

**CHAPTER 269a. SITING**

<b>Subchap.</b>	<b>Sec.</b>
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**Authority**

The provisions of this Chapter 269a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. § 510-20); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

**Source**

The provisions of this Chapter 269a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

**Cross References**

This chapter cited in 25 Pa. Code § 252.3 (relating to scope); 25 Pa. Code § 264a.18 (relating to location standards); 25 Pa. Code § 265a.18 (relating to location standards) and 25 Pa. Code § 270a.13 (relating to contents of Part A of the permit application).

**Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES**

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**GENERAL PROVISIONS****§ 269a.1. Definitions.**

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Active water supply*—A water supply in use prior to both the receipt of a permit application and the establishment of a public participation program for a hazardous waste management facility.

*Facility site*—All contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application.

*Qualifying facility*—Is one of the following:

- (i) A new commercial hazardous waste treatment or disposal facility, which did not exist as a solid waste or recycling facility prior to December 18, 1988, that:
  - (A) Has been issued a written permit after December 18, 1988.
  - (B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the Pennsylvania hazardous waste facilities plan.
  - (C) Accepts hazardous waste under the conditions of the permit.

(D) Did not operate under 40 CFR Part 270 Subpart G (relating to interim status), as incorporated by reference in § 270a.1 (relating to incorporation by reference, scope and applicability), prior to the issuance of the written permit.

(ii) An existing permitted commercial hazardous waste treatment or disposal facility which was permitted before December 18, 1988, that:

(A) Has been issued a written permit modification to expand the facility after December 18, 1988.

(B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the hazardous waste facilities plan.

(C) Accepts a larger volume of hazardous waste than was authorized in the permit prior to modification to expand the facility.

*Wetland*—An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes, but is not limited to, wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan, the United States Fish and Wildlife National Wetland Inventory and wetland areas designated by a river basin commission.

(b) All other words and terms not defined in this subchapter have the meanings ascribed to them in § 260a.10 (relating to definitions).

#### Source

The provisions of this § 269a.1 amended September 7, 2001, effective September 8, 2001, 31 Pa.B. 5075. Immediately preceding text appears at serial pages (255010) to (255011).

#### Cross References

This section cited in 25 Pa. Code § 269a.101 (relating to definitions).



**SCOPE AND APPLICABILITY****§ 269a.11. Scope and applicability.**

The requirements of this chapter apply to siting of hazardous waste treatment and disposal facilities. The hazardous waste treatment or disposal facility shall satisfy all other applicable requirements of this article. The criteria for siting hazardous waste treatment and disposal facilities are divided into two phases as described in §§ 269a.12 and 269a.13 (relating to Phase I; and Phase II).

**§ 269a.12. Phase I.**

Phase I exclusionary criteria are established in §§ 269a.21—269a.29 (relating to Phase I exclusionary criteria) and prohibit the siting of a hazardous waste treatment or disposal facility in an excluded area delineated under these criteria. The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area. Phase I criteria apply to hazardous waste treatment or disposal facilities, except for the following:

- (1) A facility sited and substantially constructed in good faith prior to the effective date of this chapter.
- (2) Modifications to a facility within the existing facility site.

**Cross References**

This section cited in 25 Pa. Code § 269a.11 (relating to scope and applicability).

**§ 269a.13. Phase II.**

(a) Phase II criteria are established in §§ 269a.41—269a.50 (relating to Phase II criteria) and identify further environmental, social and economic factors which may affect the suitability of a location for a proposed facility. Phase II criteria apply to hazardous waste treatment or disposal facilities and modifications. If a facility site does not satisfy a Phase II criteria, the applicant shall submit additional information and analyses to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.

(b) The Department will provide notice to municipal officials and other interested persons in order to solicit further information regarding potential effects of a failure to meet Phase II criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, will determine whether the proposed design, construction and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criterion.

(c) After evaluating Phase II criterion individually, the Department will evaluate the facility's overall compliance with the Phase II criteria, and will identify risks that have not been eliminated through mitigation measures. If risks

to the public health or safety, or to significant natural, scenic, historic or aesthetic values remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste treatment or disposal facility, the Department may include conditions in the permit which eliminate or reduce the identified risks or may deny the permit application.

#### Cross References

This section cited in 25 Pa. Code § 269a.11 (relating to scope and applicability).

### § 269a.14. Distances.

The distances from a facility to a feature or structure described in these criteria shall be measured from the perimeter of the facility site.

## PHASE I EXCLUSIONARY CRITERIA

### § 269a.21. Water supply.

(a) Landfill, land treatment and surface impoundment facilities may not be sited in the following locations:

(1) Within 1/2 mile of a well or spring used for a community water supply.

(2) Within 1/2 mile of either side of a stream or impoundment for a distance of 5 stream miles upstream of a surface water intake for a community water supply.

(3) Within 1/2 mile of an offsite private or noncommunity public well or spring used as an active water supply, unless prior to operation of the facility the applicant demonstrates the availability of an acceptable permanent alternative supply of like quantity, yield and quality to the existing supply, and provides financial assurance that the alternate supply will be made available at no additional cost to the water supply owner for a period of time that shall be no less than the bond liability period established in section 505(a) of the SWMA (35 P. S. § 6018.505(a)). If a permit is granted, it shall include a permit condition which requires installation of the alternative water supply prior to operation of the facility.

