

**THE CITY OF NEW YORK
DEPARTMENT OF SANITATION**

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED
AMENDMENTS TO RULES GOVERNING THE DEPARTMENT OF SANITATION'S
SITING REQUIREMENTS REGARDING TRANSFER STATIONS**

NOTICE IS HEREBY GIVEN in accordance with the requirements of section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of Sanitation by section 753(a) and (b) of the New York City Charter and by section 16-131 of the Administrative Code of the City of New York that the Department adopts the following rule governing the siting requirements of transfer stations. This rule amends Subchapter C of Chapter 4 of Title 16 of the Rules of the City of New York. Existing provisions to be deleted are shown below in brackets and new provisions are underlined.

Written comments regarding the proposed amendments may be sent to the Deputy Commissioner for Legal Affairs, New York City Department of Sanitation, 125 Worth Street, Room 710, New York, New York, 10013 on or before June 28, 2004. In addition, a public hearing regarding the proposed amendments will be held on June 28, 2004 at 125 Worth Street, 2nd Floor Auditorium from 9:30 a.m. to 12:30 p.m. Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m. at the Office of the Deputy Commissioner for Legal Affairs at 125 Worth Street, Room 710, New York, New York. Dated: May 27, 2004, John J. Doherty, Commissioner.

§ 4-31 Definitions.

When used in this subchapter:

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of Sanitation or his/her representative.

Department. "Department" shall mean the Department of Sanitation.

Hospital. "Hospital" shall mean a facility or institution engaged in providing medical or medical and surgical services primarily to in-patients by or under the supervision of a physician on a twenty-four hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service, including facilities providing services relating to particular diseases, injuries, conditions or deformities. This term shall not include a public health center, diagnostic center, treatment center, out-patient lodge, dispensary and laboratory or central service facility serving more than one institution.

Intermodal solid waste container facility. "Intermodal solid waste container facility" shall mean a facility or premises served by rail or vessel at which intermodal containers are transferred from transport vehicle to transport vehicle for the purpose of consolidating intermodal containers for shipment by rail or vessel to an authorized disposal or treatment facility, where the contents of each container remain in their closed containers during the transfer between transport vehicles, and storage remains incidental to transport at the location where the containers are consolidated, and

that is required to register with the Department of Sanitation pursuant to sections 16-130 and 16-131 of the Administrative Code of the City of New York and subchapter D of Chapter 4 of the Title 16 of the Rules of the City of New York.

Lawfully operating. "Lawfully operating" shall mean operating pursuant to written authorization by the Department of Sanitation, including, but not limited to, a putrescible or non-putrescible solid waste transfer station permit, temporary permit or conditional permit, a consent order, or a compliance agreement.

M1 district. "M1 district" shall mean any manufacturing district designated as M1 in the Zoning Resolution.

M2 district. "M2 district" shall mean any manufacturing district designated as M2 in the Zoning Resolution.

M3 district. "M3 district" shall mean any manufacturing district designated as M3 in the Zoning Resolution.

Non-putrescible solid waste transfer station. "Non-putrescible solid waste transfer station" shall mean any solid waste management facility required to obtain a permit from the Department of Sanitation pursuant to sections 16-130 and 16-131 of the Administrative Code of the City of New York and subchapter A of chapter 4 of title 16 of the Rules of the City of New York. Such term shall include construction and demolition debris and fill material transfer stations.

Public park. "Public park" shall mean any publicly-owned park, playground, beach, parkway or roadway within the jurisdiction and control of the Commissioner of Parks and Recreation of the City of New York, except for Park strips or malls in a street the roadways of which are not within the jurisdiction and control of the Commissioner of Parks and Recreation, or any publicly-owned park or beach within the jurisdiction and control of the federal or New York State government.

Putrescible solid waste transfer station. "Putrescible solid waste transfer station" shall mean any solid waste management facility required to obtain a permit from the Department of Sanitation pursuant to sections 16-130 and 16-131 of the Administrative Code of the City of New York and subchapter B of chapter 4 of title 16 of the Rules of the City of New York.

Residential district. "Residential district" shall mean a residence district, as such term is defined in the Zoning Resolution.

