

TOWN OF DANUBE
WASTE MANAGEMENT FACILITIES LAW
LOCAL LAW # 6 of 1998 PART A

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Be it enacted by the Town of Danube as follows:

Section I. TITLE

This local law shall be known as and may be cited as the "Waste Management Facilities Law of The Town of Danube."

Section II. FINDINGS

The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid and liquid waste disposal facilities such as landfills; ash fills; resource recovery or incineration facilities. Among other factors, the Board finds as follows:

1. The inability of geological science to precisely ascertain the existence and flow of groundwater and to map subterranean geology makes it impossible to determine the extent to which solid and liquid waste disposal may, or may not be, contaminating water supplies.
2. Moreover, the accumulated extent of hazardous waste disposal in solid and liquid waste disposal facilities cannot be measured or accurately determined because of state and federal regulations permitting disposal or residential or small user quantities of hazardous wastes.
3. The Town's need for solid and liquid waste disposal are being met.
4. Future correction of pollution from solid or liquid waste management facilities, including sanitary landfills and incineration facilities may be very expensive or impossible to achieve.
5. The Town's existing community character will be adversely and unalterably

impacted by the location and operation of any solid or liquid waste management facilities within the town.

6. Substantial scientific opinion questions the environmental and health effects of both " resource recovery" facilities that incinerate or burn solid waste and of the handling and disposal of ash residue from such facilities, AND the containment methods for liquid waste.

7. Solid and liquid waste regulation under New York Environmental Conservation Law (ECL) is inadequate relieve the forgoing concerns.

Section III. PURPOSE

The town intends by this Local Law to:

1. Restrict the operation of solid waste management facilities within the Town of Danube in order to promote a clean, wholesome and attractive environment for the community.
2. Ensure that accurate, current information about currently exempted solid waste disposal operations within the town is available to public officials and citizens.
3. Protect the residents of the town from undesirable effects of solid waste disposal operations including:
 - a. unaesthetic results, including odors, blowing litter, increased traffic, dust, and noise, and
 - b. deterioration in property values associated with an adjacent or proximate disposal operation that may interfere with the orderly development of properties; and
 - c. threats to public health or the environment by contamination of air, surface water or groundwaters.
4. To exercise the Town's police powers under the Municipal Home Rule Law and Sections 130 and 136 of the Town Law for the physical and mental well-being and safety of its citizens and to restrict waste disposal operations within the town that might otherwise be permitted under the ECL. Sections 27-0711 of the ECL specifically recognizes and authorizes the right and authority of a Town to legislate stricter controls on solid waste management operation than state law requires.

Section IV. APPLICABILITY

This Local Law shall apply to all territory within the confines of the Town of Danube.

Section V. DEFINITIONS

A. Unless defined below or the context otherwise requires, the terms and words used in the Local Law shall have the same meanings as those defined in Article 27 of the ECL and Title 6 Parts 360 to 364 and 617, of the New York Codes, Rules, and Regulations.

B. As used in this Local Law, these terms and words still be defined as follows:

6 NYCRR-Title 6 of the New York Codes, Rules, and regulations .

ASH or ASH RESIDUE-all the solid residue and any entrained liquids resulting from the combustion of solid waste at a solid waste incinerator, including bottom ash, boiler ash and the solid residue of any air pollution control device used in a solid waste incinerator.

ASHFILL- any landfill designed to accept ash residue, bottom ash, combined ash, or fly ash.

COMMERCIAL WASTE- liquid or solid waste generated by stores, offices, warehouses and restaurants.

COMPOSTING-aerobic decomposition of solid organic constituents of solid waste to produce a table, humus-like material used for fertilizing and conditioning land.

CONSTRUCTION and DEMOLITION DEBRIS-uncontaminated, inert solid waste resulting from the construction, remodeling, repair and demolitions of structures, and from road building and land clearing. Such waste includes, but is not limited to bricks, concrete, and other masonry materials, soil, rock, wood, wall coverings, plaster drywall, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, and metals that are incidental to any of the above.

CONTAINMENT POND or POOL-any basin, tank , pond or pool for the disposal, storage, retention, procession, treatment or other handling of liquid waste.

DEC- the New York State Department of Environmental Conservation.

DISPOSAL-the placement, distribution, storage, removal or transportation of solid wastes.

FACILITY-any .solid waste management facility.

HAZARDOUS WASTE-waste meeting the definition set forth in 6 NYCRR Part 371.

HOUSEHOLD WASTE-liquid or solid waste from residential sources.

