

Environmental Conservation

ARTICLE 15 WATER RESOURCES

TITLE 5 PROTECTION OF WATER

- Section 15-0501. Protection of certain streams; disturbances of stream beds; permit.
- 15-0503. Protection of water bodies; permit.
- 15-0505. Protection of navigable waters; excavation or fill; permit.
- 15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.
- 15-0509. Bonds.
- 15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.
- 15-0513. Liability of subcontractor, employee or agent.
- 15-0514. Prohibition of certain incompatible uses over either primary ground water recharge areas or federally designated sole source aquifers.
- 15-0515. Review.
- 15-0516. Inspection report of dam safety.
- 15-0517. Water quality testing requirements for land clearing debris and compost facilities in Nassau and Suffolk counties.

§ 15-0501. Protection of certain streams; disturbances of stream beds; permit.

1. Except as provided in subdivisions 4, 5, 6 and 7 of this section, no person or public corporation shall change, modify or disturb the course, channel or bed of any stream as defined in subdivision 2, or remove any sand, gravel or other material from the bed or banks of such a stream without a permit issued pursuant to subdivision 3 of this section.

2. For the purposes of this section, stream shall mean that portion of any fresh surface watercourse, except lakes or ponds having a surface area greater than ten acres at mean low water level, for which the department has adopted or may hereafter adopt pursuant to section 17-0301, any of the following classifications or standards:

- AA and AA (T),
- A and A (T),
- B and B (T),
- C (T)

Small ponds or lakes with a surface area at mean low water level of ten acres or less, located in the course of a stream, shall be considered a part of the stream and subject to regulation under this section.

3. Permit.

a. Before granting a permit, a permit renewal or a permit modification pursuant to this section, the department shall ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result

from the proposed project or work.

b. In order to minimize the disturbance of a stream and in order to prevent unreasonable erosion of soil, increased turbidity of the waters, irregular variations in velocity, temperature and level of waters, the loss of fish and aquatic wildlife and the destruction of natural habitat thereof, and the danger of flood or pollution, the department shall review the permit application or request for renewal or modification of an existing permit and may approve the manner and the extent to which the stream bed or channel may be changed, altered or modified and may limit the quantity of sand, gravel or other material to be removed, designate the location in the bed, channel or banks of the stream from which the sand, gravel or other material may be removed, or it may deny the permit or request.

c. The rules and regulations adopted by the department to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern the processing of permit applications, renewals, modifications, suspensions and revocations under this section.

4. No permit under this section shall be required of any local public corporation which has entered into a written memorandum of understanding with the department establishing the plan of operation to be followed in carrying out projects or work affecting water courses so as to afford proper protection to the public beneficial uses of such water courses.

5. No permit under this section shall be required of any state department or state public corporation. State departments and state public corporations may enter into a written memorandum of understanding with the department concerning projects or work of the type for which a permit would be required under this section if the project or work were undertaken by a person or local public corporation. The memorandum may establish procedures for review by the department of the plans for such projects or work and for written recommendations by the department with respect thereto.

6. No permit under this section shall be required for emergency work in a stream or on its banks which is immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, provided that the department is given written notification by registered mail or telegraph within forty-eight hours after the commencement of the work and within forty-eight hours following the completion of such work. Whenever emergency work is performed as provided in this subdivision, it shall be performed in a manner that will cause the least change, modification, disturbance or damage to the course or bed of the stream and its banks.

7. No permit under this section shall be required for certain agricultural activities of persons and corporations actively cultivating land devoted to agriculture whether or not the same be along a stream or watercourse as described in subdivision 2; providing that these agricultural activities consist only of crossing and recrossing of such streams or watercourses by livestock or by wheeled farm equipment normally used for traditional agricultural purposes; or the use of such stream or watercourse for withdrawal of water for irrigation where such withdrawal does not require altering the bed, banks or course of the stream in any manner.

8. The requirements of this section shall be in addition to those specified in section 15-0505 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed with the proposed project or work requires

a department permit under this section and section 15-0505 of this title.

§ 15-0503. Protection of water bodies; permit.

