

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Connecticut Siting Council

Subject

Low-Level Radioactive Waste Management Facility Siting Regulations

Inclusive Sections

§§ 22a-163f-1—22a-163f-10

CONTENTS

Sec. 22a-163f-1.	Purpose, scope, and applicability
Sec. 22a-163f-2.	Definitions
Sec. 22a-163f-3.	Application procedure
Sec. 22a-163f-4.	Designation of most affected neighboring municipality
Sec. 22a-163f-5.	Fees and assessments
Sec. 22a-163f-6.	Local project review grant
Sec. 22a-163f-7.	Rendering a decision
Sec. 22a-163f-8.	Transferability of certificates
Sec. 22a-163f-9.	Development and management (D&M) plan
Sec. 22a-163f-10.	Enforcement by the council

Low-Level Radioactive Waste Management Facility Siting Regulations

Sec. 22a-163f-1. Purpose, scope, and applicability

These regulations set forth the requirements, standards, and application procedures applicable to the grant or denial, amendment, transfer, suspension, revocation, and enforcement of certificates of public safety and necessity by the Connecticut Siting Council required for the siting of low-level radioactive waste management facilities. These regulations are promulgated pursuant to title 22a, chapter 446a of the Connecticut General Statutes. Additional regulations governing procedures to be followed by the Connecticut Siting Council for low-level radioactive waste management facilities proceedings are promulgated pursuant to title 16, chapter 277a, of the Connecticut General Statutes, as amended, and appear in parts 16-50j-1 through 16-50j-59 and 16-50l-1 through 16-50l-5 of Regulations of Connecticut State Agencies.

(Effective March 7, 1989)

Sec. 22a-163f-2. Definitions

As used in these regulations:

(a) “Active Part” means that portion of a low-level radioactive waste management facility where handling, management, storage, treatment, recovery, or disposal of low-level radioactive waste will be, is being, or has in the past been conducted;

(b) “Certificate” means the certificate of public safety and necessity required by title 22a, chapter 446a of the Connecticut General Statutes to commence construction or modification of a low-level radioactive waste management facility;

(c) “Closure and Stabilization” means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance;

(d) “Coastal land” means any lands and waters defined as a coastal area in title 22a, chapter 444 of the Connecticut General Statutes;

(e) “Construction” means the fabrication, erection, installation, or excavation of a low-level radioactive waste management facility which does not constitute a modification;

(f) “Disposal” means the permanent isolation of low-level radioactive waste pursuant to applicable requirements of the United States Nuclear Regulatory Commission under applicable federal laws, and regulations adopted by the commissioner of environmental protection pursuant to Section 22a-163f of the Connecticut General Statutes;

(g) “Groundwater” means subsurface water;

(h) “Local project review committee” means the committee which may be established pursuant to Section 22a-163p of the Connecticut General Statutes;

(i) “Management” means the storage, treatment, or disposal of low-level radioactive waste”;

(j) “Modification” means any change or alteration in the approved design, capacity, process, or operation of a low-level radioactive waste management facility constructed or operating pursuant to Title 22a, Chapter 446a of the Connecticut General Statutes, that the

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-163f-3

Connecticut Siting Council

council deems significant. Such change or alteration may include but is not limited to a change or alteration in the volume or composition of low-level radioactive waste managed at such facility. The routine maintenance, repair, or replacement of the individual components at a low-level radioactive waste management facility that is necessary for normal operation or change or alteration at a low-level radioactive waste management facility ordered by a federal or state official in the exercise of his statutory authority shall not be deemed to be a modification;

(k) “Neighboring municipality” means any municipality which: 1) shares a common border with the municipality within which the largest portion of the proposed facility is located; 2) occupies any area within a ten-mile radius of the proposed facility site; or 3) has been determined by the council pursuant to Section 22a-163f-4 of these regulations as the neighboring municipality likely to be most affected by the proposed facility;

(l) “Operator” means the person or entity responsible for the overall operation of a facility;

(m) “Permanent council members” means the membership for proceeding under title 22a, chapter 446a of the Connecticut General Statutes, consisting of the commissioners of health services and public safety or their designees, five members appointed by the governor, and one designee each of the speaker of the house of representatives and the president pro tempore of the senate;

(n) “Pre-Site Selection Property Appraisal” means a fair market value appraisal of all property within a two-mile radius of the proposed facility if the facility were not to be located at the proposed site, arranged by the applicant, and conducted by a licensed real estate broker or real estate salesman, as defined by title 20, chapter 392 of the Connecticut General Statutes;

(o) “Storage” means the permanent holding of waste for treatment or disposal;

(p) “Surface water” means harbors, estuaries, rivers, brooks, watercourses, waterways, lakes, ponds, springs, marshes, drainage systems, tidal waters, and all other surfaces, bodies, or accumulations of waters, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof;

(q) “Transferee” means a person or entity who becomes the holder of a certificate after a certificate has been issued for the facility;

(r) “Treatment” means any method, technique, or process intended to change the physical, chemical, or biological characteristics or composition of any low-level radioactive waste in order to render such waste safer for permanent disposal;

(s) “Waste management” means the storage, treatment, or disposal of low-level radioactive waste.

