

**Proposed Amendment to Chapter 177 for Indoor Organic Waste Processing Facilities**

Chapter 177 of the Code of the Town of Smithtown shall be amended to add the following

Article X, §§177-26 through 177-34.

ARTICLE X INDOOR ORGANIC WASTE PROCESSING FACILITIES

§177-26 Applicability

This article shall apply to the operation of all Organic Waste Processing Facilities located within the Town of Smithtown.

§177-27 Definitions

Director – either the Environmental Protection Director or the Director of Environment and Waterways, if there is no Environmental Protection Director.

Organic Waste Processing Facility – a facility that processes the organic components in waste through composting, vermiculture, anaerobic digestion, fermentation or other process to produce biogas or a mature product for use as a source of nutrients, animal feed, organic matter, liming value, or other essential constituent for a soil to help sustain plant growth. An organics waste processing facility also includes processes to convert biodegradable organic components in waste to produce animal feed. The product no longer has the visual appearance of the waste from which it was produced.

§177-28 License Required

It shall be unlawful for any person to operate an Organic Waste Processing Facility within the Town of Smithtown without first having secured a license pursuant to this Article from the Town Clerk.

#### §177-29 License Requirements

In order to obtain a license to operate an Organic Waste Processing Facility within the Town of Smithtown, a verified application shall be made to the Department of the Environment and Waterways setting forth the following information:

##### A. Personal and Business Information

- 1) The name and residence address of the applicant. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the name and address thereof and the names and residence addresses for all principals, officers, directors, partners and members.
- 2) The residence and business addresses of the applicant during the past five years. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the business and residence addresses for all principals, officers, directors, partners and members.
- 3) The applicant's business(es) for the past five years. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the business(es) for all principals, officers, directors, partners and members for the past five years.

##### B. Proposed Facility Information

- 1) Engineering Plan. The submission shall describe

- i) The physical size and location of all key components of the process to be utilized, including scales, receiving area, processing area and storage areas for finished product.
- ii) A description of the nature, volume and anticipated sources of all feedstock to be accepted at the facility.
- iii) A description of the processing system and all key components to be utilized to produce the recycled product, with minimum, maximum and optimum capacities at each processing stage.
- iv) A description of the methods and equipment to be utilized to control odors and any other noxious byproducts of the process.
- v) A description of the storage and/or curing areas and capacities to be employed for finished product before shipment to market, with anticipated curing and storage times expected before sale.
- vi) A description of the waste products expected to be generated at the facility, including the nature, quantities, methods of management, transportation and place of disposal of all such wastes.
- vii) The maximum combined tonnage of all combined feedstock, materials in process, finished product and waste product to be present on site at any time.
- viii) Such other information as the Director may reasonably require to evaluate the engineering of the facility.

2. Business Plan. The submission shall describe

- i) A description of the sources from which feedstock or raw materials are to be obtained.

- ii) A description of the markets in which the finished product or products are expected to be sold.
- iii) A description of any and all financial markets in which environmental credits, benefits, certificates or other intangible assets generated through operation of the facility are expected to be marketed or sold.
- iv) Such other information as the Director may require to evaluate the Business Plan of the Facility.

#### §177-30 Issuance of License and Appeals

A. The Department of Environment and Waterways, in order to establish the truth or accuracy of the information contained in the application, may request any information pertinent to the processing of said application and may, as necessary, request any additional information during the application process and for the entire term of said permit. If the Department cannot confirm the truth or accuracy of said material contained in the application; or if it determines that a material misrepresentation is contained therein; or if the applicant shall have been convicted of a misdemeanor or felony which is determined to render the applicant unfit to carry on the aforesaid operation; provided, however, that proper consideration is given to New York State Correction Law §§ 701 through 703-b and §§ 751 through 753 in making any such determination; or if it determines the applicant to be unfit or incapable of properly conducting the aforesaid operation, it shall issue a report to the Town Clerk, who shall deny said application. The Town Clerk shall notify the applicant within 30 days after receipt of a completed application as to whether the application shall be approved or denied. If the application is

denied and the applicant has been operating within the Town prior to the denial, then the applicant shall discontinue all operations within the Town of Smithtown within 15 days of such notification. An applicant who is denied a permit hereunder may request a review by the Town Board, which shall, upon such request, review the basis for such denial and shall determine whether such denial shall be affirmed or reversed.