1. Except as provided in subdivision 3 of this section

a. No dam shall be erected, constructed, reconstructed or repaired by any person or local public corporation without a permit issued pursuant to subdivision 2 of this section. As used in this section, and section 15-0511 of this title, "dam" means any artificial barrier including any earthen barrier, together with its appurtenant works, which impounds or will impound waters, provided it has (1) a height equal to or greater than fifteen feet or (2) a maximum impoundment capacity equal to or greater than three million gallons; except that for purposes of this section a dam shall not include any structure which has (i) a height equal to or less than six feet regardless of the structure's impoundment capacity, or (ii) an impoundment capacity not exceeding one million gallons regardless of the structure's height.

b. Except where a lease or other appropriate conveyance of an interest authorizing the use and occupancy of state-owned lands underwater has been obtained from the commissioner of general services pursuant to subdivision seven of section seventy-five of the public lands law, no dock, wharf, platform, breakwater, mooring, or other structure in, on or above waters shall be erected, placed, constructed, reconstructed, or expanded after the effective date of this paragraph by any person or local public corporation without a permit issued pursuant to subdivision 2 of this section. The term "reconstructed" as used in relation to docks, wharves, platforms, breakwaters, mooring or other structures pursuant to this paragraph shall mean the substantial rebuilding of structures or facilities and shall not apply to ordinary maintenance or repair of existing functional structures or facilities, such as repainting, redriving pilings or replacing broken boards in docks.

c. A city, town, village or county may submit to the commissioner a local law or ordinance regulating docks or other structures as described in paragraph b of this subdivision. The commissioner shall review such law or ordinance to determine whether it provides environmental protection comparable to, or greater than, the provisions of such paragraph and any regulations promulgated thereunder. If the commissioner determines that the local law or ordinance submitted meets such requirements, the commissioner may delegate, upon such terms and conditions as he or she deems appropriate, to the local government the authority to administer the permit program and to charge a fee for permit processing. Any delegation may be revoked by the commissioner if he or she finds that the local government has failed to carry out the program in accordance with the terms of the delegation.

2. Permits. a. Before granting a permit, a permit renewal or a permit modification pursuant to this section, the department shall ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state likely to result from the proposed project or work.

b. The department shall review the permit application or request for renewal or modification of an existing permit and may approve the manner and extent to which the waters of the state or the banks and shore thereof will be affected by the proposed project or work and may grant or deny the permit or request, or may grant the permit or request with such conditions as might appear necessary to safeguard life, property

and natural resources during and after the execution of the proposed project or work.

c. The rules and regulations adopted by the commissioner to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this section.

d. The requirements of this section shall be in addition to those specified in sections 15-0501 and 15-0505 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed when the proposed project or work requires a department permit under this section and any other section of this title.

3. The requirement of a permit pursuant to this section shall not apply to the following facilities:

a. A dock, pier, wharf or other structure used solely as a landing place on water providing dockage for five or fewer boats and encompassing within its outer perimeter an area less than four thousand square feet;

b. A mooring facility providing mooring for fewer than ten boats;

c. Seasonal replacement or reinstallation of structures referenced and listed in paragraph b of subdivision 1 of this section installed prior to the effective date of this paragraph.

4. The design, preparation of plans, estimates and specifications and the supervision of the erection, construction, reconstruction and repair of all the structures hereinbefore referred to shall be done by a licensed professional engineer, or in the case of farm ponds for which a permit is required, by an engineer or conservationist employed by a governmental agency cooperating with a soil conservation district, or by an engineer employed by the department.

5. Notwithstanding the provisions of this or any other chapter or law to the contrary, no reservoirs for any purpose shall hereafter be constructed on the Upper Hudson River in the Adirondack park between Luzerne and the river's source; the Boreas river from its mouth to Durgin Brook; the Indian river from its mouth to Abanakee Dam; and the Cedar river from its mouth to Cedar River Flow, by the state or by any river regulating board.

§ 15-0505. Protection of navigable waters; excavation or fill; permit.

1. No person, local public corporation or interstate authority shall excavate or place fill below the mean high water level in any of the navigable waters of the state, or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state and that are inundated at mean high water level or tide, without a permit issued pursuant to subdivision 3 of this section. For the purposes of this section, fill shall include, but shall not be limited to, earth, clay, silt, sand, gravel, stone, rock, shale, concrete (whole or fragmentary), ashes, cinders, slag, metal, or any other similar material whether or not enclosed or contained by (1) crib work of wood, timber, logs, concrete or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and piling or steel sheet piling or steel H piling, separated or in combination. Nothing contained in this section is intended to be, nor shall be construed to limit, impair or affect the memorandum of understanding which any state department enters into with the Department of Environmental Conservation

or the general powers and duties of the Department of Transportation relating to canals or the general powers and duties of the Department of Environmental Conservation relating to flood control.