(Effective March 7, 1989)

Sec. 22a-163f-3. Application procedure

(a) **Who shall apply.**

(1) The owner or operator of a proposed facility subject to the requirement of certification

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Connecticut Siting Council

§22a-163f-4

under title 22a, chapter 446a of the Connecticut General Statutes, for the construction or modification of a low-level radioactive waste management facility must apply to the council for a certificate pursuant to the application provisions of Section 22a-163h (a) of the Connecticut General Statutes. When a proposed facility is to be owned by one person but operated by another person, both owner and operator, if known at the time of filing, must sign the application.

(b) **Public notice.** The public notice requirements of Section 22a-163h (f) of the Connecticut General Statutes, shall contain the following sentence: “The chief elected official of any municipality which wishes to be represented on the council as the most affected neighboring municipality may petition to the council within 20 days of the application for such status in accordance with Section 22a-163 (f)-4 of the Regulations of Connecticut State Agencies. Such public notice shall be served to each neighboring municipality at the time of the application.”

(c) **Completeness review.**

(1) No certificate of public safety and necessity shall be granted to any person until a complete application containing all information required by the council has been filed. The required information shall at a minimum include that listed in Section 22a-163h of the Connecticut General Statutes; all information submitted to the local planning and zoning, planning, zoning, inland wetland, conservation, police, and public health and safety commissions; and information required in these regulations, unless an explanation of irrelevancy is provided for any item omitted from an application. The council will reserve final judgment of an item’s relevancy.

(2) As soon as practicable after receipt of an application, the council shall notify the applicant in writing as to the completeness of the application. If an application is deemed incomplete by the council and the applicant fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the council, the application may be rejected for lack of proper submission.

(3) A determination by the council that an application is complete shall not preclude the council from requiring the applicant to submit additional information subsequently determined to be necessary for a proper and complete evaluation of the proposed low-level radioactive waste management facility.

(Effective March 7, 1989)

Sec. 22a-163f-4. Designation of most affected neighboring municipality

(a) **Petition.** For the purposes of ad hoc representation on the council and on the local project review committee, any municipality may petition the council in writing for consideration as the neighboring municipality likely to be most affected by the proposed facility. Such a petition shall be filed no later than 20 days after an application for a certificate is filed with the council and shall specifically identify the reasons and provide supporting data, if available, why the municipality believes it should be designated as the most affected neighboring municipality.

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-163f-5

Connecticut Siting Council

(b) **Considerations.** No sooner than 20 days and no later than 30 days after receiving an application for a certificate, the permanent members of the council shall determine the neighboring municipality likely to be most affected by the proposed facility. In making its determination, the council may consider any relevant information contained in the application for the certificate and in petitions filed by municipalities pursuant to this section. The council shall, at a minimum, give reasonable consideration to the following information:

- (1) Description and location of the proposed facility and proximity to neighboring municipalities;
- (2) Air quality and movement, surface and groundwater conditions and movement, and proximity to water company facilities and property;
- (3) Human population density in the area of the proposed facility, including neighboring municipalities; and
- (4) Traffic data, including transportation routes.

(Effective March 7, 1989)

Sec. 22a-163f-5. Fees and assessments

(a) **Payment.** All application fees required by the council for a certificate of public safety and necessity for a low-level radioactive waste management facility or modification of an existing facility shall be paid to the council at the time such application is filed.

(b) **Fee schedule.** The application fee for a certificate of public safety and necessity for a low-level radioactive waste management facility or an amendment to a certificate of public safety and necessity of an existing facility as defined in title 22a, chapter 446a of the Connecticut General Statutes, and these regulations shall be 1% of estimated construction cost not including land, but not less than \$5,000 and not more than \$100,000. The fee for each application for a certificate or amendment of a certificate described in title 22a, chapter 446a of the Connecticut General Statutes, shall be used for the administrative expenses of the council and its staff incurred in processing the application. Assessments of the applicant shall be made during the proceeding, or thereafter, for the expenses of the entire proceeding, and shall be in addition to any fee paid pursuant to this section. The amount of any fees and assessments paid pursuant to this section which are in excess of the actual expenses of the council in reviewing and acting upon the entire application shall be refunded within 180 days after all council obligations regarding the application are resolved.