(b) A permanent alternative supply may be provided through the development of a new well with a distribution system, interconnection with a public water supply, extension of a private water supply or similar proposals, but it may not include provision of bottled water or a water tank supplied by a bulk water hauling system.

(1) The applicant shall demonstrate good faith efforts to reach agreement with the water supply owner regarding the provision of an acceptable permanent alternative water supply.

(2) If the applicant is unable, despite good faith efforts, to reach agreement with the water supply owner, the applicant shall demonstrate to the Department

that an acceptable permanent alternative water supply is available, has been offered and will be provided to the water supply owner.

(3) The Department will determine that an alternative permanent water supply is acceptable if the quality and quantity satisfy requirements for public water supplies under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) and Chapter 109 (relating to safe drinking water). The Department may require the alternative water supply to provide higher quality, quantity or yield of water than that required to be delivered by public water systems if the water supply owner demonstrates that the higher quality, quantity or yield is necessary to continue a preexisting use of substantial economic value.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.22. Flood hazard areas.**

(a) Surface impoundment, landfill and land treatment facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated.

(b) Treatment and incineration facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated unless the industrial use on the proposed site was in existence as of October 4, 1978, which is the effective date of the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.23. Wetlands.**

Treatment and disposal facilities may not be sited in wetland areas.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.24. Oil and gas areas.**

Surface impoundments, landfill and land treatment facilities may not be sited over active or inactive oil and gas wells or gas storage areas located within or beneath the facility site. The term “active or inactive oil and gas wells or gas storage areas” has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.25. Carbonate bedrock areas.**

Surface impoundments, landfill and land treatment facilities may not be sited over limestone or carbonate formations, where the formations are greater than 5 feet in thickness and present at the topmost geologic unit. Areas mapped by the Pennsylvania Geologic Survey as underlain by formations shall be excluded unless competent geologic studies demonstrate the absence of formations under the facility site.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.26. National natural landmarks and historic places.**

Treatment and disposal facilities may not be sited within National Natural Landmarks designated by the National Park Service or historic sites listed on the National Register of Historic Places, unless the statute under which the designation or listing has been made authorizes the operation of the facilities in these areas.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.27. Dedicated lands in public trust.**

Treatment and disposal facilities may not be sited on lands in public trust, including State, county or municipal parks, units of the National Parks System, State forests, the Allegheny National Forest, State game lands, property owned by the Historical and Museum Commission, a National wildlife refuge, National fish hatchery or National environmental center unless the agency administering the lands has been given authority by statute or ordinance to allow the operation of the facilities on these lands.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.28. Agricultural areas.**

Treatment and disposal facilities may not be sited in agricultural areas established under the Agricultural Area Security Law (3 P. S. §§ 901—915) or in farmlands identified as Class I agricultural land by the Soil Conservation Service.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**§ 269a.29. Exceptional value waters.**

Treatment and disposal facilities may not be sited in watersheds of exceptional value waters.

**Cross References**

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

**PHASE II CRITERIA****§ 269a.41. Water supply.**

(a) The applicant shall determine whether a proposed surface impoundment, landfill or land treatment facility is within the groundwater recharge area for public or private water supplies. The applicant shall delineate the position of the proposed facility site within relevant groundwater flow systems. The applicant shall identify all public and private water supplies and water treatment plants which may potentially be adversely affected by groundwater flow associated with the proposed hazardous waste facility, such as the water supplies located down-gradient in the flow path from the facility.

(b) For water supplies or water treatment plants which may be affected by the proposed facility, the applicant shall submit a detailed hydrogeologic study including information addressing the following:

- (1) Hydraulic conductivity of the aquifer for the water supplies.
- (2) Hydraulic conductivity of the geologic deposits underlying the proposed facility.
- (3) Assessment of the influence of faults, fractures or other structural geologic features upon hydraulic conductivity and groundwater flow directions.
- (4) Pumping rates of water supply wells and the areal extent and configuration of the cone of pumping depression associated with these wells in relation to the groundwater table of the surrounding areas.

(c) For water supplies or water treatment plants which the hydrogeologic study required in subsection (b) indicate, may be adversely affected by the proposed facility, the applicant shall demonstrate:

- (1) The hydrogeologic characteristics of the proposed facility site and adjacent areas assure that implementation of a groundwater monitoring well program will provide protection of water supplies or water treatment plants from potential contamination.
- (2) The feasibility of providing a permanent alternative water supply acceptable to the water supply owner of like quantity and quality to the existing supply at no additional cost to the owner.

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to phase II).

**§ 269a.42. Geology.**

(a) *Faults.* Landfill, land treatment and surface impoundment facilities are deemed to be acceptable if located 1 mile or more from a major structural feature. A major structural feature is a fault mapped by the Pennsylvania Geologic

Survey or the United States Geological Survey at a scale of 4 miles to the inch. If the proposed facility is within 1 mile of a major structural feature, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the proposed facility design with the faults in the area.

