

CHAPTER 26H

SOLID WASTE UTILITY REGULATIONS

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-1 et seq., 48:3-1 et seq., 48:13A-1 et seq. and 48:13A-7.1 et seq.

Source and Effective Date

R.2008 d.117, effective April 8, 2008.
See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 26H, Solid Waste Utility Regulations, expires on April 8, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Subchapter 1, General Requirements, was originally adopted as N.J.A.C. 14:3-10, Solid Waste Collection and Solid Waste Disposal, by R.1971 d.109, effective July 8, 1971. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

Subchapter 5, Solid Waste Collection Regulatory Reform, was originally adopted as N.J.A.C. 14:3-11, Solid Waste Collection Regulatory Reform, by R.1993 d.83, effective February 16, 1993. See: 24 N.J.R. 1459(a), 25 N.J.R. 692(a).

Subchapter 1, General Requirements, and Subchapter 5, Solid Waste Collection Regulatory Reform, were recodified from N.J.A.C. 14:3-10 and 14:3-11, effective June 3, 1996, and Subchapter 2, Rules of Practice, Subchapter 3, Transactional Filings, Subchapter 4, Solid Waste Uniform Tariff, Subchapter 6, Uniform Bid Specifications for Municipal Solid Waste Collection Contracts, and Appendix A, Wording of the Uniform Bid Specifications, were adopted as new rules, effective June 3, 1996 by R.1996 d.253. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

Chapter 26H was extensively amended by Emergency Adoption R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997), with the amendments to become operative upon final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. See: 29 N.J.R. 4170(a). The provisions of R.1997 d.404 were readopted as R.1997 d.510, effective October 31, 1997, with changes upon adoption effective December 1, 1997. The concurrent amendments to Chapter 26H became operative on November 10, 1997, the date of final disposition (denial of certiorari by the United States Supreme Court) of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. All changes upon adoption became operative on December 1, 1997. See: 29 N.J.R. 5084(a).

The Executive Order No. 66(1978) expiration date for Chapter 26H, Solid Waste Utility Regulations, was extended by gubernatorial directive from May 6, 2001 to June 3, 2002. See: 33 N.J.R. 1915(a).

Chapter 26H, Solid Waste Utility Regulations, was readopted as R.2002 d.356, effective October 11, 2002. As part of R.2002 d.356, Subchapter 7, Host Community Benefits, was adopted as new rules. See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Chapter 26H, Solid Waste Utility Regulations, was readopted as R.2008 d.117, effective April 8, 2008. As a part of R.2008 d.117, Subchapter 8, Privately-Owned Sanitary Landfills, was adopted as new rules, effective May 5, 2008. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Counties scramble to meet U.S. Court's trash mandate. Cheryl Winokur, 150 N.J.L.J. 609 (1997).

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SUBCHAPTER 1. GENERAL REQUIREMENTS

7:26H-1.1 Scope

Every utility engaged in solid waste collection and/or solid waste disposal shall be subject to the regulations as set forth herein, in addition to the Board's Rules of Practice and Administrative Orders heretofore promulgated as applicable to all utilities.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Board of Public Utilities has statutory authority to penalize solid waste licensees who commit statute, regulation or order violations; regulations promulgated under statutory authority. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

7:26H-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, the remainder of this chapter shall not be affected thereby.

7:26H-1.3 Practice where these rules do not govern

The Commissioner may rescind, amend or expand these rules from time to time, and such rules shall be promulgated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In any matter concerning solid waste management that arises not governed by these rules, the Commissioner or Director shall exercise his or her discretion within the authority of N.J.S.A. 48:13-1 et seq. and 48:13A-7.1 et seq.

7:26H-1.4 Definitions

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

"Act" means the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

"Bulky waste" means any type 13 waste, as defined at N.J.A.C. 7:26-2.13(g), including large items of waste material, such as, appliances, furniture, tires, whole trees, branches, tree trunks and stumps generated by residential, commercial, institutional or industrial sources. Also included are waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, improvements and other structures. Specifically excluded for the purpose of Department regulation are

discarded automobiles, trucks and trailers and large vehicle parts.

“Commercial solid waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in wholesale, retail or service establishments, including, but not limited to, restaurants, stores, markets, theaters, hotels and warehouses.

“Commissioner” means the Commissioner of the Department of Environmental Protection or any other person designated to act on the Commissioner’s behalf.

“Compacted waste” means solid waste that has been compressed by non-residential mechanical or hydraulic machinery.

“Compacted food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and consumption of meals at commercial restaurant establishments which has been compressed by non-residential mechanical or hydraulic machinery.

“Customer” means any person, partnership, firm, corporation, governmental subdivision or agency receiving service from any solid waste utility.

“Department” means the New Jersey Department of Environmental Protection.

“Director” means the Director of the Division of County Environmental and Waste Enforcement or any person designated to act on the Director’s behalf.

“Division” means the Division of County Environmental and Waste Enforcement in the Department.

“Disposal” means the storage, treatment, utilization, processing, transfer or final disposal of solid waste.

“Dry sewage sludge” means any type 12 waste, as defined at N.J.A.C. 7:26-2.13(g), which is a sludge from a sewage treatment plant which has been digested and dewatered and does not require liquid handling equipment.