(c) **Declaratory ruling fee.** The fee for each petition for a declaratory ruling pursuant to Section 16-50j-39 of the Regulations of Connecticut State Agencies shall be \$500. In the event that a hearing is held for a petition for declaratory ruling, assessments on applicants shall be made for expenses incurred for and during the entire proceeding and shall be in addition to any fee paid pursuant to this section.

(d) **Declaratory ruling field inspections.** For a petition for a declaratory ruling regarding a low-level radioactive waste management facility, the person or entity submitting such request or petition shall make payment of a fee of \$500 to the council for a field inspection. This fee shall be paid within 30 days after the council's inspection and shall be

in addition to any other fee paid pursuant to this section.

(e) **Development and Management Plan (D&M) Field Inspections.** Expenses incurred for field inspections in reviewing the D&M plan of a low-level radioactive waste management facility shall be billed quarterly to the applicant.

(Effective March 7, 1989)

Sec. 22a-163f-6. Local project review grant

(a) **Deposit.** Upon the filing of an application with the council, the applicant shall deposit with the council for the local project review committee a grant of \$100,000.

(b) **Disbursement.** Upon the filing by the local project review committee established pursuant to Section 22a-163p of the Connecticut General Statutes, of receipts for expenses for technical assistance including environmental, scientific, financial, professional, and legal assistance incurred by such committee for its review of the proposed low-level radioactive waste management facility within the council's proceeding, the council shall reimburse the local project review committee a sum not exceeding that deposited by the applicant pursuant to subsection (a) of this section. Any remaining funds shall be returned to the applicant.

(Effective March 7, 1989)

Sec. 22a-163f-7. Rendering a decision

(a) **Requirements for written decision.**

(1) Within one year of receiving an application, the council shall render its decision upon the record by an affirmative vote of not less than seven council members either granting or denying the application as filed, or granting it upon such terms, limitations, or conditions as the council may deem appropriate. The one year limit may be extended 180 days by agreement of the council and the applicant.

(2) The council shall include with its decision an opinion stating the reasons for its decision. The decision shall include a statement describing the items of negotiation between the applicant and local project review committee which the council has accepted and incorporated into any approval and those negotiated items it has rejected and the reasons therefore.

(3) The council shall include with its decision copies of the reports on negotiations filed by the applicant and the local project review committee, and the record of any council meeting held with the applicant and committee.

(4) The council shall include with its decision the proportion of the quarterly assessment of the gross receipts that shall be paid by the operator of the facility to the municipality in which the facility is located and to the neighboring municipality most affected by the facility.

(5) The council shall include with its decision a pre-site selection property appraisal of fair market value of all property within a two-mile radius of the facility.

(6) The council shall require that the applicant meet the financial responsibility requirements set forth in Section 22a-163l of the Connecticut General Statutes, and in these regulations including submission of a surety bond or other security acceptable to the council

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-163f-7

Connecticut Siting Council

in a form and an amount fixed by the council sufficient to pay for the costs of closure and stabilization and postclosure observation and maintenance as specified in regulations adopted by the commissioner of the State Department of Environmental Protection. A trust fund shall be established to be financed by yearly payments by the low-level radioactive waste facility operator. The amount paid into the fund shall be fixed by the council so that at the time of closure the fund shall be sufficient to pay the costs of closure and stabilization and postclosure observation and maintenance. The surety bond or other security may be reduced each year by the amount paid into the trust fund. A trust fund shall be established to pay the costs of monitoring and maintenance during the institutional control period as specified in regulations adopted by the commissioner of the State Department of Environmental Protection. The trust fund is to be financed by yearly payments by the low-level radioactive waste facility operator. The amount paid into the fund yearly shall be fixed by the council so that at the start of the institutional control period the fund shall be sufficient to pay the costs of monitoring and maintenance of the facility during the institutional control period. In case of a proposed land disposal facility, the applicant shall further provide a fund or other security for liability for damage during the institutional control period. The amount of the fund or other security and the manner of financing such fund shall be determined by the council based on the type of facility, the location of the facility, and the kind of waste processed by such facility, so that at the beginning of the institutional control period, the fund or security shall be sufficient to cover the anticipated liability for damages. In the case of a proposed treatment or storage facility, the council may require a trust fund or other security for postclosure liability for damages.