School. "School" shall mean:

(a) an institution providing full-time day instruction and a course of study that meets the requirement of sections 3204, 3205 and 3210 of the New York State Education Law; or

(b) a nursery school or kindergarten:

(1) whose annual session does not exceed the school session for full-time day schools prescribed in section 3204 of the New York State Education Law; and

(2) which is operated by the Board of Education, any established religious organization as part of an elementary school, or under a permit issued pursuant to section 47.05 of the New York City Health Code.

Site boundary. "Site boundary" shall mean the property boundaries of a transfer station as identified in the site plan filed with the Department.

Transfer station. "Transfer station" shall mean any putrescible solid waste transfer station or non-putrescible solid waste transfer station.

Zoning Resolution. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

§ 4-32 Siting Requirements.

(a) General provisions.

(1) All transfer stations and intermodal solid waste container facilities shall be sited in accordance with the provisions of the Zoning Resolution or as authorized by a variance granted by the New York City Board of Standards and Appeals.

(2) All distance requirements specified in [subdivisions (b) and (c)] subdivision (b) of this section shall be measured from the [point of the site boundary or structure enclosing waste processing operations that is closest to] boundary of the residential district, the property lines of a hospital, public park, school, or [other non-putrescible] the site boundaries of another solid waste transfer station, [as applicable] to the site boundary of the transfer station, or if the building within which the dumping, loading, processing and storage of solid waste takes place is set back at least one hundred fifty feet from the site boundary, from the building.

(3) In addition to complying with the provisions of this subchapter, every person who owns, operates, maintains or otherwise controls a non-putrescible solid waste transfer station or a putrescible solid waste transfer station shall comply with the provisions in subchapters A and B of this chapter, as applicable.

(4) In addition to complying with the provisions of paragraph (1) of this subdivision, every person who owns, operates, maintains or otherwise controls an intermodal solid waste container facility shall comply with the provisions of subchapter D of this chapter, as applicable.

[(b) Non-putrescible solid waste transfer stations. In addition to complying with the siting restrictions contained in paragraph (1) of subdivision (a) of this section, non-putrescible solid waste transfer stations shall comply with the following siting restrictions:

(1) Except as provided in paragraph (5) of this subdivision, any new non-putrescible solid waste transfer station shall be located at a site that is entirely within an M2 or M3 district and whose site boundary is at least 400 feet from a residential district, public park, school or other non-putrescible solid waste transfer station. For purposes of this paragraph, a new non-putrescible solid waste transfer station shall mean a non-putrescible solid waste transfer station that is not lawfully operating on the effective date of this section or that has not filed a permit application and an environmental assessment statement, as necessary, prior to the effective date of this section.

(2) Except as provided in paragraph (5) of this subdivision, a non-putrescible solid waste transfer station shall be prohibited from expanding its site boundary into an M1 district or within 400 feet of a residential district, public park, school or other non-putrescible solid waste transfer station.

(3) Except as provided in paragraph (5) of this subdivision, a non-putrescible solid waste transfer station that is lawfully operating within 400 feet of a residential district, public park, school, or other non-putrescible solid waste transfer station on the effective date of this section shall be prohibited from expanding its site boundary closer to the residential district, public park, school, or other non-putrescible solid waste transfer station.

(4) Except as provided in paragraph (5) of this subdivision, a non-putrescible solid waste transfer station that is lawfully operating within an M1 district on the effective date of this section may expand its site boundary within such M1 district, provided its expanded site boundary is not within 400 feet of a residential district, public park, school, or other non-putrescible solid waste transfer station.

(5) The restriction contained in paragraphs (1) through (4) of this subdivision regarding the 400-foot buffer distance between a non-putrescible solid waste transfer station and a residential district, public park, school, or other non-putrescible solid waste transfer station shall not apply to a non-putrescible solid waste transfer station that receives and removes by rail or barge all of the solid waste that it processes, provided all of such transfer station's waste processing operations are enclosed.

(6) The siting of a residential district, public park, school or other non-putrescible solid waste transfer station within 400 feet of the site boundary of a non-putrescible solid waste transfer station subsequent to the issuance of a permit or the filing of a permit application and environmental assessment statement, as necessary, for such transfer station, shall not affect such transfer station's ability to renew or obtain a permit, except that such transfer station shall be prohibited from expanding closer to the residential district, public park, school, or other non-putrescible solid waste transfer station.