2. A permit application or request for a permit renewal or modification shall be made on forms provided by the department and shall consist of a description of the character and extent of the proposed project or work, drawings, plans and specifications providing the location and details of the proposed project or work, and such additional information as the department may require.

3. Before granting a permit, a permit renewal or a permit modification pursuant to this section the department shall ascertain the probable effect on the use of such waters for navigation, the health, safety and welfare of the people of the state and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result from the proposed project or work.

* 3-a. The department may only grant a permit for the filing of the Jamaica Bay borrow pits if the proposed sediments and fill materials:

(1) have been tested and the test results are in accordance with the requirements set forth in the department's technical operational guidance series 5.1.9 for the in water management of sediment and dredge material; and

(2) meet the department's class a criteria.

* NB Repealed June 30, 2022

4. The department shall review the permit application or request for renewal or modification of an existing permit and may grant or deny the permit or request, or may grant the permit with such conditions as will safeguard life or property against danger or destruction and as will make the navigable waters safe for use by the public.

5. The rules and regulations adopted by the department to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern the processing of permit applications, renewals, modifications, suspensions and revocations under this section.

6. The provisions of subdivisions 1, 2, 3 and 4 of this section shall not apply to emergency work in waters described in subdivision 1 of this section which is immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, provided that the department is given written notification by registered mail or telegraph within forty-eight hours after the commencement of the work and within forty-eight hours following the completion of the work. Whenever such emergency work is performed as provided in this subdivision, it shall be performed in a manner that will cause the least change, modification, disturbance or damage to the environment.

7. The requirements of this section shall be in addition to those specified in section 15-0501 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed when the proposed project or work requires a department permit under this section and section 15-0501 of this title.

§ 15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.

1. Any owner of a dam or other structure which impounds waters shall

at all times operate and maintain said structure and all appurtenant structures in a safe condition. As used in this section and section 71-1109 of this chapter, "owner" means any person or local public corporation who owns, erects, reconstructs, repairs, maintains or uses a dam or other structure which impounds waters. The commissioner may promulgate regulations requiring any owner to prepare and implement a safety program for such dam or structure as necessary to safeguard life, property or natural resources. Regulations governing the safety program may include requirements for inspections, monitoring, maintenance and operation, emergency action planning, response and prevention of terrorism and cyber terrorism, financial security, recordkeeping and reporting or any other requirement the commissioner deems necessary to safeguard life, property or natural resources. Such requirement shall only apply to those dams or other structures that impound waters which pose, in the event of failure, a threat of personal injury, substantial property damage or substantial natural resource damage.

2. Whenever in the judgment of the department public safety requires, the department shall investigate dams and other structures impounding waters in the state, and docks, piers and wharves extending into such waters.

3. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the department shall have the power, whenever in the judgment of the department it may be necessary to safeguard life or property or to protect the natural resources of the state, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any owner:

a. to conduct studies, investigations and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analyses and seepage investigations; and

b. to either remove the said structure or to erect, reconstruct or repair the same within such reasonable time and in such manner as shall be specified in said order.

It shall be the duty of every such owner to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

4. It shall be unlawful for any owner to fail, omit or neglect to comply with such order within a reasonable time as designated by the department.

5. Upon the violation of any such order, the department shall have power to enter upon the lands and waters where such structures are located for the purpose of removing, repairing or reconstructing the same and to take such other and further precautions which it may deem necessary to safeguard life or property or protect the natural resources of the state against danger occasioned by the presence of such structures. In removing, repairing and reconstructing such structures or other properties so affected the department shall not deviate from the method, manner and specifications contained in the original order.

6. The department shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal, repair or reconstruction aforesaid in any wise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to

the assessment rolls of such locality or localities as a charge against the real property upon which the dam, dock or other structure is located, designated or described by the department as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department, who shall thereupon, pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.

§ 15-0509. Bonds.

The department may require the posting of a bond by permittees conditioned upon compliance with the terms of permits issued pursuant to the provisions of title 5 of this article.

§ 15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.