B. The Town Clerk shall keep a record of all licenses issued.

#### §177-31 Operational Requirements

A. The applicant shall obtain, as applicable, a registration or permit for the operation of a Composting and Other Organics Recycling Facility pursuant to 6 NYCRR 361-3.

B. The applicant shall obtain, as applicable, any required permits or approvals for air, water, wastewater, or other emissions as may be required by applicable law and regulation.

C. The facility shall comply with all applicable zoning, building, fire and safety codes of the Town of Smithtown and the State of New York.

D. The Town may condition the license issued pursuant to this section upon compliance with any operational parameters consistent with findings made under the State Environmental Quality Review Act (SEQRA).

E. The operator of the Facility shall, not later than sixty (60) days prior to the commencement of operations at the facility, provide to the Director an Operations and Maintenance Plan for the facility, which shall describe the procedures to be followed for the receipt of feedstock and raw materials, processing of feedstock and raw materials, storage and protection of finished product, segregation and disposal of waste, control of odors, control of process liquids and storm water, control of litter, facility security,

equipment maintenance and other essential tasks. The Operation and Maintenance plan shall be updated upon any major change in operations and not less than annually. The Facility shall at all times comply with the most recent Operations and Maintenance Plan.

F. The Town shall have the right to inspect the facility for purposes of ensuring compliance with the license issued hereunder and the most recent Operations and Maintenance Plan at any time during regular business hours.

G. Copies of any and all regulatory sampling and report submittals made in connection with this facility to other local, State or Federal regulatory agencies shall be submitted to the Director

H. Any finished product that is stored outdoors shall be bagged or covered.

§177-32 Financial Security

The facility operator shall provide to the Town a Performance Bond, Letter of Credit or other security acceptable to the Director in an amount sufficient to ensure the removal of all feedstock, materials in process, finished product and waste materials and restoration of the facility site in the event that the license granted pursuant to the Article is revoked or otherwise terminated.

§177-33 Term of License.

A license issued pursuant to this section shall be valid for 10 years from the date of issuance. A license issued hereunder may be renewed after submission of an application for renewal submitted not less than one hundred eighty (180) days prior to the expiration date of the current license.

§177-34 Revocation or Suspension of License

- A. Suspension. A license issued pursuant to this section may be suspended for failure to maintain Financial Security or a failure to adhere to the filed Operation and Maintenance Plan. A Notice of Suspension setting forth the grounds for suspension may be issued by the Director upon not less than thirty (30) days prior notice to the Operator. Upon issuance, the facility shall be prohibited from receipt of feedstock and raw materials until the reason for the suspension has been cured.
- B. Revocation. A license issued pursuant to this section may be revoked upon the occurrence of any of the following events:
- 1 Failure to maintain or termination of any required NYSDEC permit or registration.
  - 2 Failure to comply with operational conditions contained in the license or any covenants and restrictions contained in any zoning approval for the facility site.
  3. Operation of the facility in a manner that constitutes a public nuisance.
  4. Operation of the facility in a manner that causes substantial adverse impact upon the environment.
- C. Effect of Termination or Revocation. Upon the termination of the license term without renewal, or the termination of the license term by revocation, the facility operator shall immediately cease operations, and within sixty (60) days thereof, remove all stored feed stock, raw materials, processed materials, finished product and waste materials from the facility site. In the event that such materials are not so removed, or at any time in the event of an immediate threat to public health and safety, the Town may enter upon the facility site to remove such materials, and may call upon the financial security posted by the operator pursuant to this section for reimbursement of costs in so doing.

D. Enforcement The Town Attorney shall be authorized to enforce the terms and conditions of the license, any notice of suspension or revocation, any covenants and restrictions running with the land, and to secure any and all rights of the Town and the public through actions at law and equity in any court of competent jurisdiction.