(c) Putrescible solid waste transfer stations. In addition to complying with the siting restrictions contained in paragraph (1) of subdivision (a) of this section, putrescible solid waste transfer stations shall comply with the following restrictions:

(1) Except as provided in paragraph (5) of this subdivision, any new putrescible solid waste transfer station shall be located at a site that is entirely within an M2 or M3 district. In addition, the structure enclosing waste processing operations at such transfer station shall be at least 400 feet from a residential district, public park, or school. For purposes of this paragraph, a new putrescible solid waste transfer station shall mean a putrescible solid waste transfer station that is not lawfully operating on the effective date of this section or that has not filed a permit application and an environmental assessment statement, as necessary, prior to the effective date of this section.

(2) Except as provided in paragraph (5) of this subdivision, a putrescible solid waste transfer station shall be prohibited from expanding into an M1 district or from expanding the structure

enclosing its waste processing operations within 400 feet of a residential district, public park, or school.

(3) Except as provided in paragraph (5) of this subdivision, a putrescible solid waste transfer station that is lawfully operating on the effective date of this section with a structure enclosing waste processing operations that is less than 400 feet from a residential district, public park or school shall be prohibited from expanding the structure enclosing its waste processing operations closer to the residential district, public park, or school.

(4) Except as provided in paragraph (5) of this subdivision, a putrescible solid waste transfer station that is lawfully operating within an M1 district on the effective date of this section may expand the structure enclosing processing operations within such M1 district, provided the expanded structure is not within 400 feet of a residential district, public park, or school.

(5) The restriction contained in paragraphs (1) through (4) of this subdivision regarding the 400-foot buffer distance between a putrescible solid waste transfer station and a residential district, public park, or school shall not apply to a putrescible solid waste transfer station that receives and removes by rail or barge all of the solid waste that it processes, provided all of such transfer station's waste processing operations are enclosed.

(6) The siting of a residential district, public park, or school within 400 feet of the structure enclosing waste processing operations at a putrescible solid waste transfer station subsequent to the issuance of a permit or the filing of a permit application and an environmental assessment statement, as necessary, for such transfer station, shall not affect such transfer station's ability to renew or obtain a permit, except that such transfer station shall be prohibited from expanding the structure enclosing its waste processing operations closer to the residential district, public park, or school.]

(b) In addition to complying with the siting restrictions contained in paragraph (1) of subdivision (a) of this section, all solid waste transfer stations shall comply with the following siting restrictions:

(1) Any transfer station located in a community district that contains less than five percent of the total number of existing, lawfully operating transfer stations, as calculated by the Department, shall be subject to the following siting restrictions:

(i) Any new transfer station shall be located at a site that is entirely within an M1, M2 or M3 district, provided that such new transfer station shall not be located in an M1 district in a community district if the M1 districts in that community district cumulatively contain three or more lawfully operating transfer stations.

(ii) Any new transfer station shall be at least 400 feet from a residential district, hospital, public park or school.

(iii) In addition to the above restrictions, no new transfer station shall be located less than 400 feet from another transfer station. This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or

vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(iv) Any new transfer station shall provide space to accommodate truck queuing on site.

(v) Any transfer station that is lawfully operating may expand its operations, but must comply with the distance requirements for a residential district, hospital, public park or school as set forth in subparagraph (ii) of this paragraph.

(2) Any transfer station located in a community district that contains from five to less than ten percent of the total number of existing, lawfully operating transfer stations, as calculated by the Department, shall be subject to the following siting restrictions:

(i) Any new transfer station shall be located at a site that is entirely within an M1, M2 or M3 district, provided that such new transfer station shall not be located in an M1 district in a community district if the M1 districts in that community district cumulatively contain three or more lawfully operating transfer stations.

(ii) Any new transfer station shall be at least 500 feet from a residential district, hospital, public park or school.

(iii) In addition to the above restrictions, no new transfer station shall be located less than 400 feet from another transfer station. This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(iv) Any new transfer station shall provide space to accommodate truck queuing on site.

(v) Any transfer station that is lawfully operating may expand its operations, but must comply with the distance requirements for a residential district, hospital, public park or school as set forth in subparagraph (ii) of this paragraph.

(3) Any transfer station located in a community district that contains from ten to less than fifteen percent of the total number of existing, lawfully operating transfer stations, as calculated by the Department, shall be subject to the following siting restrictions:

(i) No new transfer stations shall be allowed in an M1 district.

