

1. The purchase, sale, collection, storage, transport or controlled processing of source separated or commingled source separated recyclable, recycled or secondary non-hazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials (including fuel and reusable energy), or thermal destruction facilities. These rules shall not apply only if the conditions in (a)1i or ii below are met.

i. The use or reuse of material, which would otherwise become solid waste under this chapter, directly as a product or incorporated into any form of raw material to be used in the manufacturing of a product shall meet the generally accepted product specifications and standards for similar manufactured products or raw materials. The used or reused material shall not present a greater risk to human health or the environment than the use of the product or raw material it is replacing.

ii. The use or reuse of materials that would otherwise become solid waste pursuant to this chapter as fill material, aggregate substitute, fuel substitute or landfill cover shall be approved as beneficial use pursuant N.J.A.C. 7:26-1.7.

iii. Specifically not exempt are those used or reuses of materials which, if released to the environment through transport, storage or other handling will cause pollution of the surface or ground water of this State or which may pose a substantial or material threat to the public health, safety or welfare in the environment.

2. Container-pickup facilities as herein defined;

3. Source separated food waste fed to livestock in the State of New Jersey as approved by the New Jersey Department of Agriculture;

4. Recycling depots as defined at N.J.A.C. 7:26A-1.3 where individuals or organizations deposit separate materials such as newsprint, bottles, cans, and so forth, prior to transport to the secondary materials industry;

5. Convenience centers as defined at N.J.A.C. 7:26-1.4;

6. The intra-plant transport, temporary storage or other handling of plant generated waste materials. Specifically not exempt are those materials to be, or which are, deposited on or in the lands of this State for periods exceeding six months, or which through transport, storage or other handling will cause pollution of the surface or ground waters of this State, or which may pose a substantial or material threat to the public health, safety or welfare;

7. Any discharge of a mixture of domestic sewage and other waste that are discharged into a sewer system to a domestic treatment works, as defined in N.J.A.C. 7:14A, which is authorized in accordance with N.J.A.C. 7:14A and local ordinances.

i. This exemption does not include transport or discharge by waste transporters; and

8. Recycling operations and recycling centers approved and operated pursuant to N.J.A.C. 7:26A.

(b) In addition to the rules in this chapter, all solid waste landfill facilities are required to obtain a permit pursuant to the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq., and the regulations promulgated thereunder, "Regulations Concerning the New Jersey Pollutant Discharge Elimination System", N.J.A.C. 7:14A.

(c) The exemptions set out at (a)1 through 8 above are not applicable to activities associated with hazardous waste or regulated medical waste.

As amended, R.1981 d.84, effective March 6, 1981.

See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

(b) added.

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

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

(c) added.

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

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

(a)6 added.

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.1989 d.54, effective January 17, 1989.

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

Substantially amended (a).

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

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

Added "hazardous" to the description of waste facilities, replaced "collection and haulage" with "solid waste transportation"; specific listing of the fee schedule elements deleted and replaced with generalized statement.

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 (a), inserted reference to civil administration penalties; in (a)1, inserted text "which would otherwise . . . to this chapter" and added last sentence; added (a)1i to (a)1iii; substantially amended (a)3; in (a)4, substituted "depots" for "centers" and inserted N.J.A.C. reference; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; added (a)8; and, in (c), made conforming changes and inserted reference to regulated medical waste.

Case Notes

New Jersey's waste flow control laws violated commerce clause. *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, D.N.J.1996, 931 F.Supp. 341.

Regulations did not exclude from definition of "sanitary landfill" a sole source facility which ceased operating prior to enactment of modern environmental statutes. *Johnson Machinery Co., Inc. v. Manville Sales Corp.*, 248 N.J.Super. 285, 590 A.2d 1206 (A.D.1991).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

Recycling center operates as solid waste facility where it accepts and buries materials as landfill. *New Jersey Department of Environmental Protection v. South Brunswick Asphalt*, 96 N.J.A.R.2d (EPE) 289.

Solid waste disposal violations debarred collectors from owing and operating any solid waste or recycling business within state. *Department of Environmental Protection v. Chad Lennon*, 95 N.J.A.R.2d (EPE) 33.

7:26-1.2 Construction and severability

(a) These rules shall be liberally construed to permit the Department to discharge its statutory function.

(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid in any judicial or administrative proceeding, such decision shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

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

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

Formerly the Department and the Bureau of Solid Waste Management.

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

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

Severability clarified that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

7:26-1.3 (Reserved)

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

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

Bureau Chief deleted.

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

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

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

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

Section was "Practice where rules do not govern".

7:26-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., as amended and supplemented.

"Active life" of a hazardous waste facility means the period from the initial receipt of hazardous waste at the facility until the Department approves certification of final closure of the facility.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of N.J.A.C. 7:26-9.1 et seq. and which is not a closed portion.

"Adequately wet" means sufficiently mixed or penetrated with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Admixture" means two or more materials mixed together to be used as a liner. Admixtures include asphalt concrete, portland cement concrete and mixtures of soil and portland cement or bentonite.

"Applicant" means the person who submits an application for a permit under this chapter and in whose name the permit is to be issued, and for the purposes of N.J.A.C. 7:26-3, the person who files an application for an approved registration statement and in whose name the approved registration statement is to be issued.

"Approved registration" means the registration of a solid waste disposal site, transporter, or other solid or hazardous waste facility issued by the Department after review and approval of the registration statement.

"Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

"Asbestos-containing waste materials" or "ACWM" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 C.F.R. 61.140. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"Beneficial use" means the use or reuse of a material, which would otherwise become solid waste under this chapter, as landfill cover, aggregate substitute, fuel substitute or fill material or the use or reuse in a manufacturing process to make a product or as an effective substitute for a commercial product. Beneficial use of a material shall not constitute recycling or disposal of that material.

"Boiler" means an enclosed device using controlled flame combustion to recover and export energy in the form of steam, heated fluids, or heated gases which:

1. Has a combustion chamber and primary energy recovery system of integral design (fluidized bed combustion units which are not of integral design will be reviewed by the Department on a case-by-case basis for classification as a boiler after considering the standards set out in 40 CFR Part 266). To be considered of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and super heaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

2. Maintains at least a 60 percent thermal energy recovery efficiency during operation, calculated in terms

of the recovered energy compared with the thermal value of the fuel; and

3. Demonstrates to the Department's satisfaction that at least 75 percent of the recovered energy is used annually. Recovered heat which is used internally shall not be counted in the 75 percent.

"Buffer zone" means those on-site areas adjacent to the sanitary landfill property line which shall be landscaped and left undeveloped.

"Bulk liquid or bulk semiliquid" means liquid or semiliquid which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of 20 gallons or more.

"Bulk waste" means large items of solid waste which because of their size or weight require handling other than normally used for municipal waste. Bulk waste includes, but is not limited to, such items as tree trunks, auto bodies, demolition or construction materials, appliances, furniture and drums.

"Burning" or "incinerating" means any method using combustion to decompose or otherwise change the physical, chemical, or biological composition of a solid waste.

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. The term does not include a "co-product" as defined herein.

"Catch-basin" means a chamber or well, usually built to the curblin of a street which admits surface water for discharge into a storm water drain.

"Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using methods specified in appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy.

"Category II nonfriable asbestos-containing material" means any material, excluding Category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using methods specified in Appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Cell" means compacted solid wastes that are enclosed by natural soil or cover material in a land disposal site.

"Clay" means a fine grain soil containing sufficient plastic fines (N. 200 sieve), on the order of 20 percent or greater such that the soil acts as a clay and will achieve the required degree of impermeability. The soil should be classified as a CL, or CH (Unified Soil Classification System), with a liquid limit between 30-60, placed above the A-line on the plasticity chart and a minimum plastic index of 15. The soil should

have a cation exchange capacity (CEC) greater than 15 meq/100 grams and be in the neutral pH range.

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products. Clean fill shall not mean processed or unprocessed mixed construction and demolition debris, including, but not limited to, wall-board, plastic, wood or metal. The non-water soluble, non decomposable inert products generated from an approved Class B recycling facility are considered clean fill.

"Co-composting facility" means a solid waste facility which utilizes a controlled biological process of degrading mixtures of nonhazardous solid waste and sewage sludge.

"Collection or collecting" means the act of picking up solid waste at its point of generation or storage.

"Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

"Commissioner" means the Commissioner of the Department of Environmental Protection or any other person designated to act on the Commissioner's behalf.

"Composite liner" means a combination of clay or admixture liner and a geomembrane.

"Composting facility" means a solid waste facility which utilizes a controlled biological process of degrading nonhazardous solid waste.

"Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which hazardous waste will be sent.

"Construction and demolition waste" means waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures. The following materials may be found in construction and demolition waste: treated and untreated wood scrap; tree parts, tree stumps and brush; concrete, asphalt, bricks, blocks and other masonry; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and non-ferrous metal; non-asbestos building insulation; plastic scrap; dirt; carpets and padding; glass (window and door); and other miscellaneous materials; but shall not include other solid waste types.

"Container" means any portable device in which a solid waste is stored, transported, treated, disposed of, or otherwise handled.

"Containerized solid waste" means solid waste as defined at N.J.A.C. 7:26-2.13 that is completely sealed, locked, or otherwise enclosed in containers of sufficient structural integrity to prevent unauthorized access to the container's

contents, spillage and leakage. Containerized solid waste shall not be enclosed by use of a tarp or other cover that does not form a complete seal around the waste, or be accessed in any way while at the facility, or be allowed to emit any contaminants or odors to the air that may reasonably result in citizen complaints, or be in violation of N.J.A.C. 7:27-5.1.

“Container-pickup facility” means a site where one or more containers are located for temporary storage of solid waste at the point of waste generation while awaiting periodic removal to a registered solid waste facility. A container-pickup facility differs from a transfer station and a convenience center.

“Contingency plan” means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or discharge of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

“Continuous monitoring instrumentation” means a direct reading instrument which measures a given parameter on a continuous basis.

“Controlled processing” means the processing of solid waste in a manner which minimizes the potential discharge of any constituents of the solid waste into the environment.

“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 or any person designated to act on the Director’s behalf.

“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.

“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.

“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 capacity, aerial 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.

“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.

“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 that contains more than one percent asbestos by weight and that can be crumbled, pulverized or reduced to powder, when dry, by hand pressure.

“Generation” means the act or process of producing solid waste.

“Geomembrane” means a prefabricated continuous sheet of flexible polymetric material including synthetic membranes, polymetric membranes, flexible membrane liners and plastic liners.

“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 1×10^{-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
2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

“Individual generation site” means the contiguous site at or on which one or more solid wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste but is considered a single or individual generation site if the site or property is contiguous.

“Industrial boiler” means a boiler for use in a manufacturing process or manufacturing facility.

“Industrial furnace” means an enclosed device which is an integral component of a manufacturing process and which uses controlled flame combustion to recover materials or energy including the following: lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting furnaces, melting furnaces, refining furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, sulfuric acid plant sulfur recovery furnaces and such other devices as the Department may add to this list on the basis of one or more of the following factors:

1. The design and use of the device primarily to accomplish recovery of material products;
2. The use of the device to burn or reduce raw materials to make a material product;
3. The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

4. The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product; and/or

5. Other factors as appropriate.

“Infectious waste” means solid waste that is defined as infectious by the New Jersey State Department of Health.

“Intermediate cover” means cover material that is a minimum of 12 inches in depth.

“Intermodal container facility” means a facility where containerized solid waste is transferred from one mode of transportation, such as trucks, rail cars, ships and barges, to another, or from one vehicle to another within one mode of transportation.

“Leachate” means liquid that has been in contact with solid waste.

“Leak-tight” means that solids or liquids cannot escape or spill out. It also means dust-tight.

“Lethal chemical” means ammunition, chemical or biological warfare agent, pyrotechnic material and military store of any kind capable of being used to inflict death or harm to man or his environment.

“Lift” means a compacted layer of solid waste plus its overlying cover material in a sanitary landfill.

“Marketable residual product” means any residual or material derived from a residual which has been prepared for land application in accordance with a permit issued pursuant to N.J.A.C. 7:14A and which, at a minimum, meets the pollutant concentrations in 40 C.F.R. 503.13(b)(1), the Class B pathogen requirements in 40 C.F.R. 503.32 and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) through (b)(8).

“Materials recovery facility” means a solid waste facility such as a transfer station which is primarily designed, operated and permitted to process a nonhazardous solid waste stream by utilizing manual and/or mechanical methods to separate from the incoming waste stream categories of useful materials which are then returned to the economic mainstream in the form of raw materials or product of reuse.

“Modular design” means a design which provides for the sequential construction and filling of discrete units of a sanitary landfill in a phased manner.

“Municipal solid waste” means residential, commercial and institutional solid waste generated within a community.

“New solid waste facility” means any solid waste facility or portion thereof which does not qualify as an existing solid waste facility.

“NJPDES” means the New Jersey Pollutant Discharge Elimination System.

“Non-container plastic materials” means source separated nonputrescible plastic materials other than plastic containers.

“Nonfriable asbestos-containing 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, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“On-site” means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is a cross-road intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

“Open burning” means the combustion of any material without the following characteristics.

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion;
3. Control of emission of the gaseous combustion products.

“Pathological waste”: See “Infectious waste.”

“PCB hazardous waste” means any hazardous waste with concentrations of PCBs of 50 parts per million (ppm) or greater by dry weight.

“Person” means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), corporate official, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

“Permit” means the approval issued by the Department to construct and operate a solid waste facility and means the approved registration statement and engineering design approval described in the Solid Waste Management Act.

“Personnel” or “facility personnel” means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

“Precious metals” means gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or a combination consisting of two or more of these eight metals.

“Publicly-owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the State, a municipality or a public authority. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

“Putrescible waste” means any waste liable to enter into a state of putrefaction, the typically anaerobic splitting of proteins by bacteria and fungi with the formation of foul-smelling, incompletely oxidized products.

“Reclaim” or “reclamation” means a procedure whereby a material is treated to recover a usable product, or where a material is regenerated. Examples are recovery of lead values from spent batteries, regeneration of spent solvents and removal of impurities from spent solvents or other hazardous wastes to render them usable as fuels.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing and transferring source separated, nonputrescible or source separated commingled nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard, or other recyclable materials approved by the Department.

“Recyclable materials” means materials which would otherwise become nonhazardous solid waste which can be separated, collected and processed and returned to the economic mainstream in the form of raw materials or products.

“Recycling or reclamation facility” means any place, equipment or plant designed and/or operated for the purpose of recycling or reclamation, as defined above, to collect, store, process or to redistribute separated waste so as to return the material to market.

“Registrant” means an applicant who has obtained an approved registration statement and who has registered solid or hazardous waste cabs, vehicles, trailers, containers, transport units or single-unit vehicles.

“Registration”: See “Approved registration.”

“Registration statement” means an application for approved registration executed on forms provided by the Department and containing such information as may be required.

“Regulated asbestos-containing material” or “RACM” means friable asbestos material, Category I nonfriable asbestos-containing material that has become friable, Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to

act on the material in the course of demolition or renovation operations.

“Representative sample” means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole.

“Residue” means any material that remains after completion of thermal, mechanical or chemical processing.

“Resilient floor covering” means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the method specified in Appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy.

“Resource recovery facility” means any place, equipment, device or plan designed and/or operated to separate or process solid or liquid waste into usable secondary materials, including fuel and energy.

“Run-off” means the liquid that drains from an area as surface flow.

“Run-on” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

“Salvaging” means the controlled removal of waste materials from a solid waste disposal facility for reuse.

“Sanitary landfill” means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste pursuant to this chapter. Sanitary landfills shall be further classified into one of the following classes:

1. “Class I sanitary landfill” means a solid waste facility which may accept all types of nonhazardous solid waste including ID 10, 13, 23, 25, 27, 72;
2. “Class II sanitary landfill” means a solid waste facility which may accept only ID type 27 or a specific category of ID type 27 of nonhazardous solid waste; and
3. “Class III sanitary landfill” means a solid waste facility which may accept only inert nonputrescible nonhazardous solid waste, ID 13 or 23.

“Scrap metal” means bits and pieces of metal parts (for example, bars, turnings, rods, sheets, wire) or metal pieces which may be combined together with bolts or soldering (for example, radiators, scrap automobiles, railroad box cars) which when worn or superfluous, can be recycled. Materials not covered by this term include residues generated from smelting and refining operations (that is, drosses, slags, and sludges), liquid wastes containing metals (that is, spent acids, spent caustics, or other liquid wastes with metals in solution), liquid metal wastes (for example, liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries.

“Scrap metal shredding facility” means an industrial facility which:

1. Receives and stores motor vehicles, appliances, other source separated, non-putrescible ferrous and non-ferrous metals;
2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and
3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or reuse.

“Segregation” means the systematic division of solid waste into components.

“Semiliquid” means a mixture consisting of solid matter suspended in a liquid media (for example, a slurry).

“Septic waste” means a mixture consisting of sewage solids combined with water and dissolved materials in varying amount.

“Sewage sludge” means solid, semi-solid or liquid residue generated by the processes of a domestic treatment works as defined at N.J.A.C. 7:14A. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. For the purposes of this chapter, scum which is not combined with the solids removed in primary, secondary or advanced wastewater treatment processes is not considered to be sewage sludge.

“Sludge” means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

“Small scale solid waste facility” means a facility which is limited by its SWF permit in capacity to less than 100 tons per day in a six day per week operation for transfer stations and material recovery facilities and to less than 800 pounds per hour (9.6 tons per day) for thermal destruction facilities.

“Soil cement” means a mixture of soil portland cement and water. As the cement hydrates the mixture forms a hard, durable, low strength concrete.

“Solid waste” see N.J.A.C. 7:26-1.6.

“Solid waste cab” means any powered device to which a solid waste trailer can be attached for transporting solid waste, excluding hazardous waste, off-site by roadway. Solid waste cab includes, but is not limited to, the tractor portion of an articulated vehicle.

“Solid waste container” means any non-powered, portable detachable device that is used to contain and transport solid waste off-site or to a solid waste facility by road, rail, water, or air and that is not normally disposed of with its cargo. A container is normally used in conjunction with a solid waste cab and trailer or a solid waste single-unit vehicle and includes, but is not limited to, roll-off boxes, dumpsters, hoppers, lugger boxes, portable tanks, or any similar appurtenance, except that it shall not include metal, fiber, or plastic containers with a capacity of less than 100 gallons.

“Solid waste facility” means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6.

“Solid waste facility performance partnership agreement” or “SWFPPA” means the document executed by a solid waste facility permittee and the Department setting forth the voluntary goals and milestones by which the permittee is to reduce the environmental impacts of the solid waste facility below the approved environmental limits established in the permit for the facility.

“Solid waste facility permit” or “SWF permit” means a certificate of approved registration and engineering design approval for a nonhazardous solid waste facility. For the purposes of N.J.A.C. 7:26-16 and 16A, a solid waste facility permit shall mean a license as that term is defined at N.J.A.C. 7:26-16.2.

“Solid waste management” means the purposeful, systematic control of the generation, storage, collection, processing, transfer, transportation, separation, recycling, recovery and disposal of solid wastes.

“Solid waste single-unit vehicle” means any self-propelled, non-articulated device, with either a detachable or non-detachable cargo compartment, which is used to move solid waste off-site or to a solid waste facility by road. A solid waste single-unit vehicle includes, but is not limited to, front and rear loading compactor vehicles, straight roll-off vehicles, straight vans, dump trucks, pick-up, straight flat beds, and straight tank and vacuum trucks.

“Solid waste trailer” means any non-powered device that normally has a permanently attached receptacle or area for carrying a solid waste payload. A solid waste trailer is usually employed in conjunction with a solid waste cab and

includes, but is not limited to, flat bed trailers, box trailers, vans, open top trailers, compactor trailers, dump trailers, tank trailers, vacuum trailers, roll-off trailers, rail cars, and barges.

“Solid waste vehicle” means any self-propelled device used to move solid waste off-site or to a solid waste facility by road. A solid waste vehicle includes, but is not limited to, a solid waste single-unit vehicle, solid waste cab and trailer, single-unit vehicle and container, or a cab, trailer, and container combination.

“Source separated” means the act of separating recyclable materials from the solid waste stream at the point of generation.

“Spent material” means any material that has been used, and as a result of contamination, can no longer serve the purpose for which it was intended without being processed, reprocessed or reclaimed.

“Standby letter of credit” means an irrevocable engagement by an issuing bank, at the request of an owner or operator, that it will honor demands for payment made by the New Jersey Department of Environmental Protection for the period of the letter of credit and under terms specified for letter of credit in this chapter.

“Subgrade” means the foundation of supporting soil layer beneath a constructed liner other than a recompacted in situ clay liner.

“Surety bond” means a contract by which a surety company engages to be answerable for the default or debts by an owner or operator on responsibilities relating to closure or post-closure care, and agree to satisfy these responsibilities if the owner or operator does not, in accordance with the terms specified for surety bonds in this chapter.

“Surface impoundment” or “impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

“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, except that a “transfer station” shall not include any solid waste facility at which 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".

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).

Operator of hazardous waste facility could not construct new incinerator without submitting Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Department of Environmental Protection (DEP) must strictly construe its own regulations. Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Construction of new incinerator changed existing hazardous waste facility into "new facility" requiring submission of Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Sludge Management Plan exempted sludge-only thermal reduction facilities from permitting requirement of the Solid Waste Management Act. Terminal Const. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J.Super. 537, 582 A.2d 1288 (A.D.1990), certification denied 126 N.J. 323, 598 A.2d 883.

Owners of land upon which unauthorized solid waste landfill was located came within authority of Department of Environmental Protection and County Health Department. Middlesex County Health Dept. v. Roehsler, 235 N.J.Super. 262, 561 A.2d 1212 (L.1989).

Purchaser of closed, nonhazardous landfill could maintain action to require township operator of landfill to fulfill its responsibilities for closing landfill. Port of Monmouth Development Corp. v. Middletown Tp., 229 N.J.Super. 445, 551 A.2d 1030 (A.D.1988), certification denied 115 N.J. 59, 556 A.2d 1206.

Surface of landfill upon which detinning facility was built was not "landfill," as defined by Solid Waste Management Act. Matter of Vulcan Materials Co., ECRA Case No. 84379, 225 N.J.Super. 212, 542 A.2d 25 (A.D.1988).

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. *Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co.*, 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

Transfer station definition cited in determination that municipal operation of solid waste transfer facility was not the operation of a public utility requiring public referendum approval. *Hughes v. Twp. of Ewing*, 137 N.J.Super. 119, 348 A.2d 199 (App.Div.1975).

Former N.J.A.C. 7:1-4.1 definition of hazardous waste falls into the category of nonmerchantable material not subject to Commerce Clause restrictions on regulation. *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).

Corporate successor to tank facility strictly liable to comply with hazardous waste requirements. *Department of Environmental Protection v. Warner*, 95 N.J.A.R.2d (EPE) 245.

7:26-1.5 (Reserved)

As amended, R.1984 d.40, effective February 21, 1984.

See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

"Repealed or regulations" not readopted.

Amended by R.1990 d.261, effective May 21, 1990.

See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).

Revised "Existing hazardous waste facility".

Case Notes

Former regulation banning disposal of out-of-state wastes in Hackensack Meadowlands sanitary landfills held unconstitutional as an undue burden on interstate commerce. *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).

7:26-1.6 Definition of solid waste

(a) A solid waste is any garbage, refuse, sludge, or any other waste material except it shall not include the following:

1. Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms; or
2. Recyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A;
3. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g); or
4. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated in recycled in one year.

(b) Any "other waste material" is any solid, liquid, semi-solid or contained gaseous material, including, but not limited to spent material, sludge, by-product, discarded commercial chemical products, or scrap metal resulting from industrial, commercial, mining or agricultural operations, from community activities, or any other material which has served or can no longer serve its original intended use, which:

1. Is discarded or intended to be discarded; or
2. Is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of, being discarded;
3. Is burned for energy recovery;
4. Is applied to the land or placed on the land or contained in a product that is applied to or placed on the land in a manner constituting disposal; or
5. Is recycled.

(c) A material is also a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(d) The definition of solid waste contained in this section applies only to wastes that are not also hazardous for purposes of the Department's hazardous waste regulations set forth at N.J.A.C. 7:26G.

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

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

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

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

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

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

In (a)1, substituted "livestock" for "swine" and "approved" for "licensed"; in (a)2, amended N.J.A.C. reference; inserted new (a)3; recodified former (a)3 as (a)4; and rewrote (d).

Case Notes

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. *Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co.*, 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

7:26-1.7 Exemption from SWF permitting

(a) Pursuant to N.J.S.A. 13:1E-4a, the Commissioner may exempt, from the requirement of Solid Waste Facility permitting as set forth in N.J.A.C. 7:26-2, and may grant a permanent or temporary certificate of authority to operate, with or without conditions, to these classes of solid waste collection or disposal facilities or operations which in the Commissioner's opinion meet the general and applicable specific criteria set forth in this section.

(b) The owner or operator of any facility or operation of a class exempted pursuant to this section shall comply with all conditions set forth in its certificate of authority to operate. Noncompliance with a certificate of authority to operate shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to operate.

1. The owner or operator of a facility for which authority to operate has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 51:14B-1 et seq., subsequent to the revocation or suspension. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

2. In no way shall the granting of a temporary certificate of authority to operate be interpreted as entitling the holder to final registration and engineering design approval.

(c) General criteria for all exemptions:

1. Any exemption granted to a class of facilities or operations pursuant to this section shall be consistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

2. No exemption shall be granted to a class of facilities or operations which will pose a threat to public health or the environment.

(d) This subsection sets forth the specific criteria for exempting sanitary landfills:

1. A certificate of authority to operate shall be granted to a sanitary landfill facility provided that:

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to demonstrate sufficient integrity, expertise and competence to operate a sanitary landfill facility in compliance with the Solid Waste Management Act and the certificate of authority to operate;

ii. It would be possible for the facility to qualify for a registration pursuant to the Solid Waste Management Act;

iii. All preparatory work necessary to permit safe and environmentally sound operation can be accomplished prior to the commencement of operations at the site;

iv. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the operation of one or more solid waste management plans or in order to comply with a judicial decree or statutory requirement to provide disposal facilities in a particular district; and

v. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements for registration under N.J.S.A. 7:26-2. The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

(e) This subsection sets forth the specific criteria for exempting transfer stations.

1. A certificate of authority to operate shall be granted to a transfer station facility provided that:

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to demonstrate sufficient integrity, expertise and competence to operate a transfer station facility in compliance with the Solid Waste Management Act and the certificate of authority to operate. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c), the certificate of authority to operate shall not be issued for a period exceeding six months and may, in the Department's discretion, be renewed for one additional consecutive six month period;

ii. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the certificate of authority to operate; and

iv. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements of N.J.A.C. 7:26-2 and 7:26-2B for registration of this facility or of an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

2. Notwithstanding any other provision of this chapter, the proposed owner or operator of the facility shall submit the following in application for a certificate of authority to operate a transfer station:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1E-126 et seq. and N.J.A.C. 7:26-16 on such forms as the Department requires. The disclosure statement, where appropriate, should be accompa-

nied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c).

ii. An emergency environmental and health impact statement pursuant to (e)3 below; and

iii. An engineering design which specifies the following:

(1) Site plan map including layout of the facility buildings or structures, profile and elevation views and interior floor plan;

(2) Access roads;

(3) Fencing;

(4) Scales, if required pursuant to N.J.S.A. 13:1E-117;

(5) On site queuing;

(6) Facility and equipment design sufficient to handle specified capacity;

(7) Facility construction plans;

(8) Washdown and control of wastewater;

(9) On-site drainage controls;

(10) Design and surfacing of on-site roadways;

(11) Operational safety and environmental monitoring procedures; and

(12) Housekeeping procedures such as litter, odor, dust and vector control.

3. Notwithstanding any other provision of this chapter, the following shall constitute the requirements for an emergency environmental and health impact statement for a transfer station meeting the exemption criteria in (e)1 above. An emergency environmental and health impact statement shall be in narrative form and must be approved prior to or concurrent with issuance of the certificate of authority to operate a transfer station. The environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the land use of the area immediately surrounding the proposed facility;

ii. A description of possible environmental impacts on the immediately surrounding area and the facility design elements or other measures that will address them. This description shall address, at a minimum, the following environmental concerns:

(1) Noise;

(2) Air quality;

(3) Traffic;

(4) Stormwater and washdown drainage; and

(5) Any other concerns described in the solid waste disposal regulations, N.J.A.C. 7:26 which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

4. The proposed owner or operator of the facility shall file copies of the applications for a certificate of authority to operate a transfer station, except for the disclosure statement, in the offices of the municipality and county in which the proposed facility is to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days of filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require that the notice identify a public comment period and specify the address at which the Department will receive public comments.

(f) This subsection sets forth the specific criteria for exempting research, development and demonstration (RD&D) projects.

1. The Department shall issue a certificate of authority to operate an RD&D project provided the project is designed, constructed and operated in a manner consistent with environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be constructed and operated in accordance with the specific conditions of the certificate of authority to operate.

2. A certificate of authority to operate shall be granted for an RD&D project which meets the following criteria for exemption:

i. The RD&D project consists of a new or innovative technology or a new or innovative operational process modification made to an existing solid waste facility or operation;

ii. The RD&D project is for a fixed period of time not to exceed one year, unless the RD&D applicant can demonstrate to the satisfaction of the Department that a longer time period is required to adequately assess long term environmental impacts and operational effects of the technology or process being evaluated. In no case shall the duration of the certificate extend beyond five years;

iii. The RD&D project will operate within the Department's standards for air emissions including noise and fugitive dust, water discharges to surface or ground waters and soil quality;

iv. The RD&D project has a design capacity of less than 100 tons per day of any waste or material, unless otherwise approved by the Department;

v. The RD&D project is consistent with any applicable Solid Waste Facility Performance Partnership Agreement established pursuant to N.J.A.C. 7:26-2.14 and is not deemed to be a material and significant alteration or addition to the existing facility as set forth at N.J.A.C. 7:26-2.6(a)4.

3. A certificate of authority to operate an RD&D project shall not be issued to a demonstrated technology or operation, to a project that would cause an exceedance of air emissions, water quality or soil standards or criteria or be deemed to cause an unacceptable risk to human health and the environment.

4. The RD&D project shall be determined to be consistent with the district solid waste management plan for the county or district within which the project is located or the Statewide Solid Waste Management Plan.

5. The owner and/or operator of a proposed RD&D project shall submit an application to the Department that includes:

i. The location of the RD&D project, including a site plan map;

ii. A description and process flow diagrams of the proposed project;

iii. The proposed duration of the project, including a start and end date;

iv. An outline of the need for the project;

v. A description of the information or improved operation that this project will provide and/or a description of the data gaps this project will fill;

vi. A description of the improved environmental effectiveness and/or the economic efficiency of the solid waste facility or operations that will be demonstrated;

vii. The operational procedures to minimize, control and mitigate impacts such as noise, air quality, traffic, and stormwater runoff;

viii. A description of the sampling and analytical plan of the material and process being demonstrated and the potential air, water or soil emissions or discharges;

ix. A description of the quality assurance/quality control plan for the overall demonstration and the sampling and analytical plan; and

x. A copy of the written approval issued by the designated plan implementation agency which indicates consistency with the district solid waste management plan for the county/district within which the project is located or as determined by the Department to be consistent with the Statewide Solid Waste Management Plan.

6. The Department may require additional information to establish a demonstration project in order to ensure that the proposed project will meet the requirements of (f)1 and 2 above.

7. The RD&D applicant shall submit semi-annual reports detailing the progress of the RD&D project. A final report addressing the specific goals for the project shall be submitted to the Department. The requirements for the semi-annual and final report shall be set forth in the conditions of the certificate of authority to operate.

8. The Department shall issue a certificate of authority to operate the RD&D project or deny the application for a certificate of authority to operate for an RD&D project, in writing to the applicant, within 90 days of receipt of a complete application.

9. The Department shall order the immediate termination of all operations at a RD&D project if it determines that the RD&D project is operating in contravention of the criteria set forth in (f)2 above, any applicable SWFPPA, or that termination is necessary to protect human health and the environment. The owner or operator of the RD&D project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

10. At the end of the RD&D project and if the RD&D CAO for a new or innovative technology or operation is not terminated as set forth in (f)9 above, the owner and/or operator of an RD&D project shall be required to obtain a SWF permit or a permit modification pursuant to N.J.A.C. 7:26-26-2, or a recycling approval pursuant to N.J.A.C. 7:26A-3, as applicable.

(g) This subsection sets forth the specific criteria for exempting beneficial use projects.

1. The Department shall issue a certificate of authority to operate for a beneficial use project, provided the project is designed and managed in a manner consistent with the environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be developed and operated in accordance with the specific conditions of the certificate of authority to operate.

2. This subsection is not applicable to materials produced by a recycling center as approved pursuant to N.J.A.C. 7:26A. The materials produced at a permitted recycling center as regulated pursuant to N.J.A.C. 7:26A are deemed to be approved for beneficial use provided the recycled product is used or reused directly as a product or as a substitute for raw material that is incorporated into a product meets the generally accepted products specifications and standards for a similar manufac-

tured product or raw material, and provided the recycled product poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.

3. This subsection is not applicable to materials used or reused directly as a product or as a substitute for raw material which is incorporated into a product that meets the original product specifications, provided the material poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.

4. The following materials are categorically approved for beneficial use and require no future approval or authorization for use or reuse provided they are used or reused in a manner consistent with N.J.A.C. 7:26-1.1:

- i. (Reserved);
- ii. Uncontaminated glass used as a substitute for conventional aggregate in asphalt or concrete applications;
- iii. Tire chips as aggregate for road base materials or asphalt pavements in accordance with New Jersey Department of Transportation standard specifications, or whole tires or tire chips when used for energy recovery;
- iv. Soils for on-site reuse that contain contaminants at levels below the most stringent site clean-up levels established by the Department for a specific site, except for sites located in the Pinelands Area;
- v. Contaminated soil that has been decontaminated to the satisfaction of the Department and is used or reused in a manner acceptable to the Department;
- vi. Nonhazardous solid waste approved in advance by the Department for use or reuse as cover material, landfill liner, cap material, or other landfill design and management components;
- vii. Coal combustion bottom ash used or reused as a component in the manufacture of roofing shingles or bituminous asphalt products;
- viii. Coal combustion fly ash or gas scrubbing by-products used or reused as an ingredient to produce light-weight block, light-weight aggregate, manufactured gypsum or manufactured calcium chloride;
- ix. Coal combustion fly ash or coal combustion bottom ash used or reused as a cement or aggregate substitute in structural concrete, structural concrete products, or a raw feedstock in the manufacture of cement or as a cement substitute for structural grade products, or subbase in roadway construction; or
- x. Coal combustion fly ash or coal combustion bottom ash used or reused to serve as an aggregate substitute in structural asphalt product.

5. The owner and/or operator of a new proposed beneficial use project shall submit an application to the Department that includes the following:

i. A description of the beneficial use project including:

(1) The specific location of the site of origin of the material to be beneficially used, including a description of the location of the material at the site of origin;

(2) A general description of the site of origin of the material to be beneficially used, including its current use or activity and its historical uses and a discussion of the reasons for creating or excavating the material at the site of origin, the dates of material generation, and the process by which the material was generated;

(3) A description of any regulatory activity at the site of origin undertaken by the Department or any other agency;

(4) A description of any regulatory activity at the site of destination undertaken by the Department or any other agency; and

(5) The quantity of material for the beneficial use project;

ii. A site location map where the material are to be used plotted on a USGS topographic map. The site plan map shall, at a minimum, indicate wetlands, tidal water limits, and the depth to the mean seasonal high ground water table across the entire site;

iii. A site location map of the site of origin plotted on a USGS topographic map;

iv. A description of the material, including a contaminant profile including, but not limited to, the following:

(1) An evaluation of the general quality of the material including a contaminant profile of the material in relation to current Department soil cleanup criteria (SCC) guidance levels and other standards as specified by the Department on a case-by-case basis, and in accordance with the sampling, quality assurance, analytical and other technical requirements of N.J.A.C. 7:26E, and/or other guidance as specified by the Department;

(2) A narrative description of the characteristics of the material and all sampling conducted in relation to the material. Material Safety Data Sheets (MSDS), all studies or analytical characterizations performed by any person on the material, and any other material specification information shall be included;

(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used or reused to monitor material produced in the future for use or reuse;

(5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and

(6) A determination of the waste classification of the material and the rationale used for that classification;

v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;

vi. A description of any treatment undertaken prior to the use of the material;

vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts; and

viii. The schedule for initiation and completion of the beneficial use project.

6. The Department may require additional information in order to ensure that the proposed beneficial use project will meet the requirements of (g)1 and 2 above.

7. The Department shall issue a certificate of authority to operate for a beneficial use project or deny the application for a certificate of authority to operate for a beneficial use project, in writing to the applicant, within 90 days of receipt of a complete application.

8. The owner and/or operator of a beneficial use project shall submit, on an annual basis, a report to the Department detailing the amount of material used, the date(s) of such use, the location(s) of the use, and any other information as required by the Department in the certificate of authority to operate.

9. The Department shall order an immediate termination of all operations at a beneficial use project if it determines that termination is necessary to protect human

health and the environment. The owner and/or operator of the beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

Amended by R.1982 d.433, effective December 6, 1982.

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

Amended by R.1984 d.40, effective February 21, 1984.

See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

"Variance" not readopted.

R.1984 d.174, effective April 25, 1984.

See: 16 N.J.R. 1100(a).

Filed as an emergency rule to expire June 24, 1984. Also proposed concurrently.

R.1984 d.399, effective August 17, 1984.

See: 16 N.J.R. 1100(a), 16 N.J.R. 1627(a), 16 N.J.R. 2367(a).

Readopted without change, Emergency R.1984 d.174.

Amended by R.1985 d.666, effective January 6, 1986.

See: 17 N.J.R. 1040(a), 18 N.J.R. 99(a).

(e) added.

Emergency Amendment and Concurrent Proposal, R.1987 d.231, effective April 30, 1987 (expires June 29, 1987).