“Effective competition” means the existence of circumstances which ensures customers of a competitive environment in which they are not subjected to artificially low collection rates which would endanger a competitive environment or are not subjected to exorbitant collection prices resulting from insufficient competitive pressure, collusion or tacit pricing agreements.

“Engaged in the business of solid waste” means obligating oneself, through a contract or some other means, to provide collection, transportation, treatment, storage or disposal of solid waste in the State of New Jersey, including employment of a licensed hauler, including a subsidiary, to do the actual collection, transportation, treatment, storage or disposal.

“Food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and con-

sumption of meals at commercial restaurant establishments consisting of food scraps, soiled paper and other organic materials.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazardous waste” means those solid wastes identified as hazardous wastes in accordance with N.J.A.C. 7:26G.

“Industrial solid waste” means any type 27 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in manufacturing, industrial, and research and development processes and operations which are non-hazardous in accordance with the standards and procedures set forth in N.J.A.C. 7:26.

“Institutional solid waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the operation of institutions, including, but not limited to, hospitals, colleges, schools, nursing homes, medical and dental professional buildings, research and development processes, and laboratories.

“Internal cost of service” means the cost of services produced by the normal operations of an entity (excluding external financing and related debt service).

“Limited service” means service that is available only at certain specified hours of the day or season of the year.

“Liquid wastes” means any type 72, 73 or 74 waste, as defined at N.J.A.C. 7:26-2.13(g), including bulk liquids and semi-liquids, septic tank cleanout wastes and liquid sewage sludge, they include liquids or a mixture consisting of solid matter suspended in a liquid media which is contained within, or is discharged from, any one vessel, tank, other container which has the capacity of 20 gallons or more (not included is any type 12 waste); pumping from septic tanks and cesspools; and liquid residue from a sewage treatment plant consisting of sewage solids combined with water and dissolved materials.

“Loose food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and consumption of meals at commercial restaurant establishments which has not been compressed by non-residential or mechanical or hydraulic machinery.

“Loose waste” means solid waste that has not been compressed by non-residential mechanical or hydraulic machinery.

“Market-based rates” means the solid waste disposal rates collected by a privately-owned sanitary landfill facility that do not exceed rates charged at other solid waste facilities in this State or at competing out-of-State facilities.

“Materials recovery” means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Material recovery facility” means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which solid waste is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Multiple dwelling” means any building of one or more stories which contains four or more dwelling units. The solid waste generated by residents of a multiple dwelling may be considered waste type 10, commercial for economic regulation purposes.

“Operating margin methodology” means a market-based methodology used to establish just and reasonable rates by determining the reasonableness of known and measurable operating expenses, including debt service, depreciation and taxes, and adding a revenue margin calculated as a percentage of these expenses which ensure a reasonable profit margin.

“Peak rate” means the highest solid waste disposal utility tariff rate on file with and approved by the Department for each type of ID waste as of November 10, 1997. When a solid waste disposal utility owner or operator petitions the Department for a rate above the existing peak rate, upon Departmental approval, the new rate becomes the peak rate for all solid waste disposal utilities for that particular waste.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons, whether incorporated or not, or any receiver or trustee.

“Petition” means an application made to the Department pursuant to N.J.A.C. 7:26H-2.

“Privately-owned sanitary landfill facility” means a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

“Public Utility MRF” means a material recovery facility or transfer station that has received a certificate of public convenience and necessity to accept solid waste for disposal from solid waste collectors or generators.

“Recycling” means any process by which materials which would otherwise become solid waste are collected, separated, or processed and returned to the economic mainstream in the form of raw materials or product. Materials to be recycled

include those materials as defined in N.J.S.A. 13:1E-99 and the individual District Solid Waste Management Plans.

“Reform Act” means the Solid Waste Collection and Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq.

“Residential service, curb collection” means service by the collector which requires collection by the collector at the curb of the residence.

“Residential service, walk-in” means service by the collector at a point other than the curb of the residence involved, provided such other collection point does not require the collector to drive the collection vehicle beyond the curb to the point of collection, or walk a distance greater than 50 feet from the curb-line.

“Residential service, special collection” means service that requires the collection of residential solid waste at irregular intervals.

“Residential solid waste” means type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the day to day activities of a residence and includes animal and vegetable waste resulting from the handling, processing, preparing, cooking and consuming of food, and includes household liquids. Residential solid waste does not mean used motor oil, grass clippings and other specified nonacceptable waste as defined in the applicable District Solid Waste Management Plan or N.J.S.A. 13:1E-1 et seq.

“Resource recovery facility” means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for refuse, or a mechanized compost facility or any other solid waste facility constructed or operated for the collection, separation, recycling of metals, glass, paper and other materials for reuse or for energy production.

“Return on rate base methodology” means a traditional rate-making methodology that establishes a rate base (net utility property plus operating expenses and working capital allowance) and allows a utility to include in its tariff rates a rate of return (profit) on same, which is usually derived via a cost of debt/cost of equity ratio analysis.

“Sanitary landfill” means a permitted solid waste facility, at which solid waste is deposited on or into the landfill 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.

“Septic waste” means a mixture consisting of sewage solids combined with water and dissolved materials in varying amounts obtained from pumping septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

“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 advance wastewater treatment processes, and a 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.

“Solid waste” means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such waste to swine on their own farms.