(b) *Bedrock depth.* For surface impoundment, landfill and land treatment facilities, a depth to bedrock of 15 feet or more shall be considered acceptable. Where the construction of the proposed facility required excavation, the final depth to bedrock shall be considered. The applicant shall address lesser bedrock depths by providing information and analysis to allow the Department to assess the compatibility of the design and construction of the proposed facility with the bedrock depth.

(c) *Slopes.* Slopes less than 15% for surface impoundment, landfill and land treatment facilities shall be considered acceptable. The applicant shall address greater slopes by submitting information and analysis to allow the Department to assess the compatibility of the design and construction measures for the proposed facility that would minimize adverse effects.

(d) *Landslide prone areas.* If a facility site is in a landslide prone area or is adjacent to a landslide prone area, the applicant shall submit information and analyses to allow the Department to assess whether the design measures provide adequate protection from potential landslides.

(e) *Oil and gas wells.* Surface impoundment, landfill and land treatment facilities shall be considered acceptable if the applicant can establish that abandoned oil and gas wells and gas storage areas do not exist within the proposed facility site. The term “abandoned oil and gas wells and gas storage areas” has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605). If abandoned facilities exist, the applicant shall provide information and analysis to allow the Department to assess the probability and degree of subsurface discharges to be expected from the existence of abandoned oil and gas wells and gas storage areas within the facility site after wells are plugged.

(f) *Carbonate areas.* Where surface impoundment, landfill or land treatment and disposal facilities are proposed over areas underlain by carbonate bedrock, the applicant shall provide information and analysis to allow the Department to assess the prevalence of solution channels and the potential for sinkholes at the facility site.

(g) *Hydrogeology.* A surface impoundment, landfill or land treatment facility may not be located in an area underlain by coarse unconsolidated deposits, such as well sorted valley fill deposits and heavily fractured bedrock. If any other facility is to be located in an area underlain by coarse unconsolidated deposits the applicant shall provide information and analyses to allow the Department to further assess the facility site to determine the environmental impact of these subsurface conditions.

(h) *Seismic risk zones.* If a proposed treatment or disposal facility is within a 5-mile radius of earthquake epicenters as mapped by the Pennsylvania Geologic

Survey or the United States Geological Survey, the applicant shall specify design measures necessary to withstand potential seismic events, and the Department will determine whether the proposed design measures provide adequate protection from potential earthquake damage.

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

**§ 269a.43. Soils.**

(a) *pH*. Land farming facilities located so the soil pH within the proposed facility is 6.0 or greater shall be deemed to be acceptable. If the proposed facility cannot meet the soil pH requirements of this subsection, the applicant shall provide information and analysis to allow the Department to assess the ability of the proposed facility to mitigate adverse environmental effects resulting from incompatible soil pH.

(b) *Cation exchange capacity*. Surface impoundment, landfill and land treatment facilities located so that the capacity of the soil to exchange cations expressed as a sum for all exchangeable cations is 15 milliequivalents per 100 grams of soil or greater shall be deemed to be acceptable. If the cation exchange capacity is less than 15, the applicant shall provide information and analyses to allow the Department to assess the soil cation exchange capacity in relation to the potential for migration of contaminants from the proposed facility.

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

**§ 269a.44. Mineral bearing areas.**

(a) *Ownership of mineral rights*.

(1) Surface impoundment, landfill and land treatment facilities shall be deemed to be acceptable if the applicant owns the mineral rights within the proposed facility and the area has not been previously mined.

(2) If the applicant does not own all the mineral rights within the proposed facility, the applicant shall determine the ownership of mineral rights conveyed with the property deed to the proposed facility. The applicant shall provide a certification based on a property title search, that ownership of all mineral rights, including coal, oil and gas is or will be held by the applicant and that these rights will not be severed from the property as long as hazardous waste remains on the property.

(b) *Surface subsidence risk*. If any part of a proposed facility site has been previously mined by deep or surface mining methods, the applicant shall provide the results of an engineering study of the proposed site by a competent geotechnical engineer. The study shall allow the Department to assess the probability and degree of surface subsidence and the methods which have been used or are pro-

posed to stabilize the surface. Additionally, the applicant shall provide assurance that minerals providing support will not be mined as long as hazardous waste remains onsite.

#### Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

### § 269a.45. Land use.

(a) *New facilities.* Treatment and disposal facilities located on lands either designated for industrial use by existing municipal zoning or indicated as industrial in officially adopted county or municipal comprehensive plans or land use maps are deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the design of the proposed facility with zoning or land use controls. Where no zoning exists, the applicant shall provide information and analysis to allow the Department to assess compatibility with existing land use.

(b) *Existing facilities.* Treatment and disposal facilities located on sites where solid waste or hazardous waste operations—treatment, storage, recovery and disposal—or both, are currently being conducted under authority of the act are deemed to comply with the land use criterion.

#### Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

### § 269a.46. Transportation standards.

(a) *Access.* Treatment and disposal facilities within 5 miles travel distance of interstate or limited access highways and served by roads capable of handling anticipated truck traffic or served by a dedicated limit access highway shall be deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the proximity of the proposed facility to interstate highways, the effect upon the operation of the proposed facility and the effect of the proposed facility upon the community in the transportation corridor to and from the facility. The applicant shall provide a plan for highway improvements, if necessary.

(b) *Structures along transportation corridor.* Treatment and disposal facility sites where the transportation corridor between the entrance to a facility and the nearest interstate or limited access highway is the primary access for less than five residential dwellings per road mile with no schools, community parks or hospitals, are deemed to be acceptable. If these criteria are not met, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

(c) *Transportation restrictions.* Treatment and disposal facility sites are deemed to be acceptable if there are less than four intersections per mile between the entrance to the facility and the nearest interstate or limited access highway. If there are four or more intersections per mile, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.153 (relating to impact on adjacent populated areas).

**§ 269a.47. Safety services.**

Treatment and disposal facilities are deemed to be acceptable if located within an area with adequate safety services. The applicant shall provide information and analyses to allow the Department to assess the adequacy of fire protection, police, ambulance and other necessary safety services available and willing to provide services to the proposed facility. In all cases, the applicant shall also comply with 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; contingency plan and emergency procedures) and Chapter 264a, Subchapter D (relating to contingency plan and emergency procedures).

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

**§ 269a.48. Proximity of facilities and structures.**

Treatment and disposal facility sites are deemed to be acceptable if the distance from the facility to an airport, school, community park, hospital, church, retail center or nursing home, is greater than 1 mile. If this criterion cannot be met, the applicant shall provide information and analyses to allow the Department to assess the effect the proposed facility will have on the use of these facilities.

**Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.153 (relating to impact on adjacent populated areas).

**§ 269a.49. Economic criteria.**

(a) A treatment or disposal facility which does not adversely affect the economy of the host and contiguous municipalities and municipalities contiguous to the transportation corridor to the nearest interstate or limited access highway is deemed to be acceptable without further assessment. If the facility will result in a net loss of revenues to local jurisdictions, the applicant shall provide informa-

tion and analysis to allow the Department to assess compensation needed to offset actual net loss of revenues to local jurisdictions caused by the proposed facility.

(b) If a treatment or disposal facility will result in a net increase in the cost of services provided by local government, the applicant shall provide information and analyses to allow the Department to assess compensation needed to offset net increases in cost of services.

(c) If a treatment or disposal facility will adversely affect the local economy, the applicant shall provide information and analyses to allow the Department to assess employment and future economic development generated as a result of the location of the facility which may offset a decrease in the local economy.

(d) If a treatment or disposal facility will result in a net increase in cost for monitoring the facility by local government, the applicant shall provide information and analyses to allow the Department to assess the need for compensation for technical assistance which may offset these costs. The applicant shall assess provisions for site access by local government.

(e) The applicant shall provide information and analyses to allow the Department to assess a change in market value of property within the local government caused by operation of the treatment or disposal facility and means by which operation of the proposed facility may offset the change.

#### Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

### § 269a.50. Environmental assessment considerations.

(a) The purpose of the criteria in this section is to assist the Department in evaluating the potential impact of a proposed treatment or disposal facility on natural, scenic, historic and aesthetic values of the environment under PA. CONST. ART. I, § 27. The Department will determine whether significant environmental harm will occur after reviewing the applicant's environmental assessment report submitted in compliance with this chapter and after consulting with the applicant and relevant governmental agencies.

(b) If the Department determines that there is a significant impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the environmental incursion to a minimum. If, after consideration of mitigation measures, the Department finds that significant environmental harm will occur, the Department will evaluate the social and economic benefits of the proposed facility to determine whether the harm outweighs the benefits. The evaluation of environmental harm must include, at a minimum, a consideration of the impact of the proposed facility on the 15 types of environmental resources described in this subsection. There may be additional potentially affected natural, scenic, historic or aesthetic values which

the Department is constitutionally obligated to protect that will be considered for proposed facilities in some locations. In those instances, the Department will identify additional potential impacts for the applicant. The following criteria may not be construed as an attempt to limit or restrict the responsibilities of a Commonwealth agency under PA. CONST. ART. I, § 27.

(1) If the proposed facility is located within 1 mile of the corridor of a stream or river designated as a National or State wild, scenic, recreational, pastoral or modified recreation river under the National Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287), or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29) the applicant shall provide information and analyses to allow the Department to determine whether the proposed facility conforms to the designating statutes, land management guidelines and studies or plans for the corridor.

(2) If the proposed facility is located within 1 mile of the nearest bank of a stream or river listed as a 1-A priority for study by the Department as a State wild, scenic, recreational, pastoral or modified recreational river; or mandated by the United States Congress for study or determined by the United States Park Service to meet the criteria for study for potential inclusion into the National Wild and Scenic Rivers System, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the river or stream.

(3) If the proposed facility is located within 1 mile of a unit of the National Parks System; a State, county or municipal park; a recreational facility operated by the United States Army Corps of Engineers; a State forest picnic area; or the Allegheny River Reservoir in the Allegheny National Forest; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the park or other recreation areas listed in this subsection.