See: 19 N.J.R. 886(a).

Subsection (f) added.

Readoption of Concurrent Proposal, R.1987 d.311, effective June 29, 1987.

See: 19 N.J.R. 1452(a).

Correction: "May" substituted for "shall" in (a) and (d)1; added text to (d) "This subsection sets forth the".

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

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

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

Added (g).

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 with a change in (g)4iv: added "emergency".

Administrative change in (b)1.

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 (c)2, added reference to class of facilities; in (d)1, deleted one year limitation period reference relating to certificates; in (d)1i, substituted "Department" for "Commissioner"; deleted (e) and (g); recodified former (f) as (e); substantially amended (e); added new (f) and (g).

Case Notes

Sludge Management Plan exempted sludge-only thermal reduction facilities from permitting requirement of the Solid Waste Management Act. Terminal Const. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J.Super. 537, 582 A.2d 1288 (A.D.1990), certification denied 126 N.J. 323, 598 A.2d 883.

7:26-1.8 Exemption from registration—land application and sewage sludge operations

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludge) and storage facilities for such non-hazardous solid waste which receive:

- i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (NJPDES) permit issued pursuant to N.J.A.C. 7:14A; and
 - ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDES permit.
- (b) All sewage sludge management equipment and operations for which permits are obtained pursuant to N.J.A.C. 7:14A and/or 7:27, except operations involving the transportation of sewage sludge or the commingling of sewage sludge with municipal solid waste, are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.
- (c) Transporters of marketable residual product are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

New Rule, R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Old rule recodified to 7:26-1.9.

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), amended N.J.A.C. reference; and added (b) and (c).

Case Notes

There is implied duty on part of Department of Environmental Protection, when deciding whether facility using sludge-derived products is exempt from permitting requirements, to give notice to affected municipalities and to consider their public health and safety concerns and zoning and land-use regulations, but there is no requirement of plenary or general public hearing. *Holgate Property Associates v. Township of Howell*, 145 N.J. 590, 679 A.2d 613 (1996).

7:26-1.9 Temporary exemption from solid waste facility permit modification procedures for permitted solid waste facilities

- (a) General criteria for all exemptions are as follows:
1. Any exemption granted to a permitted solid waste facility pursuant to this section shall be consistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and
 2. No exemption shall be granted for a significant modification which will pose a threat to public health or the environment.
- (b) This subsection sets forth the specific criteria for temporarily exempting modifications to permitted solid waste facilities, which are not small-scale solid waste facilities as defined at N.J.A.C. 7:26-1.4 or are Class I sanitary landfill as defined at N.J.A.C. 7:26-1.4, from the solid waste permit modification procedures at N.J.A.C. 7:26-2.6.
1. A temporary permit modification approval shall be granted to a solid waste facility provided that:

i. The temporary permit modification approval shall not be issued for a period exceeding six months and may, in the Department's discretion, be extended for one additional consecutive six month period;

ii. Issuance of a temporary permit modification approval prior to the time that such modification to the solid waste facility permit can be issued pursuant to N.J.A.C. 7:26-2.6 is essential in order to ensure the viability of the facility to avoid a disruption in the provision of solid waste services. Such a disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The modification to facility engineering design and/or operation shall be consistent with the protection of public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility engineering design and/or operational modification(s) to be implemented shall be those specified as conditions in the temporary permit modification approval;

iv. All preparatory work necessary to permit safe and environmentally sound operation of the facility can be accomplished prior to implementing the proposed modification(s) to the facility engineering design and/or its operations; and

v. A schedule has been established and incorporated into the temporary permit modification approval which provides for the formal processing of the request for facility modification of engineering design and/or operation in accordance with all requirements of N.J.A.C. 7:26-2.6. The schedule may call for accomplishing one or more milestones related to procedural requirements outlined at N.J.A.C. 7:26-2.6 after modification(s) of the facility engineering design and/or operation have been implemented.

2. Notwithstanding any other provision of this chapter, the facility permittee shall submit the following in an application for a temporary permit modification approval:

i. Amendments to the approved environmental and health impact statement (if applicable) or a complete and detailed description of changes in environmental impacts that will result from the proposed modification(s) in facility engineering design and/or operation and additional mitigation measures being or proposed to address such impacts. Traffic impacts shall be re-evaluated if the proposed modification results in an increase in waste acceptance;

ii. Amendments to the approved Operations and Maintenance Manual for the facility, that reflect changes made necessary due to the proposed modification(s) in facility engineering design and/or operation; and

iii. Amended engineering design(s) for the facility, reflecting changes proposed that are the result of the proposed modification(s) subject to review.

(c) The owner or operator of any solid waste facility exempted pursuant to this section shall comply with all conditions set forth in its temporary permit modification approval. Noncompliance with a temporary permit modification approval shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to implement engineering design and/or operational modification(s).

1. The owner or operator of a facility for which temporary approval has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., subsequent to the revocation or suspension. The request for a hearing shall be submitted to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, NJ 08625-0402.

2. The granting of a temporary permit modification approval shall not be interpreted as entitling the holder to a solid waste facility permit modification.

Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Former section "Public access to information and requirements for Department determination of confidentiality" recodified as N.J.A.C. 7:26-1.12.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.10 Transfer station facility master performance permits

By June 16, 1997, every facility holding a transfer station master performance permit shall submit an application for a solid waste facility permit in accordance with the procedures set forth in N.J.A.C. 7:26-2.4 and 7:26-2B.

Repeal and New Rule, R.1996 d.578, effective December 16, 1996.

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

Case Notes

No public hearing required prior to issuance of master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d-1089 (A.D.1988).

Department of Environmental Protection not estopped from denying public hearing before issuing master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Performance permit was properly issued although though permit differed from district solid waste management plan. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Master performance permit was properly issued to solid waste transfer station. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

7:26-1.11 (Reserved)

Emergency recodification to N.J.A.C. 7:26-1.13 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Section was "Burden of Proof".

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.12 Public access to information and requirements for Department determination of confidentiality

Any confidential information obtained or used in the administration of the State solid waste program, shall be treated in accordance with N.J.A.C. 7:26-17.

R.1982 d.97, effective April 5, 1982.

See: 13 N.J.R. 724(a), 14 N.J.R. 338(a).

Recodified by R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Recodified from 7:26-1.8.

Amended by R.1988 d.57, effective February 1, 1988.

See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).

Changed reference from 7:14A-11 to 7:26-17.

Administrative Correction.

See: 25 N.J.R. 4595(b).

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

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

Substituted "solid waste program" for "hazardous waste program".

Emergency recodification from N.J.A.C. 7:26-1.9 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Former N.J.A.C. 7:26-1.12, "Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)", was repealed by R.1996 d.578, effective December 16, 1996.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.13 Burden of proof

(a) In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.

(b) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste.

(c) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law that renders the material conditionally exempt from N.J.A.C. 7:26.

New Rule, R.1990 d.65, effective February 5, 1990.

See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).

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

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

Recodified from 7:26-1.13 and amended by R.1996 d.578, effective December 16, 1996.

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

Added references to specific request of the Department throughout; and in (c), substituted "an approved alternative use" for "a legal disposition". Section was "Exemption from SWF permitting—leaf composting facilities (leaves only)".

Emergency recodification from N.J.A.C. 7:26-1.11 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

SUBCHAPTER 2. DISPOSAL

7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, or 1.8.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26G. However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to the Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.

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

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

Original rule was "Dumps prohibited".

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

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

Added text in (b) "However hazardous waste . . ."

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 to (a).

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.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 (a), amended N.J.A.C. references; and deleted (c).

Case Notes

Disposing of solid waste in landfills other than those designated by state waste flow was warranted revocation of operating certificate. Matter of Allegations of Violations by Fiore and Sons, 95 N.J.A.R.2d (EPE) 88.

Receiving and storing construction and demolition debris; operating solid waste facility without a permit. DEPE v. Zanetich, 94 N.J.A.R.2d (EPE) 138.

7:26-2.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

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

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

New (c) added, former (c)-(g) made (d)-(h). In (g), "the information supplied on its" was "status as listed on his". In (h), "June" was "July" and "or to declare it expired" added. (i) added.

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

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

Rule was "Registration".

7:26-2.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To establish the procedure for obtaining and maintaining a solid waste facility permit;
2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;
3. To establish the general engineering design requirements for solid waste facilities; and
4. To establish the general operational requirements for solid waste facilities.

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

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

Rule was "Domestic refuse".

7:26-2.4 Application procedures for a solid waste facility permit

(a) Prior to preparing and submitting the application for a solid waste facility (SWF) permit, other than for facilities specified in (c) below, the applicant may schedule a pre-application conference with the Department to discuss the registration, environmental and health impact statement and engineering submission requirements and the review procedures. At least two weeks prior to the scheduled pre-application conference, the applicant should submit information in the form of reports, maps, studies and other relevant project documentation providing a sufficient basis for review by the Department. The material submitted prior to the pre-application conference may include the following:

1. A site location map plotted on a USGS topographic map;
2. A written description of the type of facility;
3. A written estimate of the proposed design capacity of the facility;
4. A written description of the type of waste to be handled;
5. A written plan establishing the tentative construction schedules;

6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;

7. Written documentation that the facility is included in the solid waste management plan pursuant to N.J.S.A. 13:1E-23 or that an application has been submitted to the appropriate public authority seeking inclusion in the solid waste management plan.

(b) A complete application for a SWF permit, except for applications for small-scale facilities identified in (c)1 and 2 below, shall include the following:

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.;

2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;

3. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d);

4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;

6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

7. For sanitary landfills, a closure plan prepared and submitted in accordance with N.J.A.C. 7:26-2A.9; and

8. All applications for a SWF permit shall be submitted to:

Assistant Director for Engineering
Division of Solid and Hazardous Waste
Department of Environmental Protection
PO Box 414
Trenton, N.J. 08625-0414

(c) A complete application for a SWF permit for a small-scale solid waste facility as identified in (c)1 or 2 below, shall include the following:

1. For a small-scale thermal destruction facility:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for thermal destruction is nonhazardous;

(2) The waste is generated at the site of the thermal destruction operation, at other associated intracompany plants located within the State of New Jersey, or is regulated medical waste received by the

onsite small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;

(3) The small-scale thermal destruction unit has a design capacity of less than 800 pounds per hour (9.6 tons per day);

(4) The facility has been included in the applicable solid waste management plan; and

(5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d); and

vi. This exemption from full application requirements is limited to one small-scale thermal destruction unit for each company site.

2. For a small-scale materials recovery facility or transfer station:

i. Documentation sufficient to demonstrate, to the satisfaction of the Department, that the capacity of the facility is less than 100 tons per day;

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)2;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

v. Documentation that the facility has been included in the applicable solid waste management plan; and

vi. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted as set forth at N.J.A.C. 7:26-16.3(d).

(d) Upon receipt of the initial application materials, the Department shall assign an application number to the application. All correspondence on written comments relating to the application shall thereafter refer to the assigned application number.

(e) All applications shall be signed by the applicant as follows:

1. The completed registration statement shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

2. All engineering designs and reports and the environmental and health impact statement required by this subchapter and other information requested as "Addendums" by the Department pursuant to (f) and (g)⁴ below, in addition to the documents required to be submitted pursuant to N.J.A.C. 7:26-2.9 and 2.10, shall be signed by a person described in (e)¹ above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. The authorization is made in writing by a person described in (e)¹ above;

ii. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, or positions of equivalent responsibility (a duly authorized representative may be either a named individual or any individual occupying the named position); and

iii. The written authorization is submitted to the Department.

3. Any person signing the registration statement, engineering design and reports, environmental and health impact statement or addendum mentioned in (e)¹ and 2 above, shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(f) The Department may require an applicant to provide additional data, reports, specifications, plans or other information where such information is necessary, as determined by the Department, to make the application technically complete prior to the tentative decision or to make a final permit determination after the public hearing. The Department shall not make a tentative or final determination on any application until such time as the applicant has supplied the requested information. Any failure to submit such information shall constitute cause for denial of the permit.

(g) The procedures for Department review and tentative approval or denial of a SWF permit application shall be in accordance with the following:

1. The Department shall not begin the processing of an application until the applicant has fully complied with the submission requirements of this subchapter and the signature and certification requirements of (e) above unless the applicant is unable to comply with the submission requirements through the actions or inactions of another Federal, State, county or local agency.

2. Upon receipt of a SWF permit application, the Department shall review the application to determine whether the application is complete. After reviewing the SWF permit application, the Department shall, within 30 days of receipt of the application, notify the applicant, in writing, whether the application is complete or incomplete.

i. For the purposes of this section, "complete application" means that all information required by N.J.A.C. 7:26-2.4(b) has been submitted by the applicant.

3. If the application is deemed incomplete, the Department shall provide the applicant with a written list of the deficiencies and additional information required to make the application complete. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (g)¹¹ below.

4. Within 30 days of receiving a notice of deficiency, the requested additional information shall be submitted to the Department as an "Addendum to the Application for a Solid Waste Facility Permit" ("Addendum"). The Department, in its discretion, may extend the timeframe for submitting additional information. Failure to correct the deficiency(ies) shall constitute cause for denial of the permit without prejudice.

5. Upon receiving the Addendum, the Department shall review the Addendum and other information supplied by the applicant for a determination of completeness in accordance with the procedure set forth in (g)² above.

6. Upon determining that the application or Addendum is complete, the Department shall send notice that an application or Addendum has been filed identifying the applicant, describing the type of facility, location of the facility and locations where and when application materials are available for review to the following:

i. The mayor, planning board, environmental commission and the health officer of any municipality in which any portion of the facility is proposed to be located;

ii. The mayor, planning board, environmental commission and health officer of any municipality the boarders of which lie within one mile of the perimeter of the proposed facility; and

iii. The implementing agency for the solid waste management plan of any solid waste management district in which any portion of the facility is proposed to be located;

7. Upon determining that an application or Addendum is complete, the Department shall submit a copy of the SWF permit application materials to the following for review:

- i. The municipal clerk of any municipality in which any portion of the facility is proposed to be located;
- ii. The County Clerk of any county in which any portion of the facility is proposed to be located; and
- iii. Any other governmental agencies that the Department deems appropriate, such as Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs; and other affected states.

8. Once the Department determines that an application or Addendum is complete, the application or Addendum may be reviewed by any interested person at the Department's offices during normal working hours by making an appointment, at the address specified at N.J.A.C. 7:26-2.4(b)8, with the records custodian of the Division of Solid and Hazardous Waste. Copies may be obtained directly from the applicant or from the Department upon payment of the duplication fee prescribed by law.

9. The Department shall determine whether a site visit and inspection are necessary in order to evaluate the proposed site of the facility. If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date for the visit shall be scheduled.

10. The Department shall publish notice in the DEP Bulletin of the receipt of each new application, and each significant agency action on an application currently before it. Notice shall be given for significant actions including, but not limited to, the determination of completeness, tentative approval, rejection of an application, public hearings on a tentative approval, final decision on a permit, transfer of a permit and permit renewal. Publication of notice in the DEP Bulletin constitutes constructive notice to all interested persons of the Department actions on SWF permits. The notice shall include, but not be limited to:

- i. The applicant's name;
- ii. The agency application number;
- iii. The type of facility proposed by the applicant;
- iv. The location of the proposed facility;
- v. The date and description of significant agency action on the application;
- vi. The locations where and when application materials are available for review; and
- vii. A statement that comments concerning the pending permit action may be submitted to the Department at the address specified in N.J.A.C. 7:26-2.4(b)8.

11. Not later than six months after the date upon the Department's letter notifying the applicant that the application is complete pursuant to (g)6 above, except in the case set forth in (g)3 above, the Department shall reject the SWF permit application, without prejudice, as technically incomplete, or deny or grant tentative approval of the application.

i. The Department shall perform a technical review of a complete application in accordance with the following timeframes:

(1) The Department shall complete its initial technical review of the application within 120 days from the determination that the application is complete;

(2) If the application is deemed technically incomplete, the Department shall provide the applicant with an opportunity to correct the deficiency or deficiencies pursuant to (g)3, 4 and 5 above;

(3) Upon receiving the Addendum submitted pursuant to (g)11i(2) above, the Department shall complete its technical review of the application within 60 days from the determination that the Addendum is complete;

ii. If the Department decides to deny the applicant a SWF permit, the basis for the denial shall be set forth in a letter to the applicant which shall also provide the applicant with notice of opportunity to request an adjudicatory hearing pursuant to (g)22 below.

iii. Where an applicant can demonstrate compelling reasons, the Department shall extend the deadlines set forth at (g)11 above and suspend its consideration of a complete application.

12. A tentative approval shall establish draft design, construction, operational, and maintenance conditions for the proposed solid waste disposal facility, requirements for the monitoring thereof and any other conditions required under Federal or State laws or rules and regulations as deemed appropriate by the Department.

13. Not later than 45 days after the granting of a tentative approval of an application for a SWF permit, the Department shall conduct a public hearing on the proposed facility and operator in accordance with the procedures set forth in N.J.A.C. 7:26-2.5. In the case of an application for a solid waste facility described in N.J.A.C. 7:26-2.4(c), an application to modify permit conditions or to revoke and reissue a permit pursuant to N.J.A.C. 7:26-2.6, an application for a permit renewal pursuant to N.J.A.C. 7:26-2.7(b), an application to transfer a permit pursuant to N.J.A.C. 7:26-2.7(d), the Department shall provide public notice, in accordance with (g)15 below, of the opportunity for a public hearing on the proposed agency action. Upon the written request of any interested party which, in the opinion of the Department, raises significant issues of fact relevant to the proposed agency action within 30 days of the newspaper publication of a notice of opportunity for a hearing, a public hearing on the proposed agency action shall be held in accordance with N.J.A.C. 7:26-2.5.

14. Not less than 15 or more than 30 days before a public hearing the Department shall provide notice, as described in (g)15 below, of the tentative approval and scheduled hearing, by the following methods:

i. By mailing a copy of a notice to the following persons (any person entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits);

(1) The applicant;

(2) The municipality in which the proposed facility will be located;

(3) Any Federal, State, county or municipal agency known to the Department to have issued or have jurisdiction to issue a permit for the same facility or activity;

(4) Any Federal, State, county or municipal agency which commented on the application and requested notice;

(5) Any other persons required by law, statute, regulation or court order to receive such notice; and

(6) Any interested person requesting such notice.

ii. By publication of a notice in two newspapers of general circulation within the area affected by or served by the facility or activity; and

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)17i and ii below. Where the notice of opportunity for a public hearing results in the scheduling of a hearing, a subsequent notice of the hearing date shall be provided in accordance with (g)17i and ii below.

15. All public notices issued pursuant to this section shall include the following information;

i. Name and address of the office processing the tentative approval for which notice is being given;

ii. Name and address of the applicant, and if different, the address of the facility or activity described by the SWF permit application materials;

iii. A brief description of the business to be conducted at the facility, including the activities described in the SWF permit application materials;

iv. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the fact sheet required by (g)16 below;

v. A brief description of the comment procedures by which the public may participate in the final permit decision and the time and place of the public hearing, if necessary; and

vi. The location of the administrative record, the times at which the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record.

16. A fact sheet concerning the proposed facility shall be prepared by the Department and shall be provided with the hearing notice required in (g)15 above. The fact sheet shall include the following:

i. The principal facts and the significant factual, legal, methodological or policy questions considered in granting the tentative approval;

ii. A description of the proposed facility;

iii. The types and quantities of solid waste which may be disposed of at the proposed facility; and

iv. A brief summary of the impacts and bases for the conditions of the tentative approval.

17. The public comment period shall be determined by the Department in accordance with the following:

i. The public comment period shall be the opportunity for any interested person to submit comments to the Department concerning a proposed facility and operator;

ii. For purposes of this subchapter the public comment period shall begin upon notice by the Department that a tentative approval has been issued or other agency action taken;

iii. The public comment period shall close 15 days after the date of the last public hearing, if any, on any tentative approval, unless the Department decides to extend the comment period in accordance with (g)17v below or reopen the comment period in accordance with (g)18 below. For agency actions on which no public hearing is held, the public comment period shall close 30 days after publication of the notice of the agency action;

iv. All interested persons, including the applicant, who believe any aspect of the tentative approval or other agency action is inappropriate shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their positive, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations or other generally available reference materials;

v. A public comment period longer than 15 days following the public hearing may be necessary, in certain cases, to give interested persons an opportunity to comply with the requirements of (g)17iv above. Any

interested person who reasonably requires additional time within which to supplement the administrative record should request, in writing, an extension of the public comment period, and the Department shall exercise reasonable discretion in setting the closing date for public comment;

vi. The Department shall publish notice, in accordance with (g)14 above of any decision to extend the period for public comment beyond the 15 days following the public hearing. Any notice of an extension of the public comment period shall clearly set forth the closing date of such extension.

18. Reopening of the public comment period shall be at the Department's discretion based upon the following:

i. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a tentative approval or other agency action, the Department may take one or more of the following actions:

(1) Issue a permit, appropriately modifying the tentative approval to reflect the Department's response to the questions raised;

(2) Prepare a revised fact sheet and revised tentative approval and reopen the comment period under this section; or

(3) Reopen the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

ii. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening;

iii. Public notice of any of the above actions shall be published in accordance with (g)14 above. Any notice issued pursuant to this section shall clearly define the scope of the reopening for purposes of limiting the scope of comments submitted during the reopened period pursuant to (g)18ii above.

19. The Department shall base the final permit decision on the administrative record, which shall be complete on the date the SWF permit is issued and which shall include, but not be limited to:

i. The application, including the registration statement, engineering design, EHIS, Addendums, if any, and all other additional materials submitted by the applicant in support of the application;

ii. All written comments received during the public comment period, including any comments submitted during an extension or reopening of the comment period;

iii. The transcript of any public hearing held on the permit application;

iv. The hearing officer's report which shall contain the Department's response to comments made during the comment period;

v. The fact sheet prepared by the Department for any public hearing and other documents contained in the supporting file;

vi. The tentative approval and final permit documents; and

vii. Material readily available to the Department, or published material which is generally available, need not be physically in the same file as the rest of the administrative record as long as it is specifically referred to in the fact sheet, the written comments, the transcript, or in the response to comments.

20. The provisions of this subchapter shall not supersede the public hearing procedures required for facilities obtaining any other permit issued by the Department. The public notice and public comment provisions contained in the applicable regulations or statutes shall govern those permit procedures.

21. The Department shall notify the applicant of the permit application decision by issuance of a SWF permit or by letter of denial on the application. In addition, the SWF permit or letter of denial shall be made available to all parties receiving copies of the application or notice of the application pursuant to (g)6 and 7 above and to any other interested person who has commented, orally or in writing, on the application, tentative approval or other agency action. Notice of the decision shall be published in the DEP Bulletin.

22. Within 20 calendar days of receipt of the Department's decision, the applicant may submit a written request to the Department for an adjudicatory hearing to contest any aspect of the Department's decision.

i. Any request for an adjudicatory hearing must be based on specific relevant issues raised by the applicant during the public comment period;

ii. Any request raising new issues shall be considered by the Department as a request to reopen the public comment period pursuant to (g)18 above;

iii. The Department may base a denial of a request for an adjudicatory hearing on the failure of the applicant to have raised the issue during the public comment period;

iv. The request for an adjudicatory hearing shall state the applicant's factual position on each question alleged to be at issue, its relevance to the permit decision, specific reference to contested permit conditions as well as suggested revised or alternative permit conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue. Supporting documentation shall be identified in the administrative record and shall be properly referenced; and

v. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

23. The Department may extend the time allowed for submitting a hearing request under this section for good cause shown.

24. For 30 days following receipt of a request for an adjudicatory hearing, the Department may attempt to settle the dispute by conducting such proceedings, meetings, and conferences as it deems appropriate.

25. If Department efforts at settlement fail, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and 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.

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

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

Rule was "Submission of engineering designs".

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

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

(c)1 added text "Unless otherwise exempted by N.J.A.C. 7:26-1.7(g)1.11 or 1.12" and "vegetative waste".

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.

Administrative change in (f)22iii.-v.

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).

Substantially amended section.

Case Notes

Solid waste disposal facility could not require review of application for solid waste facility permit. *Regional Recycling, Inc. v. State, Dept. of Environmental Protection*, 256 N.J.Super. 94, 606 A.2d 817 (A.D. 1991), affirmed 127 N.J. 568, 606 A.2d 815.

Amendment to solid waste management plan which eliminated landfill from plan was invalid. *Waste Disposal, Inc. v. Monmouth County Bd. of Chosen Freeholders*, 254 N.J.Super. 205, 605 A.2d 145 (L.1991).

Modification procedures provided by regulations promulgated under Solid Waste Management Act constituted sufficient safeguards and adequately protected public interest. *Matter of Pennsauken Solid Waste Management Authority*, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. *Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co.*, 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

Requirements for submission of sanitary landfill engineering design; statute and regulations preempt municipal zoning ordinance as to landfill access road construction. *Chester Twp. v. Dept. of Environmental Protection*, 181 N.J.Super. 445, 438 A.2d 334 (App.Div.1981).

Operation of solid waste facilities and hauling solid waste without required approvals; solid waste permits denied. *Mitchell Environmental, Inc. v. DEPE*, 94 N.J.A.R.2d (EPE) 210.

7:26-2.5 Public hearing procedures

(a) The Department shall be responsible for scheduling and conducting a public hearing in reasonable proximity to the location of the proposed facility.

(b) The Department shall designate a hearing officer who shall exercise reasonable discretion in the conduct of the hearing and shall encourage general discussion of the proposed facility, including public comment on the proposed operation, tentative approval or other action to be taken by the Department.

(c) The public hearing shall be a non-adversarial hearing at which any interested person may submit oral or written statements and data concerning the proposed operation, tentative approval or other agency action.

(d) The Department may make a presentation at the public hearing, describing the proposed facility and explaining the basis for the issuance of the tentative approval or other proposed action.

(e) The applicant shall appear at the public hearing on a tentative approval and be available to answer questions regarding the proposed facility. Failure of an applicant to appear and answer relevant questions at the public hearing may result in revocation of the tentative approval and denial of the application. The applicant may make a presentation at the public hearing, describing the proposed facility.

(f) The public hearing proceedings shall be transcribed or recorded and the transcript shall be part of the administrative record.

(g) The hearing officer, to the extent feasible, shall conduct the hearing in the following manner:

1. All interested persons shall be afforded the opportunity to appear and comment at the hearing;

2. Time shall be allotted for individuals to present comments where necessary to accommodate those present and to limit repetition;

3. Testimony on irrelevant matters shall be excluded; and

4. The hearing officer shall ensure that the hearing proceeds in an orderly fashion.

(h) To help ensure that relevant questions are answered at the public hearing, such questions may be submitted to the Department no later than five days prior to the public hearing. At the time of the hearing, the Department or the applicant, in the Department's discretion, will make every reasonable effort to answer these questions and other relevant questions received at the hearing.

(i) (Reserved)

(j) In the event that a response to a question cannot be given at the hearing, a written response shall be prepared after the hearing by either the Department or the applicant, at the Department's discretion. A copy of that written response shall be included in the hearing officer's report and shall be provided to the individual asking the question and others requesting copies of the hearing officer's report.

(k) The cost of advertisement and other expenses of the public hearing, including provision and preparation of the transcript, will be certified to the applicant who shall pay the bill within 30 days thereafter. Payment of the bill, in full, shall be a condition of final permit issuance.

As amended, R.1974 d.234, effective August 21, 1984.

See: 6 N.J.R. 343(c).

As amended, R.1975 d.190, effective June 27, 1975.

See: 7 N.J.R. 360(b).

As amended, R.1976 d.303, effective November 1, 1976.

See: 8 N.J.R. 374(d), 8 N.J.R. 590(a).

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

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

(v): Copies of analyses formerly forwarded to the Bureau.

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

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

Repealed Sanitary landfill operational requirements (General).

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

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

Case Notes

Amendment to solid waste management plan which eliminated landfill from plan invalid. *Waste Disposal, Inc. v. Monmouth County Bd. of Chosen Freeholders*, 254 N.J.Super. 205, 603 A.2d 145 (L.1991).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

7:26-2.6 Procedures and grounds for modification, revocation and reissuance and termination of SWF permits

(a) When the Department receives any information concerning a solid waste facility, it may determine whether or not one or more of the causes listed at (a)4 below for modification or revocation and reissuance exist.

1. If cause exists, the Department may modify, or revoke and reissue the SWF permit, subject to the limitations of this section, and may require the SWF permittee to submit an updated or new application in accordance with (e) below, if appropriate. When a permit is modified, only the SWF permit conditions subject to modification may be reopened for public comment. If a permit is revoked and reissued, the entire permit shall be reopened for public comment and the permit shall be reissued for a new term.

2. If a cause does not exist under this subsection or (c) below, the Department shall not modify or revoke and reissue the permit. The Department shall notify the person submitting the request that cause does not exist for a permit condition modification or a revocation and reissuance of the permit.

3. If a permit modification satisfies the criteria in (d) below for a minor modification, the permit may be modified without issuance of a tentative approval or public comment thereon. Otherwise, a tentative approval of the modified SWF permit conditions or of the revoked and reissued SWF permit shall be prepared pursuant to (e) below and the procedures in N.J.A.C. 7:26-2.4 (g) 11 through 25 followed.

4. The following may be cause for modification of permit conditions or revocation and reissuance of the SWF permit at the discretion of the Department.

i. There are material and significant alterations or additions to the permitted facility or operation which occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit. For the purpose of this subchapter, a material and significant alteration or addition is defined as:

(1) A major alteration to or addition of a new structure to the facility, which is not deemed to be a minor modification as set forth at (d) below and which would result in a significant change in the approved environmental impacts of the facility;

(2) An increase in the approved capacity of the facility which would result in a significant change in the approved environmental impacts of the facility; and

(3) A major alteration in the operations of the facility which would result in a significant change in the approved environmental impacts of the facility;

ii. The Department has received information that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of issuance. This shall include any information indicating that the effects on the environment are unacceptable or that the facility is being operated in an environmentally unsound manner;

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by a judicial decision after the permit was issued. Permits may be modified for this cause only as follows:

(1) For promulgation of amended standards or regulations, when the permit condition to be modified was based on a requirement of N.J.A.C. 7:26, and the Department has revised, repealed or modified that portion of the regulation on which the permit condition was based; and

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed a Department regulation or guideline, if the remand and stay concerned that portion of the regulation or guideline on which the permit condition was based and a request is filed by the permittee.

5. The Department shall follow the applicable procedures in (e) below while pursuing a modification or revocation and reissuance of any permit under this section.

(b) The Department may modify or, alternatively, revoke and reissue a permit if cause exists for termination under (c) below and the Department determines that modification or revocation and reissuance is appropriate.

(c) When the Department receives any information concerning a facility, it may determine whether or not one or more of the causes listed below for termination of the permit exist and shall proceed as set forth below.

1. The following are causes for terminating a permit during its term or for denying a permit renewal application.

i. Noncompliance with any condition of the permit;

ii. The permittee's failure in the application, during the permit issuance process or at any subsequent time during the permitted operations of the facility to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time, including a material and significant alteration or addition to the permitted facility;

iii. A determination by the Department that the facility is being operated in an environmentally unsound manner;

iv. A determination that the permitted activity endangers human health or the environment, or has the potential to do so, and can only be regulated to acceptable levels by permit modification or termination; or

v. A change in ownership or operational control of a permitted facility not in compliance with N.J.A.C. 7:26-2.7(e);

2. The Department shall follow the applicable procedures in (e) below in terminating any permit under this section.

(d) Upon the request of the permittee, an interested party or for good cause, the Department may make certain minor modifications to a permit without issuing a tentative approval, providing public notice thereof or holding a public hearing thereon.

1. Minor modifications to the permit shall be made to accomplish only the following:

i. Require more frequent monitoring or reporting by the permittee;

ii. Change an interim compliance date in a schedule of compliance, provided the new data does not interfere with attainment of the final compliance date requirement;

iii. Change a compliance schedule when the cause of the required change is an event over which the permittee has little or no control, such as a flood, strike or material shortage, or another event for which the permittee has no reasonable available remedy;

iv. Delete type of solid waste being accepted for handling, processing or storage at the facility or include types which are similar in nature to those included in the permit at the time of issuance without increasing the design capacity of the facility;

v. Change the testing methods or procedures in the permit as a result of changes to standardized methods or procedures;

vi. Revisions as necessary to conform to a decision by the Department rendered after an adjudicatory hearing or any settlement of the issues for which an adjudicatory hearing has been requested, pursuant to N.J.A.C. 7:26-2.4(g);

(1) After settlement of the issues for which an adjudicatory hearing had been requested, those persons who commented on the tentative approval shall receive notice of any revised permit conditions; or

vii. Changes in the design or operation of the facility which, in the best engineering judgement of the Department, will upgrade or cause no change in the environmental performance or reduce adverse environmental or human health impacts and/or are consistent with any applicable solid waste facility performance partnership agreement pursuant to N.J.A.C. 7:26-2.14.

2. A minor modification shall be effective within 60 days from the receipt by the Department of the request submitted pursuant to (d)1 above. In the event that the Department determines, based on the information submitted, that a modification of permit conditions or the revocation and reissuance of the permit pursuant to (a)3 above is warranted, the Department shall notify the permittee within 60 days of the receipt of the request. In the event that the Department fails to take action on a request for a minor modification within 60 days, the minor modification shall be deemed effective.

(e) Permits may be modified, revoked and reissued, or terminated either upon written request of the permittee, or upon the Department's initiative. The request shall set forth the relevant factors and rationale supporting the request. Upon receipt of any request, the Department shall follow the procedures set forth below:

1. Within 30 days of receipt of a request to modify or revoke and reissue, or terminate a permit, the Department shall review the request and determine whether the grounds exist for modification, revocation and reissuance or termination.

i. If the Department determines that grounds exist for modification, revocation and reissuance or termination consistent with (a)4, (b) or (c) above, it shall notify the permittee and, if necessary, require the permittee to submit information, including, but not limited to, a new or updated application.

ii. If the Department determines that grounds do not exist for modification, revocation and reissuance or termination, the Department shall notify the requesting party.

2. If a new or updated application is required, the Department shall follow the procedures for review and tentative approval outlined at N.J.A.C. 7:26-2.4(g).

3. If a new or updated application is not required, the Department shall, within 60 days of determining that a request is complete, deny or prepare a tentative approval incorporating the proposed change pursuant to N.J.A.C. 7:26-2.4(g)12.

4. In a permit modification only those conditions to be modified shall be reopened for public comment in accordance with the procedures set forth at N.J.A.C. 7:26-2.4(g)13 through 25. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

5. During any modification proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until the modification proceedings are completed.

6. When a permit is revoked and reissued, the entire permit shall be reopened in accordance with the procedures set forth at N.J.A.C. 7:26-2.4. During any revocation and reissuance proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until a new final permit is issued; or

7. Minor modifications as defined in (d) above are not subject to the requirements of this subsection.

8. If the Department tentatively decides to terminate a permit under (c) above, it shall issue a notice of intent to terminate. The notice of intent to terminate shall be processed in accordance with the same procedures as a tentative approval pursuant to N.J.A.C. 7:26-2.4(g)11 through 25.

As amended, R.1975 d.66, effective March 14, 1975.
See: 7 N.J.R. 149(b).

As amended, R.1975 d.271, effective September 15, 1975.
See: 7 N.J.R. 463(b).

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.1983 d.570, effective December 5, 1983.

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

(e) deleted.

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

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

(e) added.

Amended by R.1986 d.388, effective September 22, 1986.

See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).

(e)2i and ii deleted; new (e)2i through vi added and new (e)5 added.

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

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

Repealed subsection (a)-(d) of "Sanitary landfill operational requirements (Specified)" and recodified subsection (e) to 7:26-2A.8(l).

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

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

Substantially amended section.

Case Notes

Modification procedures provided by regulations promulgated under Solid Waste Management Act constituted sufficient safeguards and adequately protected public interest. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Determination that Thermal De-NO_x control technology for removal of nitrogen oxide emissions satisfied "advances in art" standard Act and issuance of air pollution control permit was not unreasonable administrative action. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Solid waste collector and transfer station operator seeking to make improvements to facility; application for SWF permit modification. Vincent M. Ippolito v. Tenafly Board of Adjustment, 95 N.J.A.R.2d (EPE) 17.

Revocation of solid waste license; res judicata doctrine. DEPE v. Carmine Franco and Company, Inc., 94 N.J.A.R.2d (EPE) 128.

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) A permit issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years except as provided in (c) and (d) below or N.J.A.C. 7:2-2.14. A permit may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the District Solid Waste Management Plan and provided the permitted capacity, as specified in the approved engineering design, is not exceeded.

1. The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

2. Nothing herein shall be construed to allow the permittee to exceed the maximum permitted capacity of the facility as set forth in the SWF permit for the facility at any time during the term of the permit. Any expansion, extension, enlargement or other increase beyond permitted capacity conditions shall be considered a new facility and shall require the application for the Departmental approval of a new permit.

3. The Department may issue any permit for a duration that is less than the full allowable term under this section.

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. The permittee of a permitted solid waste facility shall apply for permit renewal at least 90 days prior to the expiration date of the existing SWF permit if the facility has remaining permitted capacity in accordance with its SWF permit and if the facility is included in the District Solid Waste Management Plan.

2. The permittee, owner or operator shall submit all fees required by N.J.A.C. 7:26-4 and the following materials to the Department, if needed to update the facility's operations, as an application to renew the SWF permit for that facility:

- i. An updated registration statement on forms provided by the Department;
- ii. An updated engineering design for the facility;
- iii. An updated Operations and Maintenance Manual for the facility; and
- iv. An amendment to the disclosure statement as required pursuant to N.J.A.C. 7:26-16.6; and
- v. An updated environmental and health impact statement, including a complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-2.4(g)6 and 7 of the SWF permit renewal application.

4. The Department shall review the application for completeness in accordance with procedures set forth at N.J.A.C. 7:26-2.4(g).

