

## SOLID WASTE

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**"Controlling slopes"** means slopes on those areas of the liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

**"Convenience center"** means a site where one or more containers are located for temporary storage of solid waste and/or recyclable materials brought to the site by persons transporting only their own household solid waste and/or recyclable materials in passenger automobiles bearing general registration plates.

**"Co-product"** means a material that is not a primary product, but is an incidentally produced product, of such quality that its composition is consistently equivalent to, or exceeds the standards for, a manufactured product of the same name. A co-product is used as a commodity in trade by the general public in the same form as it is produced, in lieu of an intentionally manufactured product.

**"Cover material"** means soil, earth or other material approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14 which is used to cover compacted solid waste in a sanitary landfill for the purpose of rodent and vector control, to minimize moisture entering the fill, to provide a fire break, and in the case of final cover, to grow vegetation for erosion control. The depth or thickness of cover material to be measured after compaction with at least one pass of a bulldozer or other suitable equipment having a gross weight in excess of 10,000 pounds.

**"Cutting"** means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

**"Daily cover"** means cover material that is a minimum of six inches of depth or as approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14.

**"Department"** means the New Jersey Department of Environmental Protection.

**"Dike"** means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

**"Director"** means the Director of the Division of Solid and Hazardous Waste in the Department or his or her designee, except when specifically noted.

**"Discard or discarded"** means disposal; burning or incinerating; use or reuse; and/or reclaim or reclamation, all as defined in this section.

**"Discharge"** or **"hazardous waste discharge"** means the unintentional or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land, water or air.

**"Disposal"** means the storage, treatment, utilization, processing or final disposition of solid waste, specifically including the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**"Disposal facility"** means a solid waste facility used for the disposal of solid waste.

**"Division"** means the Division of Solid and Hazardous Waste in the Department.

**"Domestic sewage"** means waste or wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

**"Double liner"** means a two liner system separated by a leak detection/leachate removal system.

**"Dredged material"** means the sediments under a body of water such as, but not limited to, a bay, harbor, lake, stream and river, removed during a dredging operation that are displaced or removed to another location.

**"Dump"** means a land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors and scavengers.

**"Empty tank"** means a tank that meets the following criteria:

1. All wastes have been removed that can be removed by direct pumping or drainage; and
2. The quantity of residue remaining in the tank after waste removal is no more than one percent of the volume of the tank.

**"Engineering design"** means reports and drawing, including a narrative operating description, prepared by a New Jersey licensed professional engineer to describe a solid waste facility and its proposed operation.

**"Environmental and health impact statement"** or **"EHIS"** means a statement as to the realistically identifiable, probable impact of the proposed solid waste facility upon the geology, soils, hydrology, air quality, ecology, land use, socioeconomic, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at the project site and in the surrounding region; a listing of alternatives to all or any part of the project with reasons for their acceptability or nonacceptability; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

"Environmental assessment" means an evaluation of the positive and negative changes to the environmental conditions at and around a particular site which may result from the implementation of a proposed action. Included is a determination of the magnitude of the potential changes and, where applicable, the identification of recommended mitigative measures to be incorporated.

"Environmental inventory" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"Environmentally unsound" means any persistent or continuous condition resulting from the methods of operation or design of the solid waste facility which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated Federal, State, county or municipal standard.

"Environmental upgrading" means the addition or modification of the construction, operation or maintenance of a solid waste facility to abate or prevent the occurrence of an environmentally unsound condition.

"EPA" or "USEPA" means the United States Environmental Protection Agency.

"Exempt transporter" shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

"Existing solid waste facility" means that portion of an active solid waste facility which, as of the effective date of these regulations, possesses a valid approved registration from the Department.

"Expansion" means the process of increasing the design and/or permitted capacity, areal or structural dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

"Final cover" means cover material that is a minimum of 24 inches in depth.

"Food waste" means food processing by-products (food processing vegetative wastes and/or food processing residuals generated from food processing and packaging operations or similar industries that process food products), vegetative waste (produce trimmings and over-ripe produce generated by supermarkets, produce brokers and produce distributors), off-spec food products, food product overruns, and similar food waste materials.

"Foundation" means the supporting soil layers beneath a liner or cutoff wall.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Free moisture" means liquid that drains freely by gravity from solid materials.

"Friable asbestos material" means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. part 763 section 1, polarized light microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content shall be verified by point counting using PLM.

"Generation" means the act or process of producing solid waste.

"Geomembrane" means a prefabricated continuous sheet of flexible polymeric material including synthetic membranes, polymeric membranes, flexible membrane liners and plastic liners.

"Gross vehicle weight" means the weight of the vehicle or combination of vehicles, including load or contents.

"Ground water" means that water below ground, the static pressure of which is equal to or greater than prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

"Hydraulic asphalt concrete" means a controlled mixture of asphalt cement and high quality mineral aggregate compacted into a uniform dense mass.

"Impermeable liner" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of  $1 \times 10^{-7}$  cm/sec at the maximum anticipated hydrostatic pressure.

"Incinerator" means a thermal device in which solid waste is burned for the purposes of volume reduction (an incinerator used to obtain energy shall be classified as a resource recovery facility).

"Incompatible waste" means a solid waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

"Surface water" means water at or above the land's surface which is neither ground water nor contained within the unsaturated zone, including, but not limited to, the ocean and its tributaries, all springs, streams, rivers, lakes, ponds, wetlands, and artificial waterbodies.

"Tank" means a stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials which provide structural support.

"Thermal destruction facility" means a nonhazardous solid waste facility which utilizes a thermal device to either burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere. Energy recovery systems may be utilized in conjunction with the thermal device.

"Toe" means the bottom of the working face or side slope of a land disposal site where deposited solid waste is in contact with virgin ground or previous lift.

"Transfer station" means a solid waste facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle, including a rail car, for transportation to an off-site solid waste facility, or a solid waste facility at which ID 72 liquid waste (as defined at N.J.A.C. 7:26-2.13(h)) is received, stored, treated or transferred, except that a "transfer station" shall not include any solid waste facility at which only site-generated solid waste is received for onsite transfer and processing or disposal utilizing facility-owned or operated equipment and vehicles operated therefor.

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transporter" means a person engaged in the act of collecting and/or moving of solid waste off-site by road, rail, water, or air.

"Treat" or "treatment" means any method, technique, or process, including neutralization or other pH adjustment, designed to change the physical, chemical, or biological character or composition of a material so as to:

1. Neutralize or otherwise change the pH of such material;
2. Recycle energy or material resources from the material;
3. Render such material non-hazardous, or less hazardous;
4. Render the material safer to transport, store, or dispose of; or

5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

"Trust fund" means a fund established by an owner or operator and held by a financial institution (licensed by the State of New Jersey) as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in this chapter for the benefit of the New Jersey Department of Environmental Protection.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil that has been used, and as a result of such use, storage or handling is contaminated by physical or chemical impurities.

"Vector" means an organism, including insects, other arthropods or rodents, that is capable of transmitting pathogen from one organism to another.

"Vicinity" means the area encompassing one half mile from the perimeter of a nonhazardous solid waste facility.

"Visible emissions" means any emissions that are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

"Working face" means that portion of a sanitary landfill site where solid waste is discharged by a solid waste vehicle and is spread and compacted prior to placement of cover material.

As amended, R.1978 d.72, effective February 27, 1978.

See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

As amended, R.1981 d.281, effective August 6, 1981.

See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).

Substantially amended.

As amended, R.1981 d.370, effective October 8, 1981.

See: 12 N.J.R. 511(a), 13 N.J.R. 706(b).

Substantially amended.

As amended, R.1982 d.324, effective October 4, 1982.

See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).

"Authorized facility" and "Incinerator" amended; "Hazardous waste incinerator" and "New hazardous waste incinerator" defined.

As amended, R.1982 d.433, effective December 6, 1982.

See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

"Container", "Disposal", "Generator", "Hazardous waste", "Hazardous waste landfill", "Leachate", "Opening burning", and "Personnel", amended.

As amended, R.1983 d.25, effective February 7, 1983.

See: 15 N.J.R. 146(a), 15 N.J.R. 333(a).

"Authorized facility": last sentence added.

As amended, R.1983 d.192, effective June 6, 1983.

See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).

"Sanitary landfill" revised.

As amended, R.1983 d.350, effective September 6, 1983.

See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).

"Authorized facility" revised; "Gas cylinder facility" added.

As amended, R.1983 d.570, effective December 5, 1983.

See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).

"Chemical waste" deleted; "Infectious waste" revised.

As amended, R.1983 d.610, effective January 3, 1984.

See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

"Permit" and "Publicly-owned treatment works" added.

As amended. R.1983 d.623, effective January 17, 1984.

See: 14 N.J.R. 1435(a), 16 N.J.R. 132(a).

"Recycling" and "reclamation" defined; "reclamation" added "Recycling facility".

As amended. R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).

"Waste pile" added to "Hazardous waste landfill".

