

1 TOWN OF DANUBE

2 COMMERCIAL AND INDUSTRIAL DEVELOPMENT LAW

3 (WITH PARTS OF WASTE MANAGEMENT FACILITIES LAW - PART B)

4
5 Whereas a resolution was duly adopted by the Town Board of the Town of Danube on 2/3/99
6 for a public hearing preceded by a short form SEQR to be held by said town on 2/12/99 at
7 7:00 p.m. at the Danube town garage to hear all interested parties on a proposed local law entitled
8 "COMMERCIAL AND INDUSTRIAL DEVELOPMENT LAW" (with parts of the WASTE
9 MANAGEMENT FACILITIES LAW)

10
11 Whereas, notice of said short form SEQR and public hearing were duly advertised in the official
12 newspaper of the Town of Danube no later than five days sooner than the date of the public hearing ,
13 and

14
15 Whereas, said public hearing was duly held on at 7:00 PM at the Danube town hall and all parties in
16 attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed local
17 law, or any part thereof and

18
19 Whereas, pursuant to part 617 of the implementing regulations pertaining to article 8 (State
20 Environmental Quality Review Act) it has been determined by the Danube town board that an adoption
21 of said proposed local law would not have a significant effect upon the environment and could be
22 processed by other applicable governmental agencies without further regard to SEQRA, and

23
24 Whereas, not all parts of the law pertaining to solid waste management facilities will pertain to
25 industrial and commercial development but all other parts will,

26
27 Whereas, setback requirements for all other Commercial and Industrial Development can range from the
28 maximum of 2000 feet to the minimum of 100 feet depending on recommendations from planning
29 committee with the final decision being the town board's,

30
31 Whereas, the Danube town board after due deliberation finds it in the best interest of town to adopt said
32 local law,

33
34 Now, therefore, be it enacted, that the town board of the Town of Danube hereby adopts said local law,
35 Commercial and Industrial Development Law, a copy of which is attached hereto and Made a part
36 hereof and be it further ORDERED that the town clerk is hereby directed to enter said local law in the
37 minutes of this meeting and in the local law book of the Town of Danube and to give due notice of the
38 adoption of said local law to the secretary of state of New York.

39 Passed and adopted by the town board of the Town of Danube on the 12th day of February, 1999.

40
41 Voting: Councilman Edmunds - Aye, Councilwoman Stock - Aye, Supervisor Welden - Aye.
42 Councilman Lasher - Absent, Councilman Klock - Absent
43
44
45

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47
48 **TITLE**
49

50 This local law shall be known as and may be cited as the **COMMERCIAL AND INDUSTRIAL**
51 **DEVELOPMENT LAW OF THE TOWN OF DANUBE.**
52

53 **II. FINDINGS**
54

55 A. 1) The Town Board finds that environmental science is presently inadequate to satisfactorily
56 evaluate and control pollution from commercial and industrial development among other factors.
57

58 2) The inability of geological science to precisely ascertain the existence and flow of groundwaters
59 and to map subterranean geology make it impossible to determine the extent to which commercial
60 and industrial development may or may not be able to have adequate water supply or adequate sew-
61 age system capability.
62

63 3) The Town's existing community character will be adversely and unalterably impacted by the
64 location and operation of any commercial and industrial development.
65

66 4) The Town of Danube lies in a particularly significant environmental area located in the Mohawk
67 River Valley Region: it includes portions of the Mohawk River and its tributaries, which are
68 important water resources. Also within or near the Town are major aquifers, along with adjacent
69 recharge areas. The Wetlands contained within the town are a precious ecological resource and are
70 deserving of the utmost protection.
71

72 **III. PURPOSE**
73

74 A. It is the intent of this law to promote the public purposes identified in this Article by providing
75 for the proper regulation and land use of industrial and commercial development within the Town.
76 Specifically, the Town intends by this Local Law to:
77

78 1. Regulate the siting, construction, operation and expansion of all commercial and industrial
79 development within the Town of Danube in order to promote a clean, wholesome and attractive
80 environment for the community
81

82 2. Improve the ability of the public officials and town residents to participate in the process of siting
83 and licensing of new commercial and industrial development
84