5. The Department shall provide notice of its tentative decision on the permit renewal application and of the opportunity for a public hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

6. A request for a public hearing must be filed within 30 days of publication of a notice of opportunity for such hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

7. The public comment period shall close 15 days after the date of last public hearing or 30 days after the notice of opportunity for a public hearing on the renewal application.

8. The final agency decision on the SWF permit renewal application shall be based on the administrative record as defined in N.J.A.C. 7:26-2.4(a)19.

(c) The conditions of an expired permit are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for a renewal pursuant to (b) above;
2. The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit, due to time or resource constraints;

(d) Permits continued under this section remain fully effective and enforceable;

1. If the permittee is not in compliance with any one of the conditions of the expiring or expired permit the Department may choose to do any or all of the following:

- i. Initiate enforcement action based upon the permit which has been continued;
- ii. Issued a notice of intent to deny the new permit under N.J.A.C. 7:26-2.4. If the permit is denied, the owner or operator would then be required to cease activities and operations authorized by the continued permit or be subject to an enforcement action for operating without a permit;
- iii. Issue a new permit under N.J.A.C. 7:26-2.4 with appropriate conditions; or
- iv. Take such other actions as are authorized by these regulations or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(e) A permittee shall not transfer the SWF permit directly to a new owner or operator without the Department's approval.

1. Any transfer of a permit must be preapproved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of a facility. The request for approval shall include the following:

- i. A registration statement, completed by the prospective new permittee on forms provided by the Department;
- ii. A disclosure statement as required by N.J.A.C. 7:26-16.4 completed by the proposed transferee;
- iii. A demonstration that the final responsibility requirements of N.J.A.C. 7:26-2A.9 will be met by the proposed new permittee; and
- iv. A written agreement between the existing permittee and the proposed new permittee containing a specific future date for transfer of ownership or operations.

2. A new owner or operator may commence operations at the facility only after the existing permit has been revoked and a permit is issued pursuant to N.J.A.C. 7:26-2.4.

3. The permittee of record remains liable for ensuring compliance with all conditions of the permit unless and until the existing permit is revoked and a new permit is issued in the name of the new owner or operator.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the permittee from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

Amended by R.1986 d.388, effective September 22, 1986.
See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).

(f) added.

New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Repealed disrupted landfill requirement.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Required fees to be submitted at time of permit renewal application and referenced, at (b)2.v., updated environmental and health impact statement.

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) and (b)4, amended N.J.A.C. reference.

7:26-2.8 Registration and general prohibitions

(a) The registration statement shall be executed, in accordance with the requirements of N.J.A.C. 7:26-2.4(e), on forms furnished by the Department, and shall state such information necessary and proper for the enforcement of this subchapter as the Department may require.

(b) Prior to May 1 of each calendar year, each permittee shall submit to the Department, a statement updating the information contained in the initial registration statement. This update shall be on forms furnished by the Department. In no case shall submission of an updated statement alter the conditions of the permit.

(c) The permittee shall notify the Department in writing within 30 days of any change in the information set forth in this current registration statement.

(d) The failure to submit an updated registration statement and to submit all applicable fees, required by N.J.A.C. 7:27-4, on or before July 1 of each calendar year shall be sufficient cause for the Department to revoke the permit or take such other enforcement action as is appropriate.

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1, 1.7 or 1.8 in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

1. No person shall be issued an approved registration or a SWF permit if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(g) No person shall continue to operate a solid waste facility, unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8 without obtaining a SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved SWF Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) The fulfillment of the application and approval requirements set forth in this subchapter shall not exempt the applicant from obtaining all other permits or approvals required by law or regulations.

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11, unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(j) No person shall engage or continue to engage in disposal of solid waste in this State in a manner which does not meet all the conditions, restrictions, requirements or any other provisions set forth in its SWF permit.

(k) Except for minor modifications as set forth at N.J.A.C. 7:26-2.6(d), no permit condition shall be modified, revised or otherwise changed without prior written approval of the Department.

(l) No owner shall transfer ownership of the permit without receiving prior written approval of the Department, in accordance with N.J.A.C. 7:26-2.7(e).

(m) No permittee shall begin construction of a sanitary landfill until the Department approves the final Quality Assurance/Quality Control Plan submitted in accordance with N.J.A.C. 7:26-2A.8.

(n) No permittee shall begin operating a sanitary landfill, composting or co-composting facility, transfer station, materials recover facility, or thermal destruction facility until:

1. The Department approves the final Operations and Maintenance plan in accordance with N.J.A.C. 7:26-2.10; and

2. The Department receives and approves the certification of construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2A.9(a).

(o) No thermal destruction facility shall begin operations until:

1. The Department receives and approves the certification of the construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2B; and

2. The Department approves the testing period results in accordance with standards and procedures set forth in N.J.A.C. 7:26-2B.8(c).

(p) The owner or operator of any solid waste facility which is determined by the Department to be operating in an environmentally unsound manner shall:

1. Within 90 days of notification by the Department, submit a plan to close or environmentally upgrade the facility in conformance with the applicable standards, as determined by the Department and set forth in this chapter;

2. Within 90 days of receipt of written approval by the Department of the submitted plan, begin to close or construct the environmental upgrading at the facility; and

3. Within one year of receipt of written approval by the Department of the submitted plan, complete closure or construction of the environmental upgrading at the facility.

(q) A one time extension of the compliance schedule established by (p) above shall be granted by the Department provided the facility owner or operator demonstrates that he or she has made a good faith effort to meet the schedule.

(r) Should the closure or environmental upgrading required pursuant to (p) above not be completed or should continued operations be determined by the Department to be environmentally unsound despite the implementation of the plan approved pursuant to (p) above, the solid waste facility shall temporarily or permanently cease operations and close or enter into receivership, as provided for in the N.J.S.A. 13:1E-9, for that period of time necessary to rectify the environmentally unsound conditions.

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).

Case Notes

Denial and revocation of licenses was justified for recycling facility that handled solid waste without a permit. Department of Environ-

mental 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 insure 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.

(c) The EHIS for all solid waste facilities other than solid waste facilities for which specific requirements are set forth in (d) below, shall contain the following:

1. An executive summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts;

2. A detailed written description of the municipal and neighborhood setting of the proposed facility. The site location shall also be identified by the following:

i. An 8½ inch x 11 inch copy of the key map prepared in accordance with N.J.A.C. 7:26-2.10(b)4 and submitted as part of the engineering design; and

ii. An 8½ inch x 11 inch copy of the vicinity map prepared in accordance with N.J.A.C. 7:26-2.10(b)5 and submitted as part of the engineering design.

3. An environmental inventory, prepared in detail for the site specific conditions and, unless otherwise specified herein, a general description for a minimum area of one mile from the perimeter of the proposed facility's proper-

ty lines, describing existing conditions for each of the following categories:

i. Category I, the physical/chemical category, requires the following parameter descriptions:

(1) Describe the physical geology by identifying major characteristics of the formations present, including, but not limited to, thickness, lithology, structural features, degree of weathering and amount of overburden. The description of the site specific geology shall include, but not be limited to, the general engineering properties and indexes and, where applicable, the quality of the subsurface soils. Provide a copy of the geologic map prepared in accordance with N.J.A.C. 7:26-2.10(b)7ii;

(2) Describe the soils by identifying major soil types and their characteristics including, but not limited to, drainage, erosion potential and sedimentation potential. Information shall be based on U.S. Soil Conservation Service Surveys. The description of the site specific soils shall include, but not be limited to, the texture and thickness of each horizon, observed mottling, taxonomic classification and, where applicable, the quality of the surface soils. Provide a copy of the soils map prepared in accordance with N.J.A.C. 7:26-2.10(b)7i;

(3) Describe the subsurface hydrology by presenting groundwater quantity and quality data for the aquifers located beneath the site, including, but not limited to, depth to groundwater during seasonal high and low flow, flow direction, existing uses and future supply capabilities;

(4) For water bodies which directly abut the site, exist on the site, or drain directly onto or off the site, provide detailed water quantity and quality data. Such data shall include, but not be limited to, flow rates, current uses and supply capabilities, dissolved oxygen (D.O.), biochemical oxygen demand (B.O.D.), total organic carbon (T.O.C.) total suspended solids (T.S.S.) and general temperature regime. Identify also all existing water classifications, designated uses and limitations of the surface water bodies in accordance with N.J.A.C. 7:9B;

(5) For upstream tributaries of bodies of water which flow onto the site, and downstream tributaries of bodies which flow from the site, identify all existing water classifications, designated uses and limitations of the surface water bodies, in accordance with N.J.A.C. 7:9-4. Provide also a narrative description of the factors influencing the water quality in such bodies, including but not limited to major permitted discharges, tributaries or confluences with other bodies, etc. Information required by this subsection shall be provided for a distance of one mile from the site boundary;

(6) For all water bodies not named in (4) and (5) above, identify all existing water classifications, designated uses and limitations of the surface water, in accordance with N.J.A.C. 7:9-4;

(7) Provide documentation that the proposed facility will not be inconsistent with any facility or area wide water quality management plan developed pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

(8) Describe the topography by presenting contour data, drainage patterns and 100 year floodway and flood hazard areas delineations pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or areas identified pursuant to and based upon the most current Federal Flood Emergency Management Act (F.E.M.A.) maps and data;

(9) Describe the climate by presenting site specific data for wind direction, velocity and frequency, average annual and monthly precipitation and temperature. Unless specifically required to be otherwise obtained by the Department, meteorological data may be obtained from the nearest National Oceanographic and Atmospheric Administration (N.O.A.A.) sanctioned station;

(10) Describe the ambient air quality by presenting data for existing concentrations of the National Ambient Air Quality Standard pollutants as identified in 42 USC 7401 et seq., and provide a demonstration that the proposed facility will be consistent with the New Jersey State Implementation Plan and related air quality requirements established by the Division of Environmental Quality. Unless specifically required to be otherwise obtained by the Department, ambient air quality data may be obtained from the nearest State operated monitoring station.

(11) Describe the ambient acoustical conditions by providing day and night noise levels measured at the boundaries of the proposed site. Identify sources of impulsive and continuous noise.

ii. Category II, the biological/ecological category, requires the following parameter descriptions:

(1) Characterize the site and an area within one mile radius from the site boundary, with respect to major plant association (for example, mixed hardwood forest, old field successional, etc.). Delineate different associations present in a mapped format. Identify major dominant and minor species present in each plant association present. Provide estimates of the proportions of each;

(2) For game and non-game mammals, and for an area which includes the site and area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(3) For game and non-game birds, and for an area which includes the site and an area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utiliz-

ing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(4) For reptiles and amphibians, for those water bodies listed in (c)3i(4) and (5) above, and for an area within one-quarter mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(5) For fish, for all water bodies listed in (c)3i(4) and (5) above, and all water bodies within one-quarter mile of the site boundary, describe utilization by identifying species and estimating populations utilizing the site for year-round, breeding, wintering and migratory purposes;

(6) Describe the plant or animal species on the Federal and State endangered, threatened or rare plant or animal species lists and identify, in a mapped format, the extent of utilization by such species, if present. Quantify the amount of habitat at the site for each such species and the corresponding carrying capacity for each species. Evaluate applicable breeding, wintering and migratory patterns when identifying species utilization;

(7) Identify by mapping any unique, critical or unusual habitat including, but not limited to, wetlands, prime agricultural lands, steep slopes of greater than 15 percent, riparian lands, coastal zones or other areas as may be specified by the Department;

(8) Present a description of site visits actually undertaken to evaluate the site ecosystem. The description should include the date, duration of the visit, weather conditions, individuals present to conduct the study, parameters being studied and a copy of studies prepared in connection with preparation of the environmental inventory; and

(9) Describe the methodologies utilized to evaluate the biotic community and present a bibliography of all research materials utilized in the preparation of the environmental inventory. The description of the methodologies utilized shall be sufficient to permit an independent expert to form an opinion as to the scientific justification and integrity of the selected methodology.

iii. Category III, the cultural category, requires the following parameter descriptions:

(1) Describe recreational activities by identifying areas known to be used for such activities as hunting, fishing, trapping, boating, swimming, tourism, camping, nature photography and bird watching. Identify designated parks, forests and wildlife management areas, natural areas and other publicly or privately owned lands designated for open space or recreational activities;

(2) Describe the aesthetics by identifying surrounding architecture, open space areas and scenic areas; and

(3) Describe the areas of historical or archeological importance.

iv. Category IV, the socioeconomic category, requires the following parameter descriptions:

(1) Describe the transportation facilities by identifying the network which will service the proposed facility, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service and average daily number of trips. Identify any proposed local, county, or State Department of Transportation traffic engineering plans for the network identified;

(2) Describe the sewage facilities by identifying the type of treatment system available, its existing treatment capacity, collection system capacity, average and peak flow data, and current committed capacity for treatment and collection system;

(3) Describe the stormwater management system by identifying the type of collection and treatment system available, and current collection and treatment capacity and utilization;

(4) Describe the water supply by identifying the water supply system, water sources, level and type of existing pre-treatment, capacity of the distribution system, current commitment of capacity, availability of additional supply, and peak and average demands;

(5) Describe the energy supply system on-site or immediately available to the site by identifying existing power lines or pipelines, current commitment of capacity, their capability of supplying energy to the proposed facility and conveying, if applicable, any energy products generated by the proposed facility from the site;

(6) Describe the demography of the area by providing existing population totals and describing present and projected future population and trends for the district within which the facility will be located and all districts which will utilize the proposed facility. State, county or local government sources may be used for all demographic data;

(7) Describe property values within the immediate neighborhood with respect to median sales prices and recent (1-2 year) trends and provide a general description of the property values of the municipality within which the proposed facility will be located and all municipalities within one half mile of the proposed facility. The descriptions shall include such factors as zoning changes, development patterns, development approvals, etc. which can affect property values. The description of property values in the immediate area of the facility shall be sufficiently

detailed to allow assessment of the effect construction and operation of the facility may have on such values;

(8) Describe public services available by identifying current local law enforcement, fire protection and health protection capabilities of the municipality in which the proposed facility will be located; and

(9) Describe the type and map the location of community and residential dwellings such as hospitals, nursing homes, food processing centers, playgrounds, parks, schools and residences.

4. A description of the proposed facility operations, which shall include, but not be limited to the following:

i. An identification of the project sponsor including name, address, and telephone number where the project sponsor can be contacted during normal working hours. Indicate if the project sponsor is presently, or was previously, associated with any other waste disposal or collection project or operation and, if applicable, identify the project or operation. Describe the responsibilities assumed during this association;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the products or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;

iii. An identification of existing or potential markets for each of the products to be recovered from the solid waste disposal operation, if applicable. Identify the types, qualities and daily quantities of products to be recovered. Set forth the elements of a quality control plan for the recovered products. Provide a copy of any long-term contracts for the sale of the recovered products, if available. In the case where long term contracts have not been finalized upon submittal of the EHIS, a detailed letter of intent, describing areas of agreement and disagreement, shall be submitted. The end use of the recovered products, by the purchaser, shall be defined;

iv. An economic analysis for the proposed facility which projects and approximates capital, operating and maintenance expenditures, as well as any revenues to be realized from the anticipated sale of recovered products, if applicable. The analysis shall project the maximum and minimum charges to be assessed for the various waste ID types to be handled, including an estimate of the initial tipping charges to be levied;

v. An identification of the waste streams which the proposed facility will accept, and copies of any agreements which guarantee a steady flow of this waste to the facility;

vi. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

vii. A narrative statement of the type of disposal processes to be used, including control measures and monitoring instrumentation. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily and hourly handling capacity of the overall facility in tons of refuse received per day and the anticipated operating time in hours per day and days per week; and

viii. A description of the quantity and physical/chemical characteristics of process residues and side-stream wastes resulting from the operation, if applicable. A detailed discussion of appropriate methods of disposal for all such materials such as, through contracts or inclusion in the appropriate district solid waste management plan, including, if available, the identification of primary and alternate disposal sites and methods of storage and handling and methods of reuse or recycling, if applicable.

5. A discussion of the relationship of the proposed action to Federal, State, county, and local land-use plans, policies and controls and environmental regulations. The discussion shall include the following:

i. A description of present land use for the site of the proposed facility and the area within two miles of the perimeter of the facility property line. Include a map or maps illustrating zoning designations and a chart setting forth use restrictions. If the site, any portion of the site or any areas adjacent to the site was previously used for waste landfilling, information relating to depth and area of deposition, type of material landfilled, gas concentration and migration, settling and other factors which may potentially affect construction and operation shall be provided;

ii. A description of how the project will conform or conflict with the objectives of any applicable Federal, State or local land use and environmental requirements including, but not limited to, those affecting the following:

(1) The floodway and flood fringe areas of the flood hazard areas as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A 58:16A-50 et seq., or areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA);

(2) Areas designated as wild, scenic, recreational or developed recreational rivers pursuant to the Natural Wild and Scenic Rivers Act, 16 USCA 1271 or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45;

(3) Critical habitat of endangered or threatened species of plants, fish or wildlife as defined by the Federal Endangered Species Act of 1973, P.L. 93-205, or the New Jersey Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A-1 et seq.

(4) Wetlands, tidelands and coastal zone areas as identified by the Department pursuant to the Wetlands and Coastal Resource and Development Policies, N.J.A.C. 7:7E and as identified on the U.S. Fish and Wildlife Services National Wetlands Inventory Maps;

(5) The Preservation and Protection Areas as established by N.J.S.A. 13:18A-11 of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

(6) Nonattainment areas as defined in N.J.A.C. 7:27-18;

(7) Areas subject to the prevention of significant deterioration criteria as defined in 40 CFR 52.21;

(8) Areas which may impact the acoustical quality of residential and commercial properties pursuant to N.J.A.C. 7:29;

(9) Areas which may significantly impact water quality pursuant to N.J.A.C. 7:15;

(10) Lands that have been duly certified by the State Agriculture Development Committee as agricultural development areas pursuant to the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq.;

(11) Watershed areas for water classified by the Department as FW-1 waters or FW-2 Trout Production Waters pursuant to the Surface Water Quality Standards, N.J.S.A. 7:9-4;

(12) Areas over a sole source aquifer designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93-523;

(13) Areas within the critical supply areas as defined by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

(14) Areas which will encroach upon, damage or destroy any area, site, structure or object included in the National or State Register of Historic Places established by N.J.S.A. 13:1B-15.128;

(15) Areas within 10,000 feet of any airport runway which is equal to or greater than 3000 feet in

length, within 5000 feet of any airport runway which is less than 3000 feet in length; and

(16) Areas dedicated to recreational or open space use including, but not limited to, national parks, national recreation areas, national forests, national wildlife refuges, state wildlife management areas, state parks, state forests, state designated natural areas and county or local parks, wildlife sanctuaries and recreational facilities.

(17) Areas subject to cleanup pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.;

iii. Where the potential for a land use or environmental conflict exists, the applicant shall describe the mitigation efforts to be undertaken to meet the intent of the applicable land use or environmental requirement.

6. A comprehensive description of the district solid waste and, if applicable, sludge management plans for the districts wherein the proposed facility is to be located, from which solid waste is to be received, or to which process residues are to be sent for disposal. The description shall include the following:

i. An identification of all affected municipalities and districts and a description of the strategy of each plan as it pertains to the proposed facility; including inter-district waste flow agreements and intra-district waste flow patterns, plan duration, recycling and waste reduction goals, implementation schedules and plan implementing agencies. A description of how the proposed facility will conform with the content and strategy of each plan shall also be included; and

ii. A discussion of the elements of the plan which indicate a need for the facility, its relation to current solid waste disposal capacities and the mechanisms established that will guarantee the necessary waste flows to the proposed facility.

7. A list and status report on all Federal, State, county and local licenses, permits and certifications necessary for the proposed facility;

8. An environmental assessment, which shall provide a detailed evaluation of the potential impacts of the proposed facility on the environment including, but not limited to, all parameters identified in the environmental inventory in (c)3 above. The assessment shall include, but not be limited to, the following:

i. An evaluation of both positive and negative, as well as, primary (direct or immediate) and secondary (indirect or long range) impacts on each parameter under conditions of maximum usage or output and a correlation of such impacts with various stages of the site preparation, facility construction, operation, closure and post closure phases;

ii. An identification and description of the modeling techniques used to predict impacts on the various parameters identified in (c)3 above. Where applicable, a calibrated and verified model shall be used and a copy of the model in the appropriate format shall be transmitted to the Department. Where an accepted modeling technique is not available best professional judgment may be used. A detailed description of the logical reasoning and assumptions made in the exercise of best professional judgment shall be incorporated to permit independent review;

iii. Isopleths, grid maps or other maps to depict potential zones of contaminant migration surrounding any and all sources of emission or discharge. Identify the type and location of each source;

iv. A quantification of impacts whenever possible (for example, lost habitat in acres) for all potential environmental impacts identified, where such quantification is not included, an explanation of the reason for such omission shall be provided;

v. A qualitative discussion of all potential environmental impacts identified; and

vi. A detailed description of the mitigative techniques proposed to address any potential environmental impact associated with the proposed facility.

9. A health impact assessment for Class II and III sanitary landfills and thermal destruction facilities, which shall provide a detailed evaluation of the potential impacts of the proposed facility on human health resulting from ground or surface water discharges and air emissions, including, but not limited to the following:

i. A description and discussion of the health risk assessment methodology to be employed, including detailed descriptions of the logical reasoning and assumptions employed in the method. A bibliography of reference material utilized in the preparation of the assessment shall be provided. Applicants shall contact the Department prior to the initiation of the assessment to obtain the current guidelines for such activities;

ii. A discussion of the level of uncertainty involved in the overall assessment. This discussion shall address the uncertainty involved in the estimation of individual parameters such as emissions or discharge and decay rates, levels of exposure and health effects, as well as the implications of complex uncertainties;

iii. A listing of all potential contaminants which may reasonably be expected to be released from the facility, and the amounts, concentrations and pathways of each;

iv. A listing of contaminants which will be utilized to assess health risks. All known carcinogens listed in (c)9iii above shall be included; additional contaminants shall be included, based on professional judgment. This list, together with a description of the rationale employed in choosing those materials included on the list, shall be submitted to the Department for review and approval prior to the initiation of the toxicity profile and health impact assessment;

v. For each of the contaminants listed in (c)9iv above, a toxicity profile shall be developed. This profile shall include data on the physical and chemical nature of the contaminant, as well as a description and discussion of data available regarding the environmental fate, acute effects (LD₅₀, irritation), chronic effects (mutagenicity, teratogenicity, carcinogenicity) and epidemiology of the material. This profile shall include a listing of available toxicological, epidemiological or other acute or chronic health effects studies used or otherwise available on the material in question. Applicants should contact the Department prior to the initiation of development of these profiles, to obtain the current guidelines for such activities;

vi. A quantification of the potential health impacts, where possible. If such quantification is not included, an explanation of the reason for such omission shall be provided; and

vii. A detailed description of the mitigation techniques proposed to address any potential health impacts associated with the proposed facility.

10. A summary discussion of any potential adverse impacts identified in the environmental and health assessment in (c)8 and 9 above that cannot be avoided should the proposed facility be implemented. For those impacts which cannot be avoided, their implications and the reasons why the proposed facility should be permitted shall be described. Where mitigation measures are proposed to reduce these potentially adverse impacts, the projected effectiveness and costs of the mitigative measures shall be discussed.

11. A comparison of reasonable design alternatives to the proposed facility. The comparison shall be sufficiently detailed to permit independent and comparative evaluation of the benefits, costs and environmental impacts of the design of the proposed facility and each reasonable design alternative. The comparison shall include the following:

i. Discussion of the alternative of no action or no project, and addressing the major foreseeable consequences of such a choice;

ii. Discussion of the feasibility of various alternative design or process changes, including those which could reduce or avoid some or all of the adverse impacts identified above;

iii. Preparation of economic analyses for both the chosen design and the identified design alternatives. Techniques such as cost-effectiveness analysis, cost-revenue analysis or other techniques approved by the Department may be employed;

iv. Identification of any significant differences in environmental impact which would result from use of the design/process changes identified in ii above, as compared to those resulting from the chosen alternative;

v. Comparison, in matrix or other appropriate format, of the degree of feasibility and economic and environmental impacts of both the chosen alternative and the set of feasible alternatives identified in (c)11ii above; and

vi. A discussion of the reasons why the proposed action was selected over the alternatives.

12. A discussion of the relationship between local, short term uses of the environment and the effect of the proposed facility on available options for subsequent future uses. Short term refers to the construction phase of the proposed facility. A description of the following shall be included:

i. Those cumulative and long-term effects of the proposed facility which either negatively impact or enhance the environment for the future;

ii. The extent to which the proposed facility prohibits future options;

iii. Plans which provide for the protection and maintenance of the environment during construction of the proposed facility, which shall include, but not be limited to, the following:

(1) Procedures to be used during construction if archeological resources are uncovered;

(2) Erosion and sediment control plans; and

(3) Controls for dust, odors, noise, traffic, and soil tracking.

iv. Plans which provide for the protection and maintenance of the environment after termination of the facility operation.

13. A discussion of irreversible and irretrievable commitments of resources resulting from the construction and operation of the proposed facility. The discussion shall include an analysis of the use of renewable and nonrenewable resources during construction and throughout continued operation, including an assessment of energy consumption. Where applicable, alternative energy sources shall be discussed and compared to the type selected and the rationale for the selection shall be stated.

(d) The minimum EHS requirements for other types of solid waste disposal operations are as follows:

1. The EHS for small scale thermal destruction facilities described in N.J.A.C. 7:26-2.4 (c)1 shall be based on the engineering designs submitted as set forth at N.J.A.C. 7:26-2.10 and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and residue disposal;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as

part of the engineering design as set forth at N.J.A.C. 7:26-2.10(b);

iii. The impact that the proposed facility will have on local transportation patterns, drainage characteristics, surface and ground water quality, endangered and/or threatened wildlife and vegetation, storm water and wastewater collection treatment capability, water supply capability, air quality and ambient acoustical conditions. If the proposed facility is to be located in a previously constructed building, the applicant may note "nonapplicable" for those areas of concern; and

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility.

2. The EHS for small-scale materials recovery facilities, whose prime mode of operation relies upon the utilization of non-mechanical processing features, and solid waste transfer stations shall be based on engineering designs prepared in accordance with the requirements of N.J.A.C. 7:26-2.10, and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and use of end product;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design and identified in N.J.A.C. 7:26-2.10(b)5 and 6 shall be included;

iii. The impact that the proposed facility will have on local transportation patterns, drainage and soil characteristics, surface and ground water quality, endangered or threatened wildlife and vegetation, storm water and wastewater collection/treatment capability, water supply capability, ambient acoustical conditions and air quality;

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility; and

v. A description of how the facility will conform or conflict with the objectives of any applicable Federal, State, or local land use and environmental requirement set forth at N.J.A.C. 7:26-2.9(c)5ii.

3. The EHS for other types of small scale solid waste disposal operations not identified in this section shall be prepared in accordance with requirements established by Department for the operation, based upon the potential for adverse environmental and health impacts caused by such operations;

4. In addition to the EHIS requirements enumerated in this section, the Department retains the right to request additional EHIS information from the applicant.

(e) Compliance with the EHIS requirements set forth in this section shall not preclude the necessity for the applicant to conform with any environmental analysis requirements of other agencies which may have jurisdiction by law.

(f) A preliminary EHIS may be submitted to the Department prior to the submission of a complete permit application package for review and approval in accordance with the procedures set forth in (g) below and shall include but not be limited to the following:

1. An executive summary prepared in accordance with (c)1 above;
2. A site description prepared in accordance with (c)2 above;
3. An environmental inventory of the proposed facility prepared in accordance with (c)3 above;
4. An environmental assessment of the proposed facility, based on conceptual or preliminary engineering designs shall be performed and analysed at maximum possible discharge or emission levels and on the parameter listed in the environmental inventory performed as required by (c)3 above;
5. A discussion of the relationship of the proposed facility to any Federal, State, county and local land-use or environmental plans, policies, controls or regulations. The discussion shall include the following:
 - i. A description of how the proposed facility will conform or conflict with the objectives of any of the Federal, State, county or local land-use or environmental requirements set forth in (c)5ii above.
 - ii. A description of the Federal, State, county or local land-use or environmental requirements which may restrict the construction and operation of the proposed facility; and
 - iii. A detailed description of the mitigative techniques proposed to address any potential land use or environmental impact associated with the proposed facility.
6. A discussion of any potential adverse impact identified in the environmental assessment in (f)4 and 5 above that cannot be avoided;
7. A comparison of alternatives to the proposed facility design, which shall be sufficiently detailed to permit evaluation of the benefits, costs and environmental impacts of the proposed facility design and reasonable design alternatives;
8. A discussion of the relationship between local, short-term uses of the environment and long-term future uses; and

9. An identification of irreversible and irretrievable commitments of resources that would be affected by the proposed facility.

(g) The following are the procedures for preliminary EHIS review and approval and the effect of the preliminary EHIS approval:

1. An applicant may, at its own option, submit a preliminary EHIS to the Department prior to the submission of a complete application for a SWF permit;
2. The preliminary EHIS shall contain all information required pursuant to (f) above and such other information as the Department deems necessary during a pre-application conference for preliminary EHIS review;
 - i. The applicant shall provide the Department with documentation demonstrating that the proposed facility is consistent with the adopted and approved objectives and strategies set forth in the applicable district solid waste management plan, and that the proposed facility can be acquired, constructed or operated pursuant to the standards set forth in this chapter.
3. The preparation of a preliminary EHIS is not a precondition to the preparation and submittal of a complete application for a solid waste facility permit;
4. After submission of a preliminary EHIS, the Department shall review the preliminary EHIS and take one of the following actions:
 - i. Request, in writing, additional information required by the Department to conclude a review of the preliminary EHIS. Such request shall specify any additional information such as modeling, environmental or health assessments or project alternatives necessary to sufficiently evaluate the preliminary EHIS. The applicant shall respond within 14 days of the receipt of the written request and specify its intent to proceed with the submission of the information requested or terminate the preliminary EHIS review;
 - ii. Recommend a reconsideration of project alternatives based upon a review of the facts and proposed impacts of the proposed facility;
 - iii. Approve the preliminary EHIS; or
 - iv. Disapprove the preliminary EHIS.
5. Preliminary EHIS review and approval shall not preclude the necessity for an applicant to prepare and submit a final EHIS to the Department as part of a complete permit application pursuant to N.J.A.C. 7:26-2.4(d);
6. Pursuant to N.J.S.A. 13:1E-26 and N.J.S.A. 13:1E-29, an applicant receiving preliminary EHIS approval may:
 - i. Acquire real property intended for use in connection with the proposed facility; or

ii. Issue bonds or other obligations necessary to ensure available financing for the proposed facility's planning, development and implementation.

7. An applicant's decision to acquire property, issue bonds or take any other actions after receiving a preliminary EHS approval will be solely at the applicant's risk. Any acquisition action taken or expenditures made in reliance on the preliminary EHS approval are entirely at the applicant's own risk and the Department shall not be liable therefor; and

8. The issuance of any preliminary EHS approval pursuant to this section shall not be binding on the Department in its review of any subsequent submissions by an applicant for a SWF permit.

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

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

Section was "Termination or change of ownership of a landfill"; replaced with new text.

Amended by R.1986 d.305, effective July 21, 1986.

See: 18 N.J.R. 1036(a), 18 N.J.R. 1462(a).

Substantially amended.

Amended by R.1987 d.117, effective February 17, 1987.

See: 18 N.J.R. 2170(b), 19 N.J.R. 356(a).

(f)4, (g)19 and 21 substantially amended.

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

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

Repealed "Closure and post-closure care of sanitary landfills".

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

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

Substantially amended (b); in (c)2, deleted reference to certification that facility within district plan; in (c)3i(4), amended N.J.A.C. reference; deleted (d)1; recodified (d)2 through (d)5 as (d)1 through (d)4; in (d)1, amended N.J.A.C. reference; in (d)1ii inserted text "submitted as part... 7:26-2.10(b); and in (d)1iii, added the last sentence.

Case Notes

DEP must strictly construe its own regulations. Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Operator of hazardous waste facility could not construct new incinerator without submitting Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Construction of new incinerator changed existing hazardous waste facility into "new facility" requiring submission of Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Taxpayer's expert in assessment appeal for landfill did not consider costs of closure and postclosure maintenance; closed landfill not worthless as value possible if combined with contiguous lot in satisfaction of zoning ordinance coverage requirement. Inmar Associates, Inc. v. Edison Twp., 2 N.J. Tax 59 (Tax Ct.1980).

Municipality was not entitled to stay of approval for construction and operation of sludge dewatering facility at site of existing sewage treatment facility. In Matter of Bergen County Utilities Authority Treatment Works, 92 N.J.A.R.2d (EPE) 27.

7:26-2.10 General engineering design submission requirements

(a) The engineering design submittal requirements set forth in this section are general requirements for all solid waste facilities. Additional engineering design submittal requirements for sanitary landfills shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2A.6. Additional engineering design submittal requirements for thermal destruction facilities, solid waste transfer stations, materials recover facilities, and composting or co-composting facilities shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2B.4, 2B.5 and 2B.6 except for those facilities as specified in N.J.A.C. 7:26-2.4(c).

(b) The general requirements for the preparation and submittal of engineering designs for all proposed solid waste facilities are as follows:

1. All maps of the proposed facility shall be prepared in a manner and format consistent with N.J.A.C. 7:1E, Appendix C. The applicant shall submit a minimum of three complete sets of the application for small-scale facilities and five complete sets of the application for all other types of proposed solid waste facilities. Additional complete sets may be required based upon the type, scale, location, and potential environmental impacts of the proposed facility;

2. Individual engineering drawing sheets shall not be larger than 30 inches by 42 inches or smaller than 24 inches by 36 inches in size.

3. Each drawing sheet shall bear the date of preparation and the raised seal of the New Jersey licensed professional engineer responsible for the preparation of the design.

4. A key map of the engineering drawings, delineating the general location of the proposed facility, shall be prepared and submitted as part of the engineering design. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of three miles from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted. The key map shall depict the following:
 - i. All surface waters, coastal zone areas as defined in N.J.S.A. 13:19-1 et seq.; wetlands as defined in N.J.S.A. 13:9A-1 et seq.; water supply wells and reservoirs; FW-1 and FW-2 Trout Production waters as defined in N.J.A.C. 7:9B; wild, scenic, recreational or developed recreational rivers designated pursuant to the Natural Wild and Scenic River Act 16 USCA 1271 et seq. or the New Jersey Wild and Scenic River Act N.J.S.A. 13:8-45 et seq., and all 100 year floodway and flood hazard areas as delineated in N.J.A.C. 7:13:

ii. General zoning designations within one mile of the perimeter of the proposed facility's boundary:

iii. All main service corridors, transportation routes and main access roads that will be used as routes of traffic flow; and

iv. All airports and runways.

5. A vicinity map prepared in accordance with (b)2 above shall be prepared and submitted as part of the engineering design. The vicinity map shall have a minimum scale of one inch equals 400 feet ($1' = 400'$) with contour intervals shown at 20 foot intervals. The vicinity map shall delineate an area of one mile from the perimeter of the property line of the proposed facility. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plan Coordinated Datum 1927. One or more vicinity maps may be utilized to ensure clarity of the information submitted. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photographic. The vicinity map shall depict the following:

i. All buildings and structures including the layout of the buildings which will comprise the proposed facility;

ii. The boundaries of the proposed facility;

iii. The limits of the actual disposal operations within the boundaries of the proposed facility;

iv. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

v. The specific local zoning designation within 1,000 feet of the perimeter of the proposed facility's boundary; and

vi. The location of all existing and proposed utility lines, pipelines or other utility structures which will service the facility, including, but not limited to, the stormwater drainage system, sanitary sewer system, water supply system, and energy system.

6. A site plan map, delineating the existing and final as-built contours of the site of the proposed facility, shall be prepared in accordance with (b)2 above and be submitted as part of the engineering design. The site plan map shall be prepared in accordance with the "Classification Standards of Accuracy and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980 and the New Jersey Map Filing Law, N.J.S.A. 46:23-9, at a minimum scale of one inch equals 200 feet ($1' = 200'$) with contour intervals shown at two foot intervals. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum of 1929 (Mean Sea Level Datum 1929) and keyed into the North American Datum of 1983. The site plan map shall depict the following:

i. The legal boundaries of the facility as determined by a survey performed by a licensed New Jersey Land Surveyor. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points, in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. A copy of the deed of record or other document proving ownership shall accompany the site map. If the property is leased by the applicant, a copy of the lease shall accompany the site map. In those cases where the applicant is scheduled to take title to the property or sign a lease for the property at a later date, submit a timetable for same;

ii. The total acreage of the facility property and the total acreage of the actual disposal operations;

iii. The boundaries of the area to be used for disposal operations; and

iv. The layout of all buildings, access roads, internal routes of traffic flow and environmental controls, as they will appear at the site.

7. A geotechnical and soils report shall be prepared and submitted as part of the engineering design. The report shall include the following:

i. A soils map, published by the United States Department of Agriculture, Soil Conservation Service, depicting the site of the proposed facility and the area within one half mile from the perimeter of the facility; and

ii. A geologic map based on published or unpublished material and mapping available from the United States Geological Survey and New Jersey Geological Survey or unpublished mapping acceptable to the New Jersey Geologic Survey depicting the area within one mile from the perimeter of the facility.

8. An engineering report shall be prepared and submitted as part of the engineering design. The engineering report shall include the following:

i. A descriptive statement and detailed specifications of all proposed waste disposal system processes;

ii. A description of the installation methods and procedures and the scheduling of events for construction of the facility;

iii. A description of the rated and proposed design capacity of the facility in terms of tons and cubic yards per day and tons per hour to be disposed of at the facility;

iv. A description of the daily number and types of vehicles which will transport solid waste to the facility and, if applicable, the reclaimed material and waste from the facility;

v. A presentation of the results and calculations, clearly noted, of all required design testing; and

vi. A projection of the life expectancy of the facility.