(b) Considerations for decision.

(1) In making its decision to grant or deny a certificate, the council shall, consistent with applicable requirements of Sections 4-166 to 185, and title 22a, chapter 446a of the Connecticut General Statutes, consider among other relevant facts and circumstances, the following factors:

(A) The impact of the proposed facility on the municipality and affected geographic area in which it is to be located in terms of public health, safety, and welfare including, but not limited to:

(i) Protection of the public and environment from the risk and impact by accident during management or transportation of low-level radioactive waste;

(ii) Protection of the public and environment from the risk and impact by fires and explosions from improper storage, treatment, or disposal methods;

(iii) Protection of the public and environment from the risk and impact by exposure of persons to low-level radioactive wastes and their degradation products during facility operation and after its operational life;

(iv) Consistency of the proposed facility with local and regional land use plans and regulations and the state conservation and development plan in effect at the time the applicant applies to the commissioner of environmental protection for the environmental licenses, permits, or approvals necessary to construct and operate the facility, and with

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Connecticut Siting Council

§22a-163f-7

existing and proposed development in the area affected by the construction and operation of the facility;

(v) Protection of the public and environment from adverse impacts including, but not limited to, adverse economic, health, and environmental impacts by the facility during construction, operation, and after its operational life;

(vi) The protection of the public and environment from the risk and impact by the proposed facility on public and private drinking water supplies and resources; and

(vii) The protection of the public and environment from the risk and impact by the proposed facility on scenic, historic, and recreational areas; wetlands; flood plains; wildlife areas; habitat for endangered species; and other environmentally-sensitive areas.

(B) The population density in the area affected by the construction and operation of the proposed facility and the facility's proximity to residential areas.

(C) The public benefits of the proposed low-level radioactive waste management facility including, but not limited to:

(i) The need for the managed capacity provided by the facility;

(ii) The energy and resource recovery benefits, if any, which would be derived from the facility;

(iii) The economic benefit of the facility to the state and its citizens;

(iv) The capability of the proposed facility to accommodate low-level radioactive waste which would otherwise be disposed of, treated, or managed in a less environmentally suitable site or manner;

(v) Economic incentives and benefits which would accrue to the municipality in which the proposed facility is to be located; and

(vi) Any aspects of the proposed facility which would enhance environmental quality.

(D) The extent to which the location of the facility would minimize the need to transport low-level radioactive wastes long distances.

(E) Whether any other reasonably available management method or site would better protect the public health or safety, or the quality of the environment.

(F) The applicant's and, if known, the operator's financial capabilities, qualifications, and previous experience with low-level radioactive waste management.

(G) Whether the applicant has agreed to implement an environmentally-sound Development and Management plan pursuant to Section 22a-163f-9 of these regulations.

(H) Whether the applicant would comply with the minimum distances between active parts of the facility and other land uses established pursuant to Section 22a-163l-1 of these regulations.

(2) The council may give such consideration to other Connecticut state laws, municipal ordinances, and regulations as it shall deem appropriate.

(3) In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein or any necessary permits, certificates, or orders for the purpose of constructing the facility which is the subject of its application.

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-163f-8

Connecticut Siting Council

(c) Findings required for the issuance of a certificate.

The council shall not grant a certificate unless it finds and explains:

- (1) That there is a public need for the facility;
- (2) The nature of the probable environmental impact of the facility, including but not limited to impacts resulting from the construction or operation of the facility, transportation to or management of wastes in, and closure and stabilization, postclosure observation and maintenance, and institutional control of the facility; and
- (3) Every significant single and cumulative adverse effect on and conflict with state and regional policies on the subjects listed below and why such adverse effects or conflicts are not sufficient for denial of the certificate:
 - (A) The natural environment;
 - (B) Public health, safety, and welfare;
 - (C) Ecological balance;
 - (D) Scenic, historic, and recreational values;
 - (E) Forests and parks;
 - (F) Air and water purity including impact on present and future sources of water supply; and
 - (G) Land use consistency.

(Effective March 7, 1989)

Sec. 22a-163f-8. Transferability of certificates

(a) No certificate may be transferred, except to the custodial agency pursuant to state and federal law, without approval of the permanent council.

(b) Any person desiring to transfer a certificate shall jointly submit with the proposed transferee an application to the council on such forms as may be prescribed from time to time by the permanent council members. Such application shall, at a minimum, include the date on which such transfer was agreed upon by the parties to the transfer, an explanation of the reasons for the proposed transfer, and the same information about the transferee which is required of an applicant for a certificate by Section 22a-163h of the Connecticut General Statutes.