(4) If the facility is located within 1 mile of the footpath of the Appalachian Trail or other State designated trail, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the Appalachian Trail or other State designated trail.

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service, or a natural area or wild area designated by a State or Federal agency, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

(6) If the facility is located within 1 mile of or within an identified potential impact area of a National wildlife refuge, National fish hatchery or

National environment center operated by the United States Fish and Wildlife Service, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the wildlife reserve, fish hatchery or environmental center.

(7) If the facility is located within 1 mile of a historic property owned by the Historical and Museum Commission, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the historic property.

(8) If the facility is located within 1 mile of a historic site listed in the National Register of Historic Places, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on historic sites.

(9) If the facility is located within 1/4 mile of a historic site listed in the Pennsylvania Inventory of Historic Places or an archaeological site listed in the Pennsylvania Archaeological Site Survey, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the historical or archaeological site.

(10) If the facility is located within 1 mile of the boundary of a State forest or State game land or the proclamation boundary of the Allegheny National Forest, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the forest, game and or resources.

(11) If the facility is located within an area which is a habitat of a rare, threatened or endangered species of plant or animal protected by the Endangered Species Act of 1973 (7 U.S.C.A. § 136 and 16 U.S.C.A. §§ 460r-1, 460l-9, 668 dd, 715i, 715s, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), or recognized by the Fish and Boat Commission or Game Commission; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse effects on the species or habitate and mitigation measures the applicant has proposed to deal with adverse impacts.

(12) If the facility will result in an increase in the peak discharge rate of stormwater drainage from the project site, the applicant shall demonstrate that the proposed facility is in conformance with the official stormwater management plan required by the Storm Water Management Act (32 P. S. §§ 680.1—680.17), and the proposed facility will manage the runoff in a manner that otherwise adequately protects health and property from injury.

(13) If a facility is proposed to be located in a watershed for which a formal written request for designation as exceptional value waters has been received by the Department or the EQB, the applicant shall provide information and

analyses to allow the Department to assess the impact of the proposed facility on the pending designation.

(14) If the facility generates a wastewater discharge which could degrade waters designated as high quality waters under Chapter 93 (relating to water quality standards) or waters for which a formal written request for designation as high quality waters has been received by the Department or the EQB, the applicant shall demonstrate:

(i) The discharges are justified as a result of necessary economic or social development which is of significant public value.

(ii) The discharges, alone or in combination with other anticipated discharges of pollutants to the waters, will not preclude a use presently possible in the waters and downstream from the waters, and will not result in a violation of the numerical water quality criteria specified in § 93.9 (relating to designated water uses and water quality criteria) which are applicable to the receiving waters.

(15) If a proposed facility is to be located on prime or unique agricultural land as defined by the Soil Conservation Service, lands currently in agricultural use, or lands of Statewide importance as designated by the Soil Conservation Service, the applicant shall provide information and analyses to allow the Department to assess the proposed facility's consistency with Commonwealth policy, such as Executive Order 1982-3 regarding agricultural lands at 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

#### **Authority**

The provisions of this § 269a.50 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

#### **Source**

The provisions of this § 269a.50 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 501. Immediately preceding text appears at serial pages (255020) to (255023).

#### **Cross References**

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

## **Subchapter B. CERTIFICATES OF PUBLIC NECESSITY**

### **GENERAL PROVISIONS**

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269a.101. Definitions.  
269a.102. Scope and applicability.  
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### CONFLICT OF INTEREST

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### APPLICATION REQUIREMENTS

269a.121. Eligible applicants.  
269a.122. Application.  
269a.123. Application fee.  
269a.124. Public notice of application submitted to the EQB.

### EQB PROCEDURE

269a.131. Complete application.  
269a.132. Local government representatives.

### PUBLIC REVIEW AND COMMENT

269a.141. Initial public notice.  
269a.142. Local docket and mailing list.  
269a.143. Public hearing.

### CRITERIA FOR ISSUING CPNs

269a.151. General criterion.  
269a.152. Conformance with the Hazardous Waste Facilities Plan.  
269a.153. Impact on adjacent populated areas.  
269a.154. Local health, safety, economic impact and planning.  
269a.155. Public participation.

### EQB DECISION

269a.161. Deadline for decision.  
269a.162. Record of decision.  
269a.163. Public notice of decision.

### GENERAL PROVISIONS

#### § 269a.101. Definitions.

(a) The following words and terms when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*CPN*—Certificate of public necessity.

*Chairperson*—Chairperson of the EQB.

*Impact assessment*—A report, analysis or module previously prepared by or on behalf of the applicant to comply with existing Federal or State permitting

or regulatory requirements. The term includes solid waste management permit modules and analyses submitted to meet the requirements of Subchapter A (relating to siting hazardous waste treatment and disposal facilities) and established State and Federal permitting requirements.

(b) Words and terms not otherwise defined in this section have the meanings in §§ 260a.10 and 269a.1 (relating to definitions; and definitions).

