a perennial water course that drains to a surface drinking water supply which is within one mile of the waste deposition area;

10. any area of waste deposition would be within a Potentially Productive Aquifer unless:

- a. the proponent demonstrates to the Department's satisfaction, based on hydrogeological studies, that the designation of the area as a potentially productive aquifer is incorrect;
- b. the proponent demonstrates to the Department's satisfaction, based on hydrogeological studies, that the aquifer cannot now, nor in the reasonably foreseeable future, be used as a public water supply due to existing contamination of the aquifer; or
- c. the area has been excluded as a "Non-Potential Drinking Water Source Area" pursuant to 310 CMR 40.0932, or as otherwise defined at 310 CMR 40.0006: The Massachusetts Contingency Plan.

11. any area of waste deposition would be within 1000 feet upgradient, and where not upgradient, within 500 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application; provided, however, the applicant may show a valid option to purchase the restricted area, including the well and a guarantee not to use the well as a drinking supply, the exercise of which shall be a condition of any site assignment;

12. the maximum high groundwater table is within four feet of the ground surface in areas where waste deposition is to occur or, where a liner is designed to the satisfaction of the Department, within four feet of the bottom of the lower-most liner;

13. the outermost limits of waste deposition or leachate containment structures would be within a resource area protected by the Wetlands Protection Act, M.G.L. c. 131, § 40, including the 100 year floodplain;

14. any area of waste deposition or the leachate containment structures would be less than 400 feet to a lake, or 200 feet to a Riverfront Area as defined in 310 CMR 10.00, that is not a drinking water supply;

15. any area of waste deposition would be within 1000 feet of an occupied residential dwelling, health care facility, prison, elementary school, middle school or high school or children's pre-school, licensed day care center, senior center or youth center, excluding equipment storage or maintenance structures; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment; or

16. waste deposition on the site would result in a threat of an adverse impact to groundwater through the discharge of leachate, unless it is demonstrated to the satisfaction of the Department that a groundwater protection system will be incorporated to prevent such threat.

(b) Criteria for Single Waste Landfills (Reserved)

(c) Criteria for Solid Waste Combustion Facilities

(d) Criteria for Solid Waste Handling Facilities. No site shall be determined to be suitable or be assigned as a solid waste handling facility where:

1. the waste handling area would be within the Zone I of a public water supply;
2. the waste handling area would be within the Interim Wellhead Protection Area (IWPA) or a Zone II of an existing public water supply well within a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR, unless restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either
 - a. the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or
 - b. there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.
3. the waste handling area would be within the Zone A of a surface drinking water supply;
4. the waste handling area would be within 500 feet upgradient, and where not upgradient, within 250 feet, of an existing or potential private water supply well existing or established as a Potential Private Water Supply at the time of submittal of the application, provided however, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.
5. the waste handling area of;
 - a. a transfer station that proposes to receive less than or equal to 50 tons per day of solid waste and utilizes a fully enclosed storage system such as a compactor unit, is 250 feet from;
 - i. an occupied residential dwelling; or
 - ii. a prison, health care facility, elementary school, middle school or high school, children's preschool, licensed day care center, or senior center or youth center, excluding equipment storage or maintenance structures.
 - b. any other transfer station or any handling facility is 500 feet from:
 - i. an occupied residential dwelling; or
 - ii. a prison, health care facility, elementary school, middle school or high school, children's preschool, licensed day care center, or senior center or youth center, excluding equipment storage or maintenance structures.
6. the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00; or

7. the maximum high groundwater table would be within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two foot separation can be designed to the satisfaction of the Department.

(4) General Site Suitability Criteria. The following Site Suitability Criteria shall apply to all types of solid waste management facilities.

(a) Agricultural Lands. No site shall be determined to be suitable or be assigned as a solid waste management facility where:

1. the land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service; or
2. the land is deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and
3. a 100 foot buffer would not be present between the facility and those lands classified at 310 CMR 16.40(4)(a)1. or 2.

(b) Traffic and Access to the Site. No site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:

1. traffic congestion;
2. pedestrian and vehicular safety;
3. road configurations;
4. alternate routes; and
5. vehicle emissions

(c) Wildlife and Wildlife Habitat. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:

1. have an adverse impact on Endangered, Threatened, or Special Concern species listed by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
2. have an adverse impact on an Ecologically Significant Natural Community as documented by the Natural Heritage and Endangered Species Program in its database;
or
3. have an adverse impact on the wildlife habitat of any state Wildlife Management Area.