(c) The proposed transferee shall agree, in writing, to comply with the terms, limitations, and conditions contained in the certificate.

(d) The permanent council shall not approve any such transfer if it finds:

- (1) That such transfer was contemplated at or prior to the time the certificate was issued and that such fact was not adequately disclosed during the certification proceeding; or
- (2) That the transferee lacks the financial, technical, or management capabilities to comply fully with the terms, limitations, or conditions of the certificate.

(Effective March 7, 1989)

Sec. 22a-163f-9. Development and management (D&M) plan

(a) **Purpose.** At the time of the council's decision and order for a certificate or

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Connecticut Siting Council

§22a-163f-9

amendment to a certificate, the council may require the preparation of a full or partial D&M plan for any proposed low-level radioactive waste management facility or any modification to a low-level radioactive waste management facility, specifying how facility construction will comply with siting orders issued by the council, where the preparation of such a plan would help to protect the health and safety of Connecticut's citizens and the environmental and economic interests of the state.

(b) **Procedure for preparation.** The D&M plan shall be prepared by the applicant in conjunction with the council's staff.

(c) **Timing of the plan.** The D&M plan, as specified in subsection (d) of this section, shall be submitted in one complete filing to the council and to all parties, but before the commencement of construction. The council shall approve, modify, or deny the D&M plan within 60 days after receipt of such plan.

(d) **Elements of D&M plan.** A D&M plan shall be a precise and complete description of the site and facility approved by the council and shall include, but not be limited to, the following information:

(1) The original application as revised by the applicant during the proceeding showing all additions, deletions, and changes, with page references, to the original proposal;

(2) A separate statement of the proposed methods, equipment, and schedule for construction with descriptions of possible adverse construction impacts and methods of minimizing or mitigating such impacts;

(3) A description of the effects of construction on site characteristics, such as the effects of grading on surface drainage, and the effects of soil removal or compaction upon erosion, permeability, and surface drainage;

(4) A statement of the management and administrative program for the operation of the proposed facility and maintenance of the site; and

(5) The names and qualifications of supervisors assigned to the construction project.

(e) **Supplemental requirements.**

(1) Notices and reports of construction.

(A) The applicant shall provide the council, in writing, with a minimum of two weeks advance notice of the beginning of:

(i) Clearing, road construction, and site preparation; and

(ii) Construction of each section of the facility.

(B) The applicant shall provide the council in writing with a monthly construction progress report describing:

(i) Proposed changes and deviations from the approved D&M plan;

(ii) Any notices required by and provided to other state agencies; and

(iii) Status of construction.

(C) The council shall review proposed changes and deviations from the approved D&M plan and shall approve, modify, or disapprove the changes within 60 days.

(f) **Final report and approval.**

(1) Within 60 days completion of construction, landscaping, soil stabilization, and

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-163f-10

Connecticut Siting Council

operational testing of the facility or each completed section of the facility, the certificate holder shall file with the council a final report which shall include the following information:

(A) Certification by the facility operator and a professional engineer whose selection is subject to council approval that the facility conforms with the specifications and requirements in the D&M plan as approved pursuant to this section;

(B) The date full-time continuous operation and waste management will begin; and

(C) The actual construction cost of the facility, including but not limited to, the costs of site acquisition; site preparation, including erosion control and other measures to mitigate construction impacts; facility construction; landscaping; and soil stabilization.

(2) Within 90 days of receipt of the final report or noticed time of full-time operation of the facility or of each section of the facility if construction is to continue throughout the life of the facility, whichever is later, the council shall review the facility and issue a final approval of completion of the D&M plan, or section thereof, or the council shall make recommendations to the certificate holder indicating what actions or procedures are necessary to conform to the certificate and receive final approval of completion of the D&M plan or section thereof. A letter of completion of the D&M plan shall be issued when the council determines that the facility has been constructed and is being operated in accordance to the certificate.

(Effective March 7, 1989)

Sec. 22a-163f-10. Enforcement by the council

Whenever the council becomes aware of any unauthorized construction or modification of a low-level radioactive waste management facility subject to the requirements of title 22a, chapter 446a of the Connecticut General Statutes or that there has been noncompliance with any terms, limitations, or conditions of a certificate, the council, pursuant to Section 22a-163m of the Connecticut General Statutes, will take appropriate enforcement action. Such action may include issuing a cease and desist order, suspending or revoking a certificate issued by the council upon a showing of cause and after a hearing, or requesting the attorney general to bring an enforcement proceeding in superior court.

(Effective March 7, 1989)