85 3. Ensure that accurate, current information is obtained for the siting of commercial and industrial
86 development within the town and is available to public officials and citizens.
87

88 4. Protect the residents of the town from undesirable effects of commercial and industrial
89 development including but not limited to
90

- 91 a) unaesthetic results, including increased traffic, dust, noise, and loss of water, and
92 b) deterioration in property values associated with an adjacent or proximate development
93

94 B. The natural resources constitute crucial physical, ecological, social, aesthetic, recreational,
agricultural, economic assets and their preservation is necessary to protect and promote the health,

safety, and general welfare of present and future residents of the Town.

C. The siting, construction, operation of large industrial and commercial development within the Town of Danube will affect and impact upon all residents. Furthermore, it may change town characteristics which the Town may wish not to change. Commercial and Industrial development operations may interfere with the orderly development of properties and threaten public health, safety, or the environment by contamination of air, surface water, or groundwaters.

D. To exercise the Town's police powers under the Municipal Home Rule Law and Town Law for the physical and mental well-being and safety of its citizens and to restrict or regulate commercial or industrial operation within the Town. The Town reserves the right to legislate stricter controls on commercial and industrial operation the state law requires.

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 an operator or owner, properly permitted by this law

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 the New York Codes, Rules, and Regulations.

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

NYCRR means 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 land use permit under this law and must be the owner of the commercial or industrial business.

LARGE COMMERCIAL AND INDUSTRIAL means corporations, associations, organizations which has stockholders, shareholders and investors which privately-owned does not.

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 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 and application for a Special Use Permit for Commercial and Industrial development.

DEC is the New York State Department of Environmental Conservation.

EPA means the United States Environmental Protection Agency.

BOARD means the Town Board of the Town of Danube which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a commercial or industrial business must be made and that is authorized to review, analyze, evaluate, and make decisions with respect to granting or not granting, rectifying or not rectifying, or revoking Special Use Permits for commercial and industrial business. The Board may, at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate, and make recommendations to the Board with respect to the granting or not granting, rectifying or not rectifying, or revoking Special Use Permits for commercial or industrial business.

COUNTY means the New York State county in which the Town, Village, or City is physically located

PERSON means any individual, corporation, estate, trust, partnership, joint-stock company, or association of two (2) or more persons having a joint common interest, or governmental entity.

HYDROLOGY REPORT means a study of the location of water within the ground to ascertain whether there is an adequate supply of water for commercial or industrial business.

SPECIAL USE PERMIT means the official document or permit by which an applicant is allowed to construct a commercial or industrial business as granted or issued by the municipality.

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

MUTUALLY ACCEPTABLE means acceptable to all parties

VI. EXEMPTIONS

All normal farming operations. All small family-owned business

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

A. 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.

B. The Town Board may coordinate all reviews of application, 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 binds the Town to any decision on any issue concerning any application, nor limits the right and power of the Town to conduct any and all inquiries, hearings, and investigations it deems necessary in taking an action on a application.

VIII. PERMIT REQUIRED

A. A Special Use Permit.

B. No large commercial or industrial business shall be sited, constructed, expanded, or operated within the Town of Danube except as permitted by this statute.

C. Renewals of permits, expansions of permits, transfers of permits, shall require a new permit and application. Application for renewals shall be made no later than six (6) months prior to the expiration of the expiring permit.

D. It will be required to follow all setback requirements with a Special Use Permit. The requirements will be the decision of the Town Board on the maximum of two thousand (2000) feet or the minimum of one hundred (100) feet. It will be at the Board's discretion what that setback will be based on the particular commercial or industrial business.

E. All Special Use Permits for commercial and industrial businesses will be discussed by the Planning Committee as to what the fee will be for each and every business with the Town Board having final say of the cost of each Special Use Permit for a one-year, five-year, or one permit for an indefinite time period, whichever they feel is appropriate.