“Solid waste collection” means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

“Solid waste collection services” means the service provided by persons engaging in the business of solid waste collection.

“Solid waste collector” means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to N.J.S.A. 48:13A-6 and 48:13A-9.

“Solid waste disposal” means the storage, treatment, utilization, processing or final disposal of solid waste.

“Solid waste disposal services” means the services provided by persons engaging in the business of solid waste disposal.

“Solid waste facility” means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to this subchapter or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

“Tariff” means the Department form required by N.J.A.C. 7:26H-4.

“Transfer station” means a solid waste facility at which solid waste is transferred from a solid waste collection vehicle to a licensed solid waste haulage vehicle for transportation to a solid waste facility.

“Vegetative waste” means any type 23 waste, as defined at N.J.A.C. 7:26-2.13(g), including 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.

“Yard trimmings compost facility” means a recycling center which is designed and operated for the purpose of composting grass clippings, leaves and brush exclusively and shall also include leaf mulching operations.

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).

Added “Peak rate”; and deleted “Mixed district load”. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In “Hazardous waste”, amended the N.J.A.C. reference; in “Multiple dwelling”, substituted “four” for “three”; added “Tariff”; deleted “Uniform tariff”.

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added definition “Grace period”.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In definitions, “Director” and “Division”, substituted “County Environmental and Waste Enforcement” for “Solid and Hazardous Waste”; added definitions “Internal cost of service”, “Market-based rates”, “Operating margin methodology”, “Privately-owned sanitary landfill facility” and “Return on rate base methodology”; rewrote definition “Peak rate”; and in definition “Tariff”, updated the N.J.A.C. reference.

7:26H-1.5 Offices and hours

(a) All inquiries and correspondence relative to this chapter should be directed to the following address:

New Jersey Department of Environmental
Protection
Division of County Environmental and Waste
Enforcement
Bureau of Solid and Hazardous Waste Regulation
401 E. State Street
P.O. Box 422
Trenton, New Jersey 08625-0422

(b) All offices of the Department are open from 8:00 A.M. to 5:00 P.M., legal holidays, Saturdays and Sundays excluded.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In the address in (a), substituted “County Environmental and Waste Enforcement” for “Solid Waste and Hazardous Waste”, inserted “and Hazardous” preceding “Waste Regulation”, and “401 E. State Street” and substituted “422” for “414” and “0422” for “0414”.

7:26H-1.6 Certificate of public convenience and necessity

(a) No person shall engage in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3 unless such person is the holder of a certificate of public convenience and necessity issued by the Department.

(b) Unless otherwise provided by statute or Department rule, no certificate shall be issued to any person until such

person has registered with and is licensed by the Department in accordance with N.J.A.C. 7:26-16.

(c) No person may bid for a solid waste collection contract or solid waste disposal contract with a municipality or other political subdivision or commercial or industrial entity unless that person is the holder of a certificate of public convenience and necessity issued by the Department.

(d) In the event that a license, as defined at N.J.A.C. 7:26-16.2, is denied, revoked, or withdrawn, the certificate shall immediately become invalid.

(e) Collectors that transport septic waste and/or sewage sludge are not subject to the provisions of this chapter.

(f) A rail carrier as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services and that is engaged in the business of solid waste disposal or transportation by rail, but does not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, is not subject to the provisions of this chapter.

Amended by R.1996 d.253, effective June 3, 1996.

See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b), deleted the reference to N.J.A.C. 7:26-3; added (e).

Amended by R.2004 d.408, effective November 15, 2004.

See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

Added (f).

Case Notes

Municipal procedure for negotiation of public contracts after unsuccessful competitive bidding proper; unsuccessful bidder lacked standing to challenge award as it would not be entitled to contract if challenge successful; award justified; contention that contractor was morally irresponsible due to lack of PUC Certificate was patently frivolous. *Interstate Waste Removal Co., Inc. v. Bd. of Commissioners, City of Bordentown*, 140 N.J.Super. 65, 355 A.2d 197 (App.Div.1976).

7:26H-1.7 (Reserved)

Amended by R.1996 d.253, effective June 3, 1996.

See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Registration".

7:26H-1.8 Application for a certificate

(a) Each applicant for a certificate shall file an application with the Department with:

1. The full name, business address, date of birth of the applicant or, if the applicant is a business concern, of any officers, directors, partners or key employees thereof, or if the business is a corporation, all persons holding five percent or more of the issued and outstanding stock of the applicant corporation;

2. A description of the applicant's experience, training, or education in the solid waste collection and/or solid waste disposal industry together with all supporting data in order to enable the Department to determine the applicant's qualifications to engage in such business;

3. Proof of financial responsibility including with each application a statement of financial condition;

4. New utilities shall furnish a schedule of proposed rates and charges for the character of service proposed to be rendered;

5. A copy of an approval letter pursuant to N.J.A.C. 7:26-16; and

6. Any other information the Department may deem necessary to determine the qualifications of the applicant to engage in the business of solid waste collection and/or disposal.

(b) The Department shall not begin processing an application for a certificate until the applicant has submitted a complete application which includes the items listed at (a) 1 through 6 above.

Amended by R.1996 d.253, effective June 3, 1996.

See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), rewrote 4 and 5.

