

New Rule. R.1987 d.235, effective June 1, 1987.

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

Repealed "Smoking, smoldering or burning landfill".

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

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

Added sections 1.11 or 1.12.

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.1996 d.578, effective December 16, 1996.

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

In (e), (f), (g) and (i), amended N.J.A.C. references; in (k), inserted text "Except for . . . 7:26-2.6(d)"; and added (p) through (r).

Administrative change.

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

Case Notes

Revocation of solid waste transporter's license due to lack of permit and failure to pay sales taxes modified. New Jersey Department of Environmental Protection and Energy, Division of Solid Waste Management, 97 N.J.A.R.2d (EPE) 50.

Denial and revocation of licenses was justified for recycling facility that handled solid waste without a permit. Department of Environmental Protection and Energy v. Tempesta & Sons, Inc., 96 N.J.A.R.2d (EPE) 247.

7:26-2.9 Environmental and Health Impact Statement requirements

(a) The Environmental and Health Impact Statement, (hereinafter EHIS), shall be prepared utilizing a systematic,

interdisciplinary approach in order to ensure the integrated assessment of technical, economic, environmental and social parameters potentially affected by the proposed facility.

(b) An EHIS prepared and submitted pursuant to this section shall address each category described at (c)3 below. The magnitude and detail of the environmental inventory, the environmental assessment, the health impact assessment and the overall EHIS shall reflect the type, size and location of the proposed solid waste facility. Where the information addressing a requirement of the inventory is supplied in the engineering designs or reports, reference to such designs or reports may be noted in the inventory, provided the appropriate section and page number of the design or report is cross referenced and indexed. If any category described at (c)3 below presents no impact relative to the proposed facility, a notation of non-applicability shall be entered in the environmental inventory for that category. The Department shall allow variances to the requirements of this section for any category, or to reduce the size of the general area to be described in the inventory relative to site specific impacts, if the applicant demonstrates during the pre-application conference that specific categories are not applicable or the area is not appropriately subject to the EHIS based on the type, size and location of the proposed solid waste facility.

7:26-5.11 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.

Recodified from N.J.A.C. 7:26-5.10 by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

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 readopted the provisions of Emergency Amendment R.1997 d.404 without change.

Law Review 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;