

POWER PLANTS

LOCAL LAW NO. 7 OF THE YEAR 1990

A Local Law Regulating Power Plant Site Study and Operations in the Town of Kirkwood

Adopted July 31, 1990

I. TITLE

This Local Law shall be known and may be cited as the Town of Kirkwood Power Plant Site Study and Operations Local Law.

II. PURPOSE AND INTENT

The Town Board of the Town of Kirkwood hereby finds and determines that construction and operation of power plant facilities, as hereinafter defined, within the Town of Kirkwood or any part thereof, and the environmental impacts associated therewith, pose a potential threat to the health and safety of the residents of the Town of Kirkwood due to the potential for contamination of air, ground water, and adjacent properties unless proper mitigation measures are observed. It is the purpose and intent of this Local Law, pursuant to the Environmental Quality Review Act, Zoning Ordinance, and Rules for Building of the Town of Kirkwood, to provide for the health, safety, and welfare of the residents of the Town of Kirkwood, and the owners of property within the Town, by regulating the construction and operation of power plant facilities within the Town of Kirkwood.

III. DEFINITIONS

For the purpose of this Local Law, the following terms shall have the meanings set forth hereinafter:

(a) “**Applicant**” means any person filing an application for siting as well as a permit to own and operate a power plant facility under this Local Law and must be the owner or operator of said power plant facility and not simply a designer or representative of said applicant.

(b) “**Construction**” means any physical modification to a potential site at which a potential or proposed power plant facility is to be located, including, but not limited to, site preparation and grading of any proposed site.

(c) “**Facility**” shall mean power plant facility or power generating facility.

(d) “**Person**” means any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the State, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(e) “**Power plant facility or power generating facility**” means a facility whose primary purpose is for the generation of electric power, in excess of one megawatt, powered by fossil fuel (including natural gas, oil, coal or any other fossil fuel), or by any other means whatsoever, or any portion of or supporting facility relating to such plant including land areas forming the boundary of the actual facility and supporting facilities and all other land areas incorporated by said plant, including, but not limited to, buffer zones. The term “power plant” shall include a “co-generation facility” as that term is defined in Article 1, Section 2, Public Service Law of the State of New York.

(f) “**Town Board**” shall mean the Town Board of the Town of Kirkwood, New York.

(g) “**Town**” shall mean the Town of Kirkwood, New York.

IV. APPLICABILITY

(a) This Local Law shall regulate the siting, construction and operation of power plant facilities located within the Town of Kirkwood.

(b) On or after the effective date of this Local Law, no person shall commence the preparation of a site for, or being the construction of, a power plant facility in the Town of Kirkwood without having first obtained a certificate issued with respect to such facility by the Town Board pursuant to this Local Law. Any facility with respect to which a certificate is issued shall not thereafter be built, maintained, or operated except in conformity with such certificate and any terms, limitations or conditions contained therein as provided by this Local Law, provided that nothing herein shall exempt any such facility from compliance with State law and regulations thereunder subsequently adopted or from any other municipal laws and regulations of the Town of Kirkwood.

(c) Exempt facilities. This Local Law shall not apply to and the following facilities are exempt from regulation under this Local Law:

(1) Any power plant facility over which any agency or department of the federal government has exclusive jurisdiction or has jurisdiction concurrent with that of the State of New York and has exercised such jurisdiction to the exclusion of regulation of said facility by the State.

(2) Any power generating facility over which State of New York and the Public Service Commission have exclusive jurisdiction pursuant to the Public Service Law of the State of New York.

(3) Any power generating facility that generates less than 1,000 kilowatts per hour.

(4) Any power generating facility which provides emergency or standby equipment and power for an existing manufacturing or industrial facility and (1) which does not generate the power for the purpose of resale and (2) which operate less than three (3) days per month.

V. APPLICATION PROCEDURE FOR PERMIT TO CONSTRUCT AND OPERATE A POWER GENERATION FACILITY

(a) Preapplication procedure. Any person proposing to submit an application for a power generating facility under this local Law must consult with the Town as to any study, program of studies, engineering plans, and other reports made or to be made which are required to be submitted under this Local Law in support of such application. The Town shall review with the applicant the proposed facility as well as explain and set forth to the applicant all procedures and documents in support of said application required under this Local Law. During the preapplication procedure, particular attention shall be given to co-coordinating all municipal hearings and reviews required by this Local Law, to the extent the same is practicable and permitted by law.