1. Whenever in the judgment of the commissioner, public safety requires, or an illegal excavation, fill, or dam exists in or on the waters of the state, the commissioner may cause an investigation to be made of the nature of the hazard or violation and its probable effect on the health, safety and welfare of the people of the state, and the effect on the environment and natural resources including forests, soil, water, fish and wildlife.

2. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the commissioner shall have the power, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any person or local public corporation, who hereafter makes or allows to be made or is making an illegal or unsafe excavation or fill, or who constructs an illegal dam, to conduct studies, investigations, and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analysis and seepage investigations and to remove, replace or correct the dam or excavated or filled materials, within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person or local public corporation to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

3. It shall be unlawful for any person or local public corporation to fail, omit or neglect to comply with such order within a reasonable time as designated by the commissioner.

4. Upon the violation of any such order, the commissioner, or a duly appointed representative, shall have power to enter upon the lands and waters where such illegal or unsafe disturbances are located for the purpose of removing, replacing or correcting the same and to take such other and further precautions which the commissioner may deem necessary

to safeguard life or property or protect the environment of the state against danger occasioned by the presence of the illegal or unsafe excavation, fill or dams. In removing or replacing such structures or other properties so affected the commissioner shall not deviate from the method, manner and specifications contained in the original order.

5. The commissioner shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal or replacing aforesaid in anywise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the excavation, fill or dam is located, designated or described by the commissioner as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department which shall thereupon pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.

§ 15-0513. Liability of subcontractor, employee or agent.

It shall be unlawful for a subcontractor, employee or agent of a person or public corporation, or of a state department to knowingly and intentionally act, or a prime contractor of a person, public corporation or state department to act with or without an intention to violate the provisions of sections 15-0501, 15-0503 or 15-0505 in disregard of specifications provided in a construction contract protecting against stream damage.

§ 15-0514. Prohibition of certain incompatible uses over either primary groundwater recharge areas or federally designated sole source aquifers.

1. Definitions: The following terms, whenever used or referred to in this section, shall have the following meanings:

a. "Primary groundwater recharge areas" shall mean those areas of the land surface through which water of great volume and high quality generally move downward to the deeper portions of the underlying groundwater reservoir. In the counties of Nassau and Suffolk, primary groundwater recharge areas shall mean Hydrogeologic Zones I, II, III, IV and V as defined in the Long Island Comprehensive Waste Treatment Management Plan of 1978, or any amendments to such boundaries which are accepted by the commissioner.

a-1. "Primary water supply aquifer areas" shall mean those areas in the counties of Nassau, Suffolk, Kings and Queens and the Schenectady aquifer (commonly known as the Great Flats Aquifer), as identified in the nineteen hundred eighty-one New York state department of health report on groundwater dependence in New York state, and defined in the United States Geologic Survey maps for such aquifers, or any amendments to such boundaries which are accepted by the commissioner.

b. "Incompatible uses" shall mean any hazardous waste or substances as determined by the department, that may ultimately be discharged to groundwater, or the storage of such a substance that may contaminate the groundwater.

c. "Long Island Comprehensive Waste Treatment Management Plan of 1978" shall mean the study prepared by the Long Island Regional Planning Board pursuant to section two hundred eight of the Federal Water Pollution Control Act as amended in 1972.

d. "Sole source aquifer" shall mean an aquifer system that the United States environmental protection agency, pursuant to Public Law 93-523 which is known as the federal Safe Drinking Water Act of 1974, has designated as the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

e. "Hazardous wastes" shall include all materials or chemicals listed as hazardous wastes pursuant to article twenty-seven of this chapter, or all toxic pollutants as defined in subdivision nineteen of section 17-0105 of this chapter.

f. "Hazardous substance" means:

(1) petroleum; or

(2) any substance or combination of substances designated as a hazardous substance under section 311 of the Federal Water Pollution Control Act (33USC1321) and which is not a hazardous waste under title 9 of article 27 of this chapter; or

(3) any substance listed by the department which because of its quantity, concentration, or physical, chemical or infectious characteristics may;

(i) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

The department shall promulgate a list of hazardous substances, within one year after the effective date of this section, including petroleum for the purposes of carrying out the applicable provisions of this title. Prior to the promulgation of such list the department shall solicit information on the present practices of industry and other commercial users of hazardous substances.

g. "Petroleum" means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, crude oil, petroleum mixed with one or more other substances, gasoline, kerosene, naphtha and as further defined by the department in rules and regulations.

