

 <p>P.O. Box 99 • Ray Brook, New York</p> <p>www.apa.ny.gov</p>	<p>APA</p> <p>General Permit/814Order</p> <p>2002G-1RA</p>	<p>Effective Date:</p> <p>March 13, 2009</p>
	<p>In the Matter of the Issuance of a General Permit/Order for</p> <p>Disposal of Uncontaminated Wastes From Maintenance and Construction Activities by Highway and Municipal Sewer and Water Departments</p>	

SUMMARY AND AUTHORIZATION

This general permit/order is issued pursuant to Sections 809(13)(e) and 814 of the Adirondack Park Agency Act (Executive Law, Article 27) to provide a simplified process for State, county and municipal highway and municipal sewer and water departments to obtain a permit for the disposal of up to 5,000 cubic yards of allowable uncontaminated waste materials resulting from highway maintenance and construction activities. Specific approval must be obtained for each waste disposal area pursuant to the process established herein.

This general permit/order may be used in Moderate Intensity Use, Low Intensity Use, Rural Use, Resource Management, and Industrial Use land use areas as shown on the Adirondack Park Land Use and Development Plan Map subject to the following restrictions.

This general permit/order (hereafter "permit") applies only to the proper disposal on private lands of the following allowable uncontaminated waste materials: trees, branches, stumps, wood chips, recognizable concrete and concrete products (including steel or fiberglass reinforcing embedded in concrete), asphalt pavements, brick, stone, rock, and soil.

This general permit/order is in effect from the date of the renewal unless otherwise modified or revoked by the Agency.

Restrictions:

This permit may not be used for waste disposal areas to be located in:

1. a highway "critical environmental area" (CEA) , within 150 feet (in a Rural Use area) or within 300 feet (in a Resource Management area) of the edge of the right-of-way of a state highway,

2. a State land “critical environmental area” (land within 1/8 mile of State Forest Preserve lands classified as Wilderness, Primitive or Canoe areas, except in Hamlet and Industrial Use areas), or
3. an area governed by an Agency approved local land use program (requires an individual permit from the Agency or municipality).
4. the State Forest Preserve.

Waste disposal sites authorized herein may not occur within:

1. an APA jurisdictional wetland or within 100 feet of an APA jurisdictional wetland or other surface water body (e.g., intermittent or permanent stream, pond, lake) or
2. the “river area” of designated or study rivers in the New York State Wild, Scenic and Recreational Rivers System (outside of Hamlet or Moderate Intensity Use land use areas),
3. the 100-year floodplain of navigable waterbodies.

When waste disposal sites are proposed in an area adjacent to State Forest Preserve, State, county and municipal transportation agencies working in consultation with New York State Department of Environmental Conservation shall be responsible to ensure that there is a field delineation of the boundary between forest preserve lands and the highway right-of-way before waste disposal starts in that area. The involved highway agency and NYS DEC shall agree on the methods used to delineate the boundary and provide the Highway Agency Resident Engineer with that information. The intent is to ensure that there is no work or other site disturbance involving forest preserve lands as a result of this waste disposal activity.

When APA Permits for waste disposal are not needed:

1. Waste disposal areas do not require an Agency permit in land use areas classified as Hamlet provided the waste disposal area is not located in or substantially impairs a jurisdictional wetland.
2. Additional permits are not required from the Adirondack Park Agency (APA) for waste disposal at facilities previously approved by the New York State Department of Environmental Conservation (DEC) and/or the Agency for the disposal of such wastes if the waste materials are disposed of in strict compliance with previously approved permits.
3. The following activities are considered non-jurisdictional by the Agency and APA permits are not required for:

- a) the disposal of excess sediment and organic materials resulting from the cleaning of highway ditches, culverts, catch basins and shoulders and surplus excavated soil materials (i.e.: clean fill) taken from trenches dug for public utility projects (e.g., water line or sewer installations) provided the material is:
 - 1) deposited within the highway right-of-way or on private lands at the request of the landowner for landscaping or grading purposes consistent with the existing lawful land use at the time of disposal;
 - 2) not deposited within an APA jurisdictional wetland or within 100 feet of an APA jurisdictional wetland or other surface water body (e.g., stream, pond, lake);
 - 3) not used to “undertake” [as defined in 9 NYCRR 570.3(yy)] an otherwise jurisdictional activity unless or until the required Agency permit has been obtained; and
 - 4) not contaminated with paint, fuels, solvents, or other petroleum products.

- b) the disposal of tree trunks and branches or the disposal of woodchips or stump grindings resulting from the removal of trees or branches from within the highway rights-of-way is not creation of a “waste disposal area” provided:
 - 1) such materials are deposited on private lands at the request of the landowner for personal non-commercial use as firewood and landscaping mulch; and
 - 2) the materials are not deposited within an APA jurisdictional wetland or within 100 feet of an APA jurisdictional wetland or other surface water body (e.g., intermittent or permanent stream, pond, lake).

Review Process:

In order to utilize this permit, each applicant must fill out, sign and submit a completed and signed “Application and Certification For Disposal of Uncontaminated Wastes From Maintenance and Construction Activities by Highway and Municipal Sewer and Water Departments.” Agency staff will review the application for completeness, conduct a site visit, and determine if the proposed project meets the terms and conditions of this permit. If approvable, an authorized APA Representative will sign and return to the applicant the “Application and Certification” form. The applicant may not begin waste disposal activities until the Agency permit/order signed by authorized Agency staff has been received.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

JURISDICTION

Disposal of wastes involving or affecting wetlands in any land use area is subject to Agency jurisdiction under the Adirondack Park Agency Act and as a “regulated activity” under the Freshwater Wetlands Act and 9 NYCRR Part 578 and requires an individual Agency permit.