(b) Application for a permit to construct and operate a power generating facility.

(1) An applicant for a certificate to construct and operate a power generating facility shall file with the Town Clerk of the Town of Kirkwood an application, in such form as the Town may prescribe, containing the following information and materials:

a. A description of the proposed site and a description of the facility to be built thereon including available site information including maps and descriptions, present and proposed development plans, source and volume of water required for facility operation and cooling, and appropriate geological, aesthetic, ecological, biological, water supply, meteorological and population data;

b. A description of any reasonable alternate locations or location within the Town for, and alternate practical sources of power to, the proposed facility; a description of the comparative advantages and disadvantages of each such location and source; and a statement of the reasons why the primary proposed location and source is best suited to promote the health and welfare of the residents of the Town of Kirkwood, including the recreational and other concurrent use which the site may serve;

c. Studies identifying the author and date thereof, which have been made of the expected environmental impact and safety of the facility both during its construction and operation, which studies are sufficient to identify:

1. The anticipated gasses, liquid and solid wastes to be produced at the facility including their source, anticipated volumes, composition and temperature, and such other attributes as the Board may specify and the probable level of noise during the construction and operation of the facility.

2. The treatment process to reduce wastes to be released into the environment, the manner of disposal for waste retained (including excess heat) and measures for noise abatement.

3. The anticipated volumes of waste to be released to the environment under any operating condition of the facility, including meteorological, hydrological and other information needed to support such estimates.

4. Conceptual architectural and engineering plans indicating compatibility of the facility with the environment.

5. How the construction and operation of the facility, including transportation and disposal of wastes, would comply with the environmental, health and safety standards, requirements, regulations and rules under Federal, State and local laws.

6. A detailed environmental assessment form pursuant to Article 8 of the Environmental Conservation Law of the State of New York and applicable local laws of the Town of Kirkwood which assessment shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation of measures to mitigate adverse effects.

d. Preliminary engineering plans with elevations showing the use, location and dimensions of proposed buildings and land areas, driveways, driveway intersections with streets, maneuvering areas, parking areas, utility and utility easements, signs and railroad sidings.

e. A storm drainage and grading plan regarding proposed handling of surface water runoff and erosion control.

f. A survey prepared by a licensed surveyor or engineer showing the precise site boundaries.

g. Name and address of the owner and operator of the proposed facility and if the owner and operator is a corporation, list the state of incorporation plus the names and addresses of all officers and directors of said corporation.

h. The applicant shall submit financial statements prepared by his certified public accountant for the three full years previous to said application, or such other financial data agreed upon by the Board and the applicant at the preapplication conference showing sufficient finances and operating expenses to execute construction and operation of the proposed facility according to the plans submitted.

i. Nature of the soils at or within 1,000 feet of the site.

j. Depth of the water table at or within 1,000 feet of the site.

k. Location, nature and size of aquifers at or within 1,000 feet of the site.

l. Direction of present historic ground water flows at or within 1,000 feet of the site.

m. Location, nature and size of all surface waters at and/or within 1,000 feet of the site.

n. Proximity of the site to private residences, public buildings or property, school facilities places of work or other areas where individuals may be present.

o. Detailed plans of any places of proposed storage of fuels, including, but not limited to, fossil fuels associated with the operation of this facility.

p. Such other information as the applicant may consider relevant or as may be required by the Board. Copies of the application including the required information stated above shall be filed with the Town and shall be available for public inspection.

(c) Hearing and decisions.

(1) The Town Board shall fix a time, as soon as practicable, but in no event more than 90 days from the date an application is made and an environmental assessment form filed for a hearing relating to such application. The Town Board shall give public notice thereof by the publication in the official newspaper, or any supplemental newspapers, of the Town of Kirkwood of such hearing at least 14 days prior to the date thereof.

(2) In addition, at least 14 days prior to said hearing the applicant shall file with the Town proof of personal service of a copy of the completed application and requisite environmental assessment upon:

a. Broome County Planning Department;

b. Binghamton Metropolitan Transportation Study (BMTS);

c. Town of Kirkwood Volunteer Fire Department;

- d. New York State Department of Transportation;
 - e. Broome County Health Department;
 - f. New York State Department of Environmental Conservation;
 - g. Binghamton/Johnson City Joint Sewage Treatment Board; and
 - h. The Clerk of each and every neighboring municipality adjoining or contiguous to, the Town of Kirkwood.
- (3) The Town Board shall render a decision on the application as soon as practicable, but in no event more than 60 days after such hearings; provided, however, the time within which the Town Board must render its decision may be extended by mutual consent of the applicant and the Town Board. The decision of the Town Board shall immediately be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. The Board shall render a decision upon the record either to grant or deny the application as filed or to certify the facility upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the Board may deem appropriate.