Case Notes

Requirements for obtaining certificate of public convenience and necessity to operate solid waste transfer station were neither overly broad nor burdensome. *Matter of Recycling & Salvage Corp.*, 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Discussion of moral integrity as an issue in Certificate decision; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. *Little Falls Twp. v. Bardin*, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979), certiorari denied.

7:26H-1.9 Issuance of certificate

(a) The procedures for Department review and approval or denial of an application for a certificate shall be in accordance with the following:

1. Upon receipt of an application, the Department shall review the application for completeness. After reviewing the application, the Department shall within 30 calendar days of receipt of the application notify the petitioner, in writing, whether the application is incomplete.

2. If the application is deemed incomplete, the Department shall provide the applicant with a written list of the deficiencies required to make the application complete. Failure to correct the deficiencies shall constitute cause for denial of the application without prejudice. A determination of incompleteness shall stop any review until such time as a completed application is received by the Department.

3. Within 14 calendar days after receiving a notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the application or supply the requested information and the failure to supply the requested information within 60 calendar days after receiving notification of deficiency shall constitute cause for denial of the application without prejudice.

(b) The Department may impose such conditions as it finds to be proper and necessary when issuing a certificate of public convenience and necessity either in the form of a certificate or by its order.

(c) The Department may deny, after hearing, any request for a certificate of public convenience and necessity for any applicant who failed to obtain a certificate prior to operating, managing or otherwise engaging in solid waste collection.

Amended by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Stylistic changes only.

Amended by R.1996 d.253, effective June 3, 1996.
See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (c), deleted "authority to issue" following "any request for".

Amended by R.2008 d.117, effective May 5, 2008.
See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (a)1, deleted "complete or" preceding "incomplete".

Case Notes

Proper denial of right to cross-examination during Certificate proceedings; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. *Little Falls Twp. v. Bardin*, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979), certiorari denied.

Board empowered to grant Certificate applications ex parte without a full hearing; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity, 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

7:26H-1.10 Application form

Every person engaged in solid waste collection or solid waste disposal on May 6, 1970, or thereafter shall, before obtaining a certificate of public convenience and necessity, complete the application form available for such purpose upon request at the address specified in N.J.A.C. 7:26H-1.5.

Amended by R.1996 d.253, effective June 3, 1996.
See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

7:26H-1.11 Revocation or suspension of certificate

(a) The Department may, upon notice, after hearing, by order in writing, revoke or suspend a certificate of public convenience and necessity issued to any person engaged in the solid waste collection or solid waste disposal business upon finding that such person:

1. Has refused or failed to comply with any lawful order of the Department; or

2. Has failed or refused to comply with the provisions of N.J.S.A. 48:13A-7.16 through 7.18;

3. Has violated any provision of N.J.S.A. 48:13A-1 et seq., N.J.S.A. 48:13A-7.1 et seq., or N.J.S.A. 13:1E-1 et seq., or any rule, regulation or order adopted or issued thereunder;

4. Has been denied approval of a license or has failed to renew a license or has had a license revoked pursuant to N.J.S.A. 13:1E-126 et seq.; or

5. Fails to submit the annual fee as required by N.J.S.A. 48:13A-7.4, the annual assessment as required by N.J.S.A. 48:2-62, or the annual licensing renewal fee as required by N.J.A.C. 7:26-16 on or before the deadlines established by the Department.

(b) Any solid waste collector who receives a notice of intent to revoke or suspend a certificate may, upon a written request to the Department within 20 days of receipt of notice, request an adjudicatory hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq. The solid waste collector shall deliver the written request to the following addresses:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION—Adjudicatory Hearing Requests
401 East State Street—P.O. Box 402
Trenton, New Jersey 08625-0402

Division of County Environmental and Waste
Enforcement
401 E. State Street
P.O. Box 422
Trenton, New Jersey 08625-0422

Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

1. The solid waste collector shall include the following information in a request for an adjudicatory hearing under (b) above:

- i. The solid waste collector's name, address and telephone number;
- ii. Information supporting the request, and specific references to or copies of other documents relied upon to support the request;
- iii. An estimate of the time required for the hearing (in days and/or hours); and
- iv. A request, if necessary, for a barrier-free hearing location.

2. The Department may deny a request for an adjudicatory hearing under (b) above if:

- i. The solid waste collector fails to provide all information required under (b)1 above; and
- ii. The Department receives the request after the expiration of the time allotted under (b) above;

(c) When the Department determines that the contested suspension or revocation is necessary to alleviate an imminent danger to the environment or the public health, safety or welfare, the Department may suspend the license immediately and provide a hearing on an expedited basis.

(d) No person shall continue to engage in the business of solid waste collection or solid waste disposal if the Department has entered a final order suspending or revoking the certificate of public convenience and necessity held by such person.

(e) Motions for reconsideration of a Department order to suspend or revoke a certification of public convenience and necessity shall be filed in accordance with N.J.A.C. 7:26H-2.7(a).

Administrative change.

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

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In the introductory paragraph of (b), rewrote the address block; and in (e), updated the N.J.A.C. reference.

7:26H-1.12 Rates

(a) The Department upon complaint or on its own initiative may, after hearing, upon notice, by order in writing, direct any solid waste disposal utility to furnish proof that its rates for service do not exceed just and reasonable rates for such service.