9. An operations and maintenance (O and M) manual shall be prepared and submitted as part of the engineering design. The O and M manual shall include the following:

i. A description of the proposed methods of facility operation, including, but not limited to, the following:

- (1) Hours of operation;
- (2) Types of equipment (indicate capacity and number of units);
- (3) Implementation schedule for the solid waste facility;
- (4) Monitoring;
- (5) Security; and
- (6) Methods to be employed to meet the operational requirements of N.J.A.C. 7:26-2.11.

ii. An inspection plan, which shall include a schedule for inspecting all applicable major aspects of facility operation necessary to ensure compliance with the requirements of this subchapter and N.J.A.C. 7:26-2A or 2B, as applicable. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. Areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs, shall be inspected daily, when in use. The plan shall include a schedule for inspecting monitoring, safety and emergency equipment, security devices and process operating and structural equipment. The plan shall identify the types of problems which are to be looked for during the inspection and the frequency of inspection:

(1) The inspection plan shall include a program for detecting and preventing the disposal of regulated hazardous wastes. This program shall include, at a minimum, but not be limited to, the following:

(A) Random inspection of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous waste or PCB hazardous waste;

(B) Records of any inspections;

(C) Training of facility personnel to recognize regulated hazardous waste; and

(D) Notification procedures to report to the Department any discovery of regulated hazardous waste at the facility.

iii. A maintenance plan, which shall include an analysis of all applicable major aspects of the facility operation based on applicable industry established rates of potential equipment deterioration or malfunction if available, an analysis of spare parts inventory needs, schedules for anticipated repairs and maintenance contracts with local equipment dealers to supply standby or emergency equipment;

iv. A safety plan which shall include a description of the proposed measures to protect facility and other personnel from injury during operation;

v. A description of the proposed measures to handle unusual peak loadings which may exceed designed facility capacity;

vi. A description of the proposed measures to handle incoming waste flow during periods of short term facility shutdown for normal equipment repairs and also for periods of longer term facility shutdown for more extensive repairs.

10. The Department will review the O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a final O and M manual. The final O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but at least 60 days prior to initiating full-scale operations. Full-scale facility operations shall not be initiated before formal Departmental approval of the final O and M manual.

11. A landscaping plan delineating the existing site vegetation to be retained, and discussing the methods to be employed in order to ensure protection during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted, shall be submitted as part of the engineering design. Information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan. Facility exterior grounds shall be landscaped in a manner which enhances the visual appearance of the property.

12. Foundation sources and basis documents supporting all factual information submitted and all conclusions drawn, shall be identified.

New Rule, R.1985 d.65, effective February 19, 1985.

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

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

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

This section was recodified without change to 2.12.

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

See: 28 N.J.R. 2144(a), 28 N.J.R. 5248(a).

In (a), deleted two references to exemptions under N.J.A.C. 7:26-2.4(c) and amended the references made to 7:26-2B; rewrote (b)1; in (b)4i, amended N.J.A.C. reference; in (b)5vi, added reference to storm water drainage, sanitary sewer, water supply, and energy systems; in (b)6, substituted "North American Datum of 1983" for "New Jersey Plane Coordinate Datum of 1927"; deleted (b)7iii; in (b)9, amended reference to manual from preliminary manual; added

(b)9ii(1); and in (b)10, amended reference to manual from preliminary manual.

7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities. Additional operational requirements for sanitary landfills are set forth in N.J.A.C. 7:26-2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26-2B.8.

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1. Within each 24 hour period the operator shall clean each area where waste has been deposited or stored, except for those storage areas at thermal destruction facilities which are designed for multiple day storage capability and as exempted by 10 below; for sanitary landfill all areas where waste has been deposited shall be covered with the appropriate cover material except as permitted by (b)10 below;

2. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

3. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented at all facilities;

4. Methods of effectively controlling dust shall be implemented at all facilities in order to prevent offsite migration;

5. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

6. The operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

7. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures as delineated in the approved O and M manual, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

8. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

9. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility. Solid waste vehicles exempt from registration shall not be admitted to the tipping area when registered, commercial type solid waste vehicles including, but not limited to, compactor trucks, trailers or any solid waste vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

10. The operator shall designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles which are exempt for the registration requirements of N.J.A.C. 7:26-3.3. Bulky items and recyclable materials may be provided for in this manner. The operator may establish a separate secure area, with the approval of the Department, for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM) separate and apart from the disposal areas described in this paragraph or in N.J.A.C. 7:26-2A.8(l)2i and ii. The operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer. The facility operator shall be responsible for the sanitary conditions and orderly operation of the designated areas. It shall be the operator's responsibility to remove the bulky items, recyclable materials, ACWM or other waste from the designated area at a frequency so as not to exceed the storage capacity of the areas;

11. The operator shall at all times comply with the conditions of the SWF permit, as well as all other permits or certificates required and issued by the Department or any other governmental agency. The operator shall not receive, store, handle, process or dispose of waste types not specifically identified in that facility's SWF permit or other permit or certificate issued by the Department;

12. The operator shall designate a secure area under the facility's control, located a safe distance from the active disposal area, where solid waste, including suspected hazardous waste, which the facility is not permitted to receive shall be deposited until the operator receives instruction from the Department as to the proper disposal of the unpermitted waste;

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the Department. Transfer stations and materials recovery facilities shall use the formula in N.J.A.C. 7:26-2B.

14. Departmental inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

- i. Sampling any materials on site;
- ii. Photographing any portion of the facility;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's SWF permit or other permit or certificate issued by the Department; or
- v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

15. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit certificate. The designed processing and disposal capacity approved within any solid waste facility permit, other permit certificate or approval conditions as a ton per day operational maximum shall be inclusive of all solid waste received at the facility as well as all tonnages of source separated recyclables received;

16. The facility shall be operated in a manner that employs the use of the equipment and those techniques for the receipt, storage, handling, processing or disposal of incoming waste and process residues that are specifically authorized by the facility's SWF permit;

17. The operator shall provide a means of removing mud, solid waste or other debris from the tires of all vehicles. Vehicle tires shall be cleaned prior to the vehicle's departure from the facility's boundaries; and

18. The approved final O and M manual shall be maintained at the facility. A written description of any proposed changes to the approved, final O and M manual shall be submitted to the Department for review. These proposed changes shall not be implemented at the facility until the Department approves the changes.

Amended by R.1974 d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c).

Amended by R.1978 d.72, effective February 27, 1978.
See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

Amended by R.1983 d.570, effective December 5, 1983.

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

(p) deleted.

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

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

Repealed rule was general operational requirements for incinerators, transfer stations, processing facility and resource recovery facilities. Amended by R.1989 d.216, effective April 17, 1989.

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

Required that vehicles be registered as "solid waste vehicles" in (b)9, at (b)10, operator's designation of area for exempt solid waste vehicles made mandatory.

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

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

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).

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

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

Added (b)19 and (c).

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

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

In (b)9, amended Division reference and inserted reference to a solid waste decal; in (b)10, inserted third through fifth sentences, inserted reference to ACWM waste in seventh sentence, and deleted last sentence prohibiting scavenging.

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).

Deleted (b)19 and (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Case Notes

Under Tort Claims Act (N.J.S.A. 59:1-1 et seq.) State agencies and counties are immune from nuisance claims in suit regarding the regulations of a landfill; private operator of landfill does not share in public entities immunity. *East Brunswick v. Bd. of Freeholders of Middlesex Co.*, 224 N.J.Super. 44, 539 A.2d 756 (Ch.Div.1987).

7:26-2.12 Generator requirements for disposal of asbestos containing waste materials

(a) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the standards for waste disposal at 40 C.F.R. 61.149 and 40 C.F.R. 61.150.

(b) Generators of regulated asbestos containing material shall submit a written notification of intention to demolish in accordance with (d) and (e) below at least 10 days prior to beginning the demolition activity.

(c) Generators of regulated asbestos containing material shall submit a written notification to renovate in accordance with (d) and (e) below at least 10 days prior to beginning the renovation activity unless the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

1. Less than 260 linear feet on pipes or 160 square feet on other facility components; or

2. Less than 35 cubic feet of facility components where the length or area could not be measured prior to stripping, removal, dislodging, cutting, or drilling.

(d) The written notification required by (b) and (c) above shall include:

1. Name, address and telephone number of the generator.
2. Quantity and nature of waste to be disposed;
3. Name, address, telephone number, and New Jersey Department of Environmental Protection registration number of the transporter;
4. Name and address of the sanitary landfill at which disposal will occur;
5. Date and time of disposal; and
6. A copy of any written notification required by 40 CFR 61.145 to 61.155.

(e) The written notification required by (b) and (c) above shall be submitted to:

New Jersey Department of Environmental Protection
 Division of Solid and Hazardous Waste
 PO Box 414
 Trenton, NJ 08624-0414

(f) The Department may allow less than 10 days prior notification, where emergency circumstances require.

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

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

Repealed rule was "Guidelines and criteria for the preparation of engineering designs".

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

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

At (b)3, "collector-hauler" replaced by "transporter"; at 4. "landfill" replaced by "sanitary landfill", CFR cite corrected and address changed at (c).

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), inserted C.F.R. references and recodified a portion of (a) as (b); recodified former (b) through (d) as (d) through (f); inserted new (c); in (d)3, amended subsection references and inserted reference to telephone number and waste decal; and in (e), amended subsection references.

Case Notes

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. *Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co.*, 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

7:26-2.13 Solid waste facility; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1. Identification of the solid waste facility by name and facility identification number;
2. Identification of the transporter by the Department of Environmental Protection registration number assigned and solid waste decal number;
3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of three categories of wastes as follows:
 - i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);
 - ii. Septage and liquid sewage sludges: Waste ID 73 and 74 received (in gallons);
 - iii. Bulk liquid and semiliquids: Waste ID 72 received (in gallons);
4. Date and time of delivery to the facility;
5. The license plate number and State initials of the solid waste vehicle; and
6. The place of origin of the waste identified by municipality, county and State or in the case of the waste from a transfer station or materials recovery facility, the facility ID number of the transfer station shall also be listed.

7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste materials shall:

- i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

- (1) Date and time of delivery;
- (2) Identification of the transporter by name and by the New Jersey Department of Environmental Protection registration number assigned to the transporter;
- (3) Quantity in cubic yards and/or tons of the waste;
- (4) Name and address of the generator; and
- (5) For rejected shipments, the reason for rejection and disposition of the shipment after rejection; and

- ii. By the 20th day of every month, submit a copy of the daily record required by (a)7i above, covering the asbestos disposal activity of the previous calendar month. The information shall be submitted to:

New Jersey Department of Environmental Protection
 Division of Solid and Hazardous Waste
 Bureau of Resource Recovery and Technical Assistance
 PO Box 414
 Trenton, New Jersey 08625-0414

8. In addition to the requirements of (a)1 through 7 above, transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13. Transfer stations and materials recovery facilities which do not have scales shall report data in accordance with N.J.A.C. 7:26-2.11(b)13.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of same, or on systems acceptable to the Department, shall be kept for five years, and shall be available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A-2 for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/disposal (O and D) form (or duplication of same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a designated district facility pursuant to N.J.A.C. 7:26-6, the waste remaining after processing shall be designated within the O and D form and daily record as the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility. Further, at no time may ID 27 solid waste be subjected to mechanized processing, such as grinding, shredding or baling, at transfer stations or materials recovery facilities, such that the physical appearance or the material is altered prior to disposal at a designated district facility.

1. An approved O and D form shall be provided by the department to each registered transporter. The transporter shall thereafter duplicate the form for use with each load of solid waste.

2. Prior to disposing of the solid waste, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information provided; and

3. The facility operator shall verify that the form has been completed by a registered transporter, that the waste as identified by the transporter may be disposed of at the facility in compliance with the host District Solid Waste Management Plan and the facility's registration, and, where applicable, the facility's computer recording of scale data is in conformance with the information supplied, and sign the completed form.

4. The facility operator shall retain all O and D forms for a minimum of one year and shall make them available for inspection by representatives of the department or the

local health department at any time during normal working hours.

5. If an O and D form is not completed and signed by a registered transporter for each solid waste vehicle, or if the waste disposal would not be in compliance with the facility's registration, as required in (c)3 above, the facility operator shall deny the transporter the right to dispose of the solid waste at the facility.

(d) The following solid waste collection and disposal operations are exempt from complying with the provisions of (c) above:

1. Noncommercial industrial facilities which dispose of only solid waste generated by that industrial firm;

2. Municipally operated facilities which accept only solid waste which is collected by that municipality's transporters and which is generated within that municipality;

3. Sludge farming operations which accept only ID 12 solid waste and which report to the Division of Water Resources;

4. Recycling facilities which accept only recyclable materials which have been separated at the point of generation for sale or reuse; and

5. Operations exempt from registration pursuant to N.J.A.C. 7:26-3.3(a).

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district of destination on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month.

1. All solid waste facilities shall include the following within the monthly summary:

i. The tonnages and types of solid waste received by origin from each county (including municipality) and out-of-State source;

ii. The tonnages and types of solid waste returned to the county or state of origin by facility of receipt;

iii. The tonnages, types and origin (by county and municipality) of source separated recyclable materials or recyclable materials removed from the waste stream. In cases where recyclable materials are separated from mixed solid waste at the transfer station or materials recovery facility, and hence the origin (by county and municipality) cannot be identified at the time of receipt, the transfer station shall allocate the amount of recyclable materials proportionally to each municipality on the basis of the total amount of solid waste received for the calendar month;

iv. The identification of end-markets, manufacturers or recycling centers by specific name and location used

for the materials designated as recyclable materials and the amount of materials sent to each specific end-market, manufacturer or recycling center. The requirements for transportation to, and identification of, end-markets, manufacturers, and recycling centers shall be the same as at N.J.A.C. 7:26A;

v. The tonnage and types of recyclable materials being stored at the transfer station or materials recovery facility at the end of the reporting month;

(f) Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A-2 or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 14:3-10.15(b)4.

(g) Waste identification and definition of solids includes the following:

1. Solid wastes; waste ID number and definitions:

i. 10 Municipal (household, commercial and institutional): Waste originating in the community consisting of household waste from private residences, commercial waste which originates in wholesale, retail or service establishments, such as, restaurants, stores, markets, theatres, hotels and warehouses, and institutional waste material originated in schools, hospitals, research institutions and public buildings.

ii. 12 Dry sewage sludge: Sludge from a sewage treatment plant which has been digested and dewatered and does not require liquid handling equipment.

iii. 13 Bulky waste: Large items of waste material, such as appliances and furniture. Discarded automobiles, trucks and trailers and large vehicle parts, and tires are included under this category.

iv. 13C Construction and demolition waste: Waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures. The following materials may be found in construction and demolition waste: treated and untreated wood scrap; tree parts, tree stumps and brush; concrete, asphalt, bricks, blocks and other masonry; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and non-ferrous metal; non-asbestos building insulation; plastic scrap; dirt; carpets and padding; glass (window and door); and other miscellaneous materials; but shall not include other solid waste types.

v. 23 Vegetative waste: Waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes.

vi. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries, including animal manure when intended for disposal and not reuse. Also included are dead animals. Animal manure, when intended for reuse or composting, is to be managed in accordance with the criteria and standards developed by the Department of Agriculture as set forth at N.J.S.A. 4:9-38.

vii. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26G. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and residue from the operations of a scrap metal shredding facility.

viii. 27A Waste material consisting of asbestos or asbestos containing waste.

ix. 27I Waste material consisting of incinerator ash or ash containing waste.

(h) Waste identification and definition of liquids include the following:

1. Liquid wastes; waste ID number and definitions:

i. 72 Bulk liquid and semiliquids: Liquid or a mixture consisting of solid matter suspended in a liquid media which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of 20 gallons or more. Not included in this waste classification are septic tank clean-out wastes and liquid sewage sludge.

ii. 73 Septic tank clean-out wastes: Pumping from septic tanks and cesspools. Not included are wastes from a sewage treatment plant.

iii. 74 Liquid sewage sludge: Liquid residue from a sewage treatment plant consisting of sewage solids combined with water and dissolved materials.

(i) The following waste types have been consolidated under other categories:

1. 11 Institutional (see 10, Municipal);

2. 14 Construction and demolition (see 13, Bulky Waste);

3. 5 Pesticides: (see 27, Dry industrial waste and N.J.A.C. 7:26-8);

4. 16 Hazardous waste containers (see N.J.A.C. 7:26G);

5. 17 Dry hazardous waste (see N.J.A.C. 7:26G);

6. 18 Dry nonhazardous chemical waste (see 27, Dry industrial waste);

7. 19 Junked autos (see 13, Bulky waste);
8. 20 Tires (see 13, Bulky waste);
9. 21 Dead animals (see 25, Animal and food processing waste);
10. 22 Leaves and chopped tree wastes (see 23, Vegetative waste);
11. 24 Tree stumps (see 13, Bulky waste);
12. 26 Oil spill cleanup wastes (see 27, Dry industrial waste and N.J.A.C. 7:26-8);
13. 28 Infectious waste (see N.J.A.C. 7:26-1.4 and the requirements established by the New Jersey Department of Health);
14. 70 Waste oil and sludges (see N.J.A.C. 7:26-8);
15. 71 Semisolid waste oils and sludge (see N.J.A.C. 7:26-8);
16. 75 Pesticide liquids (see 72 Bulk liquid and semi liquids and N.J.A.C. 7:26G);
17. 76 Liquid hazardous waste (see N.J.A.C. 7:26G);
18. 77 Liquid chemical waste (see N.J.A.C. 7:26G);

(j) Solid waste shall be identified at the point of generation. For waste received at a transfer station or materials recovery facility, the transfer station is not the point of generation. Solid waste which is received by a transfer station or materials recovery facility shall retain the ID type identified in the O and D form. The type of solid waste shall not change due to the removal of recyclable materials or the processing of solid waste.

(k) For all waste disposed of within or leaving the district for further transfer, materials recovery or disposal (either in-State or out-of-State), each waste district shall record at a minimum the following information: district of waste origin; the identity of the transfer facility (if applicable); the identity of the final destination facility; the tonnage or cubic yards of waste; the waste type; and the tonnage or cubic yards of any material recycled. This information shall be compiled on forms provided by the Department (or duplication of same) into monthly summaries, which shall be retained for a period of one year or longer in the event of an unresolved enforcement action. Each district shall compile the monthly summaries into an annual report on a form provided by the Department which is to be submitted to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, no later than February 1 of the following year. If a district chooses to impose an in-district weighing requirement consistent with N.J.A.C. 7:26-6.10(b)2, to institute a mechanism to ensure the payment of outstanding debt and other financial obligations, the district may gather this information through in-district weighing, but only for the period set forth in N.J.A.C. 7:26-6.10(b)2. Districts which do not conduct in-district weighing shall develop an alternate recordkeeping method to ensure that accurate

information is collected on a monthly basis as set forth above.

(l) The operator of a designated district weighing facility shall ensure that all weighing is conducted in a manner that facilitates proper operation and minimizes systems interruptions.

R.1976 d.303, effective November 1, 1976.

See: 8 N.J.R. 374(d), 8 N.J.R. 509(a).

Amended by R.1978 d.72, effective February 27, 1978.

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

Amended by R.1983 d.192, effective June 6, 1983.

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

(a)5 and new (c) added; existing (c)-(e) recodified (d)-(f).

Amended by R.1983 d.570, effective December 5, 1983.

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

(d)-(f) Substantially amended.

Emergency Amendment, R.1984 d.148, effective April 2, 1984.

See: 16 N.J.R. 930(a).

(a)6 and new (c) and (d) added, existing (c)-(f) redesigned (e)-(h); inspection by local health department added to (b), monthly summary submittal deleted.

Adopted concurrent proposal, R.1984 d.231, filed June 4, 1984.

See: 16 N.J.R. 930(a), 16 N.J.R. 1497(a).

Provisions of emergency amendment R.1984 d.148 readopted with technical and substantive changes, requiring solid waste transporters to provide landfill operators with documentation of origin and contents of waste load.

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

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

(a)7 added.

Correction: Added text in (a) "resource recovery facilities and transfer stations".

See: 18 N.J.R. 983(a).

Amended by R.1988 d.73, effective February 16, 1988.

See: 19 N.J.R. 171(a), 20 N.J.R. 393(a).

Section title was Sanitary landfills, resource recovery facilities and transfer stations; records.

In (a), the above was repealed and "Each solid waste facility permittee" was substituted.

Correction: Added text to (g)1vi "oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous".

See: 20 N.J.R. 1958(b).

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

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

Added text to (g)1 in "Also included are . . .".

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.216, effective April 17, 1989.

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

Added tonnage as an available description for the capacity of a solid waste vehicle; replaced vehicles with solid waste vehicle and changed 15th to 20th day of month for submitting daily records; changed address.

Public Notice: Notice of receipt of petition for rulemaking.

See: 23 N.J.R. 2187(c).

Action on Petition for Rulemaking: Amend Type 27 waste and amend certain classes of waste from interdistrict and intradistrict waste flow orders.

See: 23 N.J.R. 2428(b).

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

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

Revised the description of dry industrial waste, ID 27, to specifically state that the residue from the operations of a scrap metal shredding facility is included within this class of solid waste.

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

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

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).

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

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

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 (a)2, added reference to solid waste decal number; in (a)7 and (e), amended Department and Division references; and added (g)viii and (g)ix.

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).

Deleted (a)3ii; recodified existing (a)3iii and (a)3iv as (a)3ii and (a)3iii; rewrote (a)8; deleted (c)6; deleted (e)1vi through (e)1viii and (e)2; and added (k) and (l). Readopted provisions of Emergency Amendment R.1997 d.404 with changes effective December 1, 1997.

Law Review and Journal Commentaries

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

Relief from Exorbitant Garbage Disposal Costs. Sandra T. Ayres, 138 N.J.L.J. No. 8, S22 (1994).

Case Notes

Waste hauler who had permit to haul its own self-generated construction waste, and who accepted and hauled others' construction waste in violation of that permit, would suffer permit revocation. Division of Solid Waste Management v. Loughran, 96 N.J.A.R.2d (EPE) 367.

Solid waste collector violated site-specific waste flow directives and interim relief orders; certificate of public convenience and necessity revoked and penalties assessed. Board of Regulatory Commissioners v. Jersey Carting, Inc., 93 N.J.A.R.2d (EPE) 56.

7:26-2.14 Solid waste facility performance partnership agreements

(a) Any thermal destruction facility, sanitary landfill, materials recovery facility, transfer station, municipal solid waste composting or co-composting facility processing greater than 100 tons per day may negotiate a 15-year solid waste facility performance partnership agreement (SWFPPA) with the Department.

1. The eligibility requirements for a SWFPPA follow:

i. The solid waste facility shall have obtained all applicable permits and licenses required by the Department and shall have been in operation for at least one year;

ii. The solid waste facility shall be in substantial compliance with all permit conditions; and

iii. The solid waste facility shall not have a history of substantial noncompliance with environmental obligations as defined in (r) below.

2. The Department shall convene an informational meeting at least annually with the owners and/or operators of the facilities listed in (a) above to outline the SWFPPA planning process.

(b) The SWFPPA shall include the following:

1. A discussion of the operating conditions and requirements in the facility's existing permit, their associated environmental and/or agricultural impacts and the potential to improve operating conditions over those required by the permit. This discussion shall, at a minimum, address:

- i. Facility storage requirements;
- ii. Litter control;
- iii. Fugitive dust controls;
- iv. Odor controls;
- v. Noise controls;
- vi. Equipment and facility on-line availability;
- vii. On-site vehicle routing and traffic; and
- viii. Off-site vehicle routing;

2. A discussion of the long-term environmental goals and milestones selected by the applicant for inclusion in the SWFPPA. The applicant shall select those goals and milestones which will reduce the existing environmental and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals. The applicant shall select from the goals and milestones listed below and/or propose alternative goals and milestones:

i. An accounting of the inputs and outputs of materials at the facility, including estimates of the quantities of raw materials used and wastes generated at each source;

ii. Baselines to be utilized to measure progress towards achieving the goals and milestones established in the SWFPPA;

iii. Methods to increase the recovery of materials from solid waste through the addition of manual or mechanical materials recovery systems in furtherance of State and solid waste management district recycling goals;

iv. Methods to reduce levels of discarded products containing heavy metals, particularly those containing cadmium, lead and mercury from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

v. Methods to reduce levels of discarded products containing volatile organic compounds from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

vi. Methods to reduce energy usage by the facility, including both the facility equipment usage and vehicle transportation. This reduction shall be based on an energy balance for the facility and vehicle transportation;

- vii. Methods to eliminate or reduce levels of hazardous substances used by facility through material or product substitution or other means;
- viii. Methods to reduce the quantity of household hazardous waste, small quantity generator waste and/or universal waste disposed of by the solid waste facility;
- ix. Formulation of a landfill mining plan to extract valuable resources for recycling, reduce the size of the landfill footprint, reclaim additional disposal capacity or otherwise improve resource management;
- x. Methods to reduce the likelihood of accidental spills or releases of hazardous substances;
- xi. Methods to reduce the level of the facility's process residue and/or the development of programs to more effectively treat or use residue as a product;
- xii. Methods to reduce water usage by the facility;
- xiii. Methods to reduce wastewater discharges by the facility; and
- xiv. Methods to reduce direct and/or fugitive air emissions from the facility;
3. A schedule for improving operational conditions identified pursuant to (b)1 above and specific methodologies for effecting the improvements;
4. A schedule for achieving the goals and milestones established pursuant to (b)2 above;
5. A discussion of the policies and procedures established to create a compliance assurance program, including:
- i. Internal inspection schedules to ensure that all site conditions and operations are in compliance with internal assurance policies and standard operating procedures and environmental obligations;
 - ii. Procedures for correcting actual noncompliance observed during inspections; and
 - iii. Procedures for reporting noncompliance to the appropriate facility official and tracking corrective actions;
6. A discussion explaining the facility specific data and information and direct measurement utilized to develop the goals and milestones established pursuant to (b)2 above. This discussion may also include information based on reasonable calculations and estimates from the best available data and/or experience and judgment; and
7. The SWFPPA shall be developed for a 15 year period, with major goals and milestones scheduled to be reviewed on a five-year basis in accordance with the procedure established at (l) below.
- (c) At least one year prior to the submission of a draft SWFPPA pursuant to (d) below, the SWF permittee and representatives from the Department shall meet to develop the long-term environmental goals and milestones of the specific SWFPPA and the timeframe for submission.
- (d) The SWF permittee shall submit a draft SWFPPA to the Department for review to determine consistency with the statewide solid waste management plan adopted pursuant to N.J.S.A. 13:1E-6 in effect at the time of the submission, and the requirements of (b) above.
1. The Department shall provide comments, in writing, on the draft SWFPPA to the SWF permittee within 90 days of receipt.
 2. The SWF permittee may amend the draft SWFPPA accordingly and/or negotiate any contested issue(s) with the Department to reach a consensus.
 3. The SWF permittee shall submit the final SWFPPA reflecting the consensus reached by the SWF permittee and the Department, for execution by the Department.
- (e) The Department's review shall be coordinated with the appropriate solid waste management district to ensure that the SWFPPA is consistent with existing or established goals for pollution prevention established in the appropriate district solid waste management plan.
- (f) Upon joint execution of the SWFPPA, the SWF permittee and the Department shall agree to the following:
1. The SWFPPA shall replace the SWF permit renewal process and requirements set forth at N.J.A.C. 7:26-2.7 and the duration of the SWF permit shall be that established for the SWFPPA unless the SWF permittee is disqualified pursuant to (p) below.
 2. The SWFPPA shall replace the SWF compliance monitoring schedule established pursuant to N.J.A.C. 7:26-4. The compliance monitoring schedule in the SWFPPA shall be based on the goals and milestones established in accordance with (b) above and satisfaction of the criteria in (f)3i through iii below.

3. The compliance monitoring schedule in the SWFPPA shall be based on the classification of the solid waste facility. Classification levels range from 1 to 3, with a level 1 facility requiring the least frequent compliance monitoring and a level 3 facility requiring the most frequent compliance monitoring. The classification levels are defined as follows:

i. A level 1 facility operates in substantial compliance with its SWF permit, having incurred only minimal administrative violations, if any.

ii. A level 2 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did not require remediation of the site.

iii. A level 3 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did require remediation of the site.

(g) For any solid waste facility otherwise eligible under this section that does not enter into an executed SWFPPA, and any other solid waste facility the duration of the SWF permit and the SWF permit renewal process are as set forth at N.J.A.C. 7:26-2.7.

(h) An SWF permittee that has executed and is operating under a SWFPPA pursuant to this section shall modify its SWF permit in accordance with the following:

1. Any minor modification, as defined at N.J.A.C. 7:25-2.6(d)1, that is consistent with the goals and milestones established in the SWFPPA shall be deemed to be effective within 60 days of submission to the Department unless the Department determines, based on the information submitted, that a modification of permit conditions is warranted. In such event, the Department shall notify the permittee within 60 days of the receipt of the submission.

2. Any modification, as defined at N.J.A.C. 7:26-2.6(a)4i, that is consistent with the SWFPPA shall, after review by the Department to ensure compliance with environmental obligations, as defined at (r) below, shall be approved.

(i) Any modification made to a permit pursuant to (h)1 and (h)2 above shall not relieve the SWF permittee from the requirement to comply with environmental obligations as defined at (r) below.

(j) The SWF permittee shall submit an annual progress report addressing the goals and milestones established in the SWFPPA. The annual progress report shall, at a minimum, contain the following:

1. A description of compliance with the facility's internal compliance assurance policies, standard operating

procedures and environmental obligations, as defined at (r) below.

2. A description of the progress towards the goals and milestones established in the SWFPPA in accordance with the agreed upon schedule(s). Any change in the schedule(s) shall be explained and a revised schedule(s) set forth.

(k) The SWF permittee shall conduct a facility wide benchmark audit not less than once every five years.

1. The facility wide benchmark audit shall include;

i. An evaluation of site conditions and facility operations to determine compliance with the facility's internal compliance assurance policies, standard operating procedures and environmental obligations, as defined at (r) below; and

ii. An evaluation of the adequacy of the management systems, internal compliance assurance policies and standard operating procedures.

2. The facility wide benchmark audit shall be performed by persons who possess the skills, training and technical competence necessary to perform the audit functions required by this section.

(l) The SWF permittee shall submit a five-year SWFPPA update setting forth the findings of the facility wide benchmark audit to the Department for review in accordance with the timeframes established in the SWFPPA. The SWFPPA update shall, at a minimum, include:

1. A description of conditions, activities and/or practices that do not comply with internal compliance assurance policies;

2. A description of corrective action that is necessary to achieve, maintain or improve compliance, and schedules for implementing such corrective action;

3. A description of weaknesses in management systems and lapses in internal compliance assurance policies and standard operating procedures that cause or contribute to noncompliance;

4. A recommendation for correcting any such weaknesses in management systems or lapses in internal compliance assurance policies or standard operating procedures; and

5. A recommendation for revising any preexisting goals, milestone schedules or methods of measuring progress, if necessary.

(m) All annual progress reports and five-year SWFPPA updates shall be signed and certified by the SWF permittee as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

4. All annual progress reports and five-year SWFPPA updates shall contain the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(n) The Department shall review the SWFPPA update submitted pursuant to (l) above in accordance with the procedures set forth at (d) above. Upon the Department's acceptance of the SWFPPA update, the SWFPPA shall be deemed extended for an additional five-year period. The duration of the SWFPPA shall be re-established at 15 years with the acceptance of each SWFPPA update for the life of the facility.

(o) The SWFPPA annual progress report and/or the five year SWFPPA update may include a request to renegotiate any provision established therein, including, but not limited to, alteration in the compliance monitoring schedule or the reporting schedule.

1. Compliance with the SWFPPA and progress towards the goals and milestones established in the SWFPPA as documented in the annual progress report or the five year SWFPPA update may enable the SWF permittee to negotiate an altered compliance monitoring schedule negotiated pursuant to (f)2 and 3 above.

2. Compliance with the SWFPPA and progress towards the goals and milestones established in the SWFPPA as documented in the annual progress report or the five-year SWFPPA update may enable the SWF permittee to negotiate reduced reporting requirements required by (j) above.

(p) The following shall be grounds for disqualification from the SWFPPA program.

1. Failure to submit an annual progress report in accordance with the requirements of (j) above;

2. Failure to submit a five-year SWFPPA update in accordance with the requirements of (l) above;

3. Failure to initiate or implement the goals and milestones established in the SWFPPA according to schedule(s) set forth;

4. Unnecessary delay in taking other action(s) agreed to in the SWFPPA; or

5. Substantial noncompliance with environmental obligations as defined at (r) below.

(q) Solid waste facilities disqualified or voluntarily withdrawing from the SWFPPA program shall submit a SWF permit renewal application pursuant to N.J.A.C. 7:26-2.7.

(r) For the purposes of this section, "environmental obligations" means the environmental statutes applicable to the facility, including but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto.

(s) A solid waste facility classified as a level 1 facility pursuant to (f)3i above may be eligible for a facility wide permit if the Department formally adopts a facility wide permit program.

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

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

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

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

This section was applicability.

New Rule, R.1996 d.578, effective December 16, 1996.

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

SUBCHAPTER 2A. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR SANITARY LANDFILLS

7:26-2A.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the design, construction, operation, maintenance, closure and post-closure care of sanitary landfills.

(b) The requirements of this subchapter are in addition to the general engineering design submission requirements in N.J.A.C. 7:26-2.10 and the general operational requirements in N.J.A.C. 7:26-2.11.

(c) This subchapter shall apply to the following facilities:

1. All newly proposed sanitary landfills and all existing sanitary landfills proposing to expand their existing operations onto previously unfilled permitted areas; and

2. Any existing sanitary landfills operating as an open dump or in an environmentally unsound manner which the Department determines needs to be environmentally upgraded.

(d) This subchapter does not apply to hazardous waste landfills. See N.J.A.C. 7:26G.

(e) The provision of this subchapter and N.J.A.C. 7:26-2 shall not be interpreted as permitting the disposal of domestic sewage, sewage sludge, or septage in any manner other than that prescribed by law.

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).

7:26-2A.2 Construction

These rules shall be liberally construed to permit the Department to discharge its statutory functions.

Case Notes

Solid Waste Management Act and regulations preempt municipal zoning ordinance with respect to construction of sanitary landfill access road; construction approval by Department proper. *Chester Twp. v. Dept. of Environmental Protection*, 181 N.J.Super. 445, 438 A.2d 334 (App.Div.1981).

7:26-2A.3 Purpose

(a) This subchapter is promulgated for the following purpose:

1. To establish additional engineering design submission requirements for sanitary landfills;
2. To establish requirements and standards for the design and construction of sanitary landfills to insure that adverse impacts are minimized and controlled and that pollution of the environment is prevented; and
3. To establish additional requirements for the operation, maintenance, inspection and monitoring of sanitary landfills to ensure the proper operation of the sanitary landfill so as to minimize and control adverse impacts and prevent pollution of the environment.

7:26-2A.4 General prohibitions and requirements

(a) Open dumps are declared to be a nuisance, hazardous to human health and are prohibited.

(b) No new sanitary landfill shall be constructed or any existing landfill continue to operate where solid waste is or would be in contact with the surface or ground waters. This provision shall not apply to cleanfill.

(c) Leachate from any sanitary landfill shall not be allowed to drain or discharge into the surface water or groundwater except as permitted pursuant to the NJPDES regulations, N.J.A.C. 7:14A.

(d) No sanitary landfill shall be operated in a manner that would result in the impairment of the quality of the surface or groundwaters to a degree that would degrade the quality of either the surface or ground waters beyond the classification established by the Department in the Surface Water Quality Standards, N.J.A.C. 7:9-4, or the Ground Water Quality Standards, N.J.A.C. 7:9-6.

(e) No sanitary landfill shall be operated in a manner that would result in the degradation of the ambient air quality beyond the standards established by the Department pursuant to N.J.A.C. 7:27.

(f) No sanitary landfill shall be operated in a manner that would result in soil erosion and sedimentation beyond the standards established by the Department of Agriculture pursuant to N.J.A.C. 2:90.

(g) No new sanitary landfill shall begin construction without first applying for a NJPDES permit pursuant to N.J.A.C. 7:14A and approval of its Soil Erosion and Sediment Control Plan pursuant to N.J.A.C. 2:90. No new sanitary landfill shall begin operation without first obtaining a NJPDES permit and approval of its Soil Erosion and Sediment Control Plan.

(h) No existing sanitary landfill shall continue to operate without obtaining a NJPDES permit, and approval of its Soil Erosion and Sediment Control plan in accordance with N.J.A.C. 2:90.

(i) No new sanitary landfill shall begin construction or operation if located within the following distances of an airport, as measured from the nearest runway to the nearest property line without the design and implementation of an effective bird deterrent plan approved by this Department and the New Jersey Department of Transportation.

1. Within 10,000 feet of any airport runway which is equal to or greater than 3,000 feet in length and that services turbo-engine planes; or

2. Within 5,000 feet of any airport runway which is less than 3,000 feet in length and that services prop-engine planes.

(j) The owner and/or operator proposing a new landfill or lateral expansion within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.

(k) No existing sanitary landfill shall continue to operate, within the restricted zone of an airport as set forth in N.J.A.C. 7:26-2A.6(g)11, when it is determined by the Department and the Bureau of Aviation of the Department of Transportation to present a real or potential attraction for birds, until an effective deterrent plan is implemented.

(l) No person shall engage in the disposal of solid waste at a facility that does not meet the operational and maintenance requirements of this subchapter and N.J.A.C. 7:26-2. In addition, each permittee shall comply with any condition, limitation, or discharge requirement which may be specified in the SWF permit for that facility;

(m) The owner or operator of an existing sanitary landfill shall be required to design in accordance with N.J.A.C. 7:26-2A.7(f)3 or 4, and after Departmental approval of the design, construct, operate and maintain, a gas collection, venting and monitoring system when gas is detected at the points set forth at N.J.A.C. 7:26-2A.7(f)3 or 4;

(n) The owner or operator of an existing sanitary landfill shall install a groundwater monitoring system in accordance with the requirements of N.J.A.C. 7:14A-6.