VI. ISSUANCE OF PERMIT TO CONSTRUCT AND OPERATE

The Town may not grant a certificate for the construction or operation of a power generating facility either as proposed or as modified by the Board, unless it shall first find and determine:

- (a) The nature of the probable environmental impact, including a specification of the predictable adverse effect on the normal environment and ecology, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, fish and other marine and wildlife.
- (b) That the facility:
 - (1) Represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, the interests of the Town with respect to the aesthetics, preservation of historic sights, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations.
 - (2) Is compatible with the public health and safety.
 - (3) Will not discharge any effluent that will be in contravention of the standards adopted by the Department of Environmental Conservation.
 - (4) That the proposed facility is in compliance with criteria and requirements of this Local Law.
 - (5) That a harmonious relationship exists between the use of such facility and uses located in adjacent districts as reflected in the comprehensive plan, that maximum safety of vehicular access and egress from the site to existing proposed streets and highways is guaranteed, that the facility provides maximum adequacy of interior circulation and parking facilities with particular attention to vehicular and pedestrian safety and railroad sidings, that the facility maintains the adequacy of traditional landscaping and setbacks in regard to achieving maximum compatibility and protection to adjacent property, that the facility achieves maximum protection,

provides environmental safeguards in regard to protection of the local environment and of adjacent properties.

(6) That the proposed facility conforms to and is in compliance with, all zoning laws, ordinances, rules and regulations of the Town.

(7) That the Town has the ability and capacity to provide adequate sewer flow and water volume required for the operation of the facility at all times, including but not limited to peak hours of operation.

(8) That the proposed facility will be in full compliance with all applicable laws, rules and regulations of the United States of America, the State of New York and the Town of Kirkwood in effect on the date of submission of the permit application pertaining to construction and operation of this facility including all requirements of this Local Law paying particular attention to the regulations and performance standards of Article VIII contained herein relating to the operation of power generating facilities.

VII. PERMIT RESTRICTIONS AND CONDITIONS

(a) Acceptance of said permit from the Town of Kirkwood by the applicant shall be indicative of the consent by applicant to execute, and the applicant shall execute, an indemnification agreement prepared by the Town which agreement shall indemnify and save harmless the Town of Kirkwood and all officers, agents and employees of said Town from and against any and all losses, claims, damages, costs, judgments, lawsuits, expenses, risks of loss or liability of whatever nature arising out of injuries to persons or property of whatever kind or nature as a result of operation of said power generating facility within the Town of Kirkwood and which are attributable to the negligence, omission of duty, misfeasance or wrongful act on the part of the applicant, its employees or agents.

(b) Prior to issuance of a permit hereunder, the applicant shall present to the Town certificates of insurance, which certificates name the Town of Kirkwood as additional insured, evidencing the acquisition of liability insurance coverage, including pollution coverage, in at least the amounts of:

- (1) Death/bodily injury: Two million dollars (\$2,000,000.00); and
- (2) Property damage: Five million dollars (\$5,000,000.00).

Said insurance shall be maintained throughout the term of the permit issued by the Town of Kirkwood to construct and operate said facility and for a three year additional period after termination of said permit, and the aforementioned certificates shall provide for thirty (30) days notice to the Town prior to cancellation of coverage.

Failure of applicant to maintain said insurance coverage shall result in immediate revocation of the permit issued hereunder.

(c) Any approval of the application and issuance of a permit by the Town Board pursuant to this Local Law shall be valid only for so long as the premises which are the subject of the site plan approval are used for the specific use and purposes stated in that application; therefore, if at any future time the applicant shall wish to dedicate the premises to any other use, applicant shall make a new application in accordance with the provisions of this Local Law.

(d) Such permit shall be personal with the applicant. Said permit does not go with the title of the land nor may it be sold, assigned, transferred or disposed of in any manner without the prior written consent and approval of the Town Board which consent and approval will not be unreasonably withheld. Any proposed purchaser, assignee, or transferee must demonstrate to the Town Board their ability to comply in all respects with all provisions and conditions of the existing permit to construct and operate said facility, as well as all other provisions and requirements of this Local Law. Any holder of such permit who otherwise allows said permit to be used by any other person, and any person who uses such permit granted to any other person, shall be guilty of an offense under this Local Law.