### **§ 269a.102. Scope and applicability.**

This subchapter establishes application requirements and procedures governing the review and consideration of an application for a CPN from the EQB under section 105 of the act (35 P. S. § 6018.105). A permittee of a hazardous waste treatment or disposal facility may apply for a CPN under this subchapter.

### **§ 269a.103. CPN.**

(a) The EQB has the power and its duty is to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of CPNs for the establishment of hazardous waste treatment and disposal facilities.

(b) Issuance of a CPN by the EQB shall suspend and supersede local laws, including zoning ordinances, which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility.

(c) The suspension and supersession granted by the CPN is explicitly extended to a person to whom the CPNs are issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of the person.

## **CONFLICT OF INTEREST**

### **§ 269a.111. Conflict of interest.**

A member or alternate of the EQB or staff designated to review any aspect of an application for a CPN who may have a potential conflict of interest as described in the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), the State Adverse Interest Act (71 P. S. §§ 776.1—776.7a) and 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees) or other applicable codes of conduct shall immediately notify the Chairperson of the potential conflict. The Chairperson will advise the EQB of the potential conflict. The EQB may recommend that the member, alternate or staff abstain from participation in the proceedings or may seek a ruling regarding the conflict under the applicable ethics law or code of conduct.

## **APPLICATION REQUIREMENTS**

### **§ 269a.121. Eligible applicants.**

An applicant for a CPN shall have:

- (1) Permits necessary for construction and operation of a new or modified facility from the Department or the Federal agency authorized to issue permits in this Commonwealth.
- (2) Implemented impact assessments and public participation programs related to obtaining those permits.

**§ 269a.122. Application.**

The applicant shall submit eight copies of the following items in an application for a CPN to the Chairperson by certified mail:

- (1) The hazardous waste permit issued for the treatment or disposal facility by the Department or the Federal agency, or both, authorized to issue permits in this Commonwealth.
- (2) Documentation of the applicant's receipt of other State and Federal permits necessary for construction and operation of the facility.
- (3) Impact assessments related to the facility.
- (4) Local laws and ordinances, if any, which the applicant believes may preclude or prohibit the establishment of a hazardous waste treatment or disposal facility on the proposed site.
- (5) A narrative description, including supporting documentation and appropriate references, demonstrating the extent to which the applicant has complied with §§ 269a.151—269a.155 (relating to criteria for issuing CPNs).
- (6) Other information the applicant feels will help the EQB determine if a CPN is warranted based upon the criteria in §§ 269a.151—269a.155.
- (7) A summary of the application which describes the type of facility for which this CPN is requested and includes a summary of paragraphs (1)—(6). The summary shall be five pages or less in length.

**§ 269a.123. Application fee.**

- (a) An application shall be accompanied by a one-time minimum nonrefundable application fee of \$1,500.
- (b) The applicant shall reimburse the Board for actual expenses incurred for reviewing and acting on the application beyond the expenses covered by the minimum fee.
- (c) An applicant resubmitting a CPN application for the same facility is exempt from the minimum fee but is responsible for the expenses incurred by the Board for reviewing and acting upon the application.

**Cross References**

This section cited in 25 Pa. Code § 269a.132 (relating to local government representatives); and 25 Pa. Code § 269a.142 (relating to local docket and mailing list).

**§ 269a.124. Public notice of application submitted to the EQB.**

(a) The applicant shall provide written notice by certified mail of its submission of an application for a CPN to the EQB within 10 days of the submittal to:

- (1) The host municipality and host county.
- (2) Other counties within 10 miles and other municipalities within 1 mile of the proposed facility.
- (3) The landowners adjacent to the proposed site.

(b) The applicant shall publish a notice of the submission of the CPN application in a display advertisement in two newspapers of general circulation in the county of the proposed site once a week for 2 successive weeks and send proof of publication of this notice to the EQB.

(c) The notices required by this section shall also include the name, address and telephone number of the applicant, including the name and location—municipality and county—of the facility, a brief description of the business conducted or activity described in the application, and a contact person in the applicant's office from whom interested citizens may obtain further information.

(d) Acceptable proof of notice required by this section will include certified mail receipts and proof of publication from newspaper publishers.

**EQB PROCEDURE****§ 269a.131. Complete application.**

(a) Upon receipt of an application for a CPN by the Board, the application shall be reviewed for completeness.

(b) The Chairperson will notify the EQB that an application has been received at the first EQB meeting following its receipt. The EQB will determine whether an application for a CPN is complete within 60 days of the Chairperson's notification to the EQB.

(c) Upon a determination by the EQB that the application is complete, the Chairperson will initiate the public review and comment procedures outlined in §§ 269a.132 and 269a.141 (relating to local government representatives; and initial public notice) and notify the applicant. The Chairperson will provide a copy of the complete application to the host county and host municipality.

(d) An application determined to be incomplete shall be returned to the applicant with an explanation of why the application is incomplete.

(e) After the application is determined to be complete, the EQB reserves the right to request additional information relevant to its decision under section 105(f) and (g) of the act (35 P. S. § 6018.105(f) and (g)).