INDUSTRIAL WASTE-, any liquid, gaseous, or solid waste substance, or combination thereof resulting from any process of industry, manufacturing, trade, or business. It shall include, but not be limited to, pesticides, lime, acids, chemicals, petroleum products, tar, and dye-stuffs.

LANDFILL or SANITARY LANDFILL- any disposal area for solid wastes in or upon the ground.

MANURE- refuse of stables and barnyards consisting of livestock, avian excreta with or without litter used for fertilizing land.

PERSON- any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

RECYCLING- means the reuse of solid waste recovered from the solid waste stream into goods or materials suitable for reuse in original or changed form.

SEWAGE- the water carrying human or animal wastes from residences, buildings, industrial establishments, or other places together with such ground water infiltration and surface water as may be present.

SOLID or LIQUID WASTE-all putrescible and non-putrescible materials or substances that are discarded or rejected, as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator ash and residue and construction and demolition debris. In addition:

1. A material is "discarded" if it is abandoned by being:
 - a. disposed of;
 - b. burned or incinerated, including being burned as a fuel for the purpose of recovering useable energy; or
 - c. accumulated, stored, or physically, chemically, or biologically -treated (other than burned or incinerated) instead of being disposed of.
2. A material is "disposed of" if it is discharged, deposited, injected, (dumped, spilled, leaked, or placed into or on any land or water.

SOLID WASTE MANAGEMENT FACILITY-any facility employed beyond the initial solid or liquid waste collection process and managing solid or liquid waste including, but not limited to: storage areas or facilities; -transfer stations, rail-haul facilities; processing facilities; landfills; ashfills; disposal facilities; solid waste incinerators; resource recovery facilities; recycling facilities; and waste tire storage, facilities, containment ponds or pools, sewage treatment plants and storage tanks or containers, or any other facility of any kind designated a solid waste management facility by the DEC.

SOLID WASTE INCINERATOR- an incinerator at which household waste and non-hazardous industrial / commercial waste are combusted for energy.

SOUND AGRICULTURAL PRACTICES- refers to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities.

Section VI. EXEMPTIONS

A. The following are not subject to this Local Law:

1. Any disposal and storage of manure in farming operations following sound agricultural practices; but not including sewage sludge processing and spreading.
2. Operations or facilities which receive or collect only non-putrescible, non-hazardous solid waste and beneficially use or reuse or legitimately recycle or reclaim such waste. Such exempt

facilities are limited to citizen recycling programs, town recycling operations, composting, farming operations, town highway operations and bona-fide salvage dealers.

3. Any sewage treatment facility but not including any sewage sludge spreading facility.

4. Any bona fide solid waste management facility previously in existence on the effective date of this Local Law shall remain exempt under the current terms and conditions of their operating permit.

B. None of the above exemptions shall be construed to permit any activity contrary to existing building codes or other laws or as exempting any other permit required by state or local law.

SECTION VII. COORDINATION WITH STATE LAW

A. All relevant sections of Article 27 of the ECL and 6 NYCRR, Parts 360 to 364 and 617, are deemed to be included within and as part of this Local Law, and any violation thereof shall be considered to constitute a violation of this Local Law.

B. The provisions of this Local Law shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this Local Law shall apply.

SECTION VIII. PROHIBITIONS

No solid waste management facility shall be constructed or allowed to commence operation.

SECTION IX. PENALTIES FOR OFFENSES; ENFORCEMENT

A. All violations of this Local Law or any of its regulations or provisions, shall be deemed Class A misdemeanors, punishable by a fine not exceeding five thousand (\$5,000) dollars or imprisonment not exceeding one (1) year, or both. Each and every day that a violation of, this Local Law is permitted to exist shall constitute a separate offense.

B. Any violation of this Local Law or regulations or provisions thereof shall create a liability to the people of the town for civil penalty not to exceed five thousand (\$5,000) dollars, to be after a hearing or opportunity to be heard. upon due-notice and with the right to specification of the charges and representation by counsel at such hearing. Each and every day that a violation of this local law occurs or continues shall constitute a separate violation for purposes of civil liability.

C. Upon any violation of this Local Law by any person, the Town shall be entitled to obtain an injunction against such persons prohibiting further violations and, in addition, ordering that any solid or liquid waste disposed of in violation hereof be removed from the Town, and ordering that any land on which solid or liquid waste is disposed of in violation of this Local Law be restored as nearly as possible to its former condition by the removal of any waste illegally disposed of and by such other restorative measures as are available, and further ordering that the operator remedy any effects of the violation of surrounding or adjacent properties or resources, including, without limitation, air, trees, crops, water bodies, wetlands and groundwaters.