(ii) Any new transfer station shall be located at a site that is entirely within an M2 or M3 district and shall be at least 600 feet from a residential district, hospital, public park or school.

(iii) In addition to the above restrictions, no new transfer station shall be located less than 400 feet from another transfer station. This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(iv) Any new transfer station shall provide space to accommodate truck queuing on site.

(v) Any transfer station that is lawfully operating may expand its operations, but must comply with the distance requirements for a residential district, hospital, public park or school as set forth in subparagraph (ii) of this paragraph.

(4) Any transfer station located in a community district that contains from fifteen to less than twenty percent of the total number of existing, lawfully operating transfer stations, as calculated by the Department, shall be subject to the following siting restrictions:

(i) The Department shall not authorize the operation of a new transfer station unless (A) the applicant obtains a reduction in the lawful permitted capacity at another transfer station within the same community district by an equal or greater amount; or (B) such new transfer station is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, and all solid waste received is subsequently transported from the transfer station by rail or vessel, and the applicant obtains a reduction in the lawful permitted capacity at another transfer station within the same community district at a rate of one ton for every two new tons of capacity.

(ii) No new transfer stations shall be allowed in an M1 district.

(iii) Any new transfer station shall be located at a site that is entirely within an M2 or M3 district and shall be at least 600 feet from a residential district, hospital, public park or school.

(iv) In addition to the above restrictions, no new transfer station shall be located less than 400 feet from another transfer station. This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(v) Any new transfer station shall be entirely enclosed.

(vi) Any new transfer station shall provide space to accommodate truck queuing on site.

(vii) Any transfer station that is lawfully operating may expand its operations, but must comply with the distance requirements for a residential district, hospital, public park or school as set forth in subparagraph (iii) of this paragraph.

(5) Any transfer station located in a community district that contains twenty percent or more of the total number of existing, lawfully operating transfer stations, as calculated by the Department, shall be subject to the following siting restrictions:

(i) The Department shall not authorize the operation of a new transfer station unless (A) the applicant obtains a reduction in the lawful permitted capacity at another transfer station within the same community district by an equal or greater amount; or (B) such new transfer station is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, and all solid waste received is subsequently transported from the transfer station by rail or vessel, and the applicant obtains a reduction in the lawful permitted capacity at another transfer station within the same community district at a rate of one ton for every two new tons of capacity.

(ii) No new transfer stations shall be allowed in an M1 district.

(iii) Any new transfer station shall be located at a site that is entirely within an M2 or M3 district and shall be at least 700 feet from a residential district, hospital, public park or school.

(iv) In addition to the above restrictions, no new transfer station shall be located less than 400 feet from another transfer station. This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(v) Any new transfer station shall be entirely enclosed.

(vi) Any new transfer station shall provide space to accommodate truck queuing on site.

(vii) Any transfer station that is lawfully operating may expand its operations, but must comply with the distance requirements for a residential district, hospital, public park or school as set forth in subparagraph (iii) of this paragraph.

(c) For purposes of this section, a new transfer station shall mean a transfer station that is not lawfully operating on the effective date of this section.

(d) For purposes of the percentage calculations required by subdivision (b) of this section, the following shall apply: (1) transfer stations lawfully operating at the same location with one or more written authorizations by the Department to operate a non-putrescible and/or putrescible solid waste transfer station shall be counted as one transfer station; (2) the Department's marine transfer stations, when operational and handling solid waste for ultimate disposal, shall be included in the number used for the percentage calculations; (3) the Department shall update the above percentage

calculations continuously as new permits are issued; and (4) such percentage calculations shall be published in the *City Record* and on the Department's website on or about the first day of January and on or about the first day of July of every calendar year, and shall be in the following format that corresponds with the rules set forth in subdivision (b) of this section:

<u>Percentage of Existing, Lawfully Operating Transfer Stations in NYC</u>	<u>Community Districts</u>	<u>Buffer Distance to Residential Districts, Hospitals, Public Parks and Schools</u>	<u>Buffer Distance between Transfer Stations^(A)</u>	<u>Additional Requirements</u>	<u>Zoning Requirements</u>
<u>20% or more</u>		<u>700 feet</u>	<u>400 feet</u>	<u>(i) Facility enclosed;</u> <u>(ii) Queuing area on site;</u> <u>(iii) Offsets required^{(B), (C)}</u>	<u>M2 and M3 districts only</u>
<u>From 15 to less than 20%</u>		<u>600 feet</u>	<u>400 feet</u>	<u>(i) Facility enclosed;</u> <u>(ii) Queuing area on site;</u> <u>(iii) Offsets required^{(B), (C)}</u>	<u>M2 and M3 districts only</u>
<u>From 10 to less than 15%</u>		<u>600 feet</u>	<u>400 feet</u>	<u>Queuing area on site</u>	<u>M2 and M3 districts only</u>
<u>From 5 to less than 10 %</u>		<u>500 feet</u>	<u>400 feet</u>	<u>Queuing area on site</u>	<u>M1, M2 or M3 allowed^(D)</u>
<u>Less than 5%</u>		<u>400 feet</u>	<u>400 feet</u>	<u>Queuing area on site</u>	<u>M1, M2 or M3 allowed^(D)</u>

(A) This restriction shall not apply to a new transfer station that is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel.

(B) Any new transfer stations operating a truck-to-truck facility must obtain a reduction in the lawful permitted capacity at another transfer station within the same community district by an equal or greater amount.

(C) Any new transfer stations located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, and at which all solid waste received is subsequently transported from the transfer station by rail or vessel, must obtain a reduction in the lawful permitted capacity at another transfer station within the same community district at a rate of one ton for every two new tons of capacity.

(D) Any new transfer station shall not be located in an M1 district in a community district if the M1 districts cumulatively contain three or more lawfully operating transfer stations.

§ 4-33 Hours of Operation.

(a) Non-putrescible solid waste transfer stations located in an M1 district may not [operate] receive solid waste between 7 p.m. and 6 a.m.

(b) Non-putrescible solid waste transfer stations located in an M2 or M3 district may not receive solid waste between 1 a.m. and 5 a.m.

(c) Putrescible solid waste transfer stations located in an M1 district may operate 24 hours per day, but may not receive solid waste between 4 a.m. and noon on Sundays.

[(c)] (d) The Department may restrict the hours of operation for any transfer station, including further restricting the hours of operation for a transfer station covered by subdivision (a) [or], (b) or (c) of this section, as a condition of such transfer station receiving a permit pursuant to sections 16-130 and 16-131 of the Administrative Code.

§ 4-34 Engineering Reports[,], and Transportation Plans [and Temporary Operating Authority].

(a) All transfer stations shall submit with each permit application a certified engineering report acceptable to the Department demonstrating that the transfer station complies with the applicable performance standards of the Zoning Resolution and the applicable provisions of the New York City Health Code.

(b) All transfer stations shall submit [to the Department] with each permit application, truck transportation plans that specify the routes that truck transport vehicles will use when transporting solid waste or other material out of the facility for final disposal, reuse or recycling. After reviewing the transportation plans, the Department may require as a permit condition that a transfer station establish a system to require such trucks exiting the transfer station to use specific transfer routes.

[(c)] Transfer stations that are lawfully operating in an M1 district on the effective date of this section under an interim operating authority such as a consent order or compliance agreement must obtain a full and complete permit in accordance with the terms of such interim operating authority, provided that the Department may, at its discretion, extend such interim operating authority for a period not to exceed five (5) years from the effective date of this section.]

[(d)] (c) The Department shall conduct periodic reviews of transfer station capacity, in the context of the City's overall waste disposal needs, with the objective of minimizing the concentration or impacts of transfer stations in communities.

§ 4-35 Variances.

(a) Unless otherwise precluded by law, the Department may grant a variance from one or more of the specific provisions of sections 4-32 and 4-33 of this subchapter in accordance with the provisions of this section. The Department shall be precluded from granting a variance that

would authorize the operation of a solid waste transfer station at a site where such use is not authorized by the Zoning Resolution or by a variance granted by the Board of Standards and Appeals. In addition, the Department shall be precluded from granting a variance from the provisions of section 4-34 of this subchapter and, for the siting of a new transfer station, from granting a variance from the applicable distance requirements from a residential district, hospital, public park or school as set forth in section 4-32 of this subchapter.