(o) The owner or operator of an existing sanitary landfill shall be required to design and after Departmental approval of the design, construct, operate and maintain a leachate control collection and treatment system when leachate is determined to be impacting the quality of the surface and groundwaters of the area.

(p) The owner or operator of an existing sanitary landfill shall install a groundwater monitoring system in accordance with the requirements of N.J.A.C. 7:14A.

(q) The following waste types as defined in N.J.A.C. 7:26-2.13(h) and (i) shall not be disposed of in sanitary landfills:

1. Hazardous waste as defined by N.J.A.C. 7:26G;
2. Septic tank clean-out wastes, waste ID number 73;
3. Liquid sewage sludge, waste ID number 74;
4. Radioactive materials regulated by the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.;
5. Regulated medical waste, Class 1 through 7, as defined in N.J.A.C. 7:26-3A.5, unless as otherwise provided at N.J.A.C. 7:26-3A.20; and
6. Bulk liquid and semiliquids, waste ID number 72.

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).

Deleted (b) through (d); recodified existing (e) through (l) as (b) through (i); inserted new (j); recodified existing (m) through (s) as (k) through (q); in (q), amended N.J.A.C. references; and added (q)5 and (q)6.

Case Notes

Use variance and site plan approval for enlargement of solid waste facility required submission of application to modify solid waste management plan. *Ippolito v. Tenafly Board of Adjustment*, 95 N.J.A.R.2d (EPE) 17.

7:26-2A.5 Additional engineering design submittal requirements for sanitary landfills

(a) In addition to the requirements of N.J.A.C. 7:26-2.10, the engineering design submission requirements for sanitary landfills shall include the following:

1. A regional map prepared and submitted in accordance with N.J.A.C. 7:26-2.10(b)4 which shall include, but not be limited to, the following additional information:

i. Location of all public community water supply wells and all wells permitted to pump over 100,000 gallons per day or 70 gallons per minute within one and one-half miles of the property line of the landfill. The service areas, if any, of the public community water systems, as defined in N.J.A.C. 7:10-1.3, within one and one-half miles of the property line of the sanitary landfill; and

ii. Location of all water wells within one-half mile of the property line of the sanitary landfill;

2. A site plan map delineating the existing contours of the proposed sanitary landfill area prepared and submitted in accordance with N.J.A.C. 7:26-2.10(b)6 which shall include, but not be limited to, the following additional information:

i. Delineation of the area-wide modular development of the sanitary landfill's construction and operations and, where applicable, the lateral limits of previously filled areas;

ii. Delineation of the vertical and horizontal control monuments and property corner markers. The elevations, in relation to the National Geodetic Vertical Datum of 1929 (Mean Sea Level 1929) of the control monuments, shall be indicated and keyed into the North American Datum of 1983;

iii. Location of all monitoring devices including, but not limited to, all groundwater monitoring wells, lysimeters, gas monitoring wells, gas vents, piezometers, inclinometers and bore hole extensometers. Elevations of the monitoring wells and piezometers shall be determined to the top of the outercasing and for the adjacent ground surface. The horizontal and vertical location shall be represented as required by N.J.A.C. 7:26-2.10(b)6i. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot; and

iv. Location of all borings, excavations and test pits. The horizontal and vertical location of all borings shall be represented as required by N.J.A.C. 7:26-2.10(b)6i. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot;

3. Additional site plan maps which delineate in plan view and in detailed cross-sectional view the following:

ii. If the sanitary landfill has a synthetic membrane in the bottom liner system, then the final cover shall include a synthetic membrane.

(1) The synthetic membrane of the final cover does not have to be the same type or thickness as the membrane in the bottom liner system. However, a minimum thickness of 30 mils shall be used. In the case of High Density Polyethylene, a minimum thickness of 60 mils is required to ensure proper seaming of the synthetic membrane.

4. The long term stability of the final slopes shall be determined by modeling techniques in conjunction with the information gathered pursuant to (b)3 above and N.J.A.C. 7:26-2A.5(a)6, and the factor of safety shall be within the minimum values set forth at (b)3i and ii above;

5. The grades of the final slope shall be constructed in accordance with the following minimum standards:

i. The top slope final grades, after allowing for settlement and subsidence, shall be, at a minimum, three percent;

ii. The top slope final grades shall be, at a maximum, five percent, except as set forth at (i)5ii(1) below:

(1) Steeper top slopes which will promote drainage and not subject the closed sanitary landfill to excessive erosion shall be permitted provided the maximum erosion rate does not exceed two tons per acre as determined by the United States Department of Agriculture, Universal Soil Loss Equation; and

iii. The side slopes of the final grades shall be no steeper than three horizontal to one vertical (3:1).

6. The final grades of the final cover system shall have a surface drainage system, designed and constructed in accordance with the requirements of (g) above, capable of conducting run-off across the final grades without the development of erosion rills or gullies;

7. The construction of the final cover system shall accommodate initial settlement so that the integrity of the impermeable liner is maintained throughout the closure and post-closure period. A temporary cover may be constructed, provided the leachate collection system is operating properly in accordance with the following:

i. The temporary cover shall be capable of minimizing infiltration into the sanitary landfill unless the sanitary landfill is designed and operated to allow for leachate recirculation in accordance with (e)3 above;

ii. The depth of the temporary cover shall be a minimum of 12 compacted inches and shall be maintained to prevent erosion and exposure of solid waste; and

iii. The temporary cover shall be exposed for no greater than six months unless otherwise approved by the Department;

8. The grading and stabilizing of the final lifts of solid waste shall result in a relatively planar surface and provide a sufficiently firm base for the placement and construction of the impermeable cap.

9. The final lifts of solid waste shall be physically or chemically stabilized in accordance with the following:

i. The density of the final lift shall be increased to the largest extent practicable by:

(1) Reducing the thickness of the layers as compacted;

(2) Increasing the ballast or load of the compaction equipment; and

(3) Increasing the number of passes of the compaction equipment.

ii. Blending of gravel, stone, cobble, or selected demolition material (for example, brick, concrete, asphalt) into the upper 12 to 24 inches of the final lift of the solid waste; or

iii. Chemically stabilizing the upper 12 inches of the final lift of solid waste with the addition of soil cement or lime treated soil with silicates, kiln dust or other proprietary polymeric additives or soil asphalt. Ash-lime treated soil or ash-cement treated soil may be used, provided the ash-lime or ash-cement treated soil has received a beneficial use or reuse authorization pursuant to N.J.A.C. 7:26-1.7(g).

10. The impermeable cap shall be designed and constructed in accordance with the following:

i. The cap shall, at a minimum, be as impermeable as the most impermeable component of the containment system;

ii. The minimum thickness for a clay impermeable cap shall be 12 inches;

iii. The minimum thickness for a geomembrane impermeable cap shall be 30 mils, or for High Density Polyethylene, 60 mils;

iv. The impermeable cap shall be constructed and tested in accordance with (c) above, except that (c)2vii, viii and ix above shall not apply;

v. Geomembranes utilized as an impermeable cap shall be designed and constructed to withstand the calculated tensile forces acting on the geosynthetic materials. The design shall consider the maximum friction angle of the geomembrane with regard to any interface and shall ensure that the overall slope stability and erosion control of the final cover system are maintained;

vi. The geomembrane shall be protected from below and above by a minimum thickness of six inches of bedding and cover which is no coarser than a poorly grade sand (SP), as determined in the Unified Soil

Classification System (USCS), and which is free of rocks, fractured stones, debris, cobbles and solid waste. An equivalent geotextile may be utilized as approved by the Department; and

vii. The impermeable cap shall be located wholly below the average depth of frost penetration in the area as determined by United States Department of Agriculture and mapping.

11. A drainage layer shall be designed and constructed in accordance with the following:

i. The design testing of materials and the quality control testing of the drainage layer of the capping system shall be performed in accordance with (d)2ii, vii and viii above;

ii. The material used in the drainage layer shall be an open graded material of clean aggregate. The material shall be in accordance with the following criteria of the cumulative grain size distribution curves:

(1) $D_{85} < 4D_{15}$; and

(2) $D_2 < 0.1$ inch;

iii. The drainage layer shall be designed and constructed so that the discharge flows freely in the lateral direction to minimize the hydrostatic head on the impermeable cap, flows through the drainage layer, and provides a path for infiltrated liquids to exit the capping system;

iv. The drainage layer shall have a thickness and hydraulic conductivity capable of transmitting the estimated percolation, based on modeling of the system. The latest version of the Hydrologic Evaluation of Landfill Performance (HELP) Model (EPA/600/9-94/xxx, U.S. Environmental Protection Agency Risk Reduction Engineering Laboratory, Cincinnati, OH) shall be used to facilitate rapid estimations of surface runoff, subsurface drainage and leachate generation quantities. The drainage layer shall be constructed, at a minimum, in accordance with the following:

(1) When located above a clay impermeable cap, the drainage layer shall be, at a minimum, six inches thick; and

(2) When located above a geomembrane impermeable cap, the drainage layer shall be, at a minimum, 12 inches thick.

v. Drainage pipes and/or geonets, where necessary to control the hydrostatic head on the impermeable cap, should be located within the drainage layers in accordance with the following:

(1) The drainage pipe should be installed at a distance sufficient to ensure that the hydrostatic head on the impermeable layer does not exceed the thickness of the drainage layer during a 25 year, 24 hour storm; and

(2) A coarse gravel envelope, within a geotextile fabric, shall be installed in accordance with N.J.A.C. 7:26-2A.5(e)3ix around the drainage pipe to minimize the movement of soil particles in the drainage pipe.

vi. A soil filter or geotextile should be designed and constructed above the open graded aggregate in order to minimize the intrusion of fines into the drainage layer.

12. The vegetative layer shall be designed and constructed in accordance with the following:

i. The vegetative layer shall be thick enough to contain the effective root depth or irrigation depth for the type of vegetation planted;

ii. Fertilizer, mulch, and seeding applications shall be performed in accordance with Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90, for permanent vegetative cover for soil stabilization;

iii. The minimum thickness of uncompacted topsoil in the upper layer of the vegetative layer shall be five inches. The topsoil shall meet the Topsoil Standard specified in Section 909.10 of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction; and

iv. The application of sludge or the use of Sludge Derived Product (SDP) to the final grades of the vegetative layer shall be performed in accordance with the NJPDES rules, N.J.A.C. 7:14A.

13. A gas venting layer shall be designed and constructed in accordance with the following:

i. The gas venting layer shall be located directly below the impermeable layer and above the compacted waste layer.

ii. The gas venting layer shall be designed and constructed in accordance with the requirements set forth at (f) above.

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).

Substantially amended section.

7:26-2A.8 Sanitary landfill operational and maintenance requirements

(a) All sanitary landfills shall be operated in accordance with the requirements set forth in N.J.A.C. 7:26-2.8, and the following additional operational, maintenance, inspection and monitoring requirements.

(b) The sanitary landfill shall be operated in accordance with the following additional minimum requirements:

1. The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment, in order that the area of waste material exposed during the operating day is minimized. The width of the working face shall be in accordance with the following:

i. Sanitary landfills receiving 400 or less truck loads of waste per day, shall have a working face no greater than 150 feet;

ii. Sanitary landfills receiving more than 400 truck loads of waste per day may submit a request for a working face greater than 150 feet or another 150 foot working face in a separate location. The size and number of the working faces approved by the Department will be based on the sanitary landfill equipment and cover material available on-site and the on-site traffic flow patterns.

2. All waste shall be thoroughly compacted throughout the operational day to yield the smallest practical volume;

3. Solid waste shall be compacted in shallow layers. The layers should be less than two feet in thickness and should be compacted with a minimum of four passes of the compaction equipment, except over leachate collection pipes where compacting shall be performed in accordance with N.J.A.C. 7:26-2A.7(d)3xiv;

4. The lift height of the daily cell, as measured vertically from the previous day's cover surface, shall not exceed 12 feet;

5. The slope of the working face shall be maintained so as to maximize compaction of the solid waste and minimize infiltration into the solid waste. The slope shall be no steeper than three horizontal to one vertical (3:1). For balefill operations, a vertical working face will be allowed at the disposal area where continued bale placement will take place within 24 hours.

6. Separate areas designated on the site plan, as approved by the Department, may be used for the storage of demolition waste or recyclable materials in accordance with the following:

i. The stockpiled solid waste or recyclable materials shall not contain putrescible material;

ii. The stockpiled solid waste or recyclable materials shall not cause or result in a public health or environmental nuisance or impose a safety hazard as determined by the Department; and

iii. A schedule or time frame for reuse of the material in a timely fashion, shall be submitted to and approved by the Department.

7. All exposed surfaces of solid waste shall be covered at the close of each operating day with daily cover, unless the solid waste meets the following:

i. The uncovered solid waste will not create an environmental or public health nuisance as determined by the Department;

ii. The uncovered solid waste will not create a safety hazard as determined by the Department;

iii. The solid waste is a clean fill; and

iv. The solid waste is an inert material.

8. The daily covering of solid waste shall be a progressive operation so that no greater than 15,000 square feet of solid waste is exposed at any time throughout the operating day for each 150 feet of working face;

9. Intermediate cover, a minimum of 12 inches of cover material, shall be applied to all surfaces to be exposed for any period exceeding 24 hours.

10. The grade and thickness of the intermediate and final cover material on all surfaces shall be maintained until stabilized. All cracks, erosion swales, rills and uneven areas shall be maintained to prevent extrusion of solid waste and to minimize infiltration and ponded water;

11. All areas with intermediate cover shall be graded so as to facilitate drainage of run-off to the surface drainage system and minimize infiltration and ponded water;

12. Heavy clays and very fine grain materials, such as fly ash, shall not be used as daily and intermediate cover. The daily and intermediate cover material should be of a quality that is manageable under all weather conditions. A sufficient quantity of cover material shall be at the site to adequately meet the requirements of (b)7 through 10 above. For landfills without on-site supplies of cover material, a standby supply for cover material equal to 25 percent of the volume of waste received and compacted at the landfill in 10 normal disposal days shall be stored within the boundaries of the landfill property;

13. Final cover constructed in accordance with N.J.A.C. 7:26-2A.7(i) shall be applied to all surfaces where the final approved elevation has been reached and to all surfaces when the landfill operation is terminated;

14. An alternate material other than clean soil shall be approved by the Department for use as daily, intermediate or final cover material at a sanitary landfill provided the following criteria are met:

i. The alternate material impedes the entry of rodents and vectors into the waste fill;

ii. The alternate material controls malodorous emissions;

iii. The alternate material provides a firebreak;

iv. The alternate material resists or has limited erosion potential and is not easily windblown; and

v. The alternate material controls windblown litter.

15. Materials, other than clean fill, intended for use as cover shall be required to receive approval as a beneficial use or reuse authorization pursuant to N.J.A.C. 7:26-1.7(g).

16. Materials intended for use in the topsoil layer in a final cover shall be tested for nutrient content, including nitrogen, ammonia-n, nitrate-n, total kjeldahl nitrogen, phosphorus, calcium, magnesium and potassium.

17. For soil-like or admixture alternative cover materials, the following laboratory testing for physical properties of the material shall be required depending on the material and its intended use:

i. For final or temporary final cover, the following tests shall be required:

- (1) Atterburg limits;
- (2) Permeability testing;
- (3) Solids content;
- (4) Percent volatile solids;
- (5) Grain size analyses; and
- (6) Moisture content.

ii. For intermediate or daily cover, the following tests shall be required:

- (1) Solids content;
- (2) Percent volatile solids;
- (3) Grain size analyses; and
- (4) Moisture content.

18. The alternate cover material shall meet the following performance standards:

i. The volatile solids, or combustible, content of the cover shall not exceed 12 percent by weight;

ii. No more than 20 percent of fine grained materials shall pass a No. 200 sieve;

iii. At least 40 percent by weight of the fragments in the soil admixture shall be capable of passing through a No. 10 mesh sieve; and

iv. Particle sizes shall not exceed six inches in diameter.

19. An evaluation program in accordance with the requirements for RD&D projects as set forth at N.J.A.C. 7:26-1.7(f) shall be conducted for non-traditional cover materials such as cover foams and geotextiles. The evaluation program shall evaluate the cover material in actual use at the landfill.

i. The owner and/or operator of a sanitary landfill with an RD&D authorization for non-traditional cover materials shall evaluate the effectiveness of the material in meeting the requirements by monitoring its use under varying operational and weather conditions.

20. There shall be sufficient types of quantities of equipment for digging, spreading, compacting or covering waste or applying cover material to adequately meet the requirements of (b)7 through 10 above, to ensure a smooth flow of traffic at the working face and to achieve the maximum compaction efficiencies;

21. At sanitary landfills that accept an annual waste flow of greater than 1,000,000 in-truck cubic yards (300,000 tons), the compaction equipment should include the use of steel wheel type compactors with a minimum operational weight of 45,000 pounds;

22. Sanitary landfill equipment shall be equipped with hand-portable fire extinguishers of a multipurpose dry chemical type, an automatic fire suppression system, and rollover protection structures and any other safety equipment required by the Occupational Health and Safety Administration standards;

23. In case of breakdown of the equipment required by (b)14 above, the permittee shall repair the equipment or obtain replacement equipment within 24 hours after breakdown. Unless sufficient types and quantities of replacement equipment meeting the requirements of 14 above are available on-site, written maintenance contracts with a local equipment dealer shall be in force at all times. A copy of the contract shall be submitted with the O and M plan to verify compliance with this requirement;

24. Access to the sanitary landfill for solid waste disposal shall be permitted only during the operating hours set by the Division of Solid and Hazardous Waste Management and shall be restricted to 7:00 A.M. to 7 P.M. in areas within 1000 feet of a residential zone;

25. The sanitary landfill shall be adequately secured with a six-foot high chain link fence with an entrance gate, posted with the operating hours, that can be locked to prevent unauthorized entry into the facility. Fencing may be exempted, as approved by the Department, in areas where topographic features restrict vehicular access to the sanitary landfill;

26. A scale house and scales meeting the requirements of N.J.S.A. 13:1E-117 and the guidelines promulgated pursuant thereto, shall be constructed at the sanitary landfill. The location of the scale house and scales shall be situated so as to minimize the queuing-up of trucks onto the public roadway and so as to maintain a smooth and safe flow of traffic to and from the working face and while entering and exiting the landfill;

27. An all weather road shall be provided to the working face;

28. Litter shall be controlled through the use of moveable fences of sufficient height or by an equivalent means. The litter fence shall be policed daily and the litter collected shall be properly disposed of at the working face;

29. Dust control shall be effected by the spraying of water or the spreading of calcium chloride or an equivalent approved by the Department, as needed. Spraying of waste oil is prohibited;

30. The sanitary landfill shall not cause any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, except for malodorous emissions emanating from the sanitary landfill which result in odors in areas over which the owner and/or operator has exclusive use or occupancy. Malodorous emissions emanating from the sanitary landfill shall not result in odors being detectable in an area of human use or occupancy beyond the property boundary line. Malodorous emissions shall be controlled by the use of daily cover. In the event that this is not satisfactory, a suitable deodorant shall be used. Malodorous solid waste shall be covered immediately after unloading with a minimum of six inches of cover material or approved alternative material;

31. Mud, soil, and other materials shall not be tracked onto any public road by exiting vehicles. A rumble rack or wheel washing station may be used to control the off site tracking of mud, soil, and other material;

32. The sanitary landfill shall be operated in a manner which minimizes the propagation and harborage of insects, rodents, and birds;

33. The sanitary landfill shall be operated in a manner which will protect all monitoring devices and environmental systems from damage. Any damage shall be immediately reported to the Division of Enforcement Field Operations at (609) 584-4180;

34. Any monitoring device or environmental control system which is damaged so as to impair the proper operation of the monitoring device or environmental control system shall be reconstructed in accordance with the following:

i. The operator shall repair the monitoring device or environmental system in accordance with the plans and schedule approved by the Department; and

ii. The Department may require immediate remedial action for repair of the damaged monitoring device or environmental control system should such damage endanger human health or the environment.

35. The sanitary landfill shall be operated in a manner which will facilitate the filling of each section to final grade and which will minimize the operational phase of each section;

36. An adequate number of qualified personnel shall be at the sanitary landfill to maintain the smooth flow of traffic at the sanitary landfill and to operate the sanitary landfill in a manner that is in compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., this chapter, and the conditions of the SWF permit;

37. A supervisor shall be at the sanitary landfill during all operating hours to ensure proper operation of the sanitary landfill, to evaluate the monitoring data and inspection reports, to determine the performance of the sanitary landfill and to direct and implement all operational decisions to ensure the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq., this chapter, and the conditions of the SWF permit;

38. All sanitary landfill personnel who are involved in waste management activities or who operate, service or monitor any facility equipment, machinery or system, shall complete a program of on-the-job training which shall include, at a minimum, the following:

i. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the SWF permit;

ii. The training shall include instruction in the operation and maintenance of the equipment, machinery and systems which facility personnel must operate, service or monitor in the course of their daily job duties. The training shall instruct facility personnel in the performance of their duties in a manner that ensures the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., this chapter, and the conditions of the SWF permit;

iii. The training program shall ensure that the facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise;

iv. The training program shall provide instruction in the use of safety and emergency equipment and the use of communication or alarm systems; and

v. The training program shall provide instruction in the procedures for emergency response for sanitary landfill fires or explosions, gas leaks, leachate treatment system failure or leaks, detention basin breaches or other emergencies and shall include procedures to shut down operations.

39. The sanitary landfill facility personnel shall complete the initial training program required by (b)32 above within six months after the effective date of this subchapter or six months after the date of their employment, whichever is later;

40. The sanitary landfill facility personnel shall take part in an annual update of the initial training program;

41. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the sanitary landfill;

42. The following actions shall be implemented in the case of an emergency:

i. The supervisor or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;

ii. Concurrently, the supervisor or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

iii. If the supervisor or emergency coordinator determines that the facility has had an uncontrolled discharge, a discharge above standard levels permitted by the Department, or a fire or explosion, he or she shall:

(1) Immediately notify appropriate local authorities if the assessment indicates that evacuation of local areas may be advisable;

(2) Immediately notify the Department at (609) 292-7172; and

(3) When notifying the Department, report the type of substance and the estimated quantity discharged, if known, the location of the discharge, actions the person reporting the discharge is currently taking or proposing to take in order to mitigate the discharge and any other information concerning the incident which the Department may request at the time of notification.

iv. The supervisor shall take all reasonable measures to ensure that fires, explosions and discharges do not recur or spread to other areas of the facility. These measures shall include, where applicable, the cessation of operations and the collection and containment of released waste;

v. Immediately after an emergency, the supervisor or emergency coordinator shall provide for treating, storing or disposing of waste, contaminated soil or water or any other material contaminated as a result of the discharge, fire or explosion;

vi. The supervisor or emergency coordinator shall ensure that no waste is processed until cleanup procedures are completed and all emergency equipment listed in the contingency plan is again fit for its intended use;

vii. The supervisor or emergency coordinator shall notify the Department and appropriate local authorities when operations in the affected area of the facility have returned to normal; and

viii. Within 15 days after the incident, the supervisor or emergency coordinator shall submit a written report on the incident to the Department. The report shall include, but not be limited to:

(1) The name, address and telephone number of the facility;

(2) The date, time and description of the incident;

(3) The extent of injuries, if applicable, with names and responsibilities indicated;

(4) An assessment of actual damage to the environment, if applicable;

(5) An assessment of the scope and magnitude of the incident;

(6) A description of the immediate actions that have been initiated to clean up the affected area and prevent a recurrence of a similar incident; and

(7) An implementation schedule for undertaking longer term measures to effect cleanup and avoid recurrence of the incident, if applicable.

43. An on-site baseline consisting of two vertical and horizontal control monuments shall be constructed and installed in accordance with the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., and the Department's specifications in the "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills" available from the Division of Waste Management, Office of Engineering.

44. The control monuments shall be installed with, at a minimum, Second Order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey", published by the U.S. Department of Commerce, 1980;

45. The control monuments shall be tied into the national or state geodetic survey network and keyed into the New Jersey Plane Coordinate Datum, 1927; and

46. Sanitary landfills equal to or greater than 50 acres in size may be required to construct and install secondary control points. The control points shall be installed in accordance with the Department's "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills."

(c) While the sanitary landfill is in operation all environmental control systems shall be maintained in a proper functioning manner and shall be inspected to ensure compliance with the operational and construction/requirements and the design and performance standards.

(d) The inspections, required by (c) above, shall be performed, unless otherwise stated, on a weekly basis and after storm events to detect evidence of deterioration, malfunction or improper operation.

(e) The owner and/or operator shall record the results of the inspections in a log book or by means of an electronic records storage system approved by the Department which shall be maintained at the sanitary landfill office and be accessible, at all times, for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial action.

(f) If deterioration which would result in failure, malfunction or improper operation is evident during inspection, the operator shall make repairs in accordance with N.J.A.C. 7:26-2A.8(b)28 and as listed in the approved final O and M manual.

(g) The sanitary landfill shall be maintained and inspected by the owner and/or operator in accordance with the following additional minimum requirements:

1. The buffer zone shall be maintained free from litter. The entire area shall be policed on a daily basis, weather permitting, and the collected litter shall be properly disposed of at the working face;

2. The all weather road shall be maintained as necessary to provide access to the working face;

3. The public roads providing access to the sanitary landfill shall be maintained free of mud, dirt, and litter. The entrance shall be properly policed on a daily basis, weather permitting;

4. The vertical and horizontal control monuments shall be maintained and resurveyed by a licensed New Jersey Land Surveyor and certified for accuracy biennially. The survey shall be, at a minimum, second order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce 1980. The control monuments shall be tied into the national or state geodetic survey network;

5. All emergency equipment shall be maintained in a proper functioning manner. The equipment shall be tested on an annual basis;

6. The cap on the cut-off wall, required by N.J.A.C. 7:26-2A.7(c)10xvi., shall be maintained at a three foot thickness to prevent the erosion of the cut-off wall;

7. The leachate collection pipes shall be maintained to ensure a free flow of leachate. The leachate collection pipes shall be inspected and if blockage and clogging of the system is evident the collection pipes shall be cleared by water jet flushing or an equivalent method. The mains shall be tested annually to ensure a free flow of leachate;

8. The structural integrity of the manholes or clean-out risers shall be maintained to ensure a free flow of leachate;

9. The structural integrity of the sumps shall be maintained to ensure water tightness of the sump;

10. The structural integrity of the leachate pump station and gas pump station, and the electrical, venting and

alarm systems of the leachate pump station and the gas pump station shall be maintained to ensure a free flow of leachate and gas;

11. The leachate pumping system and gas pumping system shall be maintained as necessary. They shall be completely overhauled, at a minimum, on a biennial basis and shall be inspected on a daily basis to ensure a free flow of leachate or gas;

12. The leachate treatment and disposal systems shall be inspected on a daily basis and maintained in a manner which will prevent anaerobic and malodorous conditions from developing;

13. The structural integrity of the storage tanks shall be maintained to ensure containment of leachate. The tanks shall be inspected annually for leaks;

14. The structural integrity and erosion protection shall be maintained on all areas of the surface impoundments to ensure stability of the dike and emergency spillways and containment of the leachate and run-off. The surface impoundment shall be inspected on a daily basis to ensure that the minimum depth of freeboard is maintained;

15. The leachate treatment and disposal system units, storage tanks, surface impoundments, and detention/retention ponds shall be dredged, as necessary, to maintain the design capacity. Dredging shall not result in or cause damage to the containment system;

16. The structural integrity of the vents, manifolds and piping of the gas venting system shall be maintained to insure a free flow of gas;

17. The structural integrity of the gas flaring or recovery/combustion systems shall be inspected on a daily basis and shall be maintained to ensure proper disposal or use of the collected gas;

18. The structural integrity of all monitoring devices shall be maintained to ensure their workability and reliability; and

19. The structural integrity and erosion protection of the surface run-on/run-off structures shall be maintained on all areas of the capping system to ensure the stability of the slope and prevent excess erosion. The top grades shall be maintained at their proper slopes to minimize ponding.

(h) Monitoring shall be performed in accordance with the following parameters and schedules:

1. Sampling and analysis of water from the groundwater monitoring wells and lysimeters shall be performed in accordance with the NJPDES regulations, N.J.A.C. 7:14A;

2. Sampling and analysis of surface water taken from the surface water monitoring locations shall be performed in accordance with N.J.A.C. 7:14A;

3. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed in accordance with the appropriate section of the NJPDES regulations at N.J.A.C. 7:14A;

4. In addition to the requirement of (h)3 above, the flow of leachate in the primary and secondary leachate collection and detection systems shall be recorded on a daily basis;

5. The daily leachate monitoring results shall be compiled on a quarterly basis and submitted to the Division.

6. Residuals from the treatment and disposal systems shall be sampled and analyzed in accordance with the requirements of the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4;

7. Residuals from the treatment and disposal systems shall be sampled prior to the planned disposal and the results of the analysis shall be submitted to the Bureau of Technical Assistance for class identification 30 days prior to disposal;

8. The hydrostatic pressure of the cut-off wall and the liner system shall be monitored on a monthly basis, unless otherwise directed by the Department, and the results shall be submitted to the Division;

9. Sanitary landfill gases shall be sampled and analyzed in accordance with the following:

i. A gas quality analysis shall be performed on the gas venting and collection systems as constructed in accordance with N.J.A.C. 7:26-2A.7(g)3 and 4 on an as-needed basis as determined by the Division and the Bureau of Air Quality Engineering, pursuant to N.J.A.C. 7:27;

ii. A methane gas survey shall be performed on a quarterly basis and the results shall be submitted to the Division. If gas is detected within the buffer zone the Department may require more detailed and frequent surveys to be performed.

iii. The methane gas survey shall be performed with a hand-held portable explosimeter or equivalent and the minimum sampling depth shall be three feet below the ground surface or above the water table, whichever is higher; and

iv. The sampling for the methane gas survey shall be performed on a quarterly basis around the perimeters of the buffer zone of active landfill areas and annually around the entire perimeter of the buffer zone of the sanitary landfill. The maximum interval between sampling points shall be 300 feet. Sampling shall be performed around the perimeter of all on-site structures. The maximum interval between sampling points for structures shall be 50 feet; however, there shall be at least one sampling point along each side of the structure. If repeated methane gas surveys consistently detect no methane gas around the perimeters of the buffer zone of an active landfill area or at any location around the entire perimeter of the buffer zone of the sanitary landfill, the maximum interval between sampling points shall be increased and/or the sampling frequency shall be decreased, as approved by the Department, based on negative results at a particular location;

10. The daily precipitation data from the meteorologic monitoring system shall be compiled and submitted on a quarterly basis to the Division.

11. The settlement and slope data shall be compiled and submitted on a quarterly basis to the Division.

(i) All sanitary landfills shall submit an annual topographic survey of all areas of the sanitary landfill. The topographic survey shall be made between January 20 and March 31 of each year and submitted on or before May 1 of each year in accordance with the following:

1. The topographic survey shall be prepared in accordance with the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., and shall be depicted at the same scale and contour intervals as the approved engineering site plan design;

2. All vertical and horizontal points all be located utilizing Third Order, Class I for property survey and Third Order, Class II from remaining points in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Coordinate Datum (Mean Sea Level Datum) and keyed into the New Jersey Plane Coordinate Datum, 1983;

3. The topographic survey shall delineate, at a minimum the following:

i. The vertical and horizontal control monuments and secondary control points installed in accordance with N.J.A.C. 7:26-2A.7(a)2 or N.J.A.C. 7:26-2A.8(a)1xxxiii, delineating X (east) and Y (north) coordinates and elevations;

ii. All groundwater monitoring wells and piezometer delineating X (east) and Y (north) coordinates and elevations;

iii. The property lines of the sanitary landfill properties;

iv. The boundary lines of the approved landfill areas;

v. The boundary of areas currently being landfilled and which have been landfilled since the last topographic survey was submitted;

vi. The boundary of the areas which have not been landfilled within the approved landfill area;

vii. The boundary of the areas where final cover has been placed;

viii. The topographic survey shall be prepared by a licensed New Jersey Land Surveyor and the topographic survey report shall be certified by a licensed New Jersey Professional Engineer; and

ix. Information from previous annual topographic surveys may be reproduced in a current annual topographic submission provided that no change to any of (i)3i through vii above has occurred.

4. A report shall be submitted with the topographic survey which shall describe, with sufficient calculations clearly notated, the following:

i. The solid waste disposed of at the landfill since the last topographic survey. This quantity shall be reported in tons for landfills with scales and in cubic yards for landfills exempted from installing scales.

ii. The number of trucks which disposed of waste since the last topographic survey;

iii. The solid waste disposed of at the landfill since commencement of landfilling operations. This quantity shall be reported in cubic yards;

iv. The volume of daily and intermediate cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

v. The volume of final cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

vi. The in-place compaction achieved since the last topographic survey. This quantity shall be reported in pounds per cubic yard; and

vii. The remaining capacity of the landfill excluding final cover volume. This quantity shall be reported in cubic yards.

5. Closed sanitary landfills are exempt from the requirements of this subsection. For the purposes of this exemption, "closed" means the termination of all operations at the landfill and initiation of closure activities pursuant to N.J.A.C. 7:26-2A.9.

(j) Approval of and standards for disruption of landfills shall be in accordance with the following:

1. Written approval for disruptions shall be obtained from the Department prior to any excavation, disruption, relocation or removal of any deposited material, which may or may not involve solid waste, from either an active, terminated, or closed sanitary landfill. Specific guidance for the preparation of an application for disruption approval is provided in the Department's Technical Manual for the Division of Solid and Hazardous Waste, Bureau of Landfill, Compost and Recycling Management, Landfill Permits. For the purposes of this section, disruptions are defined as follows:

i. Minor disruption means the performance of a site investigation at a landfill for the purpose of gathering and evaluating information about the landfill's environmental or physical properties. Minor disruptions include, but are not limited to, the performance of soil

borings and test pits, methane gas surveys, and installation of piezometers and observation wells.

ii. Major disruption means the construction of buildings, roadways, parking areas and other site improvements on top of a landfill.

iii. In cases where the landfill owner and/or operator has submitted documentation and received prior approval from the Department in the form of a revised or renewed solid waste facility permit, closure and post-closure plan approval or other approval for specific construction activities, a separate disruption approval shall not be required.

2. All requests for approval shall include an operational plan stating the area involved, the depth of the excavation with final grades, estimated cubic yards of material to be excavated, the site where excavated material is to be redeposited, and the estimated time required for completion of excavation procedures;

3. All excavation shall be confined to an area consistent with the number of pieces of digging equipment or trucks used for haulage. The area of excavation shall be kept to the smallest practical area;

4. Adequate measures shall be taken during excavation to control dust, odors, fires, rodents, insects, blowing litter, surface water run-on and erosion; and

5. The disposal of all solid waste resulting from the excavation shall be in conformance with the requirements of N.J.A.C. 7:26-2.11.

(k) Control of smoking, smoldering or burning landfills shall be in accordance with the following:

1. In case of a fire on an active sanitary landfill, the responsibility for fire control shall lie with the SWF permit holder. In case of a fire on a terminated, closed or unpermitted landfill, the responsibility for fire control shall lie with the person having the title to the premise upon which the fire is located;

2. The owner or operator of any landfill wherein smoldering, smoking or burning is occurring shall immediately notify the local police and fire department having jurisdiction and the Department hot-line (609) 292-7172;

3. The owner or operator of any active landfill shall be responsible for initiating and continuing fire-fighting actions until all smoldering, smoking and burning ceases;

4. The owner or operator of any landfill shall seek and obtain fire-fighting assistance if smoldering, smoking or burning persists for longer than 24 hours;

5. The owner or operator of any landfill shall not conduct disposal activities within the burning area. Precautions shall be taken to prevent disposal activities from interfering with fire-fighting activities; and

6. Any disruption of the finished grade or covered surface shall be repaired and recovered upon completion of fire-fighting activities.

(l) Rules concerning the disposal of asbestos and asbestos-containing waste materials in sanitary landfills follow:

1. The owner and/or operator of a sanitary landfill shall only accept and dispose of asbestos and asbestos-containing waste materials which have been managed in accordance with N.J.A.C. 7:26-2.12(a).

2. All asbestos and asbestos-containing waste materials accepted for disposal at a sanitary landfill shall be disposed of in the following manner:

i. Owners and/or operators of new landfills accepting asbestos or asbestos-containing waste materials shall meet the following requirements:

(1) The owner and/or operator of the landfill shall develop a separate area of the landfill, apart from other waste disposal areas, for disposal of asbestos and asbestos-containing waste materials. It is recommended that the asbestos disposal area be operated by a trench method, with sufficient width and ramping to allow the transport vehicle to back up to or into the trench to allow for proper unloading of the asbestos and asbestos-containing waste materials in a manner that prevents the rupture of the containers during the unloading operation.

(2) Upon acceptance of the waste, the asbestos disposal area shall immediately be prepared. After unloading, the asbestos and asbestos containing waste materials shall be immediately covered with daily cover. To prevent disturbance of the buried asbestos and asbestos containing waste, truck traffic shall be excluded from the active asbestos disposal area.

(3) In areas in which asbestos and asbestos-containing waste materials has been previously deposited, as required by (l)2i(2) above, the current working face may be prepared by removal of cover material; however, no previously deposited asbestos and asbestos-containing waste materials shall be exposed and a minimum of six inches of cover material shall be maintained between the cells. After unloading, the asbestos and asbestos-containing waste materials shall be immediately covered with a minimum of three feet of daily cover.

(4) The final cover of the asbestos disposal area shall be a minimum of three feet of soil and shall be sufficient to minimize infiltration into the asbestos and asbestos-containing waste materials. The final slopes shall be graded to facilitate run-off away from the asbestos disposal area.