SECTION X. REPEALER; EFFECT ON OTHER LAWS

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

SECTION XI. SEVERABILITY

If any part of the Local Law shall be judicially declared to be invalid, void, unconstitutional, or unenforceable, all unaffected provisions thereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted. If all parts of the Local Law shall be judicially declared to be invalid, void, unconstitutional or unenforceable, Part B will take effect immediately.

Section XII. EFFECTIVE DATE

This Local Law shall become effective when it is passed and adopted by The Town Board of the Town of Danube
Passed and Adopted on September 30, 1998

**TOWN OF DANUBE
WASTE MANAGEMENT FACILITIES LAW – PART B**

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I T I T L E

This local law shall be known as and may be cited as the “Waste Management Facilities Law of The Town of Danube.”

II FINDINGS

A. The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid and liquid waste management facilities such as landfills, ashfills, resource recovery, transfer stations, recycling facilities, and incineration facilities. Among other factors, the Board finds as follows:

1. The inability of geological science to precisely ascertain the existence and flow of groundwaters and to map subterranean geology makes it impossible to determine the extent to which solid and liquid waste disposal may, or may not be, contaminating water supplies.
2. Moreover, the accumulated extent of hazardous waste disposal in solid and liquid waste disposal facilities cannot be measured or accurately determined because of state and federal regulations permitting disposal of residential or small user quantities of hazardous wastes.
3. The Town’s need for solid and liquid waste disposal are being met.

4. Future correction of pollution from solid or liquid waste management facilities, including sanitary landfills and incineration facilities may be very expensive or impossible to achieve. According to the DEC pollution from solid waste management facilities has already contaminated portions of the local water supply. DEC studies cite disposal facilities as major sources of water, including groundwater, contamination.
5. The Town's existing community character will be adversely and unalterably impacted by the location and operation of any solid or liquid waste management facilities within the town.
6. Substantial scientific opinion questions the environmental and health effects of both "resource recovery" facilities that incinerate or burn solid waste and of the handling and disposal of ash residue from such facilities, and the containment methods for liquid waste.
7. The Town of Danube lies in a particularly significant environmental area, located in the Mohawk River Valley region; it includes portions of the Mohawk River and its tributaries, which are important water resources. Also within or near the Town are major aquifers, along with adjacent recharge areas. The wetlands contained within the Town are a precious ecological resource and are deserving of the utmost protection.
8. These natural resources constitute crucial physical, ecological, social, aesthetic, recreational, and economical assets, and their preservation is necessary to protect and promote the health, safety, and general welfare of present and future residents of the Town.
9. There are substantial floodplains within the Town. Placement of solid waste management facilities in flood plains can result in wastes being carried by flood waters and flow from the site, and filling in floodplains that may restrict the flow of flood waters, causing greater flooding upstream and/or reduced water storage capacity in the floodplain .
10. The siting, construction, operation of solid waste management facilities within the Town of Danube will affect and impact upon all residents. Furthermore, facilities which are poorly sited or operated may have a negative environmental impact on the surrounding communities because they can contaminate groundwater and surface water, and lead to odors and air pollution.
11. Solid and liquid waste regulation under the New York Environmental Conservation Law (ECL) is inadequate to relieve the foregoing concerns.

III. PURPOSE

- A. It is the intent of this law to promote the public purposes identified in this Section by providing for the proper regulation and use of solid waste management facilities within the Town. Specifically, the Town intends by this Local Law to:
 1. Regulate the siting, construction, operation and expansion of solid waste management facilities within the Town of Danube in order to promote a clean, wholesome and attractive environment for the community
 2. Improve the ability of public officials and Town residents to participate in the process of siting and licensing solid waste management facilities.
 3. Reduce the risk of pollution from solid waste management operations by regulating the type, scope and size of such activities.
 4. Ensure that accurate, current information about solid waste management operations within the Town

is available to public officials and citizens.

5. Protect -the residents of the Town from undesirable effects of solid waste management operations including
 - a. unaesthetic results, including odors, blowing litter, increased traffic, dust, and noise, and;
 - b. deterioration in property values associated with an adjacent or proximate solid waste management operation that may interfere with the orderly development of properties; and
 - c. threats to public health or the environment by contamination of air, surface water or groundwaters.
 6. To exercise the Town's police powers under the municipal Home Rule Law and Sections 130 and 136 of the Town Law for the physical and mental well-being and safety of its citizens and to restrict waste disposal operations within the Town that might otherwise be permitted under the ECL. Section 27-0711 of the ECL specifically recognizes and authorizes the right and authority of a Town of legislate stricter controls on solid waste management operations than state law requires.
- B. It is not the intent of this Local Law to restrict, obstruct, or otherwise hinder the continuation of agricultural production. The Town Board believes that the community is enhanced by the farms that operate within its boundaries. This law affirms the Town's commitment to agriculture for this generation, and future generations who will work the land.
- C. It is not the intent of this law to regulate the composting of yard waste and food waste at the personal residences or farms at which such waste is produced, in any way.