F. All Commercial and Industrial businesses will have to follow Articles 10-18 of the Waste Management Facility Law, Part B, and

G. All Commercial and Industrial businesses will submit a Hydrology Report performed by a mutually acceptable agency to ascertain whether there is an adequate water supply tested to determine that it is of acceptable quality. These reports will have to be submitted to the Town of Danube in triplicate before a special use permit will be granted.

H. All roadways from an existing public highway into and/or through, and /or out of any facility must be built to specifications acceptable to the Town Highway Superintendent and the Town Board.

ARTICLES 10-18 OF THE WASTE MANAGEMENT FACILITY LAW, PART B

X. APPLICATION PROCESS

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. 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. The approving authority with respect to all aspects of all applications hereunder shall be the Danube Town Board.

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.

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 (landfills, others as described in E of Section 8) annually, and are due upon issuance of the permit and on that date annually thereafter.

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.

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 adjourn to subsequent dates if in the opinion of the Town Board such adjournment is necessary to allow full public participation.

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 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.

- 293
- 294 2. All information required to be submitted to the DEC or EPA for all state or federal permits required to locate,
- 295 construct, expand, transfer or operate the facility, including copies of all applicable County, State, and Federal
- 296 permits or permit applications required for the facility.
- 297
- 298 3. A description of the operations, including the type of waste streams, the type of storage, treatment, disposal or
- 299 processing that will occur to each waste stream, the machinery and equipment which will be used, and the number
- 300 of employees expected to be engaged in the operations (landfills, others to be determined by the town board).
- 301
- 302 4. The maximum volume and the expected average volume of each waste stream the applicant will accept for
- 303 disposal b) processing, c) treatment or d) storage, on a weekly and on a monthly basis. Included should be the
- 304 maximum volume of each waste stream to be stored at the facility at any one time (landfills, others to be
- 305 determined by the town board).
- 306
- 307 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
- 308 the owner, the nature of his right of occupancy of such land.
- 309
- 310 6. If the applicant is a corporation the names of all parent, related and subsidiary corporations engaged in waste
- 311 management activities, the names of shareholders owning a ten percent or greater voting interest, and if the
- 312 applicant is a partnership or limited liability company, the names of each partner holding a greater than ten
- 313 percent general or limited partnership or other interest.
- 314
- 315 7. Site map or maps, prepared by a licensed engineer or land surveyor, showing the following:
- 316 a. Title of drawing, including the name and address of the applicant.
- 317 b. North arrow, scale and date.
- 318 c. The exact location of the area intended for use as a facility, including buffer zones.
- 319 d. Existing and proposed contours at intervals of not more than ten (10) feet.
- 320 e. Building orientation, footprint and elevations ;
- 321 f. Existing natural features such as water bodies, watercourses, wetlands , wooded areas, individual large trees,
- 322 flood hazard areas within two thousand (2,000) feet of the area intended for use as a facility, including buffer
- 323 zones.
- 324 g. The location of all boundary lines and/or streets and highways abutting the facility and all dwellings situated
- 325 within two thousand (2,000) feet of the area intended for use as a facility, including buffer zones.
- 326 h. The location of any adjoining property . boundary within two thousand (2,000)feet of the area intended to be
- 327 used as a facility, excluding buffer zones.
- 328 i. Location of any property boundary of an active farm within two thousand (2,000) feet of the area intended to be
- 329 used as a facility, including buffer zones.
- 330 j. The location of water wells within two thousand (2,000) feet of the area to be used as a facility.
- 331 k. Provision for buffer areas and other landscaping .
- 332 l. Location of all parking and truck-loading areas, showing access and ingress drives.
- 333 m. Agricultural district boundaries within two thousand (2,000) feet of the area intended for use as a facility,
- 334 including buffer zones
- 335 n. Grading and erosion control measures including the proposed location of sediment sink/settling pond and
- 336 interceptor swales. etc.
- 337 o. Location and design for stormwater management facilities.
- 338 p. The topography of the site.
- 339 q. A soils overlay, if general site grades exceed 10% or if portions of the site have susceptibility
- 340 to erosion, flooding or ponding .
- 341 r. Such other topographical and perimeter surveys, hydrological computations, engineering studies, and other
- 342 factual or scientific data and reports as deemed necessary by the Town Board.
- 343
- 344 8. A Full Environmental Assessment Form. If the Town Board or other agency issues a positive declaration of
- 345 environmental impact for the proposed impact, no consideration of the application will occur prior to the
- 346 completion of the SEQRA process.