(b) An applicant for a variance shall file a written application with the Department on a form prescribed by the Department. Every application for a variance shall identify the specific provision or provisions of this subchapter from which a variance is sought [and shall demonstrate that unique conditions or mitigating measures substantially address potential significant adverse environmental impacts associated with granting such variance. Unique conditions or mitigating measures include, but are not limited to, environmentally protective facility design or operations or unusual topographic conditions, such as a substantial berm, railroad right-of-way, or major highway that acts as a barrier between the proposed transfer station operation and neighboring uses that might be negatively affected by the granting of the variance].

(c) The applicant shall promptly forward a copy of the application for a variance to:

(1) the Community Board of the community district in which the transfer station is located or is proposed to be located;

(2) the City Council Member in whose district the transfer station is located or is proposed to be located; and

(3) the Borough President of the borough in which the transfer station is located or is proposed to be located.

(d) [The Department may grant a variance only upon a finding that such variance will not produce a significant environmental impact. In granting any variance pursuant to this section, the Department shall, as necessary, impose specific conditions in the applicant's transfer station permit to ensure that the transfer station operation will have no significant adverse environmental impact.] Except as otherwise provided in subdivision (a) of this section, the Department may grant a variance to an existing, lawfully operating transfer station from one or more of the specific provisions of sections 4-32 and 4-33 of this subchapter only upon a determination that a proposed action requiring a variance will, when taken as a whole, result in an overall environmental benefit. An action requiring a variance may produce an overall environmental benefit if, in conjunction with the variance request, the applicant also proposes and agrees to implement measures that are more protective of the environment and exceed regulatory requirements for existing, transfer stations. Such environmentally protective measures could include, but are not limited to, enclosing a non-putrescible or fill material transfer station; obtaining a reduction in the lawful permitted capacity at another transfer station located in the same community district by an equal or greater amount; making provisions for queuing all trucks on site; and/or utilizing new technology to reduce air emissions from off-road vehicles or stationary sources used at a transfer station.

(e) Except as otherwise provided in subdivision (a) of this section, the Department may grant a variance for a new transfer station from the provisions found in section 4-33 of this subchapter and/or the applicable distance requirements from another transfer station only if (1) the new transfer station is located in an M2 or M3 district; (2) the new transfer station proposes and agrees to implement measures that are protective of the environment and exceed regulatory requirements for new transfer stations. Such environmentally protective measures could include, but are not limited to, enclosing a non-putrescible or fill material transfer station if not otherwise lawfully required; obtaining a reduction in the lawful permitted capacity at another transfer station located in the same community district by an equal or greater amount if not otherwise lawfully required; and/or utilizing new technology to reduce air emissions from off-road vehicles or stationary sources used at a transfer station; and (3) the action for which the variance is required will not result in any significant adverse environmental impact.

Statement of Basis and Purpose:

The Sanitation Commissioner is authorized to adopt rules relating to the permitting and siting of transfer stations pursuant to §§753 and 1043 of the New York City Charter, and §§16-130, 16-131, 16-131.1 and 16-131.2 of the New York City Administrative Code. These amendments amend the Department's existing rules governing the permitting and siting of transfer stations, found in Subchapter C of Chapter 4 of Title 16 of the Rules of the City of New York.

In order to improve the regulation of private solid waste transfer stations, including putrescible solid waste transfer stations, and non-putrescible solid waste transfer stations (which include fill material and construction and demolition debris transfer stations), the Council enacted Local Law 40 of 1990 to provide the City with comprehensive enforcement authority against private solid waste transfer stations that operate in violation of City laws and rules.

The areas of the City with the largest number of transfer stations are the districts with large areas of industrial zoning, notably including the South Bronx and the East Williamsburg/Newtown Creek areas in Brooklyn. Brooklyn's Community District 1, which abuts Newtown Creek, has 38% of its area zoned for industry (M1, M2 and M3). In the South Bronx, both Community District 1, which includes Port Morris, and Community District 2, which includes Hunts Point, each have approximately 20% of their areas zoned for industry. Queens Community District 2, also abutting Newtown Creek and containing several transfer stations, has 31% of its area zoned for industry. These are the largest percentages of industrial zoned land in the City's 59 community districts. The City has designated certain industrial districts, long reserved for heavy industrial use, as Significant Maritime/Industrial Areas and Waterfront Manufacturing Zoning Districts. For example, both designations apply to the South Bronx industrial waterfront, and to the Newtown Creek and English Kills industrial area near the Brooklyn-Queens border, at the edges of Brooklyn Community District 1 and Queens Community Districts 2 and 5.