As amended. R.1984 d.279 effective July 2, 1984.

See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Revised to reflect Division of Waste Management jurisdiction.

Amended by R.1985 d.65, effective February 19, 1985.

See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).

Added definition "Friable asbestos material": deleted "Non-friable asbestos-containing waste".

Amended by R.1985, d.620, effective June 17, 1985.

See: 17 N.J.R. 1501(a), 17 N.J.R. 2885(a).

Added definition "empty tank."

Amended by R.1986 d.160, effective May 5, 1986.

See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).

Added definition "tolling agreement"

Amended by R.1986 d.347, effective August 18, 1986.

See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).

Added definitions "Use or reuse", "waste reuse facility" and "waste reuse facility identification number".

Amended by R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Substantially amended.

Amended by R.1987 d.234, effective June 15, 1987.

See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).

The text deleted from "waste oil" definition was "after sale to a customer".

Amended by R.1987 d.534, effective December 21, 1987.

See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.

Amended by R.1988 d.377, effective August 1, 1988.

See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).

Changed CFR parts in definition "Authorized facility" from 122 to 270 and 123 to 271.

Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988.)

See: 20 N.J.R. 2817(a).

Amended definition "leaf composting facility" by deleting text "or in combination ..." and adding "and shall also ..."; added "vegetative waste composting facility".

Amended by R.1989 d.54, effective January 17, 1989.

See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substantially amended.

Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of emergency amendment R.1988 d.547, readopted without change.

Amended by R.1989 d.206, effective April 17, 1989.

See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).

Added definitions "active life", "final closure", "hazardous waste management unit" and "partial closure".

Amended by R.1989 d.216, effective April 17, 1989.

See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Deleted definitions for "collection-hauler" and "collection-vehicle"; amended definitions "collection" by adding "or collecting", "transfer station" by referring to solid waste vehicle and "working face" by changing land disposal to sanitary landfill site; and added new definitions for "solid waste cab", "solid waste container", "solid waste single-unit vehicle", "solid waste trailer", "solid waste vehicle", "transportation" or "transporting" and "transporter".

Amended by R.1990 d.228, effective May 7, 1990.

See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).

Added "Treatability study".

Amended by R.1990 d.260, effective May 21, 1990.

See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).

Added "PCB hazardous waste" and "Polychlorinated biphenyls".

Amended by R.1990 d.445, effective September 4, 1990.

See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).

Definition of hazardous waste hauler changed to hazardous waste transporter, definitions added for consignee, EPA, EPA acknowledgment of consent, primary exporter, receiving country and transit country.

Amended by R.1992 d.100, effective March 2, 1992.

See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).

Corrected formula in "impermeable liner".

Amended by R.1993 d.27, effective January 4, 1993.

See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

Defined "scrap metal shredding facility".

Emergency Amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, to expire March 26, 1996).

See: 28 N.J.R. 1305(a).

Amended by R.1996 d.169, effective April 1, 1996.

See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

Added "containerized solid waste" and "intermodal container facility", and amended "solid waste facility".

Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.

See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

Deleted "demolition waste" and rewrote "construction waste" as "construction and demolition waste".

Amended by R.1996 d.500, effective October 21, 1996.

See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Added and amended numerous definitions; and deleted definitions for "administration", "asbestos containing waste", "bureau", "bureau chief", "commingled recyclable material", "degree of uncertainty of strength measurement-high", "degree of uncertainty of strength measurement-low", "leaf composting facility", "polychlorinated biphenyls", "regional", "scavenging", "set back", "vegetative waste composting facility", and "waste oil".

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2000 d.75, effective February 22, 2000.

See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Inserted "Exempt transporter", "Licensee" and "Permittee".

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In "Expansion", inserted "and/or permitted" following "the design"; rewrote "Recycling center"; in "Sanitary landfill", inserted "13C" and substituted "27, 27A and 271" for "27, 72" at the end of paragraph 1. Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Amended "Approved registration", "Director", "Small scale solid waste facility", "Solid waste cab", "Solid waste container", "Solid waste single-unit vehicle", "Solid waste vehicle", and "Transfer station"; added "Dredged material", "Gross vehicle weight", "Registration certificate", "Small vehicle transfer area", and "Solid waste transport unit".

#### Law Review and Journal Commentaries

Environmental Law—Administrative Procedure—Solid Waste. P.R. Chenoweth. 134 N.J.L.J. No. 13, 54 (1993).

#### Case Notes

Landfill was "sanitary landfill" within meaning of Sanitary Landfill Closure and Contingency Fund Act; facilities "approved for disposal of hazardous waste". State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J. 1994, 866 F.Supp. 826.

Landfill was "sanitary landfill facility" within meaning of New Jersey's Sanitary Landfill Facility Closure and Contingency Fund Act; disclosure in purchase agreement. National-Standard Co. v. Clifton Ave. Corp., D.N.J.1991, 775 F.Supp. 151.

Unlicensed facility was properly enjoined from operating without a permit in violation of Solid Waste Management Act; penalty. State, Dept. of Environmental Protection v. Interstate Recycling, Inc., 267 N.J.Super. 574, 632 A.2d 526 (A.D.1993).

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative Change in (a).  
See: 23 N.J.R. 3325(b).  
Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)1, deleted reference to EPA identification number.

**7:26-5.4 Civil administrative penalties for violation of rules adopted pursuant to the Act**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each requirement of any rule listed in N.J.A.C. 7:26-5.4(g).

(b) Each violation of a rule listed in N.J.A.C. 7:26-5.4(g) shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of any rule listed in N.J.A.C. 7:26-5.4(g) may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall determine the amount of a civil administrative penalty for each violation of any rule listed in (g) below on the basis of the provision violated, according to the following procedure. For a violation of a requirement or condition of an administrative order, permit, license or other operating authority, the Department may in its sole discretion identify the corresponding requirement of any rule summary listed in (g) below and determine the amount of the civil administrative penalty on the basis of the rule provision violated.

1. Identify the rule violated as listed in N.J.A.C. 7:26-5.4(g)1 through 8A;
2. Identify the corresponding base penalty dollar amount for the rule violated as listed in N.J.A.C. 7:26-5.4(g)1 through 8A;
3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

Severity Factor	Multiplier
i. Violator had violated the same rule less than 12 months prior to the violation.....	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation.....	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation.....	0.50
iv. Violator had violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation.....	0.25

4. To obtain the civil administrative penalty, add all of the severity penalty components pursuant to (f)3 above, to the base penalty. If the sum total exceeds \$50,000, then the civil administrative penalty shall be \$50,000.

**EXAMPLE:**

Base penalty (for violation of N.J.A.C. 7:26-2.12(f))	=	\$1,000
Subparagraph (f)3iii applies: 0.50x1000	=	500
Subparagraph (f)3iv applies: 0.25x1000	=	+ 250
Civil administrative penalty		<u>\$1,750</u>

5. For the purpose of this section, violation of the "same rule" means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the same item on the list must be violated to be considered violation of the "same rule."

(g) The Rule Summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26 and 7:26A, is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in N.J.A.C. 7:26 and 7:26A, then the provision in N.J.A.C. 7:26 and 7:26A shall prevail.

1. The violations of N.J.A.C. 7:26-1, General Provisions, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

<u>Rule</u> N.J.A.C.	<u>Rule Summary</u>	<u>Base</u> <u>Penalty</u>
7:26-1.7(b)	Failure of owner or operator of any facility exempted under N.J.A.C. 7:26-1.7 to comply with all conditions set forth in its certificate of authority to operate	\$2,000

2. The violations of N.J.A.C. 7:26-2, Disposal, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

<u>Rule</u> N.J.A.C.	<u>Rule Summary</u>	<u>Base</u> <u>Penalty</u>
7:26-2.7(b)1	Failure of permittee to apply for a permit renewal at least 90 days prior to the expiration date of the existing SWF permit.	\$2,000
7:26-2.8(b)	Failure of permittee to submit a statement updating the information contained in the initial registration statement.	\$2,000