2. The Nassau - Suffolk Hydrogeologic Zones I, II, III, IV and V, and their attendant boundaries as specified in the Long Island Comprehensive Waste Treatment Management Plan of 1978, or any amendments to such boundaries which are accepted by the commissioner are hereby adopted as primary groundwater recharge areas for the counties of Nassau and Suffolk for the purposes of this section.

3. The department shall propose, for the purposes of this section, primary groundwater recharge areas within either other designated sole source aquifer systems, excluding the counties of Nassau and Suffolk, or within primary water supply aquifer areas based upon hydrogeological conditions and recommendations within the department's groundwater management plan, within twelve months subsequent to the date at which the sole source aquifer designation becomes effective or within twelve months of the effective date of this amended subdivision, pursuant to

the following procedures:

a. The department shall hold public hearings in regard to the proposed locations and boundaries of the primary groundwater recharge areas.

b. Notice of each public hearing shall be by publication in a newspaper most likely to give notice to the people residing within the primary water supply aquifer. Notice of such hearing shall be printed at least once in each of three successive weeks, but the hearing shall not be conducted less than thirty days following the date of first publication of notice of such hearing.

c. The department shall subsequently finalize and adopt specific locations and boundaries of such primary groundwater recharge areas within three months following the completion of such hearing.

d. Additional primary groundwater recharge areas or new boundaries of existing primary recharge areas may be delineated by the department based upon new hydrogeological information subject to the procedure outlined in paragraphs a, b and c of this subdivision.

4. Copies of the adopted boundaries of the delineated areas shall be kept on file in the offices of the commissioner and the regional director of the department.

5. The department shall promulgate rules and regulations which will restrict or prohibit incompatible uses over primary water supply aquifers, giving special attention where necessary to protect primary groundwater recharge areas.

6. In undertaking its responsibilities under this section, the department shall give first attention to the protection of pristine, largely undisturbed or undeveloped areas to insure the non-degradation of the water resources of such areas.

§ 15-0515. Review.

A determination, order or issuance, modification or denial of a permit, pursuant to sections 15-0501, 15-0503 and 15-0505 shall be reviewable in a proceeding pursuant to article 78 of the Civil Practice Law and Rules.

§ 15-0516. Inspection report of dam safety.

1. Within thirty days of the creation by the department of any inspection report of any intermediate or high hazard dam, the department shall provide, to the chief executive officer of a municipality in which the dam is located, a copy of such report. Such report shall also be furnished to the chief executive officer of any other municipality in the county where the dam is located, or any county adjoining such county upon written request of the chief executive officer of such municipality.

2. For the purposes of this section, the term "chief executive officer" shall mean:

(a) for the purposes of a village or city, the mayor of such village or city;

(b) for the purposes of a town, the supervisor of such town;

(c) for the purposes of a county, the chairperson of the county legislature or board of supervisors, or, if there be one, the county executive.

§ 15-0517. Water quality testing requirements for land clearing debris and compost facilities in Nassau and Suffolk counties.

1. In Nassau and Suffolk counties, the department shall promulgate rules and regulations to prevent water quality and other environmental impairments resulting from land clearing debris facilities or composting facilities. Such regulations shall at a minimum require:

(a) quarterly up gradient and down gradient water quality testing;

(b) setbacks from drinking water supply wells and surface water bodies; and

(c) dust and odor suppression and fire risk minimization.

2. The department shall in the case of a primary recharge area, and may for other recharge areas, promulgate rules and regulations to be implemented twenty-four months after the effective date of this section, to prevent water quality and other environmental impairments resulting from land clearing debris facilities or composting facilities by requiring the use of an impermeable liner, in addition to the requirements of subdivision one of this section. The department may exempt a land clearing debris facility or a composting facility from the regulatory requirements of this subdivision following a review of the facility's water quality testing results and a determination by the department that such facility does not pose a risk of impairment to the primary recharge area or, if applicable, other recharge area.

3. For the purposes of this section:

(a) "land clearing debris" shall mean vegetative matter, soil and rock resulting from activities such as land clearing and grubbing, utility line maintenance or seasonal or storm related cleanup such as trees, stumps, brush and leaves and including wood chips generated from these materials.

(b) "composting facilities" shall mean facilities that accept more than three thousand cubic yards of waste, either processed or unprocessed, per year.