IV. APPLICABILITY

- A. This law shall be applicable to all areas within the Town of Danube
- B. Nothing in this law shall prohibit the Town Board from entering into an agreement with any facility operator or owner, properly permitted by this law, concerning host fees or contractual services.

V. DEFINITIONS

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

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

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

AGRICULTURAL DISTRICT means a district created under Article 25AA of the New York State Agriculture and Markets Law.

APPLICANT means the person applying for a permit under this law and must be the owner or operator of the solid waste management facility.

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

BOUNDARIES OF A WETLAND, WATER BODY, OR WATER COURSE shall mean :

- a. The mapped boundaries of wetlands which have been delineated by the DEC, pursuant to the New York State Environmental Law, or the U.S. Army Corps of Engineers pursuant to the Federal Clean Water Act; or
- b. The boundaries for a water body or water course defined by state or federal law or regulation within the Town of Danube under the authority of any part of the Environmental Conservation Law or the Federal Clean Water Act or any regulations promulgated under either of those statutes; or
- c. Any land or waters which is not so mapped or bounded on which the principal vegetation is that set forth in paragraphs (a), (b), or (c) of subsection (1) of Section 24-0107 of the New York State Environmental Conservation Law, or which meets the definition in (d) therein.

COMPLETED APPLICATION shall mean an application in which necessary information and other approvals, required by any other entity or relevant law or regulation, is provided to the Town Board. If the Danube Town Board is engaged in coordinated review with other regulating agencies, such information may be provided to the Town Board in accordance with the applicable coordinated review procedure.

DEC is the New York State Department of Environmental Conservation.

DISPOSAL is the placement, distribution, storage, removal or transportation of solid wastes.

EPA means the United States Environmental Protection Agency.

FACILITY is any solid waste management facility.

MAJOR MODIFICATION means a modification as defined in 6 NYCRR section 621.1(m) that the DEC determines to treat as a 621.1.13(e).

OWNER means a person who owns a solid waste management facility or part of one.

PERSON means any individual, Public or private corporation, political subdivision, government agency, authority, department or bureau of the State, municipality, industry, partnership, LIMITED LIABILITY COMPANY, association, firm, trust, estate or any other legal entity whatsoever.

RELATED CORPORATIONS means all corporations included with the applicant in one 'or more chains of corporations connected by stock ownership with a common parent corporation .

SEQRA means the State Environmental Quality Review Act and the review procedures required therein.

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

WATER COURSES means any body of water flowing in an identifiable channel or course at least nine (9) months of the year.

WETLANDS- All lands and waters in the Town of Danube that: (a) fall within the definition of freshwater wetlands in the New York State Environmental Conservation Law, as in effect on the date of the enactment of this local law, without respect to whether such lands and waters have been mapped by the Department of Environmental Conservation, and without respect to size, except that such lands and waters must have a contiguous area of at least seven thousand (7,000) square feet; or (B) fall within the definition of wetlands or navigable waters promulgated by the EPA or the U.S. Army Corps of Engineers pursuant to the Federal Clean Water Act.

VI. EXEMPTIONS

A. The following are not subject to -this Local Law:

1. Any disposal of manure in normal farming operations; but not including sewage sludge processing and spreading.
 2. Any sewage treatment facility but not including any sewage sludge spreading facility.
 3. On-site facilities, other than disposal facilities and incinerators, located on an applicant's premises and serving only the applicant's waste products created at that site. Persons constructing, operating and expanding such facilities shall apply to the Town Board and request an on-site facility waiver. The request shall include copies of all applicable state and federal licenses, permits and pending permit applications. The Town Board may place reasonable restrictions on the waiver, including reporting requirements, to insure compliance with this law. No person who qualifies for and receives this on-site facility waiver shall accept, handle, import or -transport any other source or location.
 4. Used engine lubricating oil retention facilities as defined in 6 NYCRR Part 360.14.
 5. Recyclables handling and recovery facilities.
- B. None of the above exemptions shall be construed to permit any activity contrary to existing building codes, zoning codes or other laws or as exempting any other permit required by the state or local law.