(b) Should the Department find, after hearing, that the rates are unreasonable, it may order the solid waste disposal utility earning such unreasonable rates to make an adjustment in its tariffs, contracts or agreements to a sum which shall result in just and reasonable rates.

(c) Rates for solid waste disposal service which have for their objective the making effective of initial rates or revisions, changes or alterations of existing rates and which do

not propose increases in charges above the peak rate to customers shall be filed in accordance with N.J.A.C. 7:26H-3.10.

(d) Rates for solid waste disposal service or petitions which have as their objective the making effective of revisions, charges or alterations of existing rates which propose to increase the charges for the service above the peak rate either directly or by the alteration of any classification practice, rule or regulation as to result in such an increase shall be filed in accordance with N.J.A.C. 7:26H-3.11.

(e) The procedures for Department review of a solid waste collection utility's rates and charges shall be in accordance with the procedures established in N.J.A.C. 7:26H-5.

(f) Notwithstanding the provisions of any other law, rule or regulation, court decision or order of the Board of Public Utilities or Department to the contrary, the solid waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable if:

1. Those rates are market-based rates; or
2. If the rates exceed the market-based rates authorized pursuant to (f)1 above and they are designed to either:
 - i. Stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity ; or
 - ii. Recover sufficient revenues to meet the revenue requirements of the privately-owned sanitary landfill facility.

(g) The internal cost of service or the financial condition of the privately-owned sanitary landfill facility is relevant to the determination of whether the solid waste disposal rates are market-based rates only if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the Department pursuant to N.J.A.C. 7:26H-8.5.

(h) In a contested case proceeding pursuant to (g) above, the owner (at his or her sole discretion) or operator of the privately-owned sanitary landfill facility may establish a reasonable profit margin using either:

1. The return on rate base or operating margin methodology; or
2. Any alternative methodology that is consistent with market practices.

Amended by R.1996 d.253, effective June 3, 1996.

See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

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

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

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), deleted "or solid waste collection" following "any solid waste disposal".

SUBCHAPTER 2. RULES OF PRACTICE

7:26H-2.1 Scope

These rules shall govern practice and procedure before the Division of County Environmental and Waste Enforcement of the Department of Environmental Protection.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

Substituted "County Environmental and Waste Enforcement" for "Solid and Hazardous Waste".

7:26H-2.2 Construction

These rules shall be liberally construed to permit the Department to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Department.

7:26H-2.3 Pleadings

(a) Pleadings before the Department shall be petitions, answers, and replies which, for purpose of these rules, are defined as follows:

1. "Petition" means any pleading filed to initiate a proceeding involving the jurisdiction of the Department;
2. "Answer" means any pleading filed by a respondent or other party against whom a petition is direct or who is affected by the filing or a petition; and
3. "Reply" means any pleading filed by petitioner or others in response to an answer.

(b) All pleadings, correspondence and other papers should be mailed to the address listed in N.J.A.C. 7:26H-1.5.

(c) Unless otherwise required by the Department, there shall be filed with the Department for its own use an original and four conformed copies of each pleading.

1. Filings must include a self-addressed stamped envelope for the return of a stamped and dated copy of the filing.
2. The stamped, dated copy of the filing shall constitute proof of filing.

(d) Pleadings shall be liberally construed with the view to effect justice. The Department may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Department may, on notice, strike the pleading or take such other action as it deems appropriate.

(e) Service and notice of proceedings shall be as follows:

1. Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Department, the following provisions shall govern:

i. A petition filed on behalf of a solid waste utility shall be served upon each respondent named in such petition;

ii. A petition originating a proceeding filed by a party other than a solid waste utility shall be served by the Director upon each respondent named in the petition;

iii. Every other pleading shall be served by the party filing the same on all other parties of record concurrent with or prior to the filing thereof; and

iv. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

2. Whenever a party has the right or is required to do some act within a prescribed period of time after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

(f) All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Department's own motion or the motion of the Attorney General of the State of New Jersey.

7:26H-2.4 Petitions

(a) All petitions shall comply with the provisions of this subchapter to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statute or other authority under which the Department's action is sought; and shall contain such information or statements as may be required by statute, rule or order of the Department.

(b) Petitions directed to particular respondents shall conclude with a direction that the respondent act in accordance with the demands set forth in the petition or file and serve an answer within 20 days in accordance with these rules.

(c) Where relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Department shall so state and include the following:

1. The current status of the application;
2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Department together with a copy of any order or certificate issued relating thereto; and
3. If such an application or an amendment to that application is filed with another State or Federal regulatory body subsequent to the date of the filing with the Department but prior to its determination, three copies of such application or amendments, together with three copies of any order or certificate issued relating thereto, shall be

filed with the Department and served upon other parties of record.

(d) A petitioner may join in a single petition more than one request for relief, unless the Department, in its discretion, sever matters so joined for hearing and determination or take such other action as may be in the public interest.

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

7:26H-2.5 Procedures for Department review

(a) The procedures for Department review and approval or denial of a petition shall be in accordance with the following:

1. Upon receipt of a petition, the Department shall review the petition for determination of completeness. After reviewing the petition, the Department shall, within 30 days of receipt of the petition, notify the petitioner, in writing, whether the petition is complete or incomplete.