- 347
348 9. Where applicable, a plan for the storage and/or disposal of collected leachate, including written commitments
349 from any facilities where such leachate would be disposed (landfills, others to be determined by the town board).
350
351 10. A drainage report including supporting design data and copies if engineering computations used to determine
352 the design capacities and performance requirements of drainage facilities.
353
354 11. A report outlining the vehicular traffic impact of the project, including recommendations for mitigating such
355 impacts.
356 12. Description of all violations of any federal, state or local statute or regulation by the applicant; its parent
357 corporation, subsidiaries or related corporation, owners; shareholders (or their parent corporation, subsidiaries or
358 related corporations) owning more than ten percent of the applicant; or partners owning more than ten percent of
359 the applicant, including the affected statute or regulation involved, the circumstances of the violation, penalties
360 assessed and remedial action required.
361 13. Such other information as deemed necessary by the Town Board, including information necessary for
362 compliance with SEQRA.
363
364 B. A waiver from any of the application content requirements of this Section may be granted by the Town Board
365 in its discretion, and on such conditions as it may reasonably establish, when the Town Board determines that the
366 information requested is not necessary to carry out the purposes of this law or is otherwise available to the Town.

367 **XII. DECISION CRITERIA**

- 368 A. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the
369 policies and provisions of this law.
370
371 B. In approving, disapproving, or approving with modifications any application the Town Board shall exercise its
372 discretion in consideration of the following factors:
373 1. The environmental impact of the proposed action ;
374 2. The overall need for the proposed action;
375 3. The alternatives to the proposed action;
376 4. Irreversible and irretrievable commitments of resources -that would be involved in the proposed activity.
377 5. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property that
378 is caused or threatened;
379 6. The suitability or unsuitability of such activity to the area for which it is proposed, including current land uses,
380 zoning and natural features of the site;
381 7. The effect of the proposed activity with reference to the protection or enhancement of the Town's natural
382 resources including, but not limited to, agricultural uses and districts, wildlife, flora, recreation, wetlands, water
383 bodies, and water courses;
384 8. The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient
385 magnitude, the availability of other reasonable locations;
386 9. The availability of mitigation measures or safeguards that could feasibly be added to the plan or action;
387 10. The extent to which the exercise of property rights and the public benefit derived from such use may outweigh
388 or justify the possible degradation of the site, the interference with the exercise of other property rights, and title
389 impairment or endangerment of public health, safety, or welfare;
390 11. Compliance with the Local Solid Waste Management Plan and Town comprehensive plan;
391 12. Potential litter, noise, odor, rodent and other vermin infestation, air pollution and water (surface and
392 groundwater) pollution problems from the project.
393 13. Effect of the project on vehicular traffic within the Town, including adequacy and arrangement of vehicular
394 traffic access and circulation, including emergency vehicle access;
395 14. Adequacy of drainage and flood prevention.
396 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 the 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 (landfills).

G. 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 (landfills, others to be determined by the town board). 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. 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, (landfills, others to be determined by the Town Board). 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, (landfills, others to be determined by the Town Board), applicant shall immediately upon notification by the Town, replenish said escrow account so that it has a balance of at least \$25,000 (landfills, others to be determined by the Town Board). . 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 (landfills).

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 that 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, no less than two thousand (2,000) feet from any public or private school (landfills, others to be determined by the town board).

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 or other commercial or industrial 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 3:1 The height (thickness) 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. At the discretion of the Town Board, baseline testing and surface water monitoring systems may be required at any proposed or existing facility (either landfill or other), at the permittee's expense. 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 reserves 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. 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 February 12, 1999. This Local Law shall become effective when it is filed with the Secretary of State pursuant to the Municipal Home Rule Law.

Voting: Councilman Edmunds - Aye, Councilwoman Stock - Aye, Supervisor Welden - Aye.
Councilman Lasher - Absent, Councilman Klock - Absent