VII. COORDINATION WITH STATE LAW AND LOCAL, STATE AND FEDERAL AGENCIES

- A. All relevant sections of Section 27 of the ECL and 6NYCRR, Parts 360 to 364, and 617, are deemed to be included within and as part of this law, and any violation thereof shall be considered to constitute a violation of this law.
- B. The provisions of this law shall be interpreted in such a manner as being consistent with state law, except that 'the more stringent requirements of this law shall apply.
- C. The Town Board may coordinate all reviews of applications, including the SEQRA process, with other local, state and federal agencies having approval over the application. Nothing in this local law shall limit the right or power of the Town to participate in any permitting process held by another agency. Nothing in this local law shall bind the Town to any decision on any issue concerning any application, nor limit the right and power of the Town to conduct any and all inquiries, hearings and investigations it deems necessary in @taking an action on an application.

VIII. PERMIT REQUIRED

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

IX. PROHBITED FACILITIES

- A. The following solid waste facilities may not be expanded, constructed or operated within the Town of Danube:
 - i) Disposal facilities, including, but not limited to, landfills, sanitary landfills, ashfills, construction and demolition debris landfills, industrial waste landfills, disposal facilities and monofills, but not including landfill gas recovery facilities.
 - ii) Incinerators.
 - iii) Land application facilities.
 - iv) Transfer stations.

- v) Used oil storage, reprocessing, and rerefining facilities, but not including used engine lubricating oil retention facilities as defined in 6 NYCRR Part 360.14.
 - vi) Waste tire storage facilities.
 - vii) Medical waste treatment facilities.
 - viii) Composting facilities.
 - ix) Construction and demolition debris processing facilities.
 - x) Hazardous waste facilities.
 - xi) Surface impoundments.
 - xii) Rail-haul and barge-haul facilities.
- B. If any part of this Section prohibiting certain facilities should be judicially declared to be invalid, void, unconstitutional, or unenforceable, applications for said affected facilities may be made in accordance with this law and shall be evaluated in accordance with the application procedures of this Local Law, and unaffected provisions hereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted.
- C. Any facility listed in section A above currently licensed and operating within the Town may continue operations until the expiration of the current necessary federal, state, or local operating license or permit, or five years, whichever is sooner. Nothing in this provision shall authorize the transfer, expansion, or major modification of an existing facility .

X. APPLICATION PROCESS

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

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

- E. The Town Board has the right to promulgate by resolution regulations establishing a special use permit, application, including new, renewal, expansion, major modification and transfer applications, and are due upon submission of the application. Rejected applications may be resubmitted within one year of the date of rejection by the town board without requiring payment of another permit fee. Permit fees shall be initially set at \$50,000 annually, and are due upon issuance of the permit and on that date annually thereafter.
- F. The Town Board may refer any application submitted to it pursuant to this law, to the Danube Planning Committee for review and report. The Planning Committee shall report back to the Town Board within thirty (30) days of the date of referral or within such greater period as may be specified by the Town Board at the -time of referral. Failure to comply within the specified time periods shall be interpreted by the Town Board as indicating no objection to the application.
- G. A public hearing shall be held by the Town Board, within sixty (60) days after an application, including the receipt of requested additional information, is deemed complete, or if the Town Board determines to obtain such consultation as described in section D above, within one hundred eighty (180) days after an application, including -the receipt of requested additional information, is deemed complete, upon no less than twenty (20) days notice. The public hearing may adjourned to subsequent dates if in the opinion of the Town Board such adjournment is necessary to allow full public participation.
- H. A determination shall be made to approve, approve with modifications, approve with conditions or disapprove an application within sixty (60) days following completion of the public hearing, or sixty (60) days after the completion of the SEQRA process, whichever is later.