(5) The final cover shall be seeded and maintained to prevent erosion and exposure of the asbestos and asbestos-containing waste materials.

ii. Owners and/or operators of existing landfills shall comply with one of the following two options for disposal of asbestos and asbestos-containing waste materials:

(1) The owner or operator of the landfill may develop a separate area of the landfill for asbestos and asbestos-containing waste disposal, prepared and operated as required by (l)2i above; or

(2) A separate excavation may be prepared in the working face of the landfill. The excavation shall be of sufficient width and depth so as to allow the asbestos and asbestos-containing waste materials to be deposited such that a minimum of three feet of earth or other cover material may be placed between the top of the waste deposited and the top surface of the working face. A written notice must be recorded along with the deed for the landfill property, for all landfilled areas, with the appropriate county recording office, notifying future owners of the property that asbestos has been disposed in the landfill and that disruption or excavation is expressly prohibited under (l)2v below.

iii. The asbestos and asbestos-containing waste materials deposited in the disposal areas described in (l)2i and ii above, shall immediately be covered with three feet of earth or other approved cover material in a manner that prevents the rupture of the containers during the burying operation.

iv. For disposal areas identified in (l)2i and (l)2ii(1) above, a detailed metes-and-bounds description of the asbestos disposal area shall be recorded, along with the deed for the landfill property, with the appropriate county recording office, notifying future owners of the property that disruption or excavation is expressly prohibited pursuant to (l)2v below. This description shall also include the depths of asbestos and asbestos-containing waste materials and cover material and shall remain in the record in perpetuity.

v. For disposal areas identified in (l)2i and ii above, the intermediate and/or final landfill cover may not be disrupted, except as required for pollution control or remedial action, in which case such disruption must be managed in compliance with State regulations and 40 C.F.R. Part 61 governing the removal, disposal or other handling of asbestos or asbestos-containing waste materials.

vi. No person may enter an asbestos disposal area at a landfill during the unloading and covering of asbestos and asbestos-containing waste materials without wearing a respirator approved for asbestos by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration. This equipment shall be provided and maintained in good working order by the landfill owner and/or operator for its employees. Transporters of asbestos and asbestos containing waste materials shall be responsible for providing respirators, any mandatory training and fit testing for its drivers and passengers.

vii. With the approval of the Department, the owner and/or operator of the landfill may establish a secured drop-off and/or transfer area for the acceptance of asbestos and asbestos containing waste materials (ACWM) separate and apart from the disposal areas described in (l)2i and ii above. The owner and/or operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or asbestos-containing waste materials into the container used for drop-off and/or transfer.

3. Either there shall be no visible air emissions during or after acceptance and disposal to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of (l)3i or ii below shall be met.

i. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill shall ensure that the asbestos or asbestos-containing waste material that has been deposited at the site shall:

(1) Be covered with at least six inches of compacted non-asbestos-containing material; or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Department. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

ii. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill may use an alternative emissions control method that has received prior written approval by the Department.

4. The requirements in this subsection do not apply to asbestos and asbestos containing waste materials generated in a renovation or demolition project wherein the total project involves less than 260 feet of asbestos-coated pipe or less than 160 square feet of asbestos-coated surface, such as ducts, boilers, tanks, structural members and the like.

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

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

CFR cites updated.

Administrative Correction, effective February 5, 1990: Deleted incorrectly-cited text.

See: 22 N.J.R. 382(b).

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

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

Substantially amended section.

Case Notes

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. *VA Associates v. Department of Environmental Protection and Energy*, 95 N.J.A.R.2d (EPE) 120.

7:26-2A.9 Closure and post-closure care of sanitary landfills

(a) This section shall govern the closure and post-closure care of all sanitary landfills. This section includes requirements for the preparation of a Closure and Post-Closure Plan, as defined in (d)1 below, for all new sanitary landfills and every sanitary landfill operating on or after January 1, 1982. It also establishes requirements concerning establishment and use of both the BPU and the DEP escrow accounts required pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., for every sanitary landfill operating on or after January 1, 1982.

(b) The following words and terms, when used in this section shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the Department rules, N.J.A.C. 7:26-1.4:

“Accredited financial institution” means any commercial bank, savings bank or savings and loan association with its principal office located in the State of New Jersey, and insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

“Closure” means the construction and implementation of all environmental safeguards required by law or by the sanitary landfill’s approved Closure and Post-Closure Plan and the facility’s approved engineering design subsequent to the termination of operations at any portion of that facility. Closure may include but is not limited to all activities and costs associated with the design, purchase, construction and maintenance of all items in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfills subsequent to the termination of operations at any portion thereof, including but not necessarily limited to, the costs of placement of acceptable cover, the installation of methane gas monitoring, venting, or evacuation systems, the installation and monitoring of wells or leachate collection and control systems at the site or in the vicinity of any sanitary landfill.

“Closure period” means, unless otherwise specified, the period beginning after the landfill or a portion thereof has ceased to accept waste or the period as determined by the Department.

“Escrow account” means an interest-bearing account with an accredited financial institution as escrow agent, wherein funds shall be deposited by the owner or operator of every

sanitary landfill pursuant to N.J.S.A. 13:1E-100 et seq., and this section. This account shall be based upon the standard escrow agreement provided by the Department for execution by and between the escrow agent and the owner or operator of the sanitary landfill. There shall be only one escrow account for each sanitary landfill, unless otherwise authorized by the Department.

“Liquidity” means that availability of funds for draw-downs consistent with a landfill’s approved closure plan, or, if there is no approved closure plan, consistent with the Department’s closure strategy for the landfill facility.

“Owner or operator” means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land where on a sanitary landfill facility is or has been located, and any person, partnership or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill.

“Post-closure care” means those activities necessary to maintain and monitor a sanitary landfill in accordance with an approved engineering design and applicable laws and regulations after the landfill has been properly closed.

(c) General closure and post-closure care requirements are as follows:

1. Every owner or operator of a sanitary landfill shall be jointly and severally liable for the proper operation and closure of the sanitary landfill, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operations and closure.

2. The owner or operator of a sanitary landfill shall notify the Department in writing of his intention to suspend or terminate operations at that landfill. The Department shall receive notice at least 10 days prior to the date of suspension of operations, which notice shall include the duration of the suspension, and shall receive notice at least 180 days prior to the date of termination of operations.

3. No person shall contract to sell any land which has been utilized as a sanitary landfill facility at any time unless the contract of sale for the land describes such use and the period of time that the land was so utilized, as required in (c)4 below. Upon written request, any prospective purchaser of such land may obtain from the Department a history of the compliance by the landfill with all applicable statutes, rules and regulations administered by the Department.

4. Upon closure of the sanitary landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate county recording office. The description shall include the general types, locations, and depths of wastes on the site, the depth and type of cover material, the dates the landfills were in use and all such other information as may be of interest to potential landowners, and shall remain in the record in perpetuity.

5. The post-closure care period shall continue for 30 years after the date of completing closure of the sanitary landfill or as the following conditions apply:

i. The Department may reduce the post-closure care period to less than 30 years when it has been adequately demonstrated that the reduced period is sufficient to protect human health and the environment;

ii. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period upon a finding that such extended period is necessary to protect human health and/or the environment; and

iii. Any aggrieved person may petition the Department for an extension or reduction of the post-closure care period, based on good cause.

6. If the Department intends to reduce or extend the post-closure care period to less than or more than 30 years, public notice of that intention shall be provided.

(d) General requirements for a Closure and Post-Closure Plan are as follows:

1. No person shall construct or operate a sanitary landfill without an approval from the Department of a Closure and Post-Closure Plan. Such Plan shall consist of both a Closure and Post-Closure Care Plan and a Closure and Post-Closure Financial Plan in accordance with the provisions of (e) and (f) below, except as otherwise authorized by the Department.

2. The submission for approval by the Department of the Closure and Post-Closure Plan shall be made upon application for new sanitary landfill permit.

3. Existing sanitary landfills in operation after January 1, 1982 shall submit the Closure and Post-Closure Plan for approval by the Department in accordance with the following schedule:

i. Those sanitary landfills which ceased accepting waste during calendar year 1982 or which shall cease accepting waste during calendar year 1983 shall submit a Plan no later than three months from the effective date of this section;

ii. Those sanitary landfills not included in (d)3i above and which accept in excess of 100,000 cubic yards of waste per year, as delivered, shall submit a Plan no later than six months from the effective date of this section; and

iii. All remaining sanitary landfills not provided for in (d)3i and ii above shall submit a Plan no later than 12 months from the effective date of this section.

4. No owner or operator shall submit a Closure and Post-Closure Care Plan for approval which includes any unauthorized expansion of the proposed or actual sanitary landfill operation.

5. Any owner or operator who fails to submit the Closure and Post-Closure Plan, as required by this subsection, shall be subject to denial, revocation or suspension of the registration of the sanitary landfill and other regulatory or legal actions which the Department is allowed to institute by law.

6. The owner or operator may apply for Departmental approval to amend the Closure and Post-Closure Plan at any time during the sanitary landfill's operation, closure or post-closure care period.

7. The Department may require the amendment of an engineering design and a Closure and Post-Closure Plan at any time it is deemed necessary during the sanitary landfill's operation, closure or post-closure care period.

8. Any sanitary landfill that is closed under the provisions of this section shall be maintained in accordance with the approved Closure and Post-Closure Plan and must remain in compliance with all regulations of this subchapter.

9. A copy of the approved Closure and Post-Closure Plan shall be kept on file at the sanitary landfill during the course of the sanitary landfill's operation and, after closure, shall be filed with the municipal clerk.

10. Within six months of closure of the sanitary landfill, the owner and/or operator of the sanitary landfill shall obtain and submit to the Department an "as-built" certification by a New Jersey licensed professional engineer, certifying that each provision of the Closure and Post-Closure Plan has been implemented as designed and approved, subject to the following requirements:

i. A New Jersey licensed professional engineer shall certify, in writing, to the Department that he or she has supervised the inspection of the construction of each major phase of the sanitary landfill's closure. He or she shall further certify that each phase has been prepared and constructed in accordance with the closure design approved by the Department. The certification shall include as-built drawings.

ii. A New Jersey licensed professional engineer shall certify that the materials utilized in the closure of the sanitary landfill are in conformance with and meet the specifications of the approved closure design.

iii. There shall be no deviation from the approved closure design without the prior written approval of the design engineer and, at a minimum, prior verbal approval by the Department.

iv. All certifications shall bear the raised seal of the New Jersey licensed professional engineer, his or her signature, and the date of certification.

v. The certification shall include the following statement: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments

and that, based on my inquiry of those individuals under my supervision, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(e) The Closure and Post-Closure Care Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit to the Department a Closure and Post-Closure Care Plan prepared, signed and sealed by a New Jersey licensed professional engineer to provide for closure and post-closure care of the sanitary landfill;

2. The Closure and Post-Closure Care Plan shall provide for the design and implementation of the following:

i. A Soil Erosion and Sediment Control Plan certified by the local soil conservation district in accordance with the Soil Erosion and Sediment Control Act of 1975, as amended (N.J.S.A. 4:24-39 et seq.);

ii. Final cover;

iii. Final cover vegetation;

iv. A program for the maintenance of final cover and final cover vegetation;

v. A program for the maintenance of side slopes;

vi. Institution of run-on and run-off control programs;

vii. A program for the maintenance of run-on and run-off control programs;

viii. Groundwater monitoring wells;

ix. A program for the maintenance of groundwater monitoring wells;

x. A program for the monitoring of groundwater in accordance with NJPDES rules, N.J.A.C. 7:14A, and any permit for that sanitary landfill issued pursuant thereto;

xi. A methane gas venting or evacuation system;

xii. A program for the maintenance of methane gas venting or evacuation system;

xiii. A leachate collection and/or control system;

xiv. A program for the operation and maintenance of a leachate collection and/or control system;

xv. A program for the installation of a facility access control system;

xvi. A program for the maintenance of the facility access control system;

xvii. Measures to conform the site to the surrounding area;

xviii. A program for the maintenance of measures to conform the site to the surrounding areas;

3. The Department may require additional closure and post-closure care measures or waive any of the above requirements, should specific health and/or environmental circumstances justify such action; and

4. The Closure and Post-Closure Care Plan shall include a schedule for the implementation of all the provisions of this section.

(f) The Closure and Post-Closure Care Financial Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit a Closure and Post-Closure Financial Plan to the Department which shall set forth the costs and expenses, and establish the means for meeting those costs and expenses, associated with full implementation of the approved Closure and Post-Closure Plan.

2. The Closure and Post-Closure Financial Plan shall include an estimate which details the cost of each provision of the Closure and Post-Closure Care Plan and a projection of funds that will be available from the escrow account. Where the total expenses projected for the Closure and Post-Closure Care Plan exceed the amount of funds projected in the escrow account, the owner or operator must identify specific alternative funds which are to be dedicated to ensure payment of all costs identified in the Closure and Post-Closure Plan. The Plan shall provide:

i. That no withdrawals may be made from the escrow account until such time as the funds projected in the escrow account are sufficient to pay for all closure costs identified in the Closure and Post-Closure Financial Plan; or

ii. That withdrawals may be made from the escrow account concurrent with the use of the alternative funds described above, provided that such alternative funds are established in a manner similar to the escrow account and the expenditures from such alternative funds are made subject to the approval of the Department.

3. The Closure and Post-Closure Financial Plan shall include an estimate which details the general and administrative costs, including but not limited to, fees for engineering, legal, accounting, auditing and banking services, property and sales taxes, environmental impairment and general liability insurance, Department permits and review fees, and utility costs.

i. The costs in (f)3 above for non-construction and/or maintenance services are allowable for reimbursement from the escrow accounts provided that:

(1) The costs are necessary and attendant to further the closure and post-closure requirements of the sanitary landfill;

(2) The Closure and Post-Closure Plan includes provisions for these costs and they are fully funded; and

(3) The projected costs are the same as or comparable to the costs for similar services.

ii. If there are insufficient funds available to complete the sanitary landfill's closure and post-closure requirements, as set forth in the Closure and Post-Closure Plan, reimbursement of costs for environmentally necessary construction and/or maintenance activities will take priority over general and administrative costs, unless otherwise approved in advance by the Department.

iii. The Department shall not disburse money from the escrow account for the expenses incurred by the owner and/or operator of the sanitary landfill in an effort to challenge, contest or defy the Department's rules and regulations, and any permits or orders issued pursuant thereto.

4. The Closure and Post-Closure Financial Plan shall include the intervals at which each closure provision is to be implemented as well as a projection of when each escrow account withdrawal is anticipated.

5. The Financial Plan shall take into consideration the effect of inflation on closure and post-closure expenses. Unless otherwise approved, the owner or operator shall calculate the latest closure cost estimate using a calculated adjusted inflation factor derived from the annual Implicit Price Deflator for the Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business." The adjusted inflation factor shall be the 10-year moving average inflation rate (average annual percentage) for the most current 10-year period of Gross National Product Implicit Price Deflators, for example, 1974 compared with 1984 or 116.50 compared with 223.43 which yields a 6.73 percent average annual percentage change. The adjusted annual closure cost estimate shall equal the latest closure cost estimate times the adjusted average inflation factor.

6. The owner or operator shall review the cost estimate every two years and, if necessary, revise the Closure and Post-Closure Financial Plan. The updated Financial Plan shall be submitted on the second anniversary of the date of the Financial Plan was last approved.

(g) Pursuant to N.J.S.A. 13:1E-100, et seq. the requirements for the escrow account are as follows:

1. The owner and/or operator of every sanitary landfill shall deposit in an escrow account as defined in (a) above, on or before the 20th of each month, an amount equal to \$1.00 per ton of solids and \$0.004 per gallon of liquids of all solid waste accepted for disposal during the preceding month. It is noted that disposal of liquid waste in sanitary landfills is limited to only those few facilities permitted to accept such waste;

2. In the event that a measure other than the "ton" or "gallon" is used by the owner and/or operator of a sanitary landfill, the amount to be deposited shall be calculated by using equivalents established by the Division of Taxation;

3. Upon approval of the Department, those sanitary landfills which by the nature of their operation do not have the ability to measure the waste received in the manner provided for in this section may compute quantities of waste received by using an alternative, acceptable method;

4. The escrow account shall be for the closure and post-closure care of a particular sanitary landfill and all funds therein shall be used exclusively for the closure and post-closure care of that landfill in accordance with the approved Closure and Post-Closure Plan.

5. The owner or operator of a sanitary landfill who shall fail to deposit funds into an escrow account, as provided herein, or uses those funds for any purpose other than closure and post-closure care costs, as approved by the Department, shall be guilty of a crime of the third degree.

6. Where an owner or operator has ownership or control over more than one sanitary landfill, a separate escrow account must be established for each facility;

7. The escrow account shall be kept separate and apart from all other accounts maintained by the owner or operator. The fact that the owner or operator has previously established an escrow account pursuant to another law, rule or regulation, does not relieve them of their responsibility to establish an escrow account under these rules;

8. Every escrow account established pursuant to this section shall be based upon and governed by the standard escrow agreement provided for such purpose by the Department. Any revision to an escrow agreement shall first be approved by the Department and filed by the Department with the accredited financial institution as escrow agent. A copy of the standard escrow agreement provided by the Department may be obtained from the Office of Special Funds Administration, Department of Environmental Protection, PO Box 402, 428 East State Street, Trenton, N.J. 08625-0402.

9. The escrow agreement and any other document(s) evidencing the existence of the escrow account must contain a reference to the purpose of the account that will

put the personal creditors of the owner or operator on notice as to the nature of the account.

10. The escrow account shall be established and maintained so as to maximize yield, minimize risk and maintain liquidity, and shall be subject to the approval of the Department.

11. All funds deposited in the escrow account must be readily available in the event that circumstances necessitate the closure or post-closure care of the sanitary landfill prior to the date originally contemplated.

12. All interest or other income that results from investment of funds in the escrow account shall be deposited into the escrow account and subjected to the same restrictions as the principal;

13. Withdrawals from the escrow account shall be authorized by the Department upon submission and approval of a written request therefor which identifies the specific provision(s) of the Closure and Post-Closure Plan for which funding is sought. Authorization for such withdrawal will be granted only in accordance with the approved Closure and Post-Closure Care Plan, and after compliance with the following conditions:

i. The owner or operator has complied with all requests to amend the Closure and Post-Closure Plan;

ii. Except as otherwise authorized by the Department, the owner and/or operator submits to the Department, pursuant to (e)5 above, "as built" certifications by a New Jersey licensed professional engineer that the applicable provision(s) of the Closure and Post-Closure Plan for which the preceding withdrawal was obtained has been, or is being, implemented as set forth in the Closure and Post-Closure Plan; and

iii. Where the Department has approved a Closure and Post-Closure Financial Plan providing for the use of alternative funds pursuant to (f)2ii above, withdrawals from the escrow account will only be authorized to the extent that the cost exceeds the balance of the alternative fund. Where the alternative fund is an account, the Department shall allow the maintenance of the minimum balance necessary to keep such account open.

14. No withdrawals from an escrow account may be made without written approval of the Department, except as otherwise authorized by the Department;

15. The Department may withhold disbursements for closure or post-closure work performed if the amount to be expended in any calendar year exceeds or is projected to exceed the amount budgeted for any line item provision in the closure plan, by more than five percent of the line item, as updated biennially in accordance with (f)5 above. The owner and/or operator shall seek and obtain Department approval prior to expending funds which exceed or are projected to exceed budgeted costs, by letter, including revised financial schedules, identifying

the overage or projected overage, the reasons for the overage and the source of the funds to cover the overage. The Department shall approve or deny disbursements based on the rationale provided by the owner and/or operator and the long term impact on closure or post-closure.

16. The Department, although acknowledging the need for fund expenditure totalling a specific sum may, at its discretion, grant approval for the withdrawal of only a portion thereof, conditioning subsequent approvals upon the owner or operator's verification that the sum(s) authorized have been used solely for closure or post-closure care costs;

17. The Department may, at its discretion, determine that there is a need for closure or post-closure care expenditures and may require the owner or operator to withdraw such funds from the escrow account at any time to meet such expenses;

18. Funds remaining in the escrow account after complete and proper closure and post-closure care operations shall be paid into the Sanitary Landfill Facility Contingency Fund. A sanitary landfill will be deemed to be properly and completely closed where the Department determines that no further post-closure care maintenance or monitoring is necessary at the facility. When the Department makes such a determination, it shall notify the escrow agent and the owner or operator of the determination and shall supply the owner or operator with written approval for the transfer of the excess funds. Upon receipt of this written approval, all funds in said account shall be transferred to the Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E-100 et seq. and the account will be closed;

19. The escrow account shall not constitute an asset of the owner or operator and shall be established in such a manner as to ensure that the funds in the account will not be available to any creditor other than the Department in the event of bankruptcy or reorganization of the owner or operator.

20. The owner and/or operator of every sanitary landfill must arrange, with the financial institution wherein the funds are to be deposited, for a monthly statement of the escrow account to be sent to Landfill Closure Escrow Account, Bureau of Solid Waste Regulation, Department of Environmental Protection, PO Box 414, Trenton, New Jersey 08625-0414; provided, however, the Department may at its discretion upon written petition from the owner and/or operator relieve the owner and/or operator from the requirement for the monthly statement of the escrow account and substitute a quarterly (that is, once every three months) statement requirement therefor if it determines that monthly reporting on an account of less than \$25,000 would impose an unnecessary burden on the financial institution;

21. The owner or operator of every sanitary landfill shall file with the Department, in duplicate, an annual audit of the escrow account established for the closure of the sanitary landfill. The annual audit of the escrow account shall be conducted by a New Jersey certified public accountant and shall be filed with the Department no later than October 31 of each year, including each of the post-closure care period years. For the purposes of the escrow account only, the fiscal year shall begin on October 1 and terminate on September 30 of the following year, except that fiscal year 1982 shall begin on January 1, 1982 and terminate on September 30, 1982;

22. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Office of Special Funds Administration, Landfill Closure Escrow Account, Department of Environmental Protection, PO Box 402, 428 East State Street, Trenton, New Jersey 08625-0402, a statement showing the exact amounts of all solid waste accepted for disposal during the preceding month, the total amounts of solid waste received calendar year-to-date, the funds deposited in and withdrawn from the escrow account for the particular sanitary landfill during the current month, interest accrued, escrow account balance, and the total calendar year-to-date funds deposited in and withdrawn from the escrow account. These statements shall be filed on forms provided by the Department; provided, however, the Department may at its discretion upon written petition from the owner or operator relieve the owner or operator from the requirement for monthly reports and substitute a quarterly (that is, once every three months) reporting requirement therefor, if it determines that the monthly reporting on an account of less than \$25,000 would impose an unnecessary burden on the owner or operator.

Correction: (g)20 and 21 were inadvertently omitted from code.

See: 19 N.J.R. 1341(b).

Notice of action on petition for rulemaking; disbursement of escrow funds.

See: 28 N.J.R. 1076(c).

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

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

Substantially amended section.

Petition for Rulemaking.

See: 30 N.J.R. 2304(b), 30 N.J.R. 2525(b).

Case Notes

Regulations adopted applied only to operating and not to closed landfills. *Vi-Concrete Co. v. State*, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

State Department of Environmental Protection may install and maintain monitoring wells on closed landfill. *Vi-Concrete Co. v. State*, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

Amounts taxpayers spent to cleanup pollutant spill were not considered in determining "true value" for tax assessment. *Inmar Associates, Inc. v. Borough of Carlstadt*, 214 N.J.Super. 256, 518 A.2d 110 (App. Div.1986) affirmed in part, reversed in part 112 N.J. 593, 549 A.2d 38 (1988).

Operator of sanitary landfill was liable for certain taxes and escrow accounts on solid waste disposed in its facilities and accepted pursuant to joint order issued by Department of Environmental Protection and Board of Public Utilities that required landfill to remain open beyond its intended closing date. *Edgeboro Disposal, Inc. v. Division of Taxation, Dept. of Treasury*, 15 N.J.Tax 139 (A.D.1993).

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. *VA Associates v. Department of Environmental Protection and Energy*, 95 N.J.A.R.2d (EPE) 120.

APPENDIX A

GUIDELINES FOR A GROUND WATER MODELING EFFORT

1. The model of use must have a history that documents its ability to represent real world situations. In addition it should also be demonstrated that the model of choice has the ability for proposed management of ground water resources.

2. The set of equations, that govern ground water flow and pollutant, and the derivations of these equations must be presented.

3. The numerical methods used to solve the set of ground water flow and pollutant transport equations must be presented.

4. The Boundary Conditions and Initial Conditions used in solving the ground water flow and pollutant transport equation sets should be presented both mathematically and in narrative form.

5. A technical narrative describing the model to be used and a justification for the application of this to the specific problem should be presented. This should include whether the model is finite element, finite difference or some other scheme. The objective of the model should be stated up front.

6. The unknown quantities that the model is solving for should be described and explained. In addition those parameters derived from the initial unknown quantities should also be described and explained.

7. Appropriate analytical methods should be used to verify the validity of the numerical technique used to solve the flow equations in the model.

8. A sensitivity study of the error tolerance used and modal spacing needs to be conducted. The results should be presented and explained.

9. Perform mass balance calculations on selected elements in the model to verify physical validity.

10. The model must be calibrated against field data. It is important to note that if there is insufficient field data available for calibration then the model will extrapolate values of unknown accuracies. This is particularly impor-

tant since there is no one unique solution to a model and the most accurate solution (that closest to the real world situation) is a result of sufficient field data collection and model calibration with that data. It often takes more than 25 runs with the same data to properly calibrate a model to the real world situation. The level of field data considered to be sufficient should be agreed to before the modeling effort is initiated.

11. Limits and confidence on model predictions should be established and stated in the beginning of the modeling report.

12. All inputs and outputs to the computer program should be listed and explained in technical narrative.

SUBCHAPTER 2B. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR THERMAL DESTRUCTION FACILITIES, TRANSFER STATIONS, MATERIALS RECOVERY FACILITIES, CO-COMPOSTING AND SOLID WASTE COMPOSTING FACILITIES

7:26-2B.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the design, construction, operation and maintenance of the following types of disposal facilities:

1. Thermal destruction facilities which dispose of non-hazardous solid waste;
2. Thermal destruction facilities which dispose of non-hazardous solid waste and which incorporate energy recovery;
3. Solid waste transfer station facilities; and
4. Solid waste materials recovery facilities; and
5. Solid waste co-composting and composting facilities.

(b) The requirements of this subchapter are in addition to the general requirements found at N.J.A.C. 7:26-2.10 and 2.11.

(c) This subchapter shall apply to the following facilities:

1. All proposed solid waste facilities of the types identified in (a) above shall be designed, constructed, operated and maintained in accordance with the requirements of this subchapter; and
2. Any existing solid waste facilities of the types identified in (a) above determined to be operating in an environmentally unsound manner.

(d) This subchapter does not apply to hazardous waste facilities. See N.J.A.C. 7:26G.

Amended by R.1996 d.500, effective October 21, 1996.
Sec: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

7:26-2B.2 Construction

These rules shall be liberally construed to permit the Department to discharge its statutory functions.

7:26-2B.3 Purpose

(a) This subchapter is promulgated for the following purpose:

1. To establish additional engineering design submission requirements for thermal destruction facilities, transfer stations, materials recovery facilities, and solid waste composting and co-composting facilities to ensure that adverse impacts are minimized and pollution of the environment is prevented; and
2. To establish operational requirements to ensure the proper operation of thermal destruction facilities to minimize adverse impacts and prevent pollution of the environment.

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

In (a)1, inserted text "solid waste" preceding "composting".

7:26-2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26-2.10:

1. The rated capacity of the facility, in both tons per day and tons per hour, and the maximum gross heat release rating for each incinerator/boiler;
2. The protocol to be established that will allow for the measurement of the rate of waste charging to the individual combustion unit(s), averaged for each over a discrete 24-hour period. In the case where the thermal destruction facility recovers energy for use by means of steam production, the boiler system and its auxiliaries shall be used as a calorimeter, and the following shall be factored into the method of determination:
 - i. Direct measurement of salient variables shall be employed where such means are available;
 - ii. Adjustments shall be made to account for variability in unit thermal efficiency as equipment is cycled for maintenance and as a result of equipment aging; and
 - iii. Seasonal variability of the higher heating value (HHV) of the waste subject to combustion shall be derived analytically using standard laboratory methods. At a minimum, the method chosen shall provide for quarterly reassessments of the HHV of the waste subject to combustion. Waste samples collected for HHV determination shall be representative of the nature and type of waste to be received at the facility for processing. The protocol shall also provide for a means of cross referencing the accuracy of the method of determination chosen by employing the use of the facility waste delivery weight scale records in a comparative analysis;

3. Projected average and peak daily deliveries of waste to the facility and charging rates to the combustion unit(s) (given in tons and estimated volumes). Quantify seasonal trends when anticipated;

4. The designation of normal loading, unloading and storage areas to be employed in the facility's handling of incoming wastes to be processed and residual materials generated by facility operations, including capacities in cubic yards and tons. Describe the time such areas can be practically used, based on average and peak facility operating conditions. At no time shall waste be delivered to the facility at a rate exceeding the facility's capacity to sort and process such waste. Under no circumstances shall waste be deposited beyond the confines of the refuse pit, except for the purpose of conducting incoming waste load inspections and holding unauthorized materials, or storing unprocessable materials such as oversize bulky waste;

5. The designation of emergency unloading, loading, staging, storage or other disposal capabilities to be used for the removal of previously stored waste should the facility be unable to process waste by means of combustion. Identify the plans for waste transfer from the facility, and identify the alternative disposal facility to be used under such conditions;

6. The expected daily quantity of bottom ash, fly ash (air pollution control train residues), post combustion recovered metals and other waste residue generated by facility operations, referenced by weight and projected volumes;

7. The proposed ultimate disposal location for all facility generated waste residues including, but not limited to, ash residues and by-pass materials, by-products resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

8. A descriptive statement of any materials recycling or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the outgoing residue;

9. A descriptive statement and detailed specification of all process equipment, pollution control systems, instrumentation and monitoring mechanisms. Schematic diagrams shall be provided, where applicable. Equipment specifications, including information pertaining to the make, model and manufacturer, if available, and to the related processing equipment capacity, reliability and efficiency shall be submitted. Information on individual unit synchronization with upstream and downstream equipment shall also be submitted;

26. Where feasible, the facility subsystems shall be equipped with automatic process controls which contain the necessary instrumentation and related feedback mechanisms to ensure that process operational parameters are being met. Automated systems shall be equipped with manual override capabilities. Instrumentation displays and related control mechanisms shall be positioned within the facility in such a manner as to be readily accessible and highly visible for monitoring purposes;

27. The design of the facility shall not place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, potable and non-potable water supplies, waste water and stormwater collection and treatment, energy supply and transmission, transportation systems, or any other site related infrastructure subsystems, except in those cases where plans have been developed or are being implemented to provide for the expansion of existing utility systems or establishment of new utility systems which will meet the additional demand generated by the construction and operation of the facility. Copies of existing utility expansion plans and implementation time frames shall be submitted in those cases where such expansions are needed to meet the additional demand described above; and

28. All thermal destruction facilities shall be equipped with an independent, auxiliary power system capable of supplying energy in the case of a power supply failure sufficient to complete a controlled facility shutdown.

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

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

On-site and off-site hyphenated throughout rule, "vehicles" replaced by "solid waste vehicles" and "hauling" replaced by "transporting".

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

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

Substantially amended section.

Case Notes

Waste control authority complied with regulatory provision requiring it to identify proposed disposal locations for facility-generated waste residues. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Evidence sustained air pollution control permit for resource recovery facility. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

7:26-2B.5 Additional engineering design submission requirements and design requirements for transfer stations and materials recovery facilities

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10;

(b) All solid waste transfer stations and materials recovery facilities, except for those regulated pursuant to N.J.A.C. 7:26-2.4(c)2, shall be designed in accordance with the following:

1. Facilities shall be designed with a system capable of collecting, storing, treating and disposing of wastewater

generated during normal operations, including the wash-out and cleaning of equipment, trucks and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A;

2. Facility processing, tipping, sorting, storage and compaction areas shall be located within the confines of an enclosed building.

3. Facilities shall be designed with concrete or equivalent tipping floors or ramps to ensure the proper containment and channeling of wastewater to sanitary sewer connections or corrosion resistant holding tanks and to withstand heavy vehicle usage, in compliance with the applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14A and 7:14B;

4. Facilities on site roadways and storage areas shall be designed with concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

5. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste to ensure an environmentally sound operation and for proper processing of the maximum permitted daily incoming waste loading;

6. Facilities and all appurtenances, including all vehicles while onsite, shall be designed, positioned and buffered in such a manner that the sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29;

7. Facilities shall be designed in a manner which will prevent the migration of odors and mitigate the amount of dust outside the confines of the enclosed building in accordance with N.J.A.C. 7:27;

8. Facilities shall be designed in such a manner so as to afford fluid vehicular movement onsite in accordance with the approved on-site queuing plan and prevent traffic backups and related traffic hazards on access roads servicing the facility;

9. Offsite truck routes for the conveyance of solid waste shall be defined and delineated in such a manner as to minimize impacts on surrounding residential development or similar sensitive receptor. The truck traffic to and from the proposed facility shall not result in an unacceptable decrease in the level of service, as described and defined in the New Jersey Department of Transportation (NJDOT) Highway Access Management Code (N.J.A.C. 16:47), at major intersections located along the designated truck routes;

10. Facility layout design shall conform to the configuration of the site. A setback area shall be provided to allow for adequate buffering of the site. All main building enclosures shall be designed with a minimum setback of 50 feet from the facility property line. The Department shall allow a reduction in the setback limit if the applicant satisfactorily demonstrates that such a reduction

will not pose an adverse impact on the adjacent land use activities;

11. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling and suppressing any and all fires that may occur. All fire protection systems shall be designed to comply with N.J.A.C. 5:23-3.17 and the standards established by the National Fire Protection Association (NFPA);

12. The installation, maintenance, operation, and repair of all systems identified within the interior layout of the facility shall comply with the requirements established by the Federal Occupational Health and Safety Administration and the New Jersey Worker and Community Right to Know Act;

13. Facilities shall be designed and constructed in full conformance with the specifications and requirements of the Uniform Construction Code, N.J.A.C. 5:23;

14. The facility shall be designed so as not to place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, water supply, wastewater and stormwater collection and treatment systems, energy supply and transportation systems; and

15. The proposed ultimate disposal facility and location for all waste processed by the facility shall be identified.

(c) The site plan map shall include the following:

1. A layout of all facility buildings, structures and roadways which shall indicate the type of construction materials;

2. Profile views of all structures and enclosures showing dimensions. Plan views showing building setback, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas, and site boundaries;

3. Interior floor plan showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas;

4. A description with detailed specifications of the proposed onsite and offsite transportation system which shall indicate the type of construction materials; and

5. A utilities plan identifying, locating and describing all utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system and energy system. A descriptive statement of the carrying capacities of the existing systems and the remaining availability within the system for the facility's utility needs.

(d) The engineering report shall include:

1. Descriptive and detailed specifications of all process equipment to be used, including the equipment's rated and designed capacity. Schematic diagrams shall be provided;

2. Equipment specifications including information pertaining to the make, model and manufacturer, if available, and the related processing equipment, reliability and efficiency shall be submitted;

3. A discussion of the maximum length of time that waste and, where applicable, recyclable materials will be stored at the facility; and

4. A description of any materials recycling or reclamation activities to be operated in conjunction with the facility.

(e) If the facility is to handle liquid or liquid-solid waste mixtures, the proposed methods to protect and monitor the quality of groundwater and nearby surface waters shall be indicated.

(f) If the materials recovery facility is designed with mechanical size reduction equipment, an explosion suppression system shall be included in the engineering design.

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

Substantially amended (b); in (c)1, inserted reference to roadways; and in (c)5, inserted reference to energy system.

7:26-2B.6 Additional engineering requirements for solid waste composting and co-composting facilities

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10;

(b) Co-composting facilities require a SWF permit and may also require one or more NJPDES permits from the Department in accordance with N.J.A.C. 7:14A.

(c) The engineering report for these facilities shall include the following:

1. A discussion of the quantity and composition of the waste streams entering the proposed facility in terms of:

i. Municipality of origin; and

ii. Weight, volume and corresponding load density characteristics.