2. If the petition is deemed incomplete, the Department shall provide the petitioner with a written list of deficiencies. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (a)4 below until such time as the Department makes a determination of completeness.

3. Within 14 days of receipt of notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the petition or supply the information requested to make the petition complete. The petitioner shall correct all deficiencies within 30 days of notification of incompleteness. Failure to correct all deficiencies shall result in the rejection of the petition without prejudice.

4. Upon determining that the petition is complete, the Department shall notify the petitioner, in writing, that the petition is complete and that it will be filed and assigned a docket number. No later than six months from the date of a determination of completeness, the Department shall issue an order suspending, denying or approving the petition.

(b) Unless otherwise directed by the Department, petitions and subsequent pleading shall be served by all parties as provided for in N.J.A.C. 7:26H-2.3(e).

(c) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer of acceptance, signed by the parties or their attorneys, shall be filed with the Department and if not disapproved by the Department within 20 days, the petition shall be deemed satisfied and the proceeding closed without further action.

(d) In any matter which is determined by the Department to be a contested case, the matter will be transferred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1

and 54:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26H-2.6 Answers and replies

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Department in connection therewith, except in the case of any rate proceeding instituted by a solid waste utility, shall file an answer in writing thereto with the Department in accordance with the following:

1. The answer shall be so drawn as to apprise the parties and the Department fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition; and

2. Matters alleged by way of affirmative defense shall be separately stated and numbered.

(b) Unless otherwise provided in these rules or order of the Department, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Department within ten days after the service of the answer.

(c) Whenever the Department believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(d) Upon motion on notice to all parties to the proceeding, the Department may, in its discretion, extend or shorten the time to file an answer or response.

7:26H-2.7 Motions

(a) The following pertain to motions to reconsider:

1. A party may file for reconsideration of a final decision or order of the Department within 15 days of the issuance of such decision or order. Upon filing by any party of a motion for reconsideration, appropriate notice thereof shall be given by the moving party to all other parties, or their attorney of record, by service of a copy of the motion for reconsideration.

i. The motion to reconsider must state, in separately numbered paragraphs, the alleged errors of law or fact relied upon and shall specify whether consideration, argument or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Department.

ii. Where opportunity is also sought to introduce additional evidence, the evidence to be presented shall be stated briefly together with reasons for failure to previously present said evidence.

2. Within 10 days following the service of a motion to reconsider, any party to the proceeding may serve upon the moving party and file with the Department an answer

thereto, and in default shall be deemed to have waived any objection to the granting of the motion.

3. As soon as practicable after the filing of answers to a motion to reopen or default, as the case may be, the Department shall grant or deny such motion. The action by the Department may be conditioned on reasonable terms.

4. The Department may at any time order a rehearing, argument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

5. After receipt of the initial decision, any exceptions and answers, if any, shall be disposed of by the Department based on the exceptions, answers and briefs filed unless the Department, in its discretion, requires or permits oral argument, in which case the Department will schedule the matter for argument before it.

6. The Department may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

(b) The following pertain to motions to intervene:

1. Any person, other than an original party to the proceeding, who is able to show a substantial and specific interest which would be effected by the proceeding may move, in writing, for leave to intervene prior to or at the time the matter is called for a hearing, or may make an oral motion for leave to intervene at the time of the hearing.

i. The motion to intervene must contain the name and address of the party intervening; the name and address of the party's attorney, if any; the party's interest affected by the proceeding; the nature and quantity of evidence the party will present if the motion to intervene is granted; and if affirmative relief is sought, a clear and concise statement of the relief sought and the basis for the relief.

ii. Where a motion to intervene seeks to broaden the issues decided at the original proceeding, such motion shall be filed with the Department and copies shall be served upon the original parties to the proceeding at least 10 days prior to the date of the hearing.

iii. Except for good cause shown, no motion to intervene will be granted after the proceeding is under way.

2. Motions to intervene shall be considered first at all hearings or may be set for prior hearing, and an opportunity shall be afforded to the original parties to be heard thereon.

3. If the Department determines that the person seeking to intervene has a substantial and specific interest which would be affected by the proceeding and whose interest with respect to the proceeding would not otherwise be adequately represented, the Department may grant the

motion to intervene at the time of the hearing, on such terms as the Department may prescribe and the intervenor(s) shall be afforded the same rights and obligations as the original parties.

4. Whenever it appears during the course of a proceeding that an intervenor has no substantial and specific interest which would be affected by the proceeding, the Department may dismiss the intervenor from the proceeding.

5. Where two or more intervenors have substantially like interests, the Commissioner may at any time during the hearing, limit the number of intervenors who will be permitted to participate in the hearing, noting nonetheless the appearance of said intervenors, the names of the witnesses to be offered and the fact that their testimony is corroborative of the position of the prior intervenors.

(c) All motions shall be deemed denied if not decided within 60 days after the filing. The Department may waive this rule on its own motion or for good cause shown by a party.

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

7:26H-2.8 Compliance with orders and decisions

Upon issuance of an order or decision of the Department, the party to whom the same is directed shall notify the Department on or before the date specified in said order or decision whether or not compliance has been made in conformance therewith.