XI. APPLICATION CONTENTS

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

- d. Existing and proposed contours at intervals of not more than ten (10) feet.
- e. Building orientation, footprint and elevations ;
- f. Existing natural features such as water bodies, watercourses, wetlands , wooded areas, individual large trees, flood hazard areas within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- g. The location of all boundary lines and/or streets and highways abutting the facility and all dwellings situated within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- h. The location of any adjoining property . boundary within two thousand (2,000)feet of the area intended to be used as a facility, excluding buffer zones.
- i. Location of any property boundary of an active farm within two thousand (2,000) feet of the area intended to be used as a facility, including buffer zones.
- j. The location of water wells within two thousand (2,000) feet of the area to be used as a facility.
- k. Provision for buffer areas and other landscaping .
- l. Location of all parking and truck-loading areas, showing access and ingress drives.
- m. Zoning district and Agricultural district boundaries within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones
- n. Grading and erosion control measures including the proposed location of sediment sink/settling pond and interceptor swales. etc.
 - o. Location and design for stormwater management facilities.
 - p. The topography of the site.
 - q. A soils overlay, if general site grades exceed 10% or if portions of the site have susceptibility to erosion, flooding or ponding .
 - r. Such other topographical and perimeter surveys, hydrological computations, engineering studies, and other factual or scientific data and reports as deemed necessary by the Town Board.
- 8. A Full Environmental Assessment Form. If the Town Board or other agency issues a positive declaration of environmental impact for the proposed impact, no consideration of the application will occur prior to the completion of the SEQRA process.
- 9. Where applicable, a plan for the storage and/or disposal of collected leachate, including written commitments from any facilities where such leachate would be disposed.
- 10. A drainage report including supporting design data and copies if engineering computations used to determine the design capacities and performance requirements of drainage facilities.
- 11. A report outlining the vehicular traffic impact of the project, including recommendations for mitigating such impacts.
- 12. Description of all violations of any federal, state or local statute or regulation by the applicant; its parent corporation, subsidiaries or related corporation, owners; shareholders (or their parent corporation, subsidiaries or related corporations) owning more than ten percent of the applicant; or partners owning more than ten percent of the applicant, including the affected statute or regulation involved, the circumstances of the violation, penalties assessed and remedial action required.
- 13. Such other information as deemed necessary by the Town Board, including information necessary for compliance with SEQRA.

B. A waiver from any of the application content requirements of this Section may be granted by the Town Board in its discretion, and on such conditions as it may reasonably establish, when the Town Board determines that the information requested is not necessary to carry out the purposes of this law or is otherwise available to the Town.

XII. DECISION CRITERIA

- A. The applicant shall have the burden of- demonstrating that the proposed activity will be in accord with the policies and provisions of this law.
- B. In approving, disapproving, or approving with modifications any application the Town Board shall exercise its discretion in consideration of the following factors:
 - 1. The environmental impact of the proposed action ;
 - 2. The overall need for the proposed action;
 - 3. The alternatives to the proposed action;
 - 4. Irreversible and irretrievable commitments of resources -that would be involved in the proposed activity.
 - 5 . The character and degree of injury to, or interference with, safety, health, or the reasonable use of property that is caused or threatened;
 - 6. The suitability or unsuitability of such activity to the area for which it is proposed, including current land uses, zoning and natural features of the site;
 - 7. The effect of -the proposed activity with reference to the protection or enhancement of the Town's natural resources including, but not limited to, agricultural uses and districts, wildlife, flora, recreation, wetlands, water bodies, and water courses;
 - 8. The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations;
 - 9. The availability of mitigation measures or safeguards that could feasibly be added to the plan or action;
 - 10. The extent to which the exercise of property rights and the public benefit derived from such use may outweigh or justify the possible degradation of -the site, -the interference with the exercise of other property rights, and tile impairment or endangerment of public health, safety, or welfare;
 - 11. Compliance with the Local Solid Waste Management Plan and Town comprehensive plan;
 - 12. Potential litter, noise, odor, rodent and other vermin infestation, air pollution and water (surface and groundwater) pollution problems from the project.
 - 13. Effect of the project on vehicular -traffic within the Town, including adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access;
 - 14. Adequacy of drainage and flood prevention.
 - 15. Adequacy of storm water and sanitary waste disposal.
- C. Permits will be issued by the Town Board only if the Town Board shall find that the proposed regulated activity is consistent with the policy of this Local Law.
- D. Non-Discrimination Requirement- In evaluating any application request or permit condition under this statute, the Town Board shall not consider and shall not base any decision on the source, origin, or destination of any waste stream, nor in the method or route of transporting any waste stream. No decision of the Town Board under this statute shall favor in-Town interests over out-of-Town interests nor act to subsidize local interests. No decision of the Town Board under this statute shall require any applicant to provide different services or prices for Town residents or businesses.
- E. The Town Board shall be authorized -to deny a permit application or renewal if it determines, after a public hearing and affording the applicant an opportunity to present evidence on the issue, that the Applicant, including the applicant's parent, subsidiary and other related corporations or partnerships, has such a record of violations of applicable federal, state, or local laws that, in the judgment of the Town Board, the applicant is unsuitable to operate a solid waste management facility.
- F. As part of any permit tile Town Board may impose such reporting requirements as it deems necessary to fully inform the public and public officials on the operation of the facility. The Town Board may also designate a location for deposition of such reports for public inspection. All reports, tests, correspondence, notices, etc., in connection with -the facility, sent by the operator or owner to the DEC, EPA or other state or federal agency, shall also be provided to the Town.

