

**Waste Management Division
103 South Main Street
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August 13, 1997

Current and Future Solid Waste Facility Applicants:

I am writing to advise you of pending changes to the application fee structure for solid waste management facilities that involve both public and private entities as co-applicants. Recently, we have received applications for solid waste management facilities involving public and private entities as co-applicants. This has caused us to review the statutory framework that governs the payment of certification application fees.

The requirement for certification application fees to be paid for solid waste treatment or disposal facilities is set forth in 3 V.S.A §2822 (h)(12). Under §2822(j)(6), application fees are required at the rate of \$0.75 per ton of waste to be handled by the facility for each certification year. Under §2822(i), municipalities are not required to pay these application fees.

In the past, the Department has in some cases not required an application fee for projects involving public and a private co-applicant's. We have determined that not requiring the payment of fees is no longer correct for many, if not most, facilities involving both a public and private entity.

The Department's new fee procedure regarding public/private applications is attached to this letter. As you may know, the legislature is in the process of examining Solid Waste Application fees. Fee changes are included in H.123 which was passed by the House during the 1997 session and which currently resides in the Senate Natural Resources Committee. In this procedure we have delayed the effective date of the fee acknowledging both the potential for legislative changes and the reliance of applicants on our past practice.

If you have questions about the attached procedure or if you would like to know how this may impact your facility, please contact Chris Wagner, Chief, Solid Waste Certification and Compliance Section, at 241-3483.

Sincerely yours,

Canute Dalmasse, Commissioner
Department of Environmental Conservation

cc: Senator Elizabeth Ready, Chair, Senate Natural Resources and Energy Committee
Representative David Deen, Chair, House Natural Resources and Energy Committee

**Procedure Regarding the Payment of Solid Waste Certification Application Fees
Involving Both Public and Private Co-applicants
Department of Environmental Conservation
Waste Management Division, Solid Waste Program**

Background

The requirement for certification application fees to be paid for solid waste treatment or disposal facilities is set forth in 3 V.S.A §2822 (h)(12). Under §2822(j)(6), application fees are required at the rate of \$0.75 per ton of waste to be handled by the facility for each certification year. Under §2822(i), municipalities are not required to pay these application fees.

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Applicability

This Procedure does not apply to facilities which the applicant(s) are solely public or private. This Procedure also does not apply to any applications that have been determined by the Department to be administratively complete prior to the adoption date of the Procedure.

This procedure applies to all active and future facility applications involving both a public and a private entity.

The only exception to the fee provisions may be for projects where the role of the private applicant is to function solely as a contracted service provider. These would be cases where the municipality establishes and maintains an approved financial responsibility instrument for the facility, controls the facility operations, directly utilizes the services of the facility, maintains an unencumbered right to possession, maintains access to the facility at all times, and controls the financial aspects of the facility (e.g. obtains the user fees and pays any fees or taxes). In these cases the contractor is not vested in the financial viability of the facility. If a project meets these criteria the municipality may request an exemption from the fee provisions. In order to do so it must at the time of application specifically ask for an exemption and submit documentation that demonstrates that the project meets the criteria. The applicant must receive written approval from the Department. If the request is not approved, the application will not be determined administratively complete until the appropriate fees are paid.

Fee Provisions

Applications subject to this procedure will be charged permit fees in accordance with the following provisions:

- If an administratively complete application is received by the Department prior to July 1, 1998, the applicant will be eligible for a reduction in the amount of permit fees due equivalent to one year's operation. (This reduction is allowed because the Department recognizes that public/private co-applicants have relied on the Department's past application fee practice and that some amount of time is necessary to adjust to this new procedure).
- Applicants have the option of applying for any term of certification up to the maximum of five years allowed by 10 V.S.A. §6605. The one year's fee reduction can be applied to applications of any term up to five years.
- This fee reduction will not apply in cases where there is a current certification that expires after December 31, 1998.
- In most cases, the one year fee reduction will be based on the time period beginning on the date the certification is issued and ending one year hence.
- In cases where the facility continues to operate under the provisions of 3 V.S.A. §814, the one year fee reduction period will begin on the expiration date of the previous certification and end one year hence. In these situations either the certification period will be reduced by the amount of time between the expiration date and the new issue date, or the certification can be for a full five years if the difference in fees is submitted. A certification will not be issued unless all required fees are paid.
- For applications that are not "timely and sufficient" in accordance with 3 V.S.A. § 814, and the Department's Permit Application Review Procedure, the one year fee reduction does not apply and the full fee is due.
- For all applications received on or after July 1, 1998, the application fees specified by 3 V.S.A. §2822 must be paid in full and submitted with the application for certification.

Effective Date

This Procedure is effective upon the date of Signature.

Signature

Commissioner
Department of Environmental Conservation

_____ Canute Dalmasse,
Date