SUBCHAPTER 3. TRANSACTIONAL FILINGS

7:26H-3.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the economic transactions of solid waste collection and solid waste disposal utilities and sets forth the means by which persons engaged in the business of solid waste collection and solid waste disposal shall petition for Department approval of such transactions.

(b) The requirements of this subchapter are in addition to the pleadings requirements in N.J.A.C. 7:26H-2.

(c) All petitions submitted pursuant to this subchapter shall include the following information:

1. An itemized listing of all assets involved in the transaction; and

2. By county, a listing of the total number and classification (that is, industrial, commercial or residential) of the current New Jersey customers of all the utilities involved in the transaction.

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Added (c).

7:26H-3.2 Petitions for the approval of the sale or lease of property

(a) No sale or transfer or encumbrance of the assets of a solid waste collection or solid waste disposal utility or any change in majority control of such utility shall be consummated without prior authorization of the Department.

(b) Petitions to sell or transfer the assets or to affect a change in the majority control of a solid waste business shall be in accordance with the provisions of N.J.A.C. 7:26H-2, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The executed purchase or lease agreement including the name of the transferee or lessee, the consideration or rental and the method of payment, and any rights reserved by the transferor or lessor;
2. The proposed customer notice;
3. The proposed promissory note(s) or other security instruments;
4. The schedule of assets which are the subject of the proposed transaction;
5. The two most recent quarterly financial statements of both the buyer and seller or lessor and lessee. In the event that a solid waste utility does not, in the ordinary course of business, prepare quarterly financial statements, the solid waste utility shall submit an income statement and a balance sheet;
6. Proof of certification and licensure of the buyer or lessee by the Department;
7. A petition seeking Department approval to discontinue service to that portion of the seller's service area that is the subject of the petitioned transaction, if applicable;
8. A description of the relationship between the parties other than that of transferrer and transferee, or lessor and lessee; and
9. A description of any existing mortgage or other security agreement, including, the amount, and the time required to obtain a release.

(c) Notice of the sale shall appear in a newspaper of general circulation in the service territory of the utility relinquishing its assets at least 30 days before the sale occurs.

(d) The Department has 30 days from the date of receipt to review the Notice of Intent. For the purposes of this section, receipt means arrival at and date stamped by the Division of County Environmental and Waste Enforcement.

(e) The Department shall deny approval of an agreement described in (a) above if it contains any of the following terms and conditions:

1. Irrevocable payments on the promissory note commencing prior to Department approval;
2. Security interests in the customer accounts;
3. Reversion of the customer accounts to the seller in the event of default; or
4. Management agreement with buyer prior to Department approval of same pursuant to N.J.A.C. 7:26H-3.6.

Administrative change.

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b), deleted former 8 and 9 and recodified former 10 and 11 as 8 and 9; rewrote (c).

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (d), substituted "County Environmental and Waste Enforcement" for "Solid and Hazardous Waste".

7:26H-3.3 Petitions for authority to transfer capital stock

(a) Agreements to sell or transfer any share or share(s) of capital stock of a solid waste utility to another utility or agreements to sell or transfer shares of capital stock to a corporation or person, where such sale would, by itself or in connection with other sales or transfers, vest in such person or corporation a majority interest of the outstanding capital stock shall not be consummated without prior approval by the Department.

(b) Petitions for authority to sell or transfer stocks of any solid waste utility shall conform to the requirements of N.J.A.C. 7:26H-2, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferrer and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;
3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;
4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;
5. The reason for the proposed transfer;

4. Availability of substitute services available.

(b) The Department shall utilize the criteria listed in (a) above in conjunction with commonly accepted economic indicators including, but not limited to, the following:

1. Differentiation of services provided;
2. Financial requirements for entrants, including capital entry or exit costs;
3. Concentration ratios and other measures including, market share, revenues, profitability, number of employees and number of customers, designed to determine the extent of dominance of the market by a limited number of firms;
4. Evidence developed by the Department or other local, state or federal agencies of price-fixing, territory divisions, collusion, or other forms of anti-competitive behavior by persons providing, directly or indirectly, solid waste collection services;
5. The extent and influence of vertical integration of firms in the solid waste collection industry, including:
 - i. Evidence of joint ownership of collecting, disposal, or supplier firms of the industry;
 - ii. Patterns of price discrimination in the provision of services by vertically integrated firms; and
 - iii. Patterns of behavior that suggest that vertically integrated service providers discourage competition with service providers;
6. Product/service pricing and differentiation;
7. Degree of variance off the median price for similar service in similar counties or service areas; and
8. Such other factors as the Department deems appropriate.

**7:26H-5.11 Procedures for Department review;
supervision of solid waste collection industry**

(a) The following pertain to transactions requiring Department approval pursuant to the provisions of N.J.S.A. 48:3-7:

1. All notices of intent to enter into a transaction listed at N.J.S.A. 48:3-7 shall be in the form prescribed by N.J.A.C. 7:26H-2, to the extent applicable.
2. The solid waste collector shall file a notice of intent no later than 30 days prior to the anticipated date of closing of the transaction.
3. Upon receipt of a notice of intent, the Department shall review the notice to determine whether the notice and the supporting documentation are complete. After reviewing the notice of intent, the Department shall, within 30 days of receipt of the notice, notify the applicant, in writing, whether the notice is complete or incomplete. For the purposes of this section, receipt means arrival at and

date stamped by the Bureau of Solid and Hazardous Waste Regulation, Division of County Environmental and Waste Enforcement.

- i. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (a)4 below.
- ii. Within 14 days after receiving a notification of deficiency, the collector shall inform the Department, in writing, of its intent to either withdraw the notice of intent or supply the information requested to make the notice of intent complete.
- iii. The collector shall supply all requested information within 30 days of receipt of notification of deficiency. This time limitation may be waived through agreement with the Department.

4. The Department may require a collector to provide additional information where such information is necessary, as determined by the Department, to make the notice of intent complete prior to the decision to approve the transaction. The Department shall not make a final determination on any transaction until such time as the applicant supplies all of the requested information. Any failure to submit such information shall constitute cause for dismissal of the petition without prejudice. In the event the Department requests no additional information within 30 days of receipt of the notice, the transaction shall be deemed to have been approved.

5. In the event the Department requests additional information, the timeframe for the review of a complete notice shall be in accordance with the following:

- i. The Department shall perform its review of a complete notice and make a decision within 60 days from the receipt of all requested information;
- ii. The Department will approve a transaction within 60 days of receipt of a complete notice of intent unless it makes a determination pursuant to (b) below that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition; and
- iii. In the event the Department fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

(b) The following pertain to Department investigation of rates and charges received by solid waste collectors:

1. On its own initiative, or upon receipt of information that a solid waste collector may be receiving rates or charges different than those that would result from effective competition, the Department may initiate an investigation of those rates and charges. The Department shall notify the solid waste collector, in writing (certified mail, return receipt requested), that it is the subject of an

investigation. The notice shall include, but not be limited to, the following information.

- i. The reason(s) for the investigation;
 - ii. A description of the geographic area, type or service or class of customer which is subject to investigation;
 - iii. A list of the criteria relied upon to determine that a lack of effective competition may exist; and
 - iv. The name and address of the individual to whom a response can be directed.
2. The Department may, within 30 days following the date of notice, request that the solid waste collector submit any additional information needed to assist in its review. The request for additional information shall be made in writing (certified mail, return receipt requested) and shall set forth the reasons supporting the Department's request for additional information.
- i. The solid waste collector shall submit responses to all requests for information within 30 days of receipt of the request for information.
 - ii. Should the solid waste collector fail or refuse to submit information requested pursuant to this subsection, the Department may take action to revoke or suspend the collector's certificate of public convenience and necessity.
3. The Department shall complete its review of the collector's rates and charges within 60 days following the date of notice; unless the Department requests additional information pursuant to (b)2 above, in which case the Department shall complete its review within 60 days of receipt of all requested information.
4. If necessary to pursue an investigation pursuant to (b)1 above, the Department may require any other solid waste collector within a comparable geographic area, serving a comparable class of customers or providing a similar type of service to submit specific information concerning its rates and charges for the purposes of performing a comparison of rates.
5. Upon the determination by the Department that a lack of effective competition exists and that the lack of competition has resulted in rates and charges greater than or less than those which would result from effective competition, the Department may, after hearing by order in writing:
- i. Order the solid waste collector to adjust rates or charges to a sum consistent with the market price for such collection services in the applicable geographic area;
 - ii. Order the solid waste collector to establish an escrow account during the pendency of any adjudicated case, into which the solid waste collector shall deposit

the excessive rates and charges which the Department has determined should be refunded to the collector's customers;

- iii. Order the solid waste collector to refund, at an interest rate calculated in accordance with N.J.A.C. 7:26H-5.14, the difference between the excessive rates or charges and the competitive rates or charges ordered by the Department as of the date of the notice of the Department's intention to review the rates or charges received by that solid waste collector; and

- iv. Direct the solid waste collector to take action to restore or promote effective competition within the affected geographic area, class of customers or type of service.

6. An order issued pursuant to (b)5 above shall be sent by certified mail to the solid waste collector (return receipt requested) and become effective upon issuance, unless an adjudicatory hearing request is made by the solid waste collector pursuant to N.J.A.C. 7:26H-5.17. In the event that the order is heard as a contested case pursuant to N.J.A.C. 7:26H-5.17, the order shall be effective after hearing and final action by the agency approving the order.

7. A Department order issued pursuant to (b)5 above shall expire no later than six months after the effective date of the order as such effective date is defined in (b)6 above.

8. Within six months following the issuance of an order pursuant to (b) above, the Department will review the actions taken pursuant to such order and will determine whether a lack of effective competition still exists within the affected geographic area, class of customers or type of service and whether the continued lack of effective competition has resulted in rates or charges which exceed rates or charges that would have resulted from effective competition. Following its review and determination, the Department may:

- i. Rescind its order and cease any further rate setting activity; or
- ii. Issue a new order pursuant to (b)5 above and continue rate setting activity with respect to the solid waste collector subject to the original order.

- (1) The Department shall notify the solid waste collector no fewer than 30 days prior to the expiration date of the original order that it intends to issue a new order continuing rate setting activities.

- (2) The notice must provide the reasons for the new order and the criteria utilized by the Department in making its determination that a lack of effective competition still exists within the affected geographic area, class of customers or type of service, and the continued lack of effective competition has resulted in rates or charges which exceed rates or charges that would have resulted from effective competition.

(c) The following pertain to failures or refusals