2. If sewage sludge is to be co-composted with solid waste, identify the quantity and physical/chemical characteristics of each source of sewage sludge. Sludge characteristics will be reviewed by the Department for a determination of their suitability for acceptance and processing at the proposed solid waste composting facility. The following information shall be submitted for each individual source of sludge:

- i. Identify the type of processing carried out at the sewage treatment plant source prior to dewatering (e.g. lime stabilization, digestion, long term storage, other);
 - ii. Identify the dewatering processes instituted, including a description of the equipment or technique used, the chemical reagents employed and a determination of the percent solids achieved;
 - iii. Express quantities on a dry weight basis and volume of the percent solids delivered to the facility. Identify the maximum, minimum and average delivery rates anticipated; and
 - iv. Provide a physical/chemical analysis for the sludge from each source, in accordance with the Sludge Quality Assurance regulations, N.J.A.C. 7:14-4. The Department may require additional testing where conditions dictate.
3. A description of the number, type, capacity and delivery or removal frequency (indicate both average and peak periods) of all transport vehicles. Describe on-site parking capabilities, loading and unloading facilities, access and exit points and mechanisms and features employed to provide for an even flow of traffic onto, on and away from the site. Describe the related material construction specifications and details;
 4. Identify, locate and describe the utilities intended to service the proposed facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system, electrical or other energy system;
 5. Process management should be based on specific and objective processing goals. Processing goals should be identified including, but not limited to, rapid processing, drying method, materials handling, nitrogen retention, etc. Describe the underlying conceptual basis or strategy upon which the process management will be based. A rationale should be given for the management strategy chosen in reference to others;
 6. Describe all process steps including, but not limited to, waste delivery, storage, mixing, composting methods, curing, screening, finishing, packaging and related process equipment and pollution control systems, instrumentation and monitoring mechanisms, if applicable. Within the context of the process description, identify the mix ratio of solid waste to sludge as well as the bulk weight and porosity of the mix. Provide an indication of the period of time during which active composting is to take place and the temperatures to be reached and maintained within that period. Identify the rate of aeration afforded and the time frame established for compost curing. Submit equipment specifications relating to make, model, manufacturer, processing capacity, reliability, efficiency and the relevant design and operating criteria that directly relates to the equipment's intended performance, plus the number of equipment units which will be available at the facility. Information on individual unit synchronization with upstream and downstream equipment, if applicable, shall also be provided;
 7. A comprehensive materials balance for the proposed facility shall be submitted. The materials balance shall account for every handling and processing step starting with waste delivery scheduling to the facility and ending with final product and waste/residue removal from the site. Quantification and qualification of sidestream process pollutants, if any, shall also be provided for in the materials balance. If any materials recovery is anticipated, document the anticipated materials recovery rates in tons per hour for each recovered component;
 8. A discussion of the contingency disposal options to be utilized if the composted end product cannot be marketed. These disposal options shall be in accordance with the approved district solid waste management plan and Departmental requirements established for the distribution of sewage sludge compost, if applicable;
 9. A process flow diagram of the proposed processing steps involved in recovering recyclable materials and mixed organic material from solid waste, any processing of recovered recyclable materials, and the composting, curing and storage of the mixed organic fraction;
 10. Profile views of all structures and enclosures showing dimensions;
 11. In addition to the requirements of N.J.A.C. 7:26-2.10(b)9, the operation and maintenance manual for the facility shall include the following information:
 - i. A description of the anticipated types, quantity, variation over time, and sources of waste to be received and a description of any additives used in the process;
 - ii. Designation of persons responsible for operation, control and maintenance of facility;
 - iii. Methods for measuring incoming waste;
 - iv. Methods to control the types of waste received (for example, inspection procedures);
 - v. Methods for removing and recovering for recycling or disposing of non-compostable wastes from the incoming waste stream, including procedures for removal, storage and disposal of any hazardous wastes;
 - vi. Methods to control traffic and to expedite unloading;
 - vii. Methods to maintain biological conditions;
 - viii. Methods to minimize, manage and monitor odors;
 - ix. Leachate and National Pollutant Discharge Elimination System storm water control measures;
 - x. Vector, dust and litter control measures;
 - xi. Contingency operations plan (in the event of equipment failure, power outages, natural disasters,

fire, receipt of prohibited materials), including designation of permitted disposal sites for incoming waste, leachate, and for hazardous wastes;

xii. Plans for monitoring, sampling and testing the composting materials for process control and product quality assurance as specified at N.J.A.C. 7:26-2B.7(i); and

xiii. Plans for marketing the finished compost; and

12. A final closure plan containing a schedule and description of the steps necessary to close the facility and financial assurance information.

(d) If a natural ground surface is to be used for storage or if any surface impoundments, lagoons, or other structures for storage or conveyance of leachate, runoff or condensate are proposed, soil borings of the property shall be provided in accordance with the following:

<u>Acreage</u>	<u>Minimum Number of Borings</u>	<u>Minimum Depth of Borings</u>
1-10	4	10 feet or
10-50	8	to the ground
50-100	14	water table
100-200	20	
Over 200	24	

(e) The site plan map shall depict the facility layout on the property and include profile views of all structures, utilities and enclosures showing height, breadth and bulk dimensions. Dimensions for loading, unloading, storage (for example, incoming waste, outgoing product), processing, composting and curing areas shall be provided. Identify the type of drainage system, run-off and leachate control systems. Building setbacks and the distances of any onsite proposed or existing structure, processing area or treatment area, and streets from the site boundaries shall be indicated. The site plan map shall include interior floor plans showing the layout, profile view and dimensions of the interior unloading, sorting, storage, processing, and loading areas as well as auxiliary functional areas such as offices and employee's facilities.

(f) Solid waste composting and co-composting facility engineering design requirements are as follows:

1. The composting structure must withstand wear and tear of normal operations. A roof shall cover the receiving, processing, production and curing areas. Floor structure must be impermeable (10^{-7} cm/sec) and be sloped to prevent ponding of liquids and to direct leachate to a leachate collection system. Leachate control shall be provided wherever leachate is generated.

2. All building enclosures shall be designed with a minimum setback of 100 feet from the property line of the facility. Any part of facility operations open to the environment shall be designed with a minimum setback of 2,500 feet from the nearest sensitive environmental receptor.

3. The facility design plan must address management of storm water and leachate:

i. Storm water which does come in contact with material on site shall be considered leachate.

ii. The leachate collection and removal system shall be designed for reuse in processing or treatment as dictated by local authorities.

4. The facility design must provide for:

i. Effective barriers to unauthorized entry and dumping (fencing, gates, locks, etc.);

ii. Adequate access roads to the site;

iii. Appropriate signs (at facility entrance, directing traffic flow, public information);

iv. Access to scales, if applicable;

v. Equipment and methods for achieving odor, noise, vector, dust, and litter control; and

vi. Fire protection and control features.

5. The facility shall have sufficient capacity to handle projected incoming volumes of waste.

6. The facility design must address specific storage issues, including:

i. Capacity for incoming wastes waiting to be processed (three days plus contingency storage);

ii. Capacity for proper handling, storage, and removal of hazardous or other non-permitted wastes delivered to or generated by the facility; and

iii. Capacity for finished compost storage, not to exceed 15 months' production, in accordance with a compost marketing plan.

7. The facility shall have sufficient structural support for operations (waste, equipment, buildings, etc.).

8. The facility design plan should include provisions for operations during wind, heavy rain, snow, freezing or other inclement weather conditions.

9. An occupational health and safety plan established in conformance with the safety and health standards of the Federal Department of Labor, Occupational Safety and Health Administration pursuant to 29 C.F.R. 1926 and 1910 Safety and Health Standards and Industrial Standards.

10. A written training plan which shall include the type and amount of both the initial and annual follow-up training to be provided to facility personnel;

11. The composting process shall meet the criteria for a process to further reduce pathogens (PFRP) as required by the U.S. EPA (40 C.F.R. Part 257). Three methods are accepted:

i. Windrow method, which meets PFRP as follows:

- (1) Maintain aerobic conditions; and
 - (2) A minimum of five turnings over 15 consecutive days, maintaining a temperature of not less than 55 degrees Celsius/131 degrees Fahrenheit.
- ii. Aerated static pile method which meets PFRP as follows:
- (1) Pile insulated with six to 12 inches of insulating material (for example, sawdust, cured compost, or wood chips); and
 - (2) Temperature of at least 55 degrees Celsius/131 degrees Fahrenheit maintained throughout mixture for three consecutive days.
- iii. Enclosed (within) vessel composting method which meets PFRP by:
- (1) Temperature maintained at 55 degrees Celsius/131 degrees Fahrenheit throughout mixture for at least three consecutive days.
- iv. Any future PFRP provided by Federal or State regulation.

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

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

Substantially amended (b) and (c); in (d), inserted "Minimum depth of borings" column; and added (f).

7:26-2B.7 Additional operational requirements for solid waste composting and co-composting facilities

(a) The requirements of this section are in addition to the general operational requirements of N.J.A.C. 7:26-2.11 and the solid waste facilities records maintenance requirements of N.J.A.C. 7:26-2.13.

(b) The owner and/or operator shall submit a quarterly report to the Department within 30 days after the end of each calendar quarter. The quarterly report shall include the following:

1. The quantity, type and source of incoming waste;
2. The quantity and types of recovered recyclables;
3. The quantity of compost produced;
4. The results of compost analysis;
5. The quantity, before blending, of compost sold or distributed, and markets;
6. The quantity of disposed residue, and sites;
7. Daily temperature readings and retention times during the composting process;
8. A summary of leachate management (collected, reused, and treated/ disposed);
9. A summary of major maintenance on leachate, temperature or other monitoring and control systems in operation; and

10. The standard procedures to assure data reliability.

(c) All compost analysis shall be performed by a laboratory certified pursuant to N.J.A.C. 7:18.

(d) The facility shall be operated under the supervision and control of properly trained individuals during all hours of operation, and access to facility shall be prohibited when facility is closed.

1. The owner and/or operator shall train all employees in appropriate facility operations, maintenance procedures, and safety and emergency procedures in accordance with the training plan developed pursuant to N.J.A.C. 7:26-2B.6(d)10.

(e) The owner and/or operator shall monitor and record the temperature of composting materials daily to ensure that the pathogen reduction criteria at N.J.A.C. 7:26-2B.6(f)11 are met.

(f) The owner and/or operator shall begin processing all incoming waste within three days. Any waste that is not processed within three days shall be sent for disposal. The owner and/or operator shall begin processing incoming waste containing grass within 24 hours unless the receiving area is fully enclosed and equipped with odor controls. For facilities without fully enclosed receiving areas, any waste containing grass that is not processed within 24 hours shall be sent for disposal.

(g) Incoming, unprocessed waste shall not be mixed with finished compost.

(h) Stored finished compost that is not sold or distributed within 15 months shall be removed for disposal or reprocessed for sale or distribution.

(i) In addition to the information required by N.J.A.C. 7:26-2.13(a), the daily record of facility operations shall include:

1. Daily temperature and moisture monitoring of the composting process;
2. Laboratory analyses;
3. The retention time of the composted material; and
4. The sale and distribution of recovered materials.

(j) The owner and/or operator shall develop a quality assurance (QA)/quality control (QC) plan to be included in the final operation and maintenance manual. Such plan shall outline the monitoring, sampling and analysis plans for testing the compost process and product.

(k) The Department shall set an appropriate monitoring and sampling schedule for the start-up period (one year) as part of the facility permit.

(l) Using information gained during the start-up period, a monitoring and sampling schedule for ongoing operations will be developed with the Department based on statistical methods for quality assurance.

(m) Representative samples of the compost shall be obtained in accordance with the approved plan. Samples of the compost produced at the facility shall be analyzed for the compost quality monitoring parameters listed in the Appendix to this subchapter, incorporated herein by reference, in accordance with the appropriate methods as approved in the sampling plan.

(n) Results of all laboratory analyses for each parameter shall be recorded and maintained at the facility and shall be reported to the Department as specified at (b) above.

(o) Any package containing compost offered for sale or distribution shall be labeled with the recommended safe uses and application rates, and restrictions, if any, on use of the product. If compost is offered for bulk sale or distribution, signs or printed literature containing such information shall be made available.

(p) Compost offered for sale or distribution shall satisfy the standards established by the USEPA at 40 C.F.R. 503. Specifically, compost offered for sale or distribution shall meet the pollutant concentrations in 40 C.F.R. 503.13(b)(3), the Class A pathogen requirements in 40 C.F.R. 503.32(A), and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) through 503.33(b)8. Compost not satisfying the standards established by the USEPA may be used only as authorized by the Department, or it shall be disposed.

(q) This subsection shall govern the closure and post-closure care of all composting and co-composting facilities.

1. The owner and/or operator of a permitted composting or co-composting facility shall not revise the final closure plan submitted pursuant to (c)12 above without prior approval of the Department. The owner and/or operator may submit an updated final closure plan, containing the proposed revisions to the Department at any time, provided that all revisions are submitted at least 180 days prior to termination of operations at the facility.

2. The owner and/or operator shall notify the Department, in writing, return receipt requested, at least 60 days prior to the date of termination of operations at the facility.

3. The owner and/or operator shall publish notice of termination of operations at the facility in a newspaper of general circulation in the district where the facility is located and in the district(s) or municipality(ies) sending at least 25 percent of their waste to the facility at least 30 days prior to the date of termination of operations at the facility.

4. Within 10 days of ceasing operation, all residuals and waste shall be removed from the site and recycled or disposed and the owner and/or operator shall arrange for a final cleaning of any containers, equipment, machines, floors and facility surfaces having come in contact with solid waste.

5. A composting facility shall be considered finally closed when all the requirements of the closure plan have been met.

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

7:26-2B.8 Additional operational requirements for thermal destruction facilities

(a) The requirements of this section are in addition to the general requirements of N.J.A.C. 7:26-2.11;

(b) Subsequent to completion of the facility construction phase and prior to the initiation of facility operations, the New Jersey licensed professional engineer retained by the applicant to supervise the construction of the facility shall certify in writing to the Department that he or she has personally examined the facility during each major stage of construction and that the facility has been constructed in accordance with the documents, statements, designs and plans submitted to and as approved by the Department.

(c) The owner and/or operator of the facility shall provide written notification to the Department of the intent to initiate the start up of operations at the facility at least 30 days in advance of the planned date. During this initial period of facility start up the Department reserves the right to have a representative present at the facility to observe any equipment testing that is being conducted as well as the right to collect samples to verify results.

(d) Immediately following the initiation of operations, facility personnel shall begin routine inspections for equipment malfunction or deterioration and operating effectiveness, in accordance with the following:

1. The owner or operator shall conduct inspections as indicated in the approved final O and M manual in order to identify and remedy any problems; and

2. The owner and/or operator shall record the results of the inspections in a log book or by means of an electronic storage system approved by the Department which shall be accessible at the facility at all times for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial actions taken.

2. Containers shall meet the packaging requirements for regulated medical waste at N.J.A.C. 7:26-3A.11. Coffee cans, glass or soft thin-walled plastic bottles are not acceptable containers for collection and transportation of

used or unused syringes. All containers shall be clearly labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste."

3. The home self-care medical waste, after receipt, shall be managed in compliance with the requirements for regulated medical waste in this subchapter in addition to the following specific requirements:

i. For reporting purposes, home self-care medical waste shall be considered regulated medical waste by the person accepting it for disposal;

ii. Collected home self-care medical waste shall be transported in compliance with this subchapter;

iii. A person that offers home self-care medical waste for off-site treatment, destruction, or disposal shall use the tracking form required by N.J.A.C. 7:26-3A.19;

iv. Packaged cardboard shipping boxes in which containers of home self-care medical waste is transported shall be labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste";

v. The tracking form shall be prepared in accordance with all State standards, except that Box 14 on the tracking form shall contain the words "Home Self-Care Medical Waste". Box 14 shall be used to identify the total number of containers shipped and total weight of the shipment;

vi. Treatment and destruction shall be in accordance with this subchapter. A separate log shall be maintained to record the total number of containers and total weight of home self-care medical waste treated and destroyed.

(i) No person shall install or use any alternative or innovative technology, or any modification thereof, for the treatment and/or destruction of regulated medical waste unless such technology or modification has been approved and authorized by the Department and DOH for such purpose pursuant to N.J.A.C. 7:26-3A.47.

(j) No person shall abandon regulated medical waste on any public or private property or cause regulated medical waste to be abandoned. For the purpose of this section, "abandoned" means the intentional or unintentional placement, discard or loss of regulated medical waste in any area outside of the direct control of the person generating, transporting, managing, or disposing of the waste.

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), (b), and (d), specified the applicable medical waste generators; added (b)1 and (b)2; and added (e) through (j).

7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that transport only their own regulated medical waste and home self-care medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27(c). The generator shall meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a vehicle with a gross weight of less than 8,000 pounds that is owned by the generator, the same operator as the generator at that site or the same operator's or generator's authorized employee;

2. The original generation point and the storage point or disposal facility are located in New Jersey; and

3. The generator complies with the requirements of N.J.A.C. 7:26-3A.19.

(b) Generators that transport by the U.S. Postal Service regulated medical waste, Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6, are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) if the generator generates less than three cubic feet (50 pounds) of regulated medical waste per month and ships less than three cubic feet (50 pounds) of regulated medical waste per shipment. The generator shall meet the following conditions:

1. The package shall be sent registered or certified mail, return receipt requested (indicating the person to which the package is sent, signature of sender, date, and address where delivered);

2. The generator shall retain the original mailing receipt and the returned registered or certified mail receipt and attach them to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26-3A.19.

(c) Generators of less than 500 pounds of regulated medical waste per year, excluding blood and body fluids disposed of in a municipal sewer system in accordance with N.J.A.C. 7:26-3A.16(b), are exempt from the tracking requirements of N.J.A.C. 7:26-3A.19 provided:

1. Such generators generate regulated medical waste within the boundaries of a medical care room operated by another registered generator generating regulated medical waste in the ordinary course of business, such as a doctor or hospital; and

2. Each generator using the medical care room has a written agreement with the operator of the medical care room providing that such operator will dispose of the generator's regulated medical waste according to the requirements of this subchapter.

(d) A generator that collects regulated medical waste from other generators, in the same building or in other buildings on the generator's property or on contiguous property owned by the generator not divided by public roads, is exempt from the requirements of N.J.A.C. 7:26-3A.16(d) provided:

1. The generator collecting the regulated medical waste is registered as a collection facility, intermediate handler or destination facility;

2. The generator or its employee collects the regulated medical waste;

3. All the regulated medical waste is managed in compliance with this subchapter at all times; and

4. The collected regulated medical waste is not transported on public roads.

(e) A generator that generates regulated medical waste at a temporary facility operating less often than 15 days each year is exempt from the registration requirement of N.J.A.C. 7:26-3A.8(d) provided:

1. The generator maintains a permanent registered regulated medical waste generator facility; and

2. The generator transports the regulated medical waste from the temporary facility to the generator's permanent facility at the end of each working day for management as a regulated medical waste in accordance with this subchapter.

Administrative Correction in (a).

See: 23 N.J.R. 3138(a).

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

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

Specified the weight of three cubic feet throughout; in (a), inserted reference to home self-care medical waste; in (b)1 and (b)2, inserted reference to certified mail; in (b)3 amended N.J.A.C. reference; and added (c) and (d).

7:26-3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste may be transported to or otherwise unloaded at any transfer station permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

1. Transfer stations accepting regulated medical waste shall comply with the requirements for regulated medical waste collection facilities at N.J.A.C. 7:26-3A.39(b)3 and (d)2 through 8.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

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

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

Added (a)1.

7:26-3A.19 Generator use of tracking form

(a) A generator that transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators that meet the requirements of N.J.A.C. 7:26-3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26-3A.8(e).

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

1. Generators that transport regulated medical waste to the supplier of the radioactive medical materials from which the waste was derived and such supplier of radioactive medical materials shall complete the tracking form in accordance with (h) below.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Complete Boxes 1 through 15 of the tracking form for each shipment of regulated medical waste off-site;

i. The quantity of the regulated medical waste in pounds shall be entered in Box 13.

2. Sign and date the certification statement in Box 15 on the tracking form by hand;

3. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form in Box 16; and

4. Retain "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

(e) Generators that transport their own regulated medical waste and that meet the requirements of N.J.A.C. 7:26-3A.17(a) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand, and enter in Box 5 the words "Self-Transport";

2. Sign the transporter section of the tracking form in Box 16, noting the date the regulated medical waste was transported;

3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Enter the name, address, telephone number and Generator Identification number of the collection facility in Box 14.

5. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

6. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

7. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26-3A.31(d).

(f) Generators that transport their regulated medical waste through the U.S. Postal Service and that meet the requirements of N.J.A.C. 7:26-3A.17(b) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand;

2. Sign and date the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service in Box 5. The person delivering the RMW to the U.S. Postal Service shall sign and note the date the shipment was mailed in Box 16;

3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1; and

5. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or
2. The intermediate handler or destination facility if transported solely by rail; or
3. The last rail transporter to handle the waste in the United States if exported by rail.

(h) For regulated medical waste derived from radioactive medical materials the tracking form shall be prepared as follows:

1. The generator shall complete Boxes 1 through 10 on the tracking form;

2. The generator shall indicate in Box 14 that radioactive regulated medical waste is being transported to the supplier of the original radioactive medical materials;

3. The generator shall complete Box 15 (generator's certification) and enter the first date the tracking form is used. A copy of that specific tracking form may then be used for up to one year from the original date entered in Box 15;

4. A copy of the tracking form shall accompany each shipment of radioactive regulated medical waste from the generator to the supplier;

5. The generator shall use a registered regulated medical waste transporter;

6. The supplier shall maintain a receiving log for each shipment, which may be in the form of its usual record-keeping for the radioactive waste inventory, in which the following information is recorded:

- i. The date of receipt of the radioactive regulated medical waste shipment;
- ii. The type of radioactive regulated medical waste received and the number of containers of each type; and
- iii. The total weight of each type of radioactive regulated medical waste received; and

7. The supplier shall, on a quarterly basis, submit a summary of the receiving log information to the generator of the radioactive regulated medical waste and to the Department.

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

Inserted new (d)1; recodified former (d)1 through (d)3 as (d)2 through (d)4; in (e)1, inserted date requirement and reference to "self-transport"; inserted new (e)3 and (e)4; recodified former (e)3 through (e)5 as (e)5 through (e)5; in (e)5; in (f)1 and (f)2 inserted date; inserted new (f)3; recodified former (f)3 and (f)4 as (f)4 and (f)5; in (f)4, inserted reference to "self-transport"; and added (g).

Case Notes

Dentist had duty to protect sanitation worker stuck in forearm by dental instrument while collecting trash; dentist consciously disregarded regulatory requirements regarding disposal of medical waste materials; sanitation worker claimed emotional distress, fearing HIV infection. *De Milio v. Schrager*, 285 N.J.Super. 183, 666 A.2d 627 (L.1995).

7:26-3A.20 Generators exporting regulated medical waste

(a) Generators (including transporters, collection facilities, transfer stations, and intermediate handlers that initiate tracking forms) that export regulated medical waste to a foreign country (for example, Canada) for treatment, destruction, or disposal, shall request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator shall submit an exception report as required under N.J.A.C. 7:26-3A.22.

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), inserted reference to collection facilities and transfer stations.

7:26-3A.21 Generator recordkeeping

(a) Each generator shall:

1. Keep the copy of each tracking form required by N.J.A.C. 7:26-3A.19 and the signed "Copy 1—Generator Copy" of each completed tracking form signed by the owner or operator of the destination facility, intermediate handler or collection facility for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26-3A.22(b) for at least three years after the day the exception report was submitted unless the Department specifically requires an additional retention period.

(b) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, shall maintain the following records:

1. The approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;

2. The approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and

3. For regulated medical waste accepted from other generators, the name and address of the generators, the date the waste was accepted from each generator, the weight of waste accepted from each generator, and the date the waste was treated and destroyed for each generator.

(c) Each generator in (b) above shall maintain records for a period of at least three years from the date the waste was treated and destroyed, unless the Department specifically requires an additional retention period.

(d) All generators of regulated medical waste shall submit annual generator reports to the Department for the period June 22 through June 21 of each calendar year on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) covering all regulated medical waste generated, treated or destroyed, and disposed of and shall be submitted to the Department by July 21 of each calendar year. The generator annual report shall include, but not be limited to, the following information:

1. The date of the report;
2. A description of the regulated medical waste, identified by Waste Class;
3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;
4. The name and NJDEP solid waste transporter registration number of every transporter who transported the generator's regulated medical waste;

5. The name and address of each intermediate handler or destination facility and a description of quantity in pounds for each Waste Class of regulated medical waste sent to each facility; and

6. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer).

(e) Generators of regulated medical waste that is reused or recycled shall comply with the reporting requirements of N.J.A.C. 7:26-3A.6(b)6iii and 7iii.

(f) All copies of the generator's annual reports, logs, tracking forms and other documents required to be maintained under this subchapter as well as copies of the Department's compliance inspection reports and the certificate of generator registration for the site shall be retained at the generator's site, for at least three years from the date that the documents were due, or created, unless the Department specifically requires an additional retention period.

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, inserted reference to the generator copy; in (a)2, inserted three year provision; deleted (d); recodified former (h) as (d); rewrote (e); deleted (f); recodified former (i) as (f) and substantially amended.

7:26-3A.22 Exception reporting for generators

(a) A generator shall contact the owner or operator of the destination facility, transporter(s), intermediate handler(s) and collection facility(s), as appropriate, to determine the status of any tracked waste if the generator does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26-3A.8(d) if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter, or if the tracking form for the waste was consolidated onto a new tracking form by a transporter or a collection facility in accordance with N.J.A.C. 7:26-3A.33, within 60 days of the date the waste was accepted by the initial transporter. The exception report must be post-marked on or before the 46th day following the date the waste was accepted by the initial transporter, or for loads consolidated by transporters or collection facilities, on or before the 61st day, and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

1. This section shall not apply to transporters that are generators of less than 50 pounds of regulated medical waste per month and that transport RMW pursuant to N.J.A.C. 7:26-3A.17(a).

(b) All transporters shall maintain at each site and in each vehicle used to transport regulated medical waste a copy of the Spill Management Plan and appropriate equipment and supplies for cleaning up a spill of regulated medical waste, including but not limited to, the following:

1. A spill containment and cleanup kit in each area utilized for the collection, transfer, storage, treatment, packaging or other such handling of regulated medical waste. All vehicles operating under a New Jersey regulated medical waste transporter registration, or any out-of-State transporter transporting regulated medical waste through New Jersey in accordance with N.J.A.C. 7:26-3A.27(g), shall carry a spill containment and cleanup kit in the vehicle whenever regulated medical waste is transported. Personnel shall be trained in the use of the kit. The kit shall contain, at a minimum, the following:

i. Absorbent material for spilled liquids. The absorbent material shall have a rated capacity of one gallon of liquid for every cubic foot of regulated medical waste that is usually managed in the area for which the kit is provided or 10 gallons, whichever is less.

ii. One gallon of disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream. The disinfectant shall be of hospital grade and of a formulation described in (c) below and be effective against mycobacteria.

iii. Fifty plastic bags that meet the requirements of N.J.A.C. 7:26-3A.11(b)2, 3 and 4 along with sealing tape (or devices for sealing), and appropriate labels as required by N.J.A.C. 7:26-3A.14. The plastic bags shall be large enough to overpack any box or other container usually used by the customers of the transporter for regulated medical waste packaging;

iv. Two sets of overalls, gloves, boots, caps, protective eye covering, and protective breathing devices all of which must be disposable and impermeable to liquids. Overalls, boots and caps shall be oversized or fitted to medical waste handlers and be made of a moisture resistant or moisture-proof material. When sharps are known not to be present, gloves for handling regulated medical waste shall be durable and moisture resistant or moisture proof. When sharps are known to be present or may be present, gloves for handling such waste shall be puncture resistant or puncture proof in addition to being moisture resistant. Boots shall be of durable moisture resistant or moisture proof material that does not tear under the stress of walking. At a minimum, protective breathing devices shall include surgical masks. The kit shall also contain tape for sealing wrists and ankles of the protective overalls;

v. Scoops, shovels, push brooms, and buckets;

vi. A first-aid kit, boundary marking tape, fire extinguisher, lights, and other appropriate safety equipment;

vii. A suitable means of communication for summoning aid in an emergency, and

viii. A copy of the approved Spill Management Plan as described at (a) above.

(c) Disinfection and routine decontamination procedures for soiled surfaces include, but are not limited to, the following:

1. Exposure to hot water of at least 82 degrees Celcius (180 degrees Fahrenheit) for a minimum of 15 seconds; or

2. Exposure to a chemical sanitizer by rinsing with or immersion in a chemical disinfectant. Such disinfectants shall be registered with the USEPA as hospital disinfectants that are tuberculocidal, fungicidal, virucidal and effective against HIV-1. Also approved for this specific purpose as a disinfectant is ten percent volume/volume of sodium hypochlorite and water.

(d) In case of any spill of any regulated medical waste, the transporter shall immediately take steps to contain and clean up the regulated medical waste in accordance with the procedures specified in the Spill Management Plan.

1. The spill of any medical waste by a transporter shall be immediately reported by the transporter or its designee to the DEP Emergency Response 24-hour Hotline at (609)292-7172.

2. The transporter shall submit a written accident report to the Department within 48 hours of the occurrence of any spill of regulated medical waste on an accident report form provided by the Department. A copy of the report shall be kept on file for a minimum of three years from the date of submission in the same location as the registration certificate. The record retention period shall be extended during the course of any unresolved litigation, or when otherwise required by the Department.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Former section, "Temporary authorization to operate a regulated medical waste incinerator", was recodified to N.J.A.C. 7:26-3A.38.

7:26-3A.38 Temporary authorization to operate a regulated medical waste incinerator

(a) This section applies only to and sets forth requirements for an authorization to operate an incinerator that accepts regulated medical waste for disposal.

(b) Notwithstanding the requirements of N.J.A.C. 7:26-2 and 2B, but subject to the requirements of N.J.A.C. 7:26-16, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1. The owner or operator shall submit documentation as submitted to the Department demonstrating that the incinerator was in operation accepting regulated medical waste for disposal on or before March 6, 1989;

2. The owner or operator of the disposal facility continues to accept regulated medical waste for disposal;

3. The owner or operator registers and pays fees as a regulated medical waste destination facility in accordance with N.J.A.C. 7:26-3A.8;

4. The owner or operator of the facility shall have a current certificate to operate control apparatus or equipment pursuant to N.J.A.C. 7:27;

5. The owner or operator shall be or is fully permitted pursuant to N.J.A.C. 7:26-2 and 2B prior to expiration of the facility's current certificate to operate control apparatus or equipment issued pursuant to N.J.A.C. 7:27. For the purposes of the temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate;

6. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

7. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling windblown papers and other lightweight materials such as fencing shall be implemented;

8. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

9. The owner or operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

10. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of the local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

11. The owner or operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

12. The facility owner or operator shall be responsible for the sanitary condition and orderly operation of the area;

13. The Departments' inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's authorization or permit issued by the Department; or

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

14. An operation and maintenance manual meeting the requirements of N.J.A.C. 7:26-2B.4(a)17 through 20 shall be maintained at the facility;

15. The owner or operator shall obtain or has obtained all applicable permits and approvals required by Federal, State, county and local ordinance;

16. The facility shall not pose a threat to the public health, safety or the environment; and

17. The facility shall only accept regulated medical waste from transporters who have NJDEP registration numbers and who have a certificate of public convenience and necessity issued by the Department, unless the transporter is exempt from these requirements pursuant to N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the generator who has shipped the waste has complied with N.J.A.C. 7:26-3A.17(b).

Recodified from 7:26-3A.37 and amended by R.1996 d.578, effective December 16, 1996.

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

Former section, "Intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.40. In (b)17, deleted reference to EPA.

7:26-3A.39 Collection facilities for medical wastes

(a) This section contains the regulations of the Department governing the authorization and operation of noncommercial and commercial collection facilities for regulated medical waste. Such facilities shall accept and handle only medical waste and regulated medical waste as defined at N.J.A.C. 7:26-3A.5. Such facilities shall not accept or handle solid waste as defined at N.J.A.C. 7:26-1.4 and 1.6 other than medical waste and regulated medical waste, hazardous waste as defined at N.J.A.C. 7:26G, or recyclable material as defined at N.J.A.C. 7:26A-1.3.

(b) Any registered regulated medical waste generator that conducts activities as a collection facility and that generates regulated medical waste in the ordinary course of business at the same site, such as a doctor or hospital, that operates on a noncommercial basis and accepts only medical wastes from other generators registered pursuant to N.J.A.C. 7:26-3A.8 and home self-care medical wastes in accordance with N.J.A.C. 7:26-3A.16(h) for collection for transportation off-site for treatment and/or disposal in accordance with this subchapter shall operate as a noncommercial collection facility and shall comply with the requirements at (b)1 through 3 below and at (i) and (k)4 below.

1. Noncommercial collection facilities are exempt from registration as regulated medical waste transporters pursuant to N.J.A.C. 7:26-3A.8 provided they are operated in compliance with N.J.A.C. 7:26-3A.27(e).

2. Noncommercial collection facilities shall comply with the standards for the operation of collection facilities at (i) below.

3. The boundaries of noncommercial collection facilities shall be limited to the site for which the owner and/or operator of the facility is registered as a regulated medical waste generator pursuant to N.J.A.C. 7:26-3A.8 or as an exempted transporter pursuant to N.J.A.C. 7:26-3A.27(e), including buildings on the site and vehicles registered pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A at the site for the purpose of transporting medical wastes.

(c) Any collection facility that does not meet the criteria in (b) above as a noncommercial collection facility shall obtain authorization as a commercial collection facility pursuant to (d) below and shall operate in accordance with the requirements of this section.

(d) A person registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16, and 16A to transport regulated medical waste in the State of New Jersey that seeks to operate a commercial collection facility for medical waste shall submit an application containing the information listed at (d)1 through 15 below. All maps of the proposed facility shall be prepared in a manner and format consistent with N.J.A.C. 7:1E, Appendix C. Three copies of the application and all accompanying documents shall be submitted to the Department at the address specified in (e) below, and one copy each to the host municipality and district solid waste management plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed commercial collection facility;

2. A photocopy of the applicant's authorized registration as a regulated medical waste transporter obtained pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A;

3. Photocopies of all authorizations for siting, construction and operation obtained pursuant to applicable local,

regional, State or Federal agency with jurisdiction over any aspect of the proposed facility;

4. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;

5. A description of the current use of the facility site and of all adjoining properties;

6. Documentation establishing that the facility has been included in the applicable district solid waste management plan. The Department may issue an authorization in the absence of a letter of consistency if it determines that the collection facility is needed to help fulfill the objectives of the adopted and approved Statewide Regulated Medical Waste Management Plan or any individual district regulated medical waste management plan. The Department shall notify the host county and municipality of such a determination and the reasons justifying facility authorization in writing prior to any approval of operations;

7. A description of the maximum amount and types of waste to be received and transferred at the facility each day, expressed in tons or gallons per day, as applicable;

8. A description of the sources of the waste and the anticipated disposal locations of the waste, both in State and out of State;

9. A description of the type(s) and number of containers that will be used at the facility and the type and means of storage and staging of the containers;

10. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer, surveyor or architect. The site plan shall:

i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading, unloading and temporary storage of regulated medical waste;

ii. Be drawn to a scale no greater than one inch equals 100 feet;

iii. Indicate the routing of vehicles between the facility and all nearby roadways serving the site, as well as the traffic flow within the site. Such routing must ensure safe and efficient vehicular and pedestrian circulation, parking, and loading and unloading of packages of regulated medical waste;

iv. Delineate floodplains as defined at N.J.A.C. 7:13;

v. Delineate the location of State-designated wetlands, New Jersey Pinelands, existing or suitable agricultural lands, Federal or New Jersey-registered historic sites and other environmentally sensitive areas such as State parks, wildlife management areas and National Wildlife Refuges;

vi. Identify the direction of water runoff both on-site and off-site and the screening and landscaping on the site;

vii. Indicate topographic contours, drawn at three-foot intervals; and

viii. Indicate all site access controls to be employed at the facility;

11. An original current 7.5 minute USGS Quadrangle map with the boundary of the facility plotted thereon. The map shall delineate any public access roads to the site and any streams, ponds or other potential sensitive receptors such as, but not limited to, hospitals, schools, and shopping areas within a one-half mile radius of the site;

12. A copy of the deed of record establishing ownership of the facility property or, if the applicant is a person other than the landowner, a legal agreement (for example, a lease) to use the real property for the purpose of operating the facility;

13. A description of the design capacity of the facility, setting forth the number and types of all vehicles arriving at the facility and the number and types of all vehicles leaving the facility on a daily basis, stating the maximum number of vehicles per hour that will arrive at and leave the facility;

14. A copy of any New Jersey air pollution control permit application as applicable, in accordance with N.J.A.C. 7:27; and

15. A narrative describing the facility operations from the receipt of waste through the point of transfer to destination. The narrative must clearly demonstrate that packages and containers will not be opened and that employees, the public or the environment will not be exposed to regulated medical waste or medical waste.

(e) The application described in (d) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-3A.8, to:

Bureau of Registration
Division of Solid and Hazardous Waste
New Jersey Department of Environmental Protection
PO Box 414
Trenton, New Jersey 08625-0414

(f) Within 45 days after the Department receives the application submitted pursuant to (d) above, the Department shall take one of the following actions:

1. Issue a letter of authorization to operate the commercial collection facility, or a denial of the application, to the applicant and provide a copy of the letter of authorization or denial to the host municipality and district solid waste management plan implementation agency. A letter of authorization shall not be transferred to any other person;

2. Notify the applicant in writing of missing information and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (d) above and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency.

(g) An applicant shall submit to the Department and to the host municipality and district solid waste management plan implementation agency any additional or corrected information required pursuant to (f)2 or 3 above within 30 days of receipt of the notification from the Department of missing and/or insufficient information.

(h) The Department shall deny without prejudice the application of any applicant that fails to submit the additional or corrected information required pursuant to (f)2 or 3 above or that otherwise fails to meet the application criteria of this section. The applicant may thereafter submit a new application for authorization to operate a commercial collection facility at the same location pursuant to the requirements of this section.

(i) The operating standards for collection facilities are as follows:

1. The maximum amount of regulated medical wastes at a collection facility including regulated medical wastes in any vehicles staged at the facility shall not exceed 300,000 pounds at any time unless a higher amount is specified in the facility's letter of authorization.

2. Collection facilities shall not receive medical wastes in excess of 150,000 pounds per day unless a higher amount is specified in the facility's letter of authorization.

3. Collection facility operators shall comply with all requirements for transporters at N.J.A.C. 7:26-3A.27 through 3A.37.

4. Collection facilities shall accept only regulated medical waste managed in accordance with this subchapter.

5. Collection facilities shall allow only collection and transportation vehicles registered in accordance with this subchapter and N.J.A.C. 7:26-2, 16, 16A and 27, and operated in accordance with N.J.A.C. 7:26-3 and this subchapter to transport regulated medical waste to and from the facility.

6. Regulated medical waste received, stored or transferred at any collection facility shall at all times remain fully contained in sealed packages and containers packaged, marked and labeled pursuant to this subchapter that do not leak any liquids or solid materials, are not opened for any purpose at the facility and are registered as solid waste containers pursuant to N.J.A.C. 7:26-3. Secondary outer packaging or containers may be removed so long as the primary packaging that contains the regulated medical waste and meets the performance requirements for packaging at N.J.A.C. 7:26-3A.11 is not opened, ruptured or compromised in any way.