(d) Areas of Critical Environmental Concern. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:

1. would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or
2. would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC.

(e) Protection of Open Space. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have an adverse impact on the physical environment of, or on the use and enjoyment of:

1. state forests;
2. state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution;
3. MDC reservations;
4. lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or
5. conservation land owned by private non-profit land conservation organizations and open to the public.

(f) Potential Air Quality Impacts. No site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:

1. the concentration and dispersion of emissions
2. the number and proximity of sensitive receptors; and
3. the attainment status of the area.

(g) Potential for the Creation of Nuisances. No site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. noise;
2. litter;
3. vermin such as rodents and insects;
4. odors;
5. bird hazards to air traffic; and

6. other nuisance problems.

(h) Size of Facility. No site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility. The minimum distance between the waste handling area or deposition area and the property boundary shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility.

(i) Areas Previously Used for Solid Waste Disposal. Where an area adjacent to the site of a proposed facility has been previously used for solid waste disposal the following factors shall be considered by the Department in determining whether a site is suitable and by the board of health in determining whether to assign a site:

1. the nature and extent to which the prior solid waste activities on the adjacent site currently adversely impact or threaten to adversely impact the proposed site;
2. the nature and extent to which the proposed site may impact the site previously used for solid waste disposal; and
3. the nature and extent to which the combined impacts of the proposed site and the previously used adjacent site adversely impact on the public health, safety and the environment; taking into consideration:
 - a. whether the proposed site is an expansion of or constitutes beneficial integration of the solid waste activities with the adjacent site;
 - b. whether the proposed facility is related to the closure and/or remedial activities at the adjacent site; and
 - c. the extent to which the design and operation of the proposed facility will mitigate existing or potential impacts from the adjacent site.

(j) Existing Facilities. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:

1. the extent to which the municipality's or region's solid waste needs will be met by the proposed facility; and
2. the extent to which the proposed facility incorporates recycling, composting or waste diversion activities.

(k) Consideration of Other Sources of Contamination or Pollution. The determination of whether a site is suitable and should be assigned as a solid waste management facility shall consider whether the projected impacts of the proposed facility pose a threat to public health, safety or

the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department, and whether the proposed facility will mitigate or reduce those sources of pollution or contamination.

(l) Regional Participation. The Department and the board of health shall give preferential consideration to sites located in municipalities not already participating in a regional disposal facility. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community participating in a regional disposal facility:

1. the extent to which the proposed facility meets the municipality's and the region's solid waste management needs; and
2. the extent to which the proposed facility incorporates recycling, composting, or waste diversion activities.

(5) Promotion of Integrated Solid Waste Management.

(a) In determining whether a site is suitable for a combustion facility or a landfill, the Department shall consider the following factors:

1. The potential yearly and lifetime capacity created by the proposed site use(s) in relation to the reasonably anticipated disposal capacity requirements and reduction/diversion goals of the Commonwealth and the geographic area(s) which the site will serve.
2. The extent to which the proposed site use(s), alone or in conjunction with other sites, provides or affords feasible means to maximize diversion or processing of each component of the anticipated waste stream in order to reduce potential adverse impacts from disposal and utilize reusable materials and only thereafter extract energy from the remaining solid waste prior to final disposal.
3. The extent to which the proposed use(s) of the site, alone or in conjunction with other sites, will contribute to the establishment and maintenance of a statewide integrated solid waste management system which will protect the public health and conserve the natural resources of the Commonwealth (b) In determining whether a site is suitable for a combustion facility or a landfill, the Department and the board of health shall consider the extent to which the proposed use of the site directly incorporates recycling and composting techniques or is otherwise integrated into recycling and composting activities for the geographic area(s) which the site will serve. (c) A site proposed for a combustion facility or a landfill shall be reviewed to determine if the site is also suitable for a recycling or composting facility either in conjunction with or instead of the proposed facility. (d) Site assignment applications which incorporate significant recycling or composting uses, in accordance with the goals of the statewide plan, shall receive preferred consideration