**§ 269a.132. Local government representatives.**

(a) When the EQB has accepted a complete CPN application for consideration, the EQB will ask the governing body of the host county and the governing

body of the host municipality—township, borough, town, home rule municipality or city—to each name one representative who will be invited to be present during EQB deliberations and hearings on the application and receive copies of materials given EQB members during the consideration of an application accepted for review.

(b) The role of the local government representative shall be to participate in the deliberations of the EQB as it considers the application. The representatives will not have voting rights on the EQB.

(c) A local government representative will be reimbursed for expenses incurred in participating with the EQB as outlined in Management Directive 230.10 (Travel and Subsistence Allowances), issued by the Governor's Office through the Directives Management System. See 4 Pa. Code Chapter 1, Subchapter A (relating to directives management system). This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

#### Cross References

This section cited in 25 Pa. Code § 269a.131 (relating to complete application).

### PUBLIC REVIEW AND COMMENT

#### § 269a.141. Initial public notice.

The EQB will issue a press release and publish a notice in the *Pennsylvania Bulletin* and two newspapers of general circulation in the county of the proposed facility once a week for 2 successive weeks. The notices and press release shall state that the EQB is considering a complete application for a CPN, and shall include the following items:

- (1) The name, address and telephone number of the applicant.
- (2) The location and description of the proposed facility.
- (3) A description of the process followed by the EQB to consider an application for a CPN.
- (4) The location of a local docket where application materials can be reviewed by interested persons in the host municipality or county.
- (5) An invitation to interested persons to include their name on a mailing list established by the EQB to receive future notices concerning the CPN application.

#### Cross References

This section cited in 25 Pa. Code § 269a.131 (relating to complete application); 25 Pa. Code § 269a.143 (relating to public hearing); and 25 Pa. Code § 269a.163 (relating to public notice of decision).

**§ 269a.142. Local docket and mailing list.**

(a) The EQB will establish a docket in a publicly accessible location in the host municipality or county as near as practical to the proposed facility where materials related to the EQB's consideration of the CPN application can be made available to the public for review.

(b) The EQB will establish and maintain a mailing list of persons interested in receiving notices concerning the CPN application.

(c) If the docket is located in a publicly-owned or operated building, the EQB will compensate the building owner or operator for the cost of maintaining the docket for public review. This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

**Cross References**

This section cited in 25 Pa. Code § 269a.143 (relating to public hearing); and 25 Pa. Code § 269a.163 (relating to public notice of decision).

**§ 269a.143. Public hearing.**

(a) The EQB will schedule at least one public hearing on the application in the host municipality or county within 90 days of the acceptance of a complete application for consideration.

(b) Notice of the hearing will be given 30 days before the hearing by the EQB as outlined in § 269a.141 (relating to initial public notice) and to those on the mailing list in § 269a.142 (relating to local docket and mailing list).

(c) A minimum of three members of the EQB will be present at a hearing scheduled on the application. The hearing shall be transcribed and the transcript shall be available to the EQB for review.

(d) The public comment period will remain open for comments for at least 30 days after the last public hearing on the application.

(e) The public comment period may be extended up to 60 days by the EQB if significant new information is forthcoming that warrants the extension.

**Cross References**

This section cited in 25 Pa. Code § 269a.161 (relating to deadline for decision).

**CRITERIA FOR ISSUING CPNs****§ 269a.151. General criterion.**

The EQB will evaluate the information received from the applicant, the comments received on the application during the comment period and other relevant information in reaching its decision on the application.

**Cross References**

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

**§ 269a.152. Conformance with the Hazardous Waste Facilities Plan.**

(a) The EQB will determine the extent to which the facility is in conformance with the Hazardous Waste Facilities Plan (Plan) as adopted and amended by the EQB.

(b) The EQB will determine whether the facility is needed as defined by the Plan and whether the facility is consistent with the waste management hierarchy outlined in the Plan.

**Cross References**

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

**§ 269a.153. Impact on adjacent populated areas.**

(a) The EQB will determine the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to the facility.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria under §§ 269a.46 and 269a.48 (relating to transportation standards; and proximity of facilities and structures).

**Cross References**

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

**§ 269a.154. Local health, safety, economic impact and planning.**

(a) The EQB will determine the impact of the facility on the borough, township, town, home rule municipality or city in which the facility is located in terms of health, safety, cost and consistency with local planning.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria in §§ 269a.45, 269a.47 and 269a.49 (relating to land use; safety services; and economic criteria).

**Cross References**

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

**§ 269a.155. Public participation.**

(a) The EQB will consider the extent to which the applicant has implemented guidelines developed by the EQB at Chapter 24 (relating to model procedure for meaningful public participation—statement of policy) relating to public participation in the location of a hazardous waste treatment and disposal facility as sig-

nificant evidence of the applicant's willingness to provide the public with a meaningful opportunity to participate in the evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

(b) The EQB will also consider cooperative agreements developed between the applicant and host county and host municipality as further evidence of meaningful public participation.

(c) The EQB will determine the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in the evaluation of alternative sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

#### Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

### EQB DECISION

#### § 269a.161. Deadline for decision.

(a) The EQB will issue its decision on the application within 180 calendar days of its determination that the application is complete.