(e) Any member of the Town Board or any of its duly authorized representatives shall be granted access to the area of the activity or business of the applicant at all reasonable hours to inspect the same for compliance herewith, at least twice per year.

(f) At the preapplication conference, or at the time a permit is issued, the Town and the applicant shall review and determine what inspections are required of said facility under this Local Law and by any other state or federal licensing agencies. In addition, the content of said inspection reports and how often said inspection reports are to be supplied to the Town for analysis by the Town Engineer shall be addressed. In addition, should the Town, after review and analysis of said reports, determine that further inspection of the facility for compliance herewith is necessary, the facility shall permit the Town to appoint an engineer and representative who will act as an independent inspector during the life of the permit and who shall be paid by the Town and reimbursed by the facility a fee not to exceed the rate of fifty thousand dollars (\$50,000.00) per year. Payment shall be made by the facility to the Town upon request therefor, and when all expenses are properly documented in a form and manner satisfactory to the facility. Such representative will report his findings relating to such operation of the facility to the Town Board, and such report shall be made available to the facility. Such engineering representative shall not be empowered to interrupt, interfere with, cause delay, impede in any way, or stop the operation of said facility.

(g) The facility agrees to permit said inspector access to any and all areas of the plant and to review all aspects of the facility's operation including, but not limited to, physical inspection of the power generating plant of said facility, monitoring of all air emissions and air purification systems relative to the facility's emissions, all areas of fuel storage located at said facility, the treatment process to reduce waste to be released into the environment by said facility, and review of the manner of disposal for waste retained as well as all other aspects of operation pertinent to the facility in order to determine and insure the said facility is operating in full compliance with all applicable laws, rules and regulations of the United States of America, the State of New York and the Town of Kirkwood, including all requirements of this Local Law and the regulations and performance standards of Article VIII contained herein.

(h) If, upon inspection, the Town determines that said facility fails to comply with all applicable rules and regulations of the United States of America, the State of New York, the Town of Kirkwood, and the conditions of the permit to operate issued the facility under this Local Law, then said facility and the persons responsible for the operation thereof are subject to, among other things, the penalty provisions contained in Article X of this Local Law.

VIII. OPERATIONAL REQUIREMENTS AND PERFORMANCE STANDARDS FOR POWER GENERATING FACILITIES

(a) Any power generating facility for which a permit to construct and operate has been issued pursuant to this Local Law must utilize the best available air and water pollution abatement technology. In addition, at all times during construction and/or operation, said facility must meet or exceed all existing applicable laws of the United States of America, the State of New York, and the Town of Kirkwood regulating construction and/or operation of such facilities including but not limited to:

- (1) Generally.
 - (a) The State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Section 8-0101 et. seq.).
 - (b) The National Environmental Policy Act (NEPA) (42 USC Section 4321 et. seq.).
 - (c) Federal Aviation Administration Construction Notice which requires Federal Aviation Administration approval for all construction over 200 feet high if said construction is located within an instrument approach area of local airports.
- (2) Air Quality.
 - (a) The Clean Air Act (CAA) (42 USC Section 7401 et. seq.) which includes but is not limited to:
 - (b) National Ambient Air Quality Standards (NAAQS) which requires that the proposed construction and operation of said facility will not result in a violation of the standards for ambient air quality established to protect the health and welfare of the public by adversely impacting the existing air quality in the vicinity of the facility (40 CFR Part 50).
 - (c) PSD. Prevention of significant air quality determination permit which directs that facilities in certain listed categories obtain said permit if they have the potential to emit 100 tons per year of pollutants (40 CFR 52.21).
 - (d) A New Source Review Permit under the Clean Air Act, if applicable (42 USC Section 7410 et. seq.).
 - (e) New Source Performance Standards (NSPS) (pursuant to the Clean Air Act, 42 USC Section 7401 et. seq.).
 - (1) Certificate of Approval/Air Pollution Episode. Significant air contamination sources require an episode action plan proposing its action in the event of an air pollution episode. This action plan must be approved by the Commissioner, New York State Department of Environmental Conservation.
 - (g) Certificate to Construct/Operate a Stationary Combustion Installation. A New York State Department of Environmental Conservation Permit, if applicable, is required to construct a new stationary combustion installation or to modify an existing source. In addition, the facility must obtain a separate permit to operate.
 - (h) Certificate to Operate, Process, Exhaust and/or Ventilation System. An additional DEC permit is required to operate any air contamination source.
 - (i) State Acid Deposition Control Act (SADCA) (Environmental Conservation Law Section 19-0901 et. seq.) which requires that any facility of this nature meet regulations established by the New York State Department of Environmental Conservation limiting the emissions of acid precursors (sulfur dioxide and nitrogen oxides) from any major steam electric generating facilities and stationary sources.
- (3) Water Quality and Wetlands.