		Rule	Rule Summary	Base Penalty
7:26-2.8(c)	Failure of permittee to notify the Department within 30 days of any change of information in the registration statement.	\$2,000		
7:26-2.8(c)	Failure to apply and receive approval of a SWF permit prior to engaging in the disposal of solid waste in this State.	\$2,000	7:26-2A.8(b)1	\$2,000
7:26-2.8(f)	Failing to obtain a SWF permit prior to constructing or operating a solid waste facility.	\$5,000	7:26-2A.8(b)2	\$2,000
7:26-2.8(j)	Failure to meet all conditions, restrictions, requirements or any other provision set forth in SWF permit	\$2,000	7:26-2A.8(b)3	\$2,000
7:26-2.8(k)	Failure to receive Department approval prior to modifying, revising or otherwise changing a permit condition.	\$2,000	7:26-2A.8(b)4	\$2,000
7:26-2.8(l)	Failure to receive Department approval prior to transferring ownership of a SWF permit.	\$5,000	7:26-2A.8(b)5	\$2,000
7:26-2.11(b)1	Failure of operator to clean areas where waste has been deposited or stored within each 24 hour period, for sanitary landfills all areas where waste has been deposited shall be covered.	\$2,000	7:26-2A.8(b)6	\$2,000
7:26-2.11(b)2	Failure to ensure any waste stored overnight at any facility is effectively treated.	\$2,000	7:26-2A.8(b)7	\$2,000
7:26-2.11(b)3	Failure to maintain facility property surrounding the disposal area free of litter, debris, unprocessed waste, processed residues and effluents.	\$2,000	7:26-2A.8(b)8	\$2,000
7:26-2.11(b)4	Failure to implement dust control methods.	\$3,000	7:26-2A.8(b)9	\$2,000
7:26-2.11(b)5	Failure to ensure no odors are detected off-site.	\$2,000	7:26-2A.8(b)10	\$2,000
7:26-2.11(b)6	Failure to maintain all facility systems in a manner that facilitates proper operation and minimizes system downtime.	\$4,000	7:26-2A.8(b)11	\$2,000
7:26-2.11(b)7	Failure to maintain an adequate water supply and adequate fire-fighting equipment.	\$2,000	7:26-2A.8(b)12	\$2,000
7:26-2.11(b)8	Failure to control insects, other arthropods and rodents.	\$5,000	7:26-2A.8(b)13	\$2,000
7:26-2.11(b)9	Failure to comply at all times with the conditions of SWF permit.	\$3,000	7:26-2A.8(b)14	\$2,000
7:26-2.11(b)10	Failing to ensure waste is not received in excess to the system's designed capacity.	\$2,000	7:26-2A.8(b)15	\$2,000
7:26-2.11(b)11	Failure to operate the facility in a manner that employs the use of equipment and other techniques as identified in the facility's SWF permit.	\$2,000	7:26-2A.8(b)16	\$2,000
7:26-2.11(b)12	Failure to maintain an approved O and M manual at the facility, changes to be submitted, at a minimum, on an annual basis.	\$2,000	7:26-2A.8(b)17	\$2,000
7:26-2.11(c)1	Failure to admit only properly registered solid waste vehicles for loading or unloading of any solid waste.	\$3,000	7:26-2A.8(b)18	\$5,000
7:26-2.11(c)2	Failure to designate a secure area where solid waste may be unloaded from vehicles exempt from registration under N.J.A.C. 7:26-3.3.	\$3,000	7:26-2A.8(b)19	\$2,000
7:26-2.11(c)3	Failure to designate a secure area where unpermitted waste can be deposited.	\$2,000	7:26-2A.8(b)20	\$2,000
7:26-2.11(c)4	Failure to maintain a record of the quantity of each waste type accepted for disposal.	\$2,000	7:26-2A.8(b)21	\$2,000
7:26-2.11(c)5	Failure to provide a means of cleaning vehicle tires of debris	\$5,000	7:26-2A.8(b)22	\$3,000
7:26-2.12(b)	Failure of generators of asbestos containing waste materials to submit a complete written notification of intent to demolish, 10 days prior to beginning the demolition activity.	\$2,000	7:26-2A.8(b)23	\$2,000
7:26-2.12(c)	Failure of generators of asbestos containing waste material to submit a complete written notification of intent to renovate, 10 days prior to beginning the renovation activity.	\$1,000	7:26-2A.8(b)24	\$4,000
7:26-2.13(a)7	Failure to maintain a daily record of asbestos waste and make appropriate submittals.	\$1,000	7:26-2A.8(b)25	\$2,000
7:26-2.13(a)8	Failure to maintain additional required reports in the daily record.	\$3,000	7:26-2A.8(b)26	\$2,000
7:26-2.13(c)1	Failure of facility operator to verify the O and D form	\$2,000	7:26-2A.8(b)27	\$5,000
7:26-2.13(c)	Failure to submit monthly summaries of waste to the Department.	\$2,000	7:26-2A.8(b)28	\$2,000
7:26-2.14(j)	Failure of SWFPPA permittee to prepare and submit a complete annual progress report.	\$3,000	7:26-2A.8(b)29	\$3,000
7:26-2.14(k)	Failure of SWFPPA permittee to conduct a complete facility wide benchmark audit not less than once every five years.	\$2,000	7:26-2A.8(b)30	\$2,000
			7:26-2A.8(b)31	\$4,000
			7:26-2A.8(b)32	\$2,000
			7:26-2A.8(b)33	\$2,000
			7:26-2A.8(b)34	\$5,000
			7:26-2A.8(b)35	\$2,000
			7:26-2A.8(b)36-41	\$5,000
			7:26-2A.8(c)	\$2,000
				\$5,000

3. The violations of N.J.A.C. 7:26-2A, Additional Specific Disposal Regulations for Sanitary Landfills, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26-2A.8(d-e)	Failure to perform inspections required by (c) above on a weekly basis and after storm events, and comply with recordkeeping requirements.	\$3,000		received cannot be handled or processed in the normal manner, of the operator to notify the Department of the existence of such a situation and circumstances contributing to the situation within the same working day of its occurrence.	
7:26-2A.8(f)	Failure of operator to make repairs in accordance with N.J.A.C. 7:26-2A.8(b)28 and O&M manual, if deterioration or malfunction occurs.	\$2,000	7:26-2B.8(i)	Failure to store unprocessed incoming waste, facility process waste residues and effluents, and recovered materials in bunkers, pits, bins, or similar containment vessels and to keep at all times at levels that prevent spillage or overflow.	\$2,000
7:26-2A.8(g)	Failure to maintain and inspect sanitary landfill according to requirements.	\$2,000	7:26-2B.8(j)	Failure to keep waste delivery tipping hall doors closed during non-processing or non-receiving hours.	\$2,000
7:26-2A.8(h)	Failure to monitor in accordance with parameters and schedules.	\$5,000	7:26-2B.8(k)	Failure to schedule the delivery of waste to the facility and the removal of residues and recovered products from the site so as to eliminate traffic backups and allow for fluid vehicular movement on site.	\$2,000
7:26-2A.8(i)	Failure to submit an annual topographic survey prepared according to N.J.A.C. 7:26-2A.8(i)1 through 4 by May 1 of each year.	\$2,000	7:26-2B.8(l)	Failure to ensure that samples and measurements taken for the purpose of monitoring facility process and treatment operations are representative of the process or operation and are performed with the conditions of the facility's SWF permit.	\$5,000
7:26-2A.8(j)1	Failure to obtain written approval of the Department prior to disruption/excavation.	\$2,000	7:26-2B.8(m-r)	Failure of the operator to comply with waste determination, waste analysis and required recordkeeping.	\$5,000
7:26-2A.8(j)3	Failure to keep area of excavation consistent with amount of equipment, and to keep excavation to smallest practical area.	\$2,000	7:26-2B.8(s)	Failure of the owner or operator to have a 24-hour surveillance system which continuously monitors and controls entry to the facility or an artificial or natural barrier which completely surrounds the facility.	\$5,000
7:26-2A.8(j)4	Failure to control dust, odors, fires, rodents, insects, blowing litter.	\$3,000	7:26-2B.8(t)	Failure of a facility to maintain required personnel, supervisor, boiler operator, licensed engineer to assure the proper and orderly operation of all system components, along with the ability to handle all routine facility maintenance requirements.	\$5,000
7:26-2A.8(k)6	Failure to repair any disruption of finished grade or covered surface upon completion of firefighting activities.	\$2,000	7:26-2B.8(u)	Failure to ensure that all personnel complete an initial program of classroom instruction and on-the-job training, training program directed by a person thoroughly familiar with the technology, ensure that facility personnel respond to any malfunction or emergency situation, complete the initial training program within six months, planned annual review of the initial training, records document the type and amount of training received, kept until closure, former employees records kept for at least one year.	\$2,000
7:26-2A.8(l)	Failure to comply with asbestos waste disposal requirements.	\$3,000			