XIII. PERMIT REQUIREMENTS

- A. Any permit issued hereunder shall at all times be displayed conspicuously at or near the entrance to the site.
- B. Any permit issued hereunder shall be effective from the date of its issuance until the lesser of December 31 of the fifth year following its issuance, or, so as to allow coordinated review, the date of The next renewal of the applicable state or federal permit. A permit hereunder may be renewed for the lesser of additional five (5) year periods or the period of applicable facility state or federal permit, provided that the operations are in conformance with this Local Law and -the permit would be approved as an original application if submitted at the time. The granting of an original or renewed permit shall in no way create vested rights for the permittee or the site.
- C. No permit issued under this law shall be transferable or assignable without the prior written approval of the Town Board. For the purpose of this section, if the permittee or licensee is a corporation whose stock is not sold to the general public on any recognized stock exchanged or “over the counter,” and any type transfer or assignment of the ownership of a share or shares of stock in said corporation is made, voluntarily or involuntarily, which transfer or assignment would cause the controlling interest in said corporation to be vested in a party other than the party holding controlling interest in -the corporation before such transfer. The Town Board must be notified in writing by the corporate licensee or permittee as to any Transfer or assignment of ownership of controlling interest in the shares of stock in said licensee or permittee. Any transfer or assignment as defined in this section will cause an automatic revocation of any permit issued hereunder, unless the Town Board, in its sole discretion, consents in writing to such transfer.
- D. Such permit may be revoked, modified or suspended by the Town Board for the violation of any regulation herein after a public hearing at which the permittee shall have an opportunity to be heard
- E. Such permit may be revoked, modified or suspended by the Town Board, for -the reasons listed in 6 NYCRR section 621.14 and in accordance with the procedures listed therein.
- F. All tipping fees paid to the town will reflect on an amount per ton charged. If the price goes up, so will the tipping fees.
- A. The applicant agrees to fund an environmental officer chosen by the Town Board to monitor the facility through inspections and samplings of the site to occur not less than one day per week nor more than seven days per week. The cost of all analyses, shipping, and reporting of samples shall be borne by the applicant.
- H. For locations where there will be ground disturbance the applicant will provide a phase one (1) Archeological survey performed by a 36CFR61 qualified archeologist approved by the Town Board.
- I. The applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any application. The initial deposit shall be \$75,000. These funds shall accompany the filing of an application and the Town will maintain separate escrow account for all such funds. The Town’s consultants and experts shall bill or invoice the Town no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance less than \$25,000, applicant shall immediately upon notification by the Town, replenish said escrow account so that it has a balance of at least \$25,000. Such additional escrow funds must be deposited with the town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more the amount of the actual billing or invoicing, the difference shall be promptly refunded to the applicant.

XVI. GENERAL REGULATIONS

- A. A person who shall operate a facility site for which a permit is granted hereunder shall be responsible for the operation, management, and security of said site
- B. No disposal facility shall employ ash or ash residue of any kind as daily cover.
- C. The area designed to be used as a solid waste management facility, including any type of disposal facility, including associated buildings, utilities, construction staging areas, and other appurtenant physical features and buffer areas, shall be:

1. No less than two thousand (2,000) feet from active farm land.
 2. Not within and no less than two thousand (2,000) feet from the boundary of an agricultural district
 3. No less than two thousand (2,000) feet from any aquifer or adjacent recharge area, as determined by the DEC Division of Water.
 4. No less than two thousand (2,000) feet from the first water bearing unit.
 5. No less than two thousand (2,000) feet from the boundary of the 100 year floodplain.
 6. No less than two thousand (2,000) feet from any wetland, water body, or water course.
 7. No less than two thousand (2,000) feet from any public water wellhead.
 8. Not within and no less than two thousand (2,000) feet from the boundary of any residential zoning district.
- D. The area designed to be used as an incinerator, including associated buildings, utilities, construction staging areas, and other appurtenant physical features and buffer areas, shall be, in addition to the requirements of section C of this Section:
1. No less than two thousand (2,000) feet from any public or private school.
- E. The applicant shall execute a document binding itself, its successors, assigns and parent corporations or entities to indemnifying and holding harmless the Town of Danube for any costs associated with clean-up or remediation arising out of the operation of any solid waste management facility, including liability for such clean-up or remediation under current or future state or federal law or private civil legal action. The Town Board may impose such financial security requirements as it determines are necessary, when the financial security of the applicant is in question.
- F. The slope of any facility shall be no steeper than 4:1 The height of any facility shall not exceed ninety (90) feet measured from its highest point to its base.
- G. The area designated to be used for facility purposes shall be enclosed with a suitable fence and entrance gate to contain blowing papers and to secure the area during non-operational hours. All unloading of solid waste shall be conducted in such a manner as to eliminate odor and litter the facility that are detectable at, the nearest residence or commercial establishment will automatically require a temporary suspension of the permit, until the violation is remedied.
- H. Refuse shall not be unloaded when weather conditions, e.g., high winds, make it probable that the litter may be carried beyond the limits of the facility, at the permittee's expense.
- I. At the discretion of the Town Board, baseline testing and surface water monitoring systems may be required at any proposed or existing facility, at the permittee's expense.
- J. Recyclable items, e.g., glass, aluminum, newspaper, etc., shall not be deposited in any disposal facility. Such items shall be removed from any deposits of refuse by permittee and delivered to any appropriate recycling center for disposal.
- K. The Town of Danube reserved the right to promulgate rules and regulations applicable to permittees and the operation of facilities consistent with this law in order to clarify its terms and/or to monitor compliance with its provisions and/or promote enforcement thereof. Violation of any of the provisions of this law.
- K. Variances from the requirements of this Section may be granted by the Town Board, upon a demonstration of practical difficulties and unnecessary hardship due to unique circumstances not caused by the applicant, at the sole discretion of the Town Board, only upon a super-majority (majority plus one of all seats, regardless of whether then vacant) of the Town Board. No variance shall be granted if the site in question could yield a reasonable return if used for other purposes allowable under Town law. No variance shall be granted to allow a facility or operation otherwise prohibited by this law.
- L. Any permit for a facility will be required to provide liability insurance through the Town's Insurance Company for an amount to be determined by the Town Board for a term of 99 + 1 years, payable to the Town half upon opening and the other half before the closing of the facility.

XV. PENALTIES FOR OFFENSES; ENFORCEMENT

- A. All violations of this Local Law or any of its regulations or provisions, shall be deemed Class A misdemeanors, punishable by a fine not exceeding five thousand (\$5,000) dollars or imprisonment not exceeding one (1) year, or both. Each and every day that a violation of this Local Law is permitted 'to exist shall constitute a separate offense. Each and every provision of this Local Law that is violated shall constitute, a separate offense.
- B. Any violation of this Local Law or regulations or provisions thereof shall create a liability to the people of the Town for civil penalty not to exceed five thousand (\$5,000) dollars, to be after a hearing or opportunity to be heard, upon due-notice and with the right to specification of the charges and representation by counsel at such hearing. Each and every day that a violation of this Local Law occurs or continues shall constitute a separate violation for purposes of civil liability.
- C. Upon any violation of this Local Law by any person, the Town shall be entitled to obtain an injunction against such persons prohibiting further violations and, in addition, ordering that any solid or liquid waste disposed or stored in violation hereof be removed from the Town, and ordering that any land on which solid or liquid waste is disposed of in violation of this Local Law be restored is nearly as possible to its former condition by the removal of any waste illegally disposed of and by such other restorative measures as are available, and further ordering that the operator remedy any effects of the violation of surrounding or adjacent properties or resources, including, without limitation, air, -trees, crops, water bodies, wetlands and groundwaters.
- D. Any person who has been found by a judicial tribunal of the State of New York to have intentionally violated this Local Law shall, in addition to the provisions found in sections A and B, be liable to reimburse the Town and citizens of Danube for its costs and expenses associated with bringing a particular prosecution to enforce this law, including, but not limited to, its reasonable attorney fees.
- E. The Town of Danube shall have the authority to appoint an Enforcement Officer(s) authorized to act on behalf of the Town of Danube to enforce the provisions of this law. Any peace officer, the Town Supervisor, and members of the Town Board or their duly authorized representatives shall be granted access to any facility site permitted hereunder to inspect the same for compliance herewith, upon reasonable notice.

XVI. REPEALER; EFFECT ON OTHER LAWS

- A. Sections 11 & 12 of Chapter 50 of the Code of the Town of Danube (Town landfill law) are repealed.
- B. All other ordinances and local laws or parts thereof in conflict herewith are superseded by this Local Law; provided, however, that the provisions of this Law shall not be interpreted as obviating any requirements or restrictions wherever it is possible to conform to the provisions of both this law and any other law or ordinance.

XVII. SEVERABILITY

If any part of the Local Law shall be judicially declared to be invalid, void, unconstitutional, or unenforceable, all unaffected provisions hereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted.

XVIII. EFFECTIVE DATE - Immediately

Passed and adopted by the Town Board on September 30, 1998. This Local Law shall become effective when it is filed with the Secretary of State pursuant to the Municipal Home Rule Law.