(b) The EQB may consider extending the deadline for decision if one of the following occurs:

(1) The applicant and host county and host municipality make a written recommendation to the Board for an extension because they are close to agreement on cooperative agreements that would resolve key issues.

(2) The EQB extends the public comment period under § 269a.143 (relating to public hearing).

(c) The extension will be for 60 days or less.

(d) The EQB will have 60 days after an extension to issue its decision.

#### § 269a.162. Record of decision.

(a) A written record of decision outlining the findings of the EQB under each of the criteria established in §§ 269a.151—269a.155 (relating to criteria for issuing CPNs) will be issued by the EQB.

(b) The record of decision will include a summary of comments received by the EQB on the CPN application and a response indicating how the comments were considered by the EQB.

#### § 269a.163. Public notice of decision.

(a) The Chairperson will notify the applicant in writing of the EQB decision on the application for a CPN within 10 days.

(b) The Chairperson will also notify in writing the host municipality, the host county and persons identified on the mailing list established under § 269a.142 (relating to local docket and mailing list) of the EQB decision within 10 days.

(c) The Department will provide additional notice of the decision of the EQB as described in § 269a.141 (relating to initial public notice).

### **Subchapter C. HOST MUNICIPALITY FUND ALLOCATION**

#### **ELIGIBILITY**

Sec.  
269a.201. Eligibility.

#### **COMPLIANCE**

269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.

#### **ALLOCATION**

269a.221. Allocation of the Fund.

#### **DISTRIBUTION**

269a.231. Distribution of payments.

#### **ELIGIBILITY**

#### **§ 269a.201. Eligibility.**

A host municipality is eligible for a one time distribution from the Fund, under section 305 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305), for each qualifying facility, located in whole or in part, within its corporate boundary.

#### **Cross References**

This section cited in 25 Pa. Code § 269a.211 (relating to compliance with the Pennsylvania Hazardous Waste Facilities Plan).

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**COMPLIANCE****§ 269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.**

A host municipality will only receive a one time payment under § 269a.201 (relating to eligibility) for a commercial hazardous waste treatment or disposal facility, or portion thereof, that is identified as being needed by the Pennsylvania Hazardous Waste Facilities Plan.

**Cross References**

This section cited in 25 Pa. Code § 269a.211 (relating to compliance with the Pennsylvania Hazardous Waste Facilities Plan).

**ALLOCATION****§ 269a.221. Allocation of the Fund.**

(a) The Department will identify qualifying facilities at the end of each calendar year. A municipality will become eligible for payment in the first calendar year that a qualifying facility is permitted and operating. Host municipalities are not required to submit an application or request to be eligible.

(b) A host municipality shall be eligible for a one time payment from the Fund if a qualifying facility is identified by the Department in whole, or in part, within the host municipality's corporate boundaries, and moneys remain in the Fund after requests for reimbursement under section 305(d)(1) of the act (35 P. S. § 6020.305(d)(1)) have been satisfied for the calendar year.

(c) When only one qualifying facility is identified, the host municipality shall receive the balance of the fund for that year, subject to subsection (b).

(d) When more than one qualifying facility is identified, the Department will allocate the available moneys using the following criteria:

- (1) The toxicity, mobility and other characteristics of the hazardous waste.
- (2) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.
- (3) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, treated or disposed of annually at the facility shall be calculated as a percentage of the total amount of hazardous waste treated or disposed of annually within this Commonwealth.
- (4) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, generated in this Commonwealth, shall be calculated as a percentage of the hazardous waste treated or disposed of annually at the facility.

(5) The Department may require executed contracts or the facility's first year of manifest data from the owner or operator to determine the information required by this section.

(6) If the total facility is not designated as needed by the Pennsylvania Hazardous Waste Facilities Plan, the percentage of the facility meeting the needs of the Pennsylvania Hazardous Waste Facilities Plan will be estimated by the Department.

(7) Numerical values shall be derived based on the factors in paragraphs (1)—(4). Those values shall be added together to obtain a score for each qualifying facility.

(8) The scores will then be compared and a pro rata share of the available Fund moneys will be allocated to each host municipality based on these scores.

(9) If a qualifying facility is located in more than one host municipality, the allocation for that facility shall be distributed among the municipalities based on the percentage of the permitted facility within each municipality.

#### Source

The provisions of this § 269a.221 amended September 7, 2001, effective September 8, 2001, 31 Pa.B. 5075. Immediately preceding text appears at serial pages (255033) to (255034).

#### Cross References

This section cited in 25 Pa. Code § 269a.231 (relating to distribution of payments).

### DISTRIBUTION

#### § 269a.231. Distribution of payments.

The Department may require up to 1 year's operating data from a qualifying facility to determine the allocation for that facility. Allocation payments from the Fund will not be disbursed until the eligible reimbursements under section 305(d)(1) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305(d)(1)) have been made or funds encumbered for payment, and the Department has sufficient data to make the determinations required by § 269a.221 (relating to allocation of the Fund). The Department will make the determinations and either disburse or encumber the remaining moneys in accordance with current fiscal policy to assure payment within 1 year of determination of eligibility of the host municipality.

[Next page is 270-1.]