In a lawsuit filed in May, 1996, Neighbors Against Garbage v. Doherty, Index No. 10923/96 (Supreme Ct. NY County, March 16, 1997) a coalition of community groups brought suit to require the Department to promulgate additional rules governing the siting of transfer stations. The case involved an interpretation of the language of Local Law 40 of 1990 requiring the Department to promulgate rules concerning the siting of transfer stations in relation to other such facilities,

residential premises and/or other premises as may be appropriate. The suit did not seek to establish what the appropriate siting rules should be. The trial court found, and the Appellate Division affirmed, 245 AD2d 81 (1st Dept. 1997), that the City's 1991 and 1994 rules addressed the permitting, design, operation and maintenance of transfer stations, but did not sufficiently address their proximity to other transfer stations and residences, schools and parks, as required by Local Law 40.

In October 1998, the Department promulgated additional regulations governing the siting of new transfer stations and the expansion of existing transfer stations. A coalition of community organizations and others filed suit challenging the 1998 siting rules as insufficiently restrictive, in Organization of Waterfront Neighborhoods (OWN) v. Carpinello, Supreme Court, New York County, Index 103661/99. In a ruling, the Court noted that it had certain concerns about the 1998 rules. Following a lengthy attempt to resolve the dispute through mediation, the Department committed to promulgate revised siting rules, while the Court retained jurisdiction of the lawsuit.

In 2000, along with the passage of the City's Comprehensive Solid Waste Management Plan, the New York City Council enacted Local Law 74, which required the Department to conduct a comprehensive study of the City's existing system for managing commercial putrescible and non-putrescible solid waste. The Department considered the results of the Final Commercial Waste Study, issued in April 2004, in proposing the new rules concerning the siting of private solid waste transfer stations. The purpose of this rule is to reduce the potential for negative impacts from transfer stations on neighboring uses by imposing additional siting restrictions on transfer stations. The proposed rule takes into account both the judicial findings and concerns and the need to ensure that there is enough transfer station capacity to accommodate all of the solid waste generated in the City on a daily basis.

In 2003, the Department adopted interim siting restrictions designed to remain in place pending completion of the Commercial Waste Study and the promulgation of final siting rules.

Unlike the 1998 rules, these amendments will treat the siting of non-putrescible and putrescible solid waste transfer stations in the same manner. Additionally these amendments clarify how the Department will measure all distance requirements. More specifically these amendments restrict the siting of new solid waste transfer stations by placing community districts into five categories based upon a percentage calculation (the number of transfer stations located in a specific community district divided by the total number of transfer stations permitted by the Department city-wide). These categories all contain specific restrictions regarding the distance of any new transfer station from a residential district, hospital, public park, school or another solid waste transfer station and the requirement that the new transfer station shall provide space for truck queuing on site. More specifically, each category places the following restrictions on the siting of new transfer stations:

- In a community district where there exists less than five percent of the total number of existing, lawfully operating transfer stations, the following restrictions shall apply: (1) All new transfer stations shall be located entirely in an M1, M2 or M3 district. However, if the M1 districts in the community district cumulatively contain three or more lawfully operating transfer stations, no new transfer stations will be sited in the M1

district; (2) Any new transfer station shall be at least 400 feet from a residential district, hospital, public park or school; (3) No new transfer station may be located less than 400 feet from another solid waste transfer station, unless the new transfer station is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel; (4) Any new transfer station shall provide space to accommodate truck queuing on site; and (5) Any lawfully operating transfer station may expand its operations, but must comply with the 400 foot distance requirements from a residential district, hospital, public park or school.