- (a) State Pollutant Discharge Elimination Systems Permit (SPDES) (Environmental Conservation Law Section 17-0801 et. seq.). The facility must apply for and obtain this permit regulating effluent discharges (including thermo releases to surface and ground waters within the State of New York).
 - (b) New York State 401 Water Quality Certification which requires that the New York State Department of Environmental Conservation certify that federal water quality standards will not be degraded by the facility's operation.
 - (c) Water Resources Law (Environmental Conservation Law Section 15-0101 et. seq.).
- (4) Waste Disposal Requirements.
- (a) Hazardous Waste Treatment, Storage and Disposal Facility Permit. Any facility that generates, treats, stores or disposes of any hazardous waste as defined by the New York State Department of Environmental Conservation is required to obtain the necessary permits for the treatment, storage and disposal of said wastes.
 - (b) Waste Transporter Permit. Also required by the New York State Department of Environmental Conservation if facility transports any ash designated or defined as hazardous waste within the State of New York.
- (5) Other Permits/Approvals.
- (a) Flood Plain Development Permit. If the proposed facility is constructed within the 100 year flood plain, said development and construction must comply with all local and state laws regarding development within the 100 year flood plain area.
 - (b) Building Permit. The construction of said power generation facilities will require a Town building permit and will be subjected to all rules and regulations relative to the issuance of said building permits including site plan review pursuant to the Zoning Ordinance of the Town of Kirkwood, New York, and any other local laws pertaining thereto.
 - (c) Special Use Permit. Any power generation facility constructed pursuant to this Local Law must meet all guidelines and requirements pursuant to this Local Law for the issuance of permits to construct and operate said facility.

IX. APPLICATION FEE

The minimum fee for an application for a permit to construct and operate a power generating facility under this Local Law shall be at least one dollar (\$1.00) for each kilowatt of total generating capacity of the proposed facility up to a maximum fee of one hundred fifty thousand dollars (\$150,000.00), payable at the time said application is submitted, to be used by the Town to engage services of qualified professionals or experts to review and report on the application and the facts, allegations or data set forth therein. The minimum application fee required shall be deposited in a special account maintained by the Supervisor of the Town of Kirkwood and the monies shall be invested at interest. Any monies not expended by the Town of Kirkwood under the provisions of this Local Law shall be returned to the applicant together with any interest earned on the monies so deposited. In the event the Town expends the minimum application fee so deposited, the applicant shall be responsible for contributing the difference between the minimum fee previously paid up to the maximum of one hundred fifty thousand dollars (\$150,000.00) should the Town so require. The applicant shall be required to guarantee future payment on the application fee by presenting to the Town a letter of credit or some other form of financial responsibility acceptable to the Town at the time the application is submitted.

X. PENALTIES

Upon conviction, a violation of this Local Law shall be deemed a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) for each and every such offense, or imprisonment for a period not to exceed ninety (90) days, or both. Each day's violation shall constitute a separate and additional violation. In addition to the above-provided penalties and punishment, the Town Board in its discretion may immediately suspend the permit to operate said facility or, in the alternative, may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such local law. Said permit to operate may also be revoked by the Town Board for any violation or violations of this Local Law which continue for a period of 15 consecutive days or more. Any revocation hereunder shall be subject to a public hearing thereon at which the applicant shall have an opportunity to be heard.

XI. SEPARABILITY CLAUSE

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this Local Law but shall be confined in its operation to the clause, sentence, paragraph, section or part of this Local Law that shall be directly involved in the controversy in which such judgment shall have been rendered.

XII. REPEAL

Any portions of ordinances, resolutions or regulations heretofore adopted in conflict with this Local Law are hereby repealed.

XIII. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State.