4. The violations of N.J.A.C. 7:26-2B, Additional Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Mixed Solid Waste Composting Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty	Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-2B.7(b)	Failure of solid waste composting and co-composting facility to comply with quarterly report requirements.	\$2,000	7:26-3.2(a)	Failure to obtain an approved registration statement from the Department prior to engaging in the transportation of solid waste.	\$8,000
7:26-2B.7(d)	Failure of solid waste composting and co-composting facility to comply with training requirements; Access to facility prohibited when facility is closed.	\$2,000	7:26-3.2(a)2	Failure to ensure that any device used for the transportation of solid waste is registered with the Department.	\$2,000
7:26-2B.7(c)	Failure of solid waste composting and co-composting facility to monitor temperature of composting materials to ensure pathogen reduction criteria are met.	\$2,000	7:26-3.2(a)4	Failure of registrant to ensure registered vehicles, cabs, containers, etc. are not used, controlled or possessed by any other person.	\$5,000
7:26-2B.7(f)	Failure of solid waste composting and co-composting facility to comply with incoming waste processing timeframes and requirements.	\$2,000	7:26-3.2(c)	Failure to comply with any conditions or limitations which may be specified on the approved registration.	\$5,000
7:26-2B.7(g)	Failure of solid waste composting and co-composting facility to ensure incoming, unprocessed waste is not mixed with finished compost.	\$2,000	7:26-3.2(d)	Failure of a registrant to submit a transporter registration renewal updating information contained in the previous registration statement.	\$2,000
7:26-2B.7(h)	Failure of solid waste composting and co-composting facility to comply with 15 month finished compost storage requirement.	\$1,000	7:26-3.2(e)	Failure of registrant to notify the Department within 30 days of any change in the registration statement.	\$2,000
7:26-2B.7(i)	Failure of solid waste composting and co-composting facility to comply with recordkeeping requirements.	\$2,000	7:26-3.4(b)	Failure to deposit all collected solid waste at an approved facility.	\$5,000
7:26-2B.7(j-n)	Failure of solid waste composting and co-composting facility to comply with monitoring and sampling requirements.	\$3,000	7:26-3.4(c)	Failure to ensure solid does not remain or is stored in any solid waste vehicle in excess of 24 hours, unless an emergency.	\$2,000
7:26-2B.7(o)	Failure of solid waste composting and co-composting facility to comply with labeling requirements.	\$2,000	7:26-3.4(d)	Failure to ensure design of solid waste vehicle is such that it will not cause spillage onto roadways.	\$2,000
7:26-2B.7(p)	Failure of solid waste composting and co-composting facility to comply with USEPA 40 CFR 503 general requirements.	\$2,000			
7:26-2B.8(d)	Failure of the owner or operator to conduct inspections as indicated in the approved final O&M manual in order to identify and remedy any problems and comply with recordkeeping requirements.	\$3,000			
7:26-2B.8(f)	Failure of the owner or operator to implement waste receiving area control procedures that provide for the inspection of the incoming waste stream for the purpose of removing nonprocessible or potentially explosive materials prior to the initiation of processing.	\$3,000			
7:26-2B.8(g)	Failure, should the facility experience equipment or system malfunction to the extent that the waste				

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-3.4(c)	Failure to ensure solid waste vehicle is not loaded beyond its design capacities or in such a manner that will cause spillage onto roadways.	\$2,000
7:26-3.4(f)	Failure to keep all solid waste vehicles in good working condition and to provide a means of continuous service in the event an emergency arises.	\$2,000
7:26-3.4(g)	Failure to protect property of customer.	\$2,000
7:26-3.4(h)	Failure to properly mark each solid waste vehicle or to carry current DEP registration certificate.	\$2,000
7:26-3.4(i)	Failure to use tarpaulins as needed.	\$2,000
7:26-3.4(j)	Failure to access or exit a solid waste facility pursuant to the district management plan or SWF permit.	\$2,000
7:26-3.5(a)1	Failure to design all solid waste vehicles used for the transportation of sewage sludge to preclude any spillage or leakage onto roadways.	\$2,000
7:26-3.5(a)2	Failure to ensure sewage sludge and other fecal material is not intermixed with other wastes of a chemical or industrial nature.	\$5,000
7:26-3.5(b)	Failure to design all solid waste vehicles used for the transportation of bulky waste to preclude any spillage.	\$2,000
7:26-3.5(c)	Failure to ensure radioactive material and lethal chemicals are not transported in or through this State without prior approval from authorities having jurisdiction, and from the Department.	\$5,000
7:26-3.5(d)1	Failure to design all solid waste vehicles used for the transportation of asbestos waste so as to preclude any spillage leakage or emissions therefrom.	\$3,000
7:26-3.5(d)2	Failure to package asbestos for transportation in accordance with 40 CFR 61.152 and N.J.A.C. 7:26-2.12.	\$5,000
7:26-3.5(d)3	Failure to transport asbestos in a manner that prevents the rupture of containers in loading, transporting and unloading operations.	\$5,000
7:26-3.5(d)4	Failure to transport collected asbestos directly from the point of generation to the solid waste landfill permitted to receive such wastes.	\$5,000
7:26-3.5(d)6	Failure to ensure no visible air emissions are generated during loading, transporting, or unloading operations.	\$5,000
7:26-3.5(g)2	Failure of transporter to complete and sign O and D form prior to disposal	\$2,000
7:26-3.7(a)	Failure to ensure waste materials to be collected and transported show no evidence of smoking, smoldering or burning.	\$5,000
<p>6. The violations of N.J.A.C. 7:26-3A, Regulated Medical Waste, and the civil administrative penalty amounts for each violation, are as set forth in the following table. The lesser penalty amount applies to persons registered in generator categories 1 through 3 (&lt;300 lbs/year). The larger penalty amount applies to persons registered in generator categories 4 and 5 (&gt;300 lbs/year).</p>		
Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-3A.8(a)	Failure of a generator of RMW to register with the Department.	\$1,500
7:26-3A.8(a)1	Failure of a generator of RMW to register in the proper category.	\$5,000
7:26-3A.8(b)1	Failure of a commercial transporter of RMW to register with the Department.	\$1,000
7:26-3A.8(b)2	Failure of a non-commercial transporter of RMW to register with the Department.	\$5,000
7:26-3A.8(c)	Failure of commercial intermediate handlers and owner/operators of destination facilities to register with the Department.	\$2,500
7:26-3A.8(c)3	Failure of a non-commercial collection facility or an intermediate handler treating their own waste to register with the Department.	\$5,000
7:26-3A.8(d)1	Failure of commercial collection facility to register with the Department.	\$2,000
7:26-3A.8(d)5,6	Failure of a non-commercial collection facility to register with the Department.	\$5,000
7:26-3A.9	Failure of transporters', intermediate handlers' and destination facilities' supervisory personnel to attend an education and training session and disseminate information to employees.	\$2,000
Rule	Rule Summary	Base Penalty
7:26-3A.10(a)	Failure of generators of RMW to segregate for off-site transport prior to placement in containers.	\$1,000
7:26-3A.10(d)	Failure to handle a package of RMW mixed with other waste as RMW.	\$3,000
7:26-3A.11	Failure of a generator to ensure that RMW is properly packaged before transporting or offering for transport off site.	\$1,000
7:26-3A.12(a)	Failure to comply with RMW storage requirements.	\$3,000
7:26-3A.12(b)	Failure to comply with RMW storage periods.	\$500
7:26-3A.12(c)	Failure to secure sharps containers.	\$1,000
7:26-3A.13(a)	Failure to comply with container decontamination and reuse requirements.	\$1,000
7:26-3A.14(a)	Failure to comply with labeling requirements.	\$3,000
7:26-3A.15(a)	Failure to comply with marking requirements.	\$500
7:26-3A.16(a)	Failure to determine if waste is RMW.	\$1,000
7:26-3A.16(d)	Failure to use properly registered transporters.	\$3,000
7:26-3A.16(c)	Failure to dispose of RMW at an authorized facility.	\$1,000
7:26-3A.16(h)	Failure to comply with home self-care RMW requirements.	\$5,000
7:26-3A.16(i)	Failure to get approval from the department prior to using an alternative or innovative technology for the treatment or destruction of RMW.	\$1,000
7:26-3A.19	Failure of a generator to comply with tracking form requirements.	\$500
7:26-3A.21	Failure to comply with generator recordkeeping requirements.	\$2,000
7:26-3A.22	Failure of generator to comply with exception reporting requirements.	\$500
7:26-3A.25	Failure of generator with on-site incinerator to comply with recordkeeping requirements.	\$1,000
7:26-3A.26	Failure of owner/operator of on-site incinerator to comply with reporting requirements.	\$3,000
7:26-3A.27(i)	Failure of a transporter/collection facility to dispose of RMW stored in the vehicle within fourteen calendar days, or before it becomes putrescent.	\$1,000
7:26-3A.28	Failure of a transporter to comply with RMW acceptance requirements.	\$2,000
7:26-3A.30(a)1	Failure of vehicle to have fully enclosed, leak resistant cargo carrying body.	\$3,000
7:26-3A.30(a)2	Failure to ensure RMW does not become putrescent and is not subjected to mechanical stress or compaction during loading and unloading or during transit.	\$2,000
7:26-3A.30(a)3	Failure to maintain cargo carrying body in good sanitary condition.	\$2,000
7:26-3A.30(a)4	Failure to securely lock unattended cargo carrying body.	\$5,000
7:26-3A.30(b)	Failure to comply with vehicle identification requirements.	\$1,000
7:26-3A.30(c)	Failure to manage RMW/solid waste mixture as RMW.	\$5,000
7:26-3A.31	Failure of transporter to comply with tracking form requirements.	\$2,000
7:26-3A.32(a)	Failure to deliver entire quantity of RMW to intermediate hauler, destination facility or next transporter.	\$1,000
7:26-3A.32(b)	Failure to contact generator for directions and make changes accordingly, if RMW cannot be delivered as intended.	\$1,000
7:26-3A.33(a)	Failure to comply with requirements for consolidating waste to a new tracking form.	\$2,000
7:26-3A.34	Failure of transporter to comply with recordkeeping requirements.	\$3,000
7:26-3A.35	Failure of transporter to comply with reporting requirements.	\$3,000
7:26-3A.37(a)	Failure of transporter to have an approved RMW spill management plan.	\$2,000
7:26-3A.37(b)	Failure of transporter to have a RMW spill containment and cleanup kit at all sites and in all vehicles used for the storage, handling, collection, treatment and collection of RMW.	\$2,000