Section 802 (66) of the APA Act defines “waste disposal areas” to mean any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than an on-site disposal area directly associated with an industrial use.

The Agency has determined that the disposal of uncontaminated waste materials resulting from construction activities performed by county and municipal highway and municipal sewer and water departments or State agencies is “disposal of other wastes.”

County and Municipal Highway Departments

Pursuant to Section 810 of the Adirondack Park Agency Act, waste disposal areas are considered Class A regional projects in Low Intensity Use, Rural Use and Industrial Use land use areas and Class B regional projects in Moderate Intensity Use and Resource Management land use areas as shown on the official Adirondack Park Land Use and Development Plan Map.

Waste disposal areas are not regulated in land use areas classified as Hamlet unless the waste disposal site is involving or affecting an APA jurisdictional wetland.

Pursuant to Section 809(2)(a), any person proposing to undertake a Class A regional project in any land use area or a Class B regional project in any land use area not governed by an approved and validly enacted local land use program, shall make application to the Agency for approval of such project and obtain an Agency Permit. Section 802 defines any person to include any individual or municipality.

State Agencies

The Agency has determined that the disposal of uncontaminated waste materials outside of the highway right-of-way resulting from construction and maintenance activities performed by State agencies is “new land use and development within the Adirondack Park” and is therefore reviewable pursuant to Section 814 of the APA Act.

PROCEDURES

Permit Application and Review Process:

1. To utilize this APA General Permit/Order, the applicant must fully complete the application, including all required attachments. The application may be submitted in person to the Agency or by mail at:

Adirondack Park Agency
Deputy Director, Regulatory Programs Division
Route 86, PO Box 99
Ray Brook, New York 12977

2. Within 15 calendar-days of receipt of an application, the APA will review the application for completeness, confirm APA jurisdiction, determine whether the proposed activity meets the eligibility criteria and contact the applicant to arrange a meeting at the site of the proposed activity.
3. If the application is incomplete, the Agency will inform the applicant by certified mail indicating what specific information is missing. On the day the Agency receives the missing information from the applicant, a new 15 calendar-day review period begins for determining completeness. If approvable, within 10 calendar-days of the site visit or when the application is deemed complete, whichever is later, the Agency will by certified mail issue a signed APA General Permit/814 Order 2002G-1RA, Application and Certification approving the activity.
4. Where an application has been determined to be ineligible, the Agency will send a letter by certified mail briefly explaining why the activity was ineligible for coverage under the APA permit and stating that the activity may be reviewed again upon receipt of a new application for an individual major project permit.
5. Eligibility Criteria:
 - a) In order for this permit to apply, upon field verification, the proposed activity must be determined by APA staff to:
 - 1) be consistent with the information contained in the application;
 - 2) involve not more than 5,000 cubic yards of allowable uncontaminated waste materials resulting from highway maintenance and construction activities, or municipal sewer and water projects;
 - 3) not have been partially or wholly undertaken;
 - 4) not require additional detailed engineering or environmental studies to more fully demonstrate no undue adverse impacts on important resources of the Park;
 - 5) be compatible with the land use area and nearby land uses,

- 6) not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park taking into account the project benefits; and
- 7) be capable of meeting the conditions contained within this Permit and as stated in "Section C. - Conditions" of the Application and Certification form.

6. Applicant Certification: By signing the application, the applicant:

- a) confirms that the information contained in the application is true, accurate and complete;
- b) agrees that a determination of ineligibility for a permit under APA General Permit/Order 2002G-1RA by the Deputy Director of Regulatory Programs for any reason is considered final and cannot be appealed;
- c) agrees that if a jurisdictional activity has been determined to be ineligible for approval under this APA general permit/order program, the appropriate individual minor or major permit application must be submitted to the Agency and a permit issued before that activity can be undertaken;
- d) agrees that the time period for review for completeness of any subsequent application for an individual permit or Section 814 Order will not begin to run until the Agency has received the individual permit/order application; and
- e) agrees that there is no default approval of the APA Permit if the time periods specified herein are not complied with by the APA.

FINDINGS OF FACT

1. State, county and municipal highway and municipal sewer and water departments are responsible for the design, construction, maintenance and operation of i) public highway facilities, including roads, bridges, and maintenance buildings and yards and ii) underground water, sewer and electric facilities. On occasion, uncontaminated waste materials generated from construction and maintenance projects must be disposed of by these departments. A permit or order is required from the Agency when waste materials are disposed of in an unapproved location.
2. When construction contracts are let out to bid to private contractors, waste disposal sites are often not identified in the contract plans and documents. The contractors who are awarded the project are then required to obtain the permit from the Agency for the regulated "waste disposal area." As many contracts only last one construction season, the normal Major Project Permit process often makes it difficult for the contractor to obtain the required permit in a timely manner relative to the construction completion date.

3. Disposal of uncontaminated waste materials in accordance with the terms and conditions of this permit will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park.
4. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980 since Agency staff will have reviewed the site for possible historic buildings.

CONCLUSIONS OF LAW

The Agency has considered all the statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574 and §814 of the Adirondack Park Agency Act and 9 NYCRR Part 579 and Executive Order 150.

The Agency hereby finds that those specific projects for the disposal of uncontaminated waste materials resulting from highway and municipal sewer and water maintenance and construction activities performed by State, county and municipal departments are approvable pursuant to this general permit if they comply with the above criteria and provided they are undertaken in compliance with the terms and conditions herein.