7. Regulated medical waste shall not remain at a non-commercial collection facility for more than 90 consecutive calendar days, which period shall include weekends and holidays. A noncommercial collection facility at which waste is staged or stored for more than 90 days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

8. Unless exempted under N.J.A.C. 7:26-6.3, all regulated medical waste accepted at a collection facility from New Jersey sources shall be disposed of in accordance with the applicable District Solid Waste Management Plan developed pursuant to N.J.A.C. 7:26-6. A collection facility shall not accept packages or containers in which regulated medical waste generated from more than one New Jersey district or county, or out-of-State source, has been mixed. Any out-of-State waste accepted at a collection facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or at permitted out-of-State disposal facilities authorized by the receiving state.

9. Regulated medical waste at any collection facility shall not emit odors that are detectable at the facility or in the vicinity of the facility. Any waste that does emit any odor shall be immediately disposed of in accordance with this subchapter.

10. Access to any collection facility shall be restricted to facility operators, regulated medical waste vehicle operators and authorized visitors only. Effective security procedures shall be implemented to control entry and exit at all times. All regulated medical waste packages and containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the packages and containers and their contents.

11. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of any collection facility, including vehicles, at any time. This right to enter and inspect includes, but is not limited to:

- i. Observing and sampling any wastes or other materials on site;
- ii. Photographing any portion of the facility, regulated medical waste vehicles, regulated medical waste packages and containers;
- iii. Investigating an actual or suspected source of pollution of the environment or any release of regulated medical waste;
- iv. Ascertaining compliance or noncompliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and

v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

12. Collection facilities shall comply with the requirements of the Federal Occupational Safety and Health Administration and all other applicable standards of any agency for the operation of the facility and the maintenance of the health and safety of the employees and other persons.

13. Routine housekeeping and maintenance procedures shall be implemented at the facility to prevent the accumulation of dust and/or debris and to maintain general cleanliness throughout the facility and in the working environment.

14. Any areas or surfaces at a commercial collection facility that have come into contact with regulated medical waste shall be disinfected immediately in accordance with the Spill Management Plan approved pursuant to N.J.A.C. 7:26-3A.37.

15. Any release or discharge of any regulated medical waste at a collection facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at (609)292-7172. This telephone report shall specify the type of waste or substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification. In addition, the facility operator or emergency coordinator designated pursuant to (j) below shall:

- i. Immediately identify the character, source, amount, and extent of any discharge and notify all appropriate State or local agencies with designated response roles if assistance is needed;
- ii. Assess possible hazards to public health or the environment that may result and notify appropriate local authorities if such assessment indicates that evacuation of local areas may be advisable;
- iii. Ensure that no regulated medical waste is processed in the affected unit and area until cleanup procedures are completed and all equipment is again fit for its intended use;
- iv. Notify the Department and appropriate local authorities when operations have returned to normal; and
- v. Submit a written report on the incident to the Department within 15 days after the incident. The written report shall include, but not be limited to, the name, address, and telephone number of the facility; the date, time, and description of the incident; the extent of any injuries of any severity, with names and job responsibilities of those persons injured indicated;

an assessment of actual damage to the environment; an assessment of the scope and magnitude of the incident; a description of the immediate actions initiated to clean up and disinfect the affected area; a description of actions taken to prevent a recurrence of a similar incident and, an implementation schedule for undertaking long-term measures to effect cleanup and avoid recurrence of the incident, if applicable.

16. Deliveries of regulated medical waste to collection facilities shall be scheduled in such a manner as to minimize truck queuing on the facility property as well as on the street or road leading to the entrance. On-site traffic control measures shall be implemented to provide orderly vehicle movement at collection facilities. If, at any time, the additional traffic generated by the operation of the facility results in congestion of surrounding roads and intersections, corrective measures shall be developed and implemented immediately to alleviate traffic-related problems.

17. No regulated medical waste or medical waste shall be staged, placed or stored beyond the confines of a building at the collection facility or a regulated medical waste vehicle registered pursuant to this subchapter, N.J.A.C. 7:26-3, 16 or 16A.

18. Collection facilities shall pay all fees and register in accordance with all applicable regulations for any other waste management activities conducted at the facility, in addition to the complying with the requirements of this subchapter.

(j) Additional operating requirements for commercial collection facilities are as follows:

1. The commercial collection facility operator shall designate an on-site emergency coordinator who is available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges or releases of medical wastes at the facility.

2. The commercial collection facility operator shall develop and maintain at the site an operations and maintenance (O&M) manual that shall describe all operating conditions and procedures of the facility. The O&M manual shall be made available to all facility personnel. The O&M manual shall be prepared in accordance with N.J.A.C. 7:26-2.10(b)9.

3. All personnel directly involved in any commercial collection facility waste management activities or who operate, service or monitor any facility equipment, machinery or system at the facility shall successfully complete a training program of classroom instruction, which shall be combined with on-the-job training as needed. The training program shall:

i. Provide fire fighting training, instructions for implementing the Spill Management Plan in accordance with N.J.A.C. 7:26-3A.37 and ensure that facility personnel are able to effectively respond to any equipment malfunction and emergency situation that may arise;

ii. Provide instructions in the use and operation of safety equipment, procedures for inspecting, maintaining and repairing facility equipment, machinery and monitoring systems and the procedures to be followed during planned and unplanned shutdown of operations;

iii. Contain instructions that ensure the facility's compliance with the requirements of this chapter and the conditions of any Departmental letters of authorization and permits issued for the facility;

iv. Contain instruction for the constant monitoring of incoming loads for conformance with the requirements of this section and the identification and proper handling of suspected unauthorized wastes;

v. Be completed by all facility personnel within two weeks after the date of their employment and prior to work assignment at the facility;

vi. Be conducted on an annual basis for all facility personnel in the form of a planned annual review of the complete training program; and

vii. Be documented in the form of detailed training records that record the names of personnel trained, the dates when training occurred and the type and extent of training provided. The training documentation shall be maintained at the facility for three years from the date the training occurred.

4. Any commercial collection facility operator and any person designated by such operator to operate part or all of the collection facility or to conduct any of its waste-related activities shall be registered as a regulated medical waste transporter pursuant to N.J.A.C. 7:26-3A.3, 16 and 16A.

5. The commercial collection facility shall maintain sufficient staff to ensure the proper, orderly and safe operation of all facility systems and equipment, along with the ability to handle all routine facility maintenance requirements.

6. Fire detection and protection systems shall be maintained in operable condition at all times. Fire-fighting equipment shall be available on-site or on call to extinguish any and all fires. Fire fighting procedures shall be posted in each area of the facility and shall include the telephone number of local fire and police departments.

7. Noise control shall be implemented to ensure that sound levels generated by the facility operation, including vehicles, shall not exceed the standards set forth in Noise Control rules at N.J.A.C. 7:29.

8. One complete set of the commercial collection facility's operating records, the O&M manual and these rules shall be kept on file at the facility, and shall be available to facility personnel and for inspection by the Department or its designated representatives.

9. The commercial collection facility's material management system's safety appliances and related appurtenances shall, at all times, be kept in the proper operating order through an effective inspection, planned maintenance, repair and parts replacement program as described in the O&M manual. As part of this program, the facility operator shall maintain an inventory of spare parts and replacement equipment, records of all inspections, as well as have access to back up equipment to ensure continued operation of the facility.

10. Regulated medical waste shall not remain at a commercial collection facility for more than 14 consecutive calendar days, which period shall include weekends and holidays. A commercial collection facility at which waste is staged or stored for more than 14 calendar days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

(k) A collection facility operator shall maintain the following records at the facility at all times and shall file reports as follows. The operator shall retain records and reports for three years.

1. A commercial collection facility shall maintain daily records that shall note the source, destination and quantity, by vehicle, of all regulated medical waste received, transferred and shipped to and from the facility. The records shall specify the source for every shipment of regulated medical waste received and the destination of every shipment of regulated medical waste out of the facility. Quantities of regulated medical waste shall be listed in tons or gallons as appropriate.

i. The daily records shall be compiled into quarterly reports in accordance with N.J.A.C. 7:26-2.13 and shall be submitted to the following address within 20 days of the end of each calendar quarter:

Bureau of Medical Waste and Technical Assistance
Division of Solid and Hazardous Waste
New Jersey Department of Environmental Protection
PO Box 414
Trenton, NJ 08625-0414

2. A commercial collection facility shall maintain records that document all violations of any local, State and Federal requirements, including violations of the collection facility authorization issued by the Department.

3. A commercial collection facility shall maintain records that document all incidents in which a transporter not registered and licensed pursuant to this subchapter

and N.J.A.C. 7:26-3, 16 and 16A, or a container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the tracking form numbers for the waste in the container. These incidents shall also be reported within 24 hours to the Department's Central Regional Field Enforcement Office or the Environmental Hotline at (609) 292-7172.

4. All collection facilities shall maintain records in accordance with N.J.A.C. 7:26-3A.34, 3A.43 and 3A.44, except that noncommercial facilities are not required to comply with N.J.A.C. 7:26-3A.44(a)1 and 2.

(l) Any person that conducts any of the activities of a commercial collection facility as defined in this section without authorization from the Department, or without a solid waste transfer station permit issued pursuant to N.J.A.C. 7:26-2A, shall be deemed to be operating an illegal solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E, and N.J.A.C. 7:26-5.

(m) Any authorized commercial collection facility that accepts unauthorized waste, or fails to operate in compliance with the requirements of this section, shall be deemed an illegal solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E, and N.J.A.C. 7:26-5.

(n) Any authorized commercial collection facility that accepts regulated medical waste from a transporter not registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16 and 16A shall be subject to penalties for violation of New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter registration, certification and licensing, and revocation of collection facility authorization.

(o) The Department may revoke the authorization of a commercial collection facility if that facility fails to comply with the requirements for such facilities or any law in any way related to the operation of a commercial collection facility pursuant to New Jersey statute or the Department determines that any of the causes for modification in (p) below are sufficient cause for revocation in order to protect human health, safety and the environment.

(p) The Department may modify a commercial collection facility authorization for the following reasons and the operator shall pay a fee as specified in N.J.A.C. 7:26-3A.8 on issuance of any commercial collection facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized

commercial collection facility or operation that occurred after Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

2. The Department receives information that was not available at the time it issued the letter of authorization that would have warranted the issuance of conditions in the authorization different from those imposed in the existing authorization. This information may include, but is not limited to, information concerning the effects of the facility on the properties surrounding the facility or the effects of the facility on the environment;

3. A change in Federal or State laws, regulations or policies governing solid waste and/or regulated medical waste management;

4. The regulatory compliance record of the collection facility operator;

5. A relevant judicial decision after the authorization was issued; or

6. An operator of a commercial collection facility shall request a modification of its authorization whenever the operator proposes to change any aspect of the operation as originally described in the application. Such change include, but are not limited to, changes in the amount and type of regulated medical waste managed at the facility, and changes in the sources of regulated medical waste and changes in the regulated medical waste disposal location.

(q) The Department shall provide 30-day prior notice of a modification to an authorization to operate a commercial collection facility pursuant to (p) above and its reasons for determining a modification is warranted. This notice shall be sent to the operator of the facility and the host municipality and district solid waste management plan implementation agency.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Former section, "Use of tracking form for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.41.

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.

7:26-3A.40 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26-3A.40 through 3A.44 apply to owners and operators of intermediate handler or destination facilities located in New Jersey that manage regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities, including treatment and destruction facilities, facilities that cause the regulated medical waste to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4 including incineration facilities, alternative or innovative technology facilities and disposal facilities; and

2. Intermediate handlers, including alternative or innovative technology or other facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4.

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

(c) No person shall engage in the treatment and/or destruction of regulated medical waste in New Jersey unless such person:

1. Registers the site as an intermediate handler or destination facility in accordance with N.J.A.C. 7:26-3A.8;

2. Obtains a tariff in accordance with N.J.S.A. 13:1E-48.12.b if operating commercially;

3. Uses treatment and/or destruction process(es) authorized by the Department and DOH pursuant to N.J.A.C. 7:26-3A.47;

4. Obtains the specific approval of the Department and DOH to operate an alternative or innovative technology approved pursuant to N.J.A.C. 7:26-3A.47 for the treatment and/or destruction of regulated medical waste at the registered facility; and

5. Complies with all other environmental statutes applicable to the facility, including but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the rules and regulations adopted thereunder, and any permits or orders issued pursuant thereto.

Recodified from 7:26-3A.38 and 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), amended N.J.A.C. references and inserted reference to intermediate handlers and destination facilities; in (a)1 and (a)2, inserted reference to alternative or innovative technology facilities; and added (c). Former section, "Tracking form discrepancies for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.42.

7:26-3A.41 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.42(a) on the tracking form;

3. Immediately give the transporter "Copy 3—Transporter Copy" of the signed tracking form:

7:26-3A.45 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26-3A.46 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

Recodified from 7:26-3A.43 and 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), amended N.J.A.C. reference.

7:26-3A.46 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

- i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;
- ii. Return a signed copy of the tracking form to the non-rail transporter;
- iii. Forward at least three copies of the tracking form to:
 - (1) The next non-rail transporter, if any; or
 - (2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or
 - (3) The last rail transporter designated to handle the waste in the United States; and
- iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

- i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

- i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and
- ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

Recodified from 7:26-3A.44 by R.1996 d.578, effective December 16, 1996.

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

7:26-3A.47 Alternative or innovative technology authorization

(a) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste, and any modification thereof, shall be authorized by the Department and DOH prior to any marketing, sale or use in New Jersey, in accordance with the following:

1. Persons seeking to market, sell or use an alternative or innovative technology shall submit an application to the Bureau of Medical Waste and Technical Assistance in the Department for authorization and pay the alternative technology review fee in accordance with N.J.A.C. 7:26-3A.8. The application shall be on forms provided by the Department and shall include the following:

- i. A description of the proposed method of operation;
- ii. Actual performance data;
- iii. Vendor and independently verified treatment efficacy data;
- iv. Information on parametric monitoring and controls;
- v. Limits on waste acceptance;
- vi. Information on residuals produced;
- vii. Potential environmental impacts, including emissions and noise impacts;
- viii. Occupational exposures;
- ix. Safety procedures; and
- x. Installation and operating costs, including data on energy efficiency.

2. The DOH may require additional information concerning the ability of the technology to effectively treat regulated medical waste.

3. The information provided in the application and all other information of any nature provided to or obtained by the Department and DOH in their administration of this section, shall be available to the public for review, unless a specific claim of confidentiality is submitted pursuant to in N.J.A.C. 7:26-17.1.

4. The Department and DOH may use the information and recommendations of the State and Territorial Association on Alternative Treatment Technologies, and other sources as needed, in evaluating regulated medical waste alternative or innovative technologies.

5. An alternative or innovative technology authorization to operate shall specify general operating conditions and other applicable requirements, such as, but not limited to, requirements for general operation; maintenance and housekeeping; injury reporting; emergency management and reporting; media; fugitive emissions and equipment performance monitoring and control; equipment operation; design; pollution control; data reporting; a DOH protocol to monitor treatment efficacy or other conditions of operation or performance; periodic technology evaluation progress reports as required by the Department and DOH and other reports as needed; financial assurance; and operation termination and remedial action; and other applicable requirements as shall be determined by the Department and DOH on a case-by-case basis. At a minimum, authorization shall include a DOH protocol to monitor treatment efficacy.

6. An alternative or innovative technology authorization shall be issued only for the specific technology applied for. Any modifications to the technology shall be submitted to the Department and DOH for review and approval pursuant to (a)1 through 5 above before introduction and use in New Jersey.

(b) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste authorized pursuant to (a) above:

1. May be marketed or sold for use in New Jersey;
2. Shall be authorized on a case-by-case basis at each facility intending to operate the alternative or innovative technology; and
3. Shall be installed and operated in compliance with all applicable Federal, State and local statutes and regulations.

(c) For the purposes of expediting development, demonstration, evaluation or implementation of alternative or innovative technologies and for the purpose of obtaining operational data and information on which the application for authorization to operate can be reviewed pursuant to (a) above, the Department may, in consultation with the DOH, exempt any regulated medical waste alternative or innovative technology research, development or demonstration project from applicable waste management regulations in accordance with the procedures at N.J.A.C. 7:26-1.7(f).

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

7:26-3A.48 Requirements for generators using out-of-State facilities disposing of regulated medical waste from New Jersey

(a) A generator using an out-of-State intermediate handler, destination facility, transfer facility, or other medical waste disposal facility operating for any purpose that uses the U.S. Postal Service or other parcel delivery service in New Jersey and uses the U.S. Postal Service or other authorized mail or parcel delivery service to transport regulated medical waste from New Jersey to the out-of-State facility, shall request a certification from the out-of-State facility, which shall include copies of any state and local authorizations and/or permits. Copies of this certification shall be sent by the generator to the Bureau of Medical Waste and Technical Assistance. This information shall be provided by the generator prior to sending any RMW out-of-State for disposal,

(b) A generator using the out-of-State facility described in (a) above shall also submit a certification of any and all changes to the out-of-State facilities authorizations or permits within 30 days of such changes.

(c) A generator of regulated medical waste in this State, shall not send regulated medical waste by the U.S. Parcel Service or other parcel delivery service to an out-of-State facility that has not submitted a certification to the Department in accordance with this section.

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

SUBCHAPTER 4. FEES FOR SOLID WASTE

7:26-4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, requiring licensing and registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds, need not pay any solid waste fee to the Department. Any person transporting solid waste who does not meet the criteria for exemption under this subsection shall be subject to the fee requirements applicable to transporters of solid waste set forth at N.J.A.C. 7:26-4.4.

(c) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.1974 d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c).
Amended by R.1983 d.269, effective July 5, 1983.
See: 15 N.J.R. 662(a), 15 N.J.R. 1095(b).
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Added text "of solid waste, excluding hazardous waste".
Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(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), inserted reference to thermal destruction facilities and composting facilities; and in (b), added last sentence.

Case Notes

Operator was liable for certain taxes and escrow accounts on solid waste disposed in its facilities under joint order issued by Department of Environmental Protection and Board of Public Utilities requiring landfill to remain open beyond intended closing date and requiring operator to extend credit to cash-based haulers in amount of rate increase. *Edgeboro Disposal, Inc. v. Division of Taxation*, 284 N.J.Super. 208, 664 A.2d 942 (A.D.1993).

Solid waste collector who failed to comply with terms of rate increase allowance; refund. In the Matter of the Petition of A. Fiore and Sons, Inc., 94 N.J.A.R.2d (EPE) 124.

7:26-4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid by certified check or money order and made payable to "Treasurer, State of New Jersey" at the following address:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
120 S. Stockton Street
CN 414
Trenton, N.J. 08625-0414

(b) Engineering design fees and transporter registrations may be paid in person at the address set forth in (a) above.

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration is as follows:

1. Each solid waste facility permittee shall pay an annual facility registration update fee of \$1,010. The annual facility registration update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

(b) Each solid waste facility permittee shall pay the applicable annual fee listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year. The operator of one intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6 shall pay the annual fee listed below on January 1 of each year.

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	\$22,988
Sanitary Landfill—operating at less than 31,200 tpy	\$6,386
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	\$16,946
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	\$5,894
Thermal Destruction Facilities—operating at 9.6 tons per day or more	\$21,072
Thermal Destruction Facilities—operating at less than 9.6 tons per day	\$1,834
Intermodal Container Facilities	\$260
Solid Waste Composting and Co-Composting Facilities	\$3,144

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:

- Class A: small scale thermal destruction facility (as such term is defined at N.J.A.C. 7:26-1.4)
- Class B: design capacity greater than 9.6 tons per day

2. Sanitary landfills:

- Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)
- Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)
- Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

3. Transfer stations and materials recovery facilities:

- Class A: design capacity of less than 100 tons per day
- Class B: design capacity of at least 100 tons per day

4. Compost facilities:

- Class A: vegetative food waste and paper brought in separated form
- Class B: separated compostable waste-no inorganic material (e.g. glass, metal, plastic, etc.)
- Class C: mixed waste requiring manual and/or mechanical separation processes before composting

5. Sanitary landfill closure plan submissions:

Closure Plan

Class A: less than 10 acres

Class B: 10 to 30 acres

Class C: more than 30 acres

(d) The following table sets forth fees (in dollars) for services for the classes of solid waste facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

	Class	
	A	B
a. Administrative completeness determination	6,734	13,467
b. Engineering design report review	29,460	106,054
c. Permit renewal	21,884	58,077
d. Major modification to permit	9,595	32,826
e. Minor modification to permit	4,040	7,575
f. Transfer of ownership of permit	5,724	9,932
g. Minor technical review	1,010	2,020

2. Sanitary Landfill Facilities

	Class		
	A	B	C
a. Administrative completeness determination	10,100	7,575	3,788
b. Engineering design report review	106,054	73,228	53,027
c. Permit renewal	63,128	42,927	25,251
d. Major modification to permit	20,201	11,615	9,090
e. Minor modification to permit	11,363	7,575	5,050
f. Transfer of ownership of permit	12,626	9,090	7,828
g. Minor technical review	1,515	1,010	505

3. Transfer Stations and Materials Recovery Facilities

	Class	
	A	B
a. Administrative completeness determination	5,050	7,575
b. Engineering design report review	23,736	27,776
c. Permit renewal	20,706	25,251
d. Major modification to permit	11,615	20,201
e. Minor modification to permit	3,535	5,050
f. Transfer of ownership of permit	5,555	5,555
g. Minor technical review	1,010	1,515

4. Compost Facilities

	Class		
	A	B	C
a. Administrative completeness determination	2,525	7,575	7,575
b. Engineering design report review	12,626	22,726	50,502
c. Permit renewal	11,110	17,676	27,776
d. Major modification to permit	4,040	11,615	17,676
e. Minor technical reviews	1,010	1,515	1,515
f. Transfer of ownership of permit	3,535	5,555	5,555

5. Closure Plan

	Class		
	A	B	C
a. Administrative completeness determination	1,178	1,768	2,946
b. Engineering design report review	8,417	12,626	16,834
c. Major modification to approval	2,525	3,788	5,050
d. Minor modification to approval	842	1,683	2,525
e. Transfer of ownership of approval	1,683	2,525	3,788
f. Minor technical review	421	842	1,263

6. Annual Topographic Map Submissions

a. Engineering design report review 2,805

(e) For submissions concerning disruption, methane venting systems, on-site disposal, cover material, beneficial use reviews, RD&D reviews, hearing officer's report, construction facility inspection, contaminated soil reviews, or the solid waste facility performance partnership agreement, the applicant/permittee shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$84.17.

(f) The omission of any type of service from the fee schedules set forth in (a), (b), (d) and (e) above shall not be construed as a waiver of the Department's authority to assess fees for such services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. The solid waste facility performance partnership agreement will be assessed a fee based on the hour for hour negotiation of the document with the permittee. This assessment will allow for the flexibility required by the Department and the permittee in establishing its permit pursuant N.J.A.C. 7:26-2.14. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$84.17. The Department will calculate the fee for performance of the Department's services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a), (b), (d) or (e) above, the amount of the fee shall be equal to the amount listed in (a), (b), (d) or (e).

2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$84.17.

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee shall request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

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.

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

The New Jersey Department of Environmental Protection has reviewed and approved the adopted solid waste management plans for all 22 of the solid waste management districts in New Jersey. Based on these plans, it is evident that district-based waste planning is required to insure proper solid waste management.

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.

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 liquid 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
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;

iii. Each load of chemically treated wood or scrap tires is accompanied by the waste origin/waste disposal form satisfying the requirements of N.J.A.C. 7:26-2.13(c); and

iv. The chemically treated wood or scrap tires are delivered to one or both of the following:

(1) An out-of-State power generating incinerator authorized or permitted by the receiving state to accept such materials for utilization as fuel; or

(2) An in-State power generating incinerator, including a resource recovery facility, that is approved by the Department to accept such materials for utilization as fuel subject to a review of the facility's operating permit, incoming materials specifications and written narrative explanation of operation. An in-state resource recovery facility that accepts chemically treated wood or scrap tires shall obtain an approved tariff for the receipt of these materials pursuant to N.J.A.C. 7:26H-5 and modify its solid waste facility permit pursuant to N.J.A.C. 7:26-2.6. Each approved in-state power generating facility, with the exception of an in-state resource recovery facility which must report such activity in its facility monthly volume report pursuant to N.J.A.C. 7:26-2.13, shall submit a tonnage report specifying the total amount of chemically treated wood or scrap tires received, in tons, from New Jersey sources, to the Department at the address specified at (a)8v below by March 1 of each year for the prior calendar year.

v. Applications for approval and annual tonnage reports shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
PO Box 414
Trenton, N.J. 08625

Public Notice: Notice of receipt of petition for rulemaking.
See: 23 N.J.R. 2187(c).

Action on Petition for Rulemaking: Amend Type 27 waste which exempts certain classes of waste from interdistrict and intradistrict waste flow orders.

See: 23 N.J.R. 2428(b).

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

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

If certain conditions are met, exempts the residue from the operation of scrap metal shredding facilities from the waste flow rules.

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).

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

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

Added (a)8 and 9.

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 (a)5ii and (a)7, amended N.J.A.C. references; in (a)6, inserted reference to Class C and Class D materials; and added (a) 8.

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).

Deleted (a)9. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Law Review and Journal Commentaries

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

7:26-6.4 Informational requirements

Any person registered with the Department for the collection, transportation, and/or disposal of solid wastes affected by this subchapter shall, upon request by the Department, submit, in such form as the Department may deem appropriate, information concerning the sources of wastes collected, and his/her transportation and disposal patterns.

7:26-6.5 (Reserved)

As amended, R.1984, d.4, effective January 17, 1984.

See: 15 N.J.R. 1914(a), 16 N.J.R. 134(a).

(k) substantially amended; (o)11 revised; (p)9-13 added; (v) substantially amended.

As amended, R.1984 d.41, effective February 21, 1984.

See: 15 N.J.R. 1417(a), 16 N.J.R. 367(c).

(m)1iii and iv revised.

As amended R.1984 d.474, effective October 15, 1984.

See: 16 N.J.R. 1000(a), 16 N.J.R. 2806(a).

(c)13 deleted; previous (c)14 redesignated (c)111 (l)1 substantially revised.

As amended, R.1984 d.475, effective October 15, 1984.

See: 16 N.J.R. 1149(a), 16 N.J.R. 2808(a).

Substantially amended.

Amended by R.1985 d.317, effective June 17, 1985.

See: 17 N.J.R. 517(b), 17 N.J.R. 1560(a).

(a)8iii added.

Amended by R.1985 d.503, effective October 7, 1985.

See: 15 N.J.R. 517(a), 17 N.J.R. 2388(a).

(k)3 added. This amendment was adopted jointly with the Board of Public Utilities.

Amended by R.1986 d.159, effective May 5, 1986.

See: 17 N.J.R. 2590(a), 18 N.J.R. 983(b).

(p)5i and (p)6i-ii added.

Amended by R.1986 d.164, effective May 5, 1986.

See: 17 N.J.R. 2591(a), 18 N.J.R. 983(c).

Deleted old (d)3 through (d)8 and inserted new (d)3-5.

Amended by R.1987 d.71, effective January 20, 1987.

See: 18 N.J.R. 2171(a), 19 N.J.R. 202(a).

(c) substantially amended.

Amended by R.1987 d.72, effective January 20, 1987.

See: 18 N.J.R. 1773(a), 19 N.J.R. 202(b).

(d) substantially amended.

Amended by R.1988 d.357, effective August 1, 1988.

See: 19 N.J.R. 1142(a), 20 N.J.R. 1910(a).

The amendments to this section were jointly adopted with Public Utilities. The section was substantially amended.

Amended by R.1989 d.308, effective June 5, 1989.

See: 20 N.J.R. 1048(a), 21 N.J.R. 1558(a).

The amendments were jointly adopted with the Board of Public Utilities. Essex County solid waste redirected from HMDC 1-C landfill to 3 transfer stations for processing and transfer to out-of-state facilities.

Amended by R.1990 d.324, effective July 2, 1990.

See: 21 N.J.R. 1486(a), 22 N.J.R. 2005(b).

All Bergen County solid waste, except type 10, directed to facility 0239E1SP01.

Amended by R.1991 d.113, effective March 4, 1991.

See: 22 N.J.R. 284(a), 23 N.J.R. 719(a).

The amendments to this section were jointly adopted with the Board of Public Utilities.

Gloucester City added to waste flow list in (d)1. Designated out-of-state facility deleted by name in (d)1, new (d)4i and (d)5. Added new (d)3, redesignated existing (d)3 as (d)4. Recodified (d)4 as (d)5. Replaced (d)5 and (d)6. Added (d)7. Added (g)6. Repealed (h)1-5 and added new (h)1. Recodified and amended (h)6 to (h)2; (h)6i

repealed and added new (h)3. Deleted (t)1 through 8. Recodified (t)9 as (t)1. Added (t)1ii. Deleted (t)10 through 14. Added (t)2. Amended by R.1993 d.109, effective March 1, 1993.
See: 24 N.J.R. 3291(a), 25 N.J.R. 991(a).

Waste flows updated and simplified for all counties; amendments adopted solely by DEPE, in accordance with Executive Order No. 38(1991) Reorganization Plan 002(1991).
Repealed 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 Emergency Repeal R.1997 d.404. Section was "District waste flow planning requirements and disposal facility designations".

7:26-6.6 (Reserved)

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

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

Substantially amended (b); in (c), inserted reference to plan amendment, deleted (d), relating to submission of recommendations; and recodified former (e) as (d).

Repealed 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 Emergency Repeal R.1997 d.404. Section was "Procedure for modification of waste flows pursuant to an amendment to a District Solid Waste Management Plan".

7:26-6.7 (Reserved)

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

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

Repealed 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 Emergency Repeal R.1997 d.404. Section was "Procedure for emergency direction or redirection of solid waste flow".

7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A-1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and non-ferrous metal remaining after the shredding process; and
2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

New Rule, R.1993 d.27, effective January 4, 1993.

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

7:26-6.9 (Reserved)

New Rule, R.1993 d.508, effective October 18, 1993.

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

Repealed 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 Emergency Repeal R.1997 d.404. Section was "Transporting solid waste between solid waste districts and out-of-State".

7:26-6.10 Modifications to district solid waste management plans; plan amendments

(a) Each plan amendment to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a plan amendment means a modification to the district solid waste management plan, which, if implemented, would have a significant impact on the environment, property rights, public and private funds or the overall solid waste management system. A plan amendment includes, but is not limited to, the following:

1. An interdistrict agreement between two or more districts for the purpose of managing solid waste and/or recyclables on a regional basis;
2. The designation of an in-district weighing facility(ies), if a district chooses. If a district chooses to impose a weighing requirement in order to collect any fees or charges for ensuring the payment of outstanding debt and other fee obligations, the district shall submit, within 180 days, an alternative means of collecting such fees or charges which does not rely on in-district weighing. Following submission of said plan, districts may continue to collect any fees or charges through in-district weighing pending the Department's review of the alternative method of collecting fees or charges.
3. A solid waste disposal contract entered into by the district or authority;
4. The deletion of a solid waste facility other than those listed at N.J.A.C. 7:26-6.11(b)7;
5. The identification of new or a change in the identity of existing designated plan implementation agency or agencies;
6. The method of financing solid waste management in the district, including any mechanism to be instituted by the district for ensuring the payment of outstanding debt and other financial obligations;
7. The inclusion of new facilities, including landfills, resource recovery facilities, transfer stations, materials recovery facilities, solid waste and co-composting facilities, recycling facilities for Class B, Class C and Class D materials, permanent household hazardous waste collection sites, and new regulated medical waste collection, treatment, processing and disposal facilities and compost facilities;

8. An increase in the amount of material received during a 24 hour period at an existing permitted solid waste facility greater than 100 tons per day.

9. A modification to any district solid waste and recycling policy and/or program, including, but not limited to, short and long-term disposal strategies, methods for achieving designated recycling goals and blanket facility inclusion policies; and

10. Any modification to the solid waste management plan as may be identified by the Department.

(c) Upon the development of a solid waste plan amendment, a board of chosen freeholders or the Hackensack Meadowlands Development Commission shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment.

1. The designated plan implementation agency shall publish notice of a public hearing concerning the plan amendment in a newspaper of general circulation in the county or district once each week for two consecutive weeks, the second publication date being not less than 10 calendar days prior to the public hearing date. For the purposes of determining weekly publication, Sunday is considered the first day of the week, in conformance with N.J.S.A. 13:1E-23.

2. The notice of the public hearing concerning the plan amendment shall provide a detailed description of the plan amendment and, at a minimum, contain the following information:

- i. The date, time and place of the public hearing;
- ii. The name and address of the district solid waste coordinator;
- iii. When and where the plan amendment can be reviewed; and
- iv. In the case of a facility, a description and the site location, by municipality, street address, lot and block number, the proposed or expanded capacity and the waste types which will be received.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission shall submit to the Department a complete plan amendment which shall include the following:

1. One copy of the adopting ordinance or resolution;
2. Twenty copies of the plan amendment;
3. One copy of the public hearing transcript;
4. One copy of the public notice accompanied by an affidavit of publication issued by the publishing newspaper; and
5. For any plan amendment which proposes to incorporate a facility site, 20 copies of an 8½ inch x 11 inch tax

map identifying the location of the site, the street address, and the lot and block numbers.

(e) The plan amendment in (d) above shall be submitted to:

New Jersey Department of Environmental Protection
 Division of Solid and Hazardous Waste
 Recycling and Planning Element
 PO Box 414
 Trenton, N.J. 08625-0414

(f) Upon receipt of a plan amendment submitted pursuant to (d) and (e) above, the Department shall review the plan amendment for completeness. Within 10 working days of receipt of the plan amendment, the Department shall notify, in writing, the entity that submitted the plan amendment whether the plan amendment is complete or incomplete.

(g) The Department shall submit a copy of a complete plan amendment to the Advisory Council on Solid Waste Management in the department, and to the agencies, bureaus and divisions in the Department identified at N.J.S.A. 13:1E-23 for review and recommendations.

(h) Upon review of the plan amendment and upon receipt of recommendations provided pursuant to (f) above, the Department shall approve, modify or reject a plan amendment within 150 days of receipt of a complete plan amendment and shall certify such determination to the board of chosen freeholders or to the Hackensack Meadowlands Commission. If the Department takes no action on a complete plan amendment within 150 days, the plan amendment shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Emergency Amendment, by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Rewrote (b)2; and in (b)6, inserted reference to mechanism for ensuring payment of obligations.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-6.11 Administrative actions concerning a district solid waste management plan

(a) Each administrative action taken relative to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a solid waste management plan administrative action includes, but is not limited to, the following:

1. The use of Resource Recovery Investment Tax (RRIT) grant moneys and/or the development of the associated disbursement schedules;

2. The designation of or change to prior approved truck routes to or from solid waste facilities;

3. The inclusion of new recycling facilities for processing Class A or Class C recyclable materials, or replacement units at existing regulated medical waste facilities;

i. The inclusion and/or expansion of recycling and compost facilities shall be, at the discretion of the district, subject to any previous blanket inclusion policies approved by the Department and shall be undertaken by the district in accordance with the approved district solid waste management plan. This paragraph is intended to supplement and not replace any previously approved blanket inclusion policy for a district.

ii. Any blanket inclusion amendment approved by the Department shall contain a provision requiring, among other things, notification to the public as to the location for the receipt of written comments and the starting and ending dates for the written comment period.

4. The expansion of capacity of any size, other than that specified at N.J.A.C. 7:26-6.10(a)8, for any regulated solid waste facility;

5. The modification of an existing facility including acceptance of additional waste types, on-site operational changes and expansions of facility buffer zones or expansions into buffer zones for ancillary operational activities;

6. The modification of a recycling program, including the designation of additional materials for recycling, procurement strategies, market strategies, public education, private incentive programs, waste audit strategies, yard waste programs, per container programs, and enforcement strategies;

7. The deletion of any facility which is included in the plan for more than two years but for which a complete permit application has not been made, or the deletion of any facility which is included in the plan but has not been in operation for more than two years;

8. Unless specifically noted by the Department within a plan certification document, any information collected and/or submitted by the district plan implementation agency, including, but not limited to, solid waste studies, reports, data collection, compost inventories, and weekly waste averaging (when the daily rate has already been included in the plan);

9. The reaffirmation of an existing district solid waste disposal strategy subsequent to the final disposition of the *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, Civil Action No. 93-cv-02669 (D.N.J. May 1, 1997) case, provided that the plan implementation agency has held a public hearing on such reaffirmation for the purpose of receiving comments from persons interested in or affected by the amendment. Notice of such hearing shall be published in newspapers of general circulation in the district not less than 10 days prior to the hearing and shall include the information set forth in (c)2 above.

10. Any other administrative action as may be identified by the Department.

(c) Nothing contained in this section shall be construed to subrogate the district solid waste management planning process. The board of chosen freeholders or the Hackensack Meadowlands Development Commission, in its discretion, may hold a public hearing prior to the adoption of any administrative district solid waste plan action.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission or the designated implementation agency of the affected district shall submit to the Department a letter that describes in detail the administrative action to be taken relative to the district solid waste management program.

1. The letter concerning the administrative action shall be submitted to the address at N.J.A.C. 7:26-6.10(e)6.

(e) Upon receipt of a letter describing the administrative action, submitted pursuant to (d) above, the Department shall review the information provided. Within 10 working days of receipt of the letter, the Department shall notify, in writing, the entity that submitted the letter concerning the administrative action of its receipt of such letter.

(f) The Department shall approve an administrative action within 30 working days of receipt of the letter describing the administrative action pursuant to (d) above, unless it determines that the described action is subject to the requirements for a solid waste management plan amendment pursuant to N.J.A.C. 7:26-6.10. In the event the Department fails to respond to a letter concerning an administrative action within the 30 day period, the administrative action shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Inserted new (b)9 and recodified former (b)9 as (b)10.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.
See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-6.12 Compliance with district solid waste management plan

(a) Any contract or renewed contract for solid waste collection and/or disposal which is inconsistent with an amendment to the applicable solid waste management plan and which was executed prior to the approval of the such amendment and subsequent to the effective date of this chapter, and which is for a term in excess of one year, shall be renegotiated in order to bring such contract into conformance with the provisions of the amended solid waste management plan and this chapter.