- In a community district where there exists from five to less than ten percent of the total number of existing, lawfully operating transfer stations, all of the restrictions outlined above will apply with the exception that any new transfer station shall be at least 500 feet from a residential district, hospital, public park or school.
- In a community district where there exists from ten to less than fifteen percent of the total number of existing, lawfully operating transfer stations, all of the restrictions outlined in the above paragraph will apply with the following exceptions: (1) No new transfer stations shall be allowed in an M1 district; and (2) Any new transfer station shall be at least 600 feet from a residential district, hospital, public park or school.
- In a community district where there exists from fifteen to less than twenty percent of the total number of existing, lawfully operating transfer stations, the following restrictions shall apply: (1) The Department shall not authorize the operation of a new transfer station unless the applicant obtains a reduction in the lawful permitted capacity at another transfer station within the same community district by an equal or greater amount *or* the applicant proposes a new transfer station located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, where the transport of solid waste from the transfer station is by rail or vessel, and the applicant is able to obtain a reduction in the lawful permitted capacity at another transfer station located within the same community district at a ratio of one ton for every two new tons of capacity; (2) No new transfer stations shall be allowed in an M1 district; (3) Any new transfer station shall be located entirely within an M2 or M3 district and shall be at least 600 feet from a residential district, hospital, public park or school; (4) No new transfer station may be located less than 400 feet from another solid waste transfer station, unless the new transfer station is located at or adjacent to a rail yard, rail spur, industrial track or vessel facility, in which all solid waste received is subsequently transported from the transfer station by rail or vessel; (5) Any new transfer station shall be entirely enclosed and shall provide space to accommodate truck queuing on site; and (6) Any lawfully operating transfer station may expand its operations, but must comply with the 600 foot distance requirements from a residential district, hospital, public park or school.
- In a community district where there exists twenty percent or more of the total number of existing, lawfully operating transfer stations, all of the restrictions outlined in the previous paragraph will apply with the exception that any new transfer station shall be at least 700 feet from a residential district, hospital, public park or school.

Intermodal solid waste container facilities shall be sited in accordance with the provisions of the Zoning Resolution or as authorized by a variance granted by the New York City Board of Standards and Appeals.

For purposes of these rules, a new solid waste transfer station shall mean a putrescible or non-putrescible solid waste transfer station that is not lawfully operating on the effective date of these rules. Additionally, for purposes of the percentage calculations required by the Department the following shall apply (1) transfer stations lawfully operating at the same location with one or more written authorizations by the Department to operate a non-putrescible and/or putrescible solid waste transfer station shall be counted as one transfer station; (2) the Department's marine transfer stations, when operational and handling solid waste for ultimate disposal, shall be included in the number used for the percentage calculations; (3) the Department shall update percentage calculations continuously as new permits are issued and (4) such percentage calculations shall be published in the *City Record* and on the Department's website biannually (January and July) and shall be in the chart format found in the rules.

In addition to the restrictions on the hours of operation currently found in the Department's rules, this rule would further restrict non-putrescible solid waste transfer stations located in M2 or M3 districts from receiving solid waste between 1 a.m. and 5 a.m.

This rule also prohibits the Department from granting variances from the distance requirements from a residential district, hospital, public park or school set forth in the rules. The rule authorizes the Department to grant variances to an existing, lawfully operating transfer station from certain siting restrictions and from restrictions on hours of operation only upon a determination that a proposed action requiring a variance will, when taken as a whole, result in an overall environmental benefit. An action requiring a variance may produce an overall environmental benefit if, in conjunction with the variance request, the applicant also proposes and agrees to implement measures that are more protective of the environment and exceed regulatory requirements for existing, transfer stations. Such environmentally protective measures could include, but are not limited to, enclosing a non-putrescible or fill material transfer station; obtaining a reduction in the lawful permitted capacity at another transfer station located in the same community district by an equal or greater amount; making provisions for queuing all trucks on site and/or utilizing new technology to reduce air emissions from off-road vehicles or stationary sources used at a transfer station.

Additionally, the rule allows the Department to grant a variance for new transfer stations from restrictions on the hours of operation and the applicable distance requirements from another transfer station only if (1) the new transfer station is located in an M2 or M3 district; (2) the new transfer station proposes and agrees to implement measures that are protective of the environment and exceed regulatory requirements for new transfer stations. Such environmentally protective measures could include, but are not limited to, enclosing a non-putrescible or fill material transfer station if not otherwise lawfully required; obtaining a reduction in the lawful permitted capacity at another transfer station located in the same community district by an equal or greater amount if not otherwise lawfully required; and/or utilizing new technology to reduce air emissions from off-road vehicles or stationary sources used at a transfer station; and (3) the action for which the variance is required will not result in any significant adverse environmental impact.