Rule	Rule Summary	Base Penalty
7:26-3A.38(b)6	Failure of RMW incinerator to ensure waste stored overnight is effectively treated.	\$2,000
7:26-3A.38(b)7	Failure to maintain facility property surrounding the disposal area free of litter, debris, unprocessed waste, processed residues and effluents.	\$2,000
7:26-3A.38(b)8	Failure to ensure no odors are detected off-site.	\$4,000
7:26-3A.38(b)9	Failure to maintain all facility systems in a manner that facilitates proper operation and minimizes system downtime.	\$2,000
7:26-3A.38(b)10	Failure to maintain adequate water supply and fire fighting equipment, failure to post emergency numbers (fire, police, ambulance, hospital).	\$5,000
7:26-3A.38(b)11	Failure to effectively control insects, arthropods, rodents.	\$2,000
7:26-3A.38(b)12	Failure to maintain orderly operation and sanitary conditions.	\$2,000
7:26-3A.38(b)14	Failure to maintain O&M manual at the facility.	\$3,000
7:26-3A.38(b)17	Failure of facility to accept RMW only from properly registered transporters.	\$2,000
7:26-3A.39(i)1	Failure to ensure stored waste does not exceed 300,000 pounds or amount as specified in authorization.	\$2,000
7:26-3A.39(i)2	Failure to ensure collection facility receives no more than 150,000 pounds of waste per day, or as otherwise indicated in authorization.	\$2,000
7:26-3A.39(i)4	Failure to accept only RMW waste managed in accordance with N.J.A.C. 7:26-3A.	\$2,000
7:26-3A.39(i)5	Failure to ensure only registered vehicles transport to and from facility.	\$2,000
7:26-3A.39(i)6	Failure to ensure all waste at all times remains fully contained, and does not leak.	\$3,000
7:26-3A.39(i)9	Failure to ensure no odors are detected off-site. Odor causing waste to be disposed of immediately.	\$4,000
7:26-3A.39(i)10	Failure to implement and maintain effective security procedures.	\$2,000
7:26-3A.39 (i)13	Failure to implement routine housekeeping and maintenance procedures.	\$2,000
7:26-3A.39(i)16	Failure to ensure truck queuing is minimized, on-site traffic controls implemented.	\$2,000
7:26-3A.39(i)17	Failure to ensure RMW is not staged, placed or stored beyond confines of facility or vehicle.	\$2,000
7:26-3A.39(j)2	Failure to maintain O&M manual at the facility.	\$3,000
7:26-3A.39(j)3	Failure to comply with training program requirements.	\$2,000
7:26-3A.39(j)6	Failure to maintain fire protection systems in operable condition, fire procedures posted.	\$5,000
7:26-3A.39(j)7	Failure to ensure that noise levels do not exceed standards set forth in N.J.A.C. 7:29.	\$4,000
7:26-3A.39(j)8	Failure to maintain on site operating records, O&M manual.	\$3,000
7:26-3A.39(j)9	Failure to maintain safety appliances in proper operating order, comply with O&M inspection schedules, maintain inspection records.	\$5,000
7:26-3A.39(k)	Failure to comply with recordkeeping and reporting requirements.	\$3,000
7:26-3A.40(c)3	Failure of intermediate handlers and destination facilities to ensure only approved treatment and destruction processes authorized by NJDEP and DOH are utilized.	\$2,000
7:26-3A.41	Failure to comply with tracking form requirements.	\$2,000
7:26-3A.42	Failure to comply with tracking form discrepancy requirements.	\$500
7:26-3A.43	Failure to comply with recordkeeping requirements.	\$3,000
7:26-3A.44	Failure of collection facilities, intermediate handlers and/or destination facilities to comply with additional reporting requirements.	\$2,000
7:26-3A.46	Failure of rail transporter to comply with tracking form requirements.	\$2,000
7:26-3A.47(a)	Failure to ensure alternative or innovative technology processes and any modifications are approved by the NJDEP and DOH prior to any marketing, sale or use in New Jersey.	\$5,000
7:26-3A.48(a,b)	Failure of an out-of-State organization using the U.S. Postal Service or other parcel service and disposing of regulated medical waste from New Jersey to comply with certification requirements.	\$2,000
7:26-3A.48(c)	Failure of a RMW generator to ensure that RMW waste is not sent to any out-of-State facility which does not have a certificate on file with the Department.	\$5,000

7. The violations of N.J.A.C. 7:26-6, Interdistrict and Intradistrict Solid Waste Flow, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-6.5	Failure to comply with the district waste flow plan.	\$10,000

8. The violations of N.J.A.C. 7:26A, Recycling Rules, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26A-3.1(a)	Failure of approved recycling center to comply with all approval conditions.	\$2,000
7:26A-3.5(f)	Failure of recycling center to post a legible sign at the recycling center entrance indicating its approval and listing items detailed in 3.2(a)13i and ii.	\$500
7:26A-3.6	Failure to submit renewal application for a general approval to the Department at least three months prior to the current approval expiration and to comply with all submittal requirements.	\$1,000
7:26A-3.7(j)	Failure, within 45 days after expiration of the time period authorized by the limited approval to operate a recycling facility, to file a final report with the Department.	\$2,000
7:26A-3.7(k)	Failure of persons operating a limited approved recycling center to ensure that no illegal dumping occurs.	\$2,000
7:26A-3.8(a)	Failure to limit processing methods for tires to slicing, shredding, chipping, crumbing or other methods approved by the Department, prohibition to incinerating, landfilling, abandoning or otherwise illegally disposing of tires.	\$3,000
7:26A-3.8(b)	Failure by the owner or operator of the tire recycling center to ensure that no mosquito colony formation develops.	\$2,000
7:26A-3.8(c)	Failure of a tire, tree stump, tree part or wood waste recycling center to have an approved fire control plan.	\$5,000
7:26A-3.9(a)	Failure of recycling center to ensure the temporary storage of Class B recyclable material does not exceed the amount indicated in the general or limited approval to operate.	\$2,000
7:26A-3.9(b)	Failure of recycling center to ensure that unprocessed Class B recyclable material is not stored in excess of one year from the date of receipt.	\$2,000
7:26A-3.10	Failure of recycling center to comply with modification requirements.	\$2,000
7:26A-3.15(a)	Failure to ensure a general or limited approval to operate a recycling center is not transferred without prior approval of the Department.	\$5,000
7:26A-3.15(c)	Failure to provide one copy of written request to transfer approval to the recycling coordinator and one copy to the applicable municipal planning board.	\$2,000
7:26A-3.17(a)	Failure of recycling center to comply with recordkeeping and annual reporting requirements.	\$3,000
7:26A-4.1(a)i	Failure of recycling center to ensure that recyclable material is separated at the point of generation from other waste material.	\$3,000
7:26A-4.1(a)ii	Failure of recycling center to ensure only Class A, Class B or Class C materials are received, stored, processed or transferred at the center.	\$3,000
7:26A-4.1(a)iii	Failure of recycling center to comply with commingling requirements.	\$2,000
7:26A-4.1(a)2	Failure of recycling center to ensure residue is not stored on-site in excess of six months.	\$2,000
7:26A-4.1(a)4	Failure of recycling center to store residue separately from recyclable material and in a manner which prevents run-off, leakage or seepage from the residue storage area into, on or around the soil of the residue storage area.	\$2,000

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26A-4.1(a)5	Failure of recycling center to ensure hazardous wastes are not stored, processed or transferred at any recycling center.	\$5,000	7:26A-4.5(b)2	Failure of Class C material operator to comply with composting structure requirements, no ponding, leachate control.	\$2,000
7:26A-4.1(a)6	Failure of recycling center to ensure electronic components which contain polychlorinated biphenyls (PCBs) and which are attached to or detached from appliances or other scrap metal, are not shredded, sheared or baled.	\$5,000	7:26A-4.5(b)3	Failure of Class C material operator to main fully enclosed operation.	\$2,000
7:26A-4.1(a)8	Failure to operate a recycling center in such a manner that the recycling center property is maintained free of litter and debris and such that tracking of mud into nearby streets is prevented.	\$2,000	7:26A-4.5(b)5	Failure of Class C material operator to comply with O & M manual requirements.	\$3,000
7:26A-4.1(a)10	Failure of recycling center operator to ensure that traffic associated with the operation of the center does not result in a degradation of a level of service of any major intersection or public roadway within a half-mile radius.	\$2,000	7:26A-4.5(b)7, 8	Failure of Class C material operator to comply with employee training requirements.	\$2,000
7:26A-4.1(a)11	Failure of recycling center operator to ensure recycling center operations are separated from sensitive land uses by an effective visual screen buffer.	\$2,000	7:26A-4.5(b)9	Failure of Class C material operator to have properly trained individual supervising operation.	\$2,000
7:26A-4.1(a)12	Failure of recycling center operator to ensure unauthorized access to center is controlled.	\$2,000	7:26A-4.5(b)11	Failure of Class C material operator to comply with incoming organics processing timeframes and requirements.	\$2,000
7:26A-4.1(a)13	Failure of recycling center operator to ensure areas of vehicular usage are suitably compacted and, where necessary, paved.	\$2,000	7:26A-4.5(b)12	Failure of Class C material operator to ensure incoming, unprocessed material is not mixed with finished compost.	\$2,000
7:26A-4.1(a)14	Failure of recycling center operator to have adequate water supply, firefighting equipment, and local fire department phone numbers phone numbers posted.	\$5,000	7:26A-4.5(b)13, 14	Failure of Class C material operator to meet PFRB criteria and requirements.	\$2,000
7:26A-4.4(a)	Failure by the owner or operator of a recycling center to provide a recycling tonnage report by February 1 of each year.	\$1,000	7:26A-4.5(b)16	Failure of Class C material operator to comply with 15 month finished compost storage requirement.	\$1,000
7:26A-4.4(b)	Failure by a transporter of recyclable materials to provide a recycling tonnage report by February 1 of each year.	\$1,000	7:26A-4.5(b)18-21	Failure of Class C material operator to comply with monitoring and sampling requirements.	\$3,000
7:26A-4.4(c)	Failure of exempt person to submit required tonnage reports by February 1 of each year.	\$1,000	7:26A-4.5(b)22, 23	Failure of Class C material operator to comply with additional recordkeeping requirements.	\$2,000
7:26A-4.5(a)2	Failure of Class C yard trimming operator to ensure center has sufficient capacity to handle incoming volumes.	\$2,000	7:26A-4.5(c)1	Failure of Class C operator to comply with labeling requirements.	\$2,000
7:26A-4.5(a)3	Failure of Class C yard trimming operator to have properly trained individual supervising operation, access to facility prohibited when center is closed.	\$2,000	7:26A-4.5(c)2	Failure of Class C operator to comply with compost utilization requirements.	\$2,000
7:26A-4.5(a)4	Failure of Class C yard trimming operator to ensure yard trimmings are only received during times when operator is present.	\$2,000	7:26A-5.1(a)	Failure to ensure no shearing, shredding, baling or other actions which could cause release of refrigerant fluid to take place, occurs prior to recovery of such fluid.	\$5,000
7:26A-4.5(a)5	Failure of Class C yard trimming operator to ensure all trimmings received are removed from bags, boxes.	\$2,000	7:26A-5.1(b)	Failure to recover refrigerant fluid in a manner such that no venting of refrigerant fluid occurs.	\$5,000
7:26A-4.5(a)6	Failure of Class C yard trimming operator to initiate processing of incoming materials containing grass, within the working day.	\$2,000	7:26A-5.1(c)	Failure to deliver recovered refrigerant fluid to a facility which has agreed to reprocess the fluid or, if such arrangements cannot be made, failure to store or dispose of the recovered fluid in accordance with applicable rules and regulations.	\$5,000
7:26A-4.5(a)7i	Failure of Class C compost operators to attend, within one year of start up, approved composting courses.	\$2,000	7:26A-6.4(d)2	Failure of generator to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000
7:26A-4.5(a)7ii	Failure of Class C compost operator to maintain improved active composting surface to prevent ponding or runoff.	\$2,000	7:26A-6.4(d)3	Failure of generator to ensure used oil storage units are in good condition and not leaking.	\$3,000
7:26A-4.5(a)7iii	Failure of Class C yard trimming operator to moisten, without excess runoff, dry yard trimmings prior to windrow formation.	\$2,000	7:26A-6.4(d)4	Failure of generator to comply with used oil labeling requirements.	\$2,000
7:26A-4.5(a)7iv	Failure of Class C yard trimming operator to position windrows perpendicular to ground surface contours.	\$2,000	7:26A-6.4(f)	Failure of generator to comply with used oil off-site shipment requirements.	\$2,000
7:26A-4.5(a)7v	Failure of Class C yard trimming operator to install windsock.	\$1,000	7:26A-6.6(c)	Failure of a used oil transporter to have EPA identification number.	\$2,000
7:26A-4.5(a)7vi	Failure of Class C yard trimming operator to comply with windrow composting requirements.	\$2,000	7:26A-6.6(d)1	Failure of a used oil transporter to comply with deliveries requirements.	\$2,000
7:26A-4.5(a)7vii	Failure of Class C yard trimming operator to comply with material staging and processing buffer distance requirements.	\$2,000	7:26A-6.6(f)3	Failure of used oil transfer facility to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000
7:26A-4.5(a)7viii	Failure of Class C yard trimming operator to comply with finished compost testing requirements.	\$2,000	7:26A-6.6(f)4	Failure of used oil transfer facility to ensure used oil storage units are in good condition and not leaking.	\$3,000
7:26A-4.5(a)7xii	Failure of Class C yard trimming operator to comply with additional recordkeeping requirements.	\$3,000	7:26A-6.6(f)5	Failure of used oil transfer facility to comply with "secondary containment for containers" requirements.	\$3,000
7:26A-4.5(b)1	Failure of Class C material operator to ensure center has sufficient capacity to handle incoming volumes.	\$2,000	7:26A-6.6(f)6	Failure of used oil transfer facility to comply with "secondary containment for existing aboveground tanks" requirements.	\$3,000
			7:26A-6.6(f)7	Failure of used oil transfer facility to comply with "secondary containment for new aboveground tanks" requirements.	\$3,000
			7:26A-6.6(f)8	Failure of used oil transfer facility to comply with used oil labeling requirements.	\$3,000
			7:26A-6.6(g)	Failure of used oil transfer facility/transporter to comply with tracking requirements.	\$2,000
			7:26A-6.7(b)	Failure of used oil processor/re-refiner to comply with notification requirements.	\$2,000
			7:26A-6.7(c)1	Failure of used oil processor/re-refiner to comply with preparedness and prevention requirements.	\$5,000
			7:26A-6.7(c)2i-v	Failure of used oil processor/re-refiner to comply with contingency plan requirements.	\$5,000

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26A-6.7(c)2	Failure of used oil processor/re-refiner to ensure used oil is stored only in tanks, containers, or units subject to N.J.A.C. 7:26G.	\$3,000	40 C.F.R. § 273.33	Failure of large quantity handler of universal waste to comply with waste management requirements.	\$4,000
7:26A-6.7(c)3	Failure of used oil processor/re-refiner to ensure used oil storage units are in good condition and not leaking.	\$3,000	§ 273.34	Failure of large quantity handler of universal waste to comply with labeling/marketing requirements.	\$4,000
7:26A-6.7(c)4	Failure of used oil processor/re-refiner to comply with "secondary containment for containers" requirements.	\$3,000	§ 273.35	Failure of large quantity handler of universal waste to comply with accumulation time limits.	\$4,000
7:26A-6.7(c)5	Failure of used oil processor/re-refiner to comply with "secondary containment for existing above-ground tanks" requirements.	\$3,000	§ 273.36	Failure of large quantity handler of universal waste to comply with employee training requirements.	\$4,000
7:26A-6.7(c)6	Failure of used oil processor/re-refiner to comply with "secondary containment for new above-ground tanks" requirements.	\$3,000	§ 273.37	Failure of large quantity handler of universal waste to comply with waste tracking requirements.	\$4,000
7:26A-6.7(c)7	Failure of used oil processor/re-refiner to comply with used oil labeling requirements.	\$3,000	§ 273.38	Failure of large quantity handler of universal waste to comply with off-site shipment requirements.	\$4,000
7:26A-6.7(f)	Failure of used oil processor/re-refiner to comply with analysis plan requirements.	\$5,000	§ 273.39	Failure of large quantity handler of universal waste to comply with waste tracking requirements.	\$4,000
7:26A-6.7(g)	Failure of used oil processor/re-refiner to comply with tracking requirements.	\$2,000	§ 273.40	Failure of large quantity handler of universal waste to comply with exporting requirements.	\$4,000
7:26A-6.7(h)	Failure of used oil processor/re-refiner to comply with operating record and reporting requirements.	\$3,000	§ 273.52	Failure of universal waste transporter to comply with waste management requirements.	\$3,000
7:26A-6.7(i)	Failure of used oil processor/re-refiner to use oil transporter with EPA identification number.	\$3,000	§ 273.53	Failure of universal waste transporter to comply with storage time limits.	\$3,000
7:26A-6.8(b)	Failure of used oil burner facility to comply with burning restrictions.	\$3,000	§ 273.55	Failure of universal waste transporter to comply with off-site shipment requirements.	\$3,000
7:26A-6.8(c)	Failure of a used oil burner facility to comply with notification requirements.	\$2,000	§ 273.56	Failure of universal waste transporter to comply with exporting requirements.	\$3,000
7:26A-6.8(c)2	Failure of used oil burner facility to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000	§ 273.61	Failure of universal waste destination facility to comply with off-site shipment requirements.	\$4,000
7:26A-6.8(c)3	Failure of used oil burner facility to ensure used oil storage units are in good condition and not leaking.	\$3,000	§ 273.62	Failure of universal waste destination facility to comply with universal waste tracking requirements.	\$4,000
7:26A-6.8(c)4	Failure of used oil burner facility to comply with "secondary containment for containers" requirements.	\$3,000			
7:26A-6.8(c)5	Failure of used oil burner facility to comply with "secondary containment for existing above-ground tanks" requirements.	\$3,000			
7:26A-6.8(c)6	Failure of used oil burner facility to comply with "secondary containment for new above-ground tanks" requirements.	\$3,000			
7:26A-6.8(c)7	Failure of used oil burner facility to comply with used oil labeling requirements.	\$3,000			
7:26A-6.8(f)	Failure of used oil burner facility to comply with tracking requirements.	\$2,000			
7:26A-6.8(g)	Failure of used oil burner facility to comply with notice requirements.	\$2,000			
7:26A-6.9(b)	Failure of used oil fuel marketer to ensure shipments of off-specification used oil is sent only to used oil burner facilities that have EPA identification numbers and burns the used oil in a device as identified in N.J.A.C. 7:26A-6.8(b)1.	\$4,000			
7:26A-6.9(c)	Failure of used oil fuel marketer to comply with on-specification used oil fuel requirements.	\$2,000			
7:26A-6.9(d)	Failure of a used oil fuel marketer to comply with notification requirements.	\$2,000			
7:26A-6.9(e)	Failure of used oil marketer to comply with tracking requirements.	\$2,000			
7:26A-6.9(f)	Failure of used oil marketer to comply with Notice requirements.	\$2,000			
		Base Penalty			
40 C.F.R. § 273.13	Failure of small quantity handler of universal waste to comply with waste management requirements.	\$2,000			
§ 273.14	Failure of small quantity handler of universal waste to comply with labeling/marketing requirements.	\$2,000			
§ 273.15	Failure of small quantity handler of universal waste to comply with accumulation time limits.	\$2,000			
§ 273.16	Failure of small quantity handler of universal waste to comply with employee training requirements.	\$3,000			
§ 273.18	Failure of small quantity handler of universal waste to comply with off-site shipment requirements.	\$2,000			
§ 273.20	Failure of small quantity handler of universal waste to comply with exporting requirements.	\$2,000			
§ 273.32	Failure of large quantity handler of universal waste to comply with notification requirements.	\$4,000			

Administrative Correction in (g)7.  
 See: 23 N.J.R. 3138(a).  
 Amended by R.1993 d.5, effective January 4, 1993.  
 See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a)), 25 N.J.R. 98(a).  
 Reflects amendments to N.J.A.C. 7:26-7.6 and 9.4.  
 Amended by R.1996 d.500, effective October 21, 1996.  
 See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).  
 Amended by R.1996 d.578, effective December 16, 1996.  
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).  
 In (f)1 and (f)2, amended N.J.A.C. references; in (f)4, amended EXAMPLE; in (g), amended N.J.A.C. references; and added (g)1 through (g) 8.  
 Amended by R.2001 d.86, effective March 5, 2001.  
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).  
 In (g)2 table, deleted 7:26-2.13(c)2 and recodified 7:26-2.13(c)3 as 7:26-2.13(c)1; in (g)5 table, added 7:26-3.5(g)2.  
 Amended by R.2002 d.181, effective June 17, 2002.  
 See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).  
 In (g)2, amended the penalty table.  
 Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).  
 See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).  
 In (g)8, rewrote the Rule Summary table.

**Case Notes**

Summary proceedings to enforce agency orders, action brought for alleged violations of Pesticide Control Act. State, Dept. of Environmental Protection v. Larchmont Farms, Inc., 266 N.J.Super. 16, 628 A.2d 761 (A.D.1993), certification denied 135 N.J. 302, 639 A.2d 301.

Administrative hearings concerning collection of penalties were not provided for in Solid Waste Management Act; violator is entitled to collection hearing in Superior Court on due process basis, though not to a preliminary Departmental administrative hearing. Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Hazardous waste generator's failure to respond to discovery request supported dismissal of generator's appeal from penalty assessment. New Jersey Department of Environmental Protection v. Oil Transfer Company, 96 N.J.A.R.2d (EPE) 360.

Failure to remove hazardous waste from manufacturing site within time allowed by Solid Waste Management Law mandates penalty even

if violation was unintentional. *DEPE v. Plasti-Glas Molded Products, Inc.*, 96 N.J.A.R.2d (EPE) 135.

Corporate successor to hazardous waste facility was strictly liable for failing to test holding tanks. *Department of Environmental Protection v. Warner*, 95 N.J.A.R.2d (EPE) 245.

Each shipment of hazardous waste constituted separate violation of regulations governing manifesting and disposing of hazardous waste. *Department of Environmental Protection v. Rollins Environmental Services, Inc.*, 92 N.J.A.R.2d (EPE) 13.

**7:26-5.5 Civil administrative penalty determination**

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26-5.4 when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26-5.4 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26-5.4.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$40,000-	\$30,000-	\$15,000-
		\$50,000	\$40,000	\$25,000
	Moderate	\$30,000-	\$10,000-	\$3,000-
		\$40,000	\$20,000	\$6,000
	Minor	\$15,000-	\$3,000-	\$1,000-
		\$25,000	\$6,000	\$2,500

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

- i. Has caused or has the potential to cause serious harm to human health or the environment; or
- ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

- i. Has caused or has the potential to cause substantial harm to human health or the environment; or
- ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may adjust the amount determined pursuant to (f), (g) and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (f) above, on the basis of the following factors:

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
  - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
  - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Rewrote (a); in (b), (e), and (g), deleted reference to Part A permit application; in (f), deleted N.J.A.C. references; and rewrote (i)2 through (i)4.

#### Case Notes

Department of Environmental Protection entitled to assess penalties; while penalties should be collected by negotiation, the Department may resort to the courts for assistance at any time; neither local governing bodies nor boards of education have standing to bring action for penalties for violations of the Solid Waste Management Act; local board of health has standing to bring penalty action; Department has control over course of litigation over violation claims brought by it as cross-claims. *Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc.*, 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Penalties for unpermitted recycling and solid waste disposal activities affirmed. *NJDEPE v. Cardell, Inc.*, 96 N.J.A.R.2d (EPE) 9.

#### 7:26-5.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the Act or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the

conduct of the violator at the mid-point of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be in an amount of not more than \$50,000 nor less than \$40,000 per act or omission; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$1,000 per violation.

(d) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.

3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or the violation.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), deleted reference to Part A permit application and rewrote (d)2 through (d)4.

#### Case Notes

Department of Environmental Protection entitled to assess penalties; while penalties should be collected by negotiation, the Department may resort to the courts for assistance at any time; neither local governing bodies nor boards of education have standing to bring action for penalties for violations of the Solid Waste Management Act; local board of health has standing to bring penalty action; Department has control over course of litigation over violation claims brought by it as cross-claims. *Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc.*, 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Applicant's failure to disclose prior criminal record in application for approval as solid waste transporter justifies civil administrative penalty. *NJDEP v. Martinez*, 96 N.J.A.R.2d (EPE) 121.

**7:26-5.7 Civil Administrative penalty for failure to allow lawful entry and inspection**

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (d) below as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Act, the civil administrative penalty shall be in an amount of not more than \$30,000 nor less than \$20,000 per violation; and

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection the civil administrative penalty shall be in an amount of not more than \$5,000 nor less than \$3,000 per violation.

(d) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
  - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
  - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).  
Rewrote (d)2 through (d)4.

**7:26-5.8 Civil administrative penalty for failure to pay a fee**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act.

(b) To assess a civil administrative penalty pursuant to this section:

1. The Department shall identify the civil administrative base penalty pursuant to (c) below; and
2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (d) below.

(c) The base penalty shall be as follows:

1. An amount equal to one-half of the unpaid fee or \$100.00, whichever is greater, for nonpayment of a fee due in any calendar year; or
2. An amount equal to the unpaid fee or \$250.00 whichever is greater, for the nonpayment of a second fee due in the same calendar year as that in (c)1 above; or
3. An amount equal to the twice the unpaid fee or \$500.00, whichever is greater for the nonpayment of a third fee due in the same calendar year as that in (c)1 or 2 above.

(d) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (c) above by the amount obtained by multiplying the base penalty dollar amount by one percent for each day that the fee is past due.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), deleted reference to Part A permit application; rewrote (b) and (c); and added (d).

**7:26-5.9 Civil administrative penalty for economic benefit**

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act. If the total economic benefit was derived from more than one violation, the total economic benefit may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Deleted reference to Part A permit application.

### 7:26-5.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this subchapter are declared to be severable.

## SUBCHAPTER 6. SOLID WASTE PLANNING REGULATIONS

### Subchapter Historical Note

Subchapter 6, Interdistrict and Intradistrict Solid Waste Flow, was renamed Solid Waste Planning Regulations, by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997). R.1997 d.510 re-adopted the provisions of Emergency Amendment R.1997 d.404 without change.

### Law Reviews and Journal Commentaries

EBB and Flow of Solid Waste. T. Kevin Sheehy, 141 N.J.L.J. 46 (1991).

### 7:26-6.1 Authority

This subchapter is promulgated pursuant to the policies set forth in and the authority delegated to the Department of Environmental Protection by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

### Law Review and Journal Commentaries

Environmental Law—Administrative Procedure—Solid Waste. P.R. Chenoweth, 134 N.J.L.J. No. 13, 54 (1993).

### Case Notes

An injunction prohibiting enforcement of New Jersey's solid waste flow control statutes, which favored the designation of in-state waste facilities for disposal of locally generated solid waste in violation of the Commerce Clause, prohibited the state department of environmental protection from enforcing any solid waste management plan which required waste to be directed to in-state facility designated without participation of out-of-state competitors. *Union County Utilities Authority v. Bergen County Utilities Authority*, 995 F.Supp. 506 (D.N.J. 1998).

Operator of transfer station and recycling center was entitled to preliminary injunctive relief on commerce clause challenge to constitutional validity of solid waste flow regulations; no showing that relief would dismantle significant portion of existing waste flow scheme. *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, D.N.J.1995, 893 F.Supp. 301.

Emergency order issued by Dep't of Environmental Protection and Bd. of Public Utilities redirecting county's solid waste flows from closed landfill to transfer station in Pennsylvania did not exceed territorial jurisdiction of those agencies; DEP and BPU were required to comply with procedural requisites regarding amendment to county waste flow plan. In the *Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District*, 214 N.J.Super. 247, 518 A.2d 1105 (App. Div.1986).

Propriety of selection of site for county landfill by board of chosen freeholders. *Twp. Committee of South Harrison Twp. v. Bd. of Chosen Freeholders of Gloucester Cty.*, 213 N.J.Super. 179, 516 A.2d 1140 (Law Div.1985), reversed 210 N.J.Super. 370, 510 A.2d 42 (1986).

Waste flow redirection regulations promulgated in compliance with Supreme Court decision upheld as reasonable and not violative of the Commerce Clause; ultimate waste flow stream redirection decision properly made by Board of Public Utilities; economic repercussion assessment made; trial-type evidentiary hearing on regulations not required. *Elizabeth v. State, Dept. of Environmental Protection*, 198 N.J.Super. 41, 486 A.2d 356 (App.Div.1984).

Former N.J.A.C. 7:26-1.11 through 1.15 specifically directing waste flow streams held beyond legislative authority of the Department; regulations more appropriately the realm of the Board of Public Utilities; Department authorized to provide only general direction to solid waste flow. *A.A. Mastrangelo, Inc. v. Dept. of Environmental Protection*, 90 N.J. 666, 449 A.2d 516 (1982).

Discussion of former N.J.A.C. 7:1-4.2 scheme for determination of out-of-state waste. *Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority*, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974); reversed 68 N.J. 451, 348 A.2d 505 (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

Jurisdiction regarding authorization of solid waste facility. In re *Combustion Equipment Assoc's*, 169 N.J.Super. 305, 404 A.2d 1194 (App.Div.1979). Authority of solid waste management districts to direct solid waste to specific disposal facilities (opinions rendered on statutory grounds). *Att'y Gen. Form Op. 1980—No. 3*.

### 7:26-6.2 Purpose

Pursuant to the Solid Waste Management Act, the Department is charged with developing procedures to assure the orderly preparation of a solid waste management plan for every solid waste management district and the approval, modification, or rejection of such a solid waste management plan, and the certification of the determinations to the board of chosen freeholders or the Hackensack Meadowlands Development Commission, as the case may be, which submitted such plan. This subchapter sets forth the rules to conduct these tasks.

Amended by R.1993 d.508, effective October 18, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Amended by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).

See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Rewrote section.

### 7:26-6.3 Types of wastes covered

(a) This subchapter applies to all solid waste, as defined in N.J.A.C. 7:26-2.13, with the exception of the following:

1. Bulk liquids and semi-liquids, ID type 72;
2. Septic tank clean-out wastes, ID type 73;
3. Liquid sewage sludge, ID type 74;
4. Dry sewage sludge, ID type 12;

5. Dry industrial waste, ID type 27, but only if such waste is residue from the operations of a scrap metal shredding facility, provided that the operator of the scrap metal shredding facility satisfies the requirements of (a)5i through iv below:

i. The owner/operator of the scrap metal shredding facility shall obtain the Department's approval of a quality control plan for the facility, which ensures that before shredding the motor vehicles, appliances, or source separated, non-putrescible ferrous and non-ferrous metals received by the facility, the facility removes components that could affect the nonhazardous characteristics of the residue from the operations of the facility. As provided in the quality control plan, the facility may reject any motor vehicles, appliances or source separated non-putrescible ferrous and non-ferrous metal if inspection reveals that components that could affect the non-hazardous characteristics of the residue are present. The facility is considered the generator of the components it accepts for processing, and shall dispose of these components in accordance with all applicable laws, orders and regulations (including N.J.A.C. 7:26G, if applicable). The components to be removed include, without limitation, the following:

- (1) Batteries and cable ends;
- (2) Gas tanks;
- (3) Catalytic converters;
- (4) Unspent airbag canisters;
- (5) Transformers;
- (6) PCB capacitors; and
- (7) Fluorescent lighting fixtures;

ii. The owner/operator of the scrap metal processing facility shall obtain the Department's approval of a sampling and analytical plan which insures monitoring of the characteristics of the residue from the operations of the facility, as set forth in N.J.A.C. 7:26G-5 and the most recent edition of the USEPA publication SW-846 "Test Methods for Evaluating Solid Waste-Physical/Chemical Methods," incorporated herein by reference. The operator shall perform sampling and analysis quarterly, including without limitation the Toxicity Characteristic Leaching Procedure (TCLP) parameter as set forth in N.J.A.C. 7:26G-5. The operator shall submit the analysis performed in accordance with the approved sampling to the Division of Solid and Hazardous Waste for classification on January 15, April 15, July 15 and October 15, provided however that if the Department approves less frequent sampling and analysis, the owner/operator shall submit the analysis on the dates specified in the Department's approval of that sampling. Upon a request by the facility and as approved by the Department, the sampling frequency of the approved sampling and analytical plan may be reduced. The owner/operator of the facility shall submit a revised sampling and analytical plan which documents how the accuracy and precision criteria as required in SW-846 will be maintained with a reduced schedule;

iii. On February 15 and August 1 of every year the owner/operator of the scrap metal shredding facility shall submit to the department and to the solid waste district in which the facility is located, a report on forms provided by the Department consistent with the Department's Annual Recycling Tonnage Reporting Manual including the following information:

- (1) The total amount of each type of materials which the facility received in the six-month period ending January 1st and July 1st of every year;
- (2) The total amount of residue disposed of by the facility;
- (3) The total amount of ferrous and non-ferrous metal remaining after shredding; and
- (4) The report shall be submitted to the following:  
New Jersey Department of Environmental Protection  
Division of Solid and Hazardous Waste  
PO Box 414  
Trenton, NJ 08625-0414  
Office of Recycling and Planning; and

iv. The scrap metal shredding facility shall either maintain a scale certified under N.J.A.C. 13:47B-1 and provide specific truck load weigh data to the district in which the facility is located, or transport the residue through the district's weighing facilities to be weighed before the residue is transported for disposal;

6. Source separated Class A recyclable material, Class B recyclable material, Class C recyclable material and Class D recyclable material as such terms are defined at N.J.A.C. 7:26A-1.3;

7. Hazardous waste, as defined at N.J.A.C. 7:26G-5; and

8. Non-residentially generated chemically treated wood, such as wood treated with creosote, pentachlorophenol (PCP) or chromated copper arsenate (CCA), or scrap tires that are destined for incineration and/or energy recovery provided that the following conditions are met:

i. The chemically treated wood or scrap tires are separated at the point of generation from other solid waste;

ii. The chemically treated wood or scrap tires transported for incineration and energy recovery are transported by a solid waste transporter licensed under N.J.A.C. 7:26-3, 16 and 16A. Transporters delivering chemically treated wood scrap or scrap tires to an out-of-State power generating incinerator pursuant to (a)8iv(1) below shall submit a tonnage report to the Department at the address specified at (a)8v below by March 1 of each year for the prior calendar year that specifies the total amount of material received, in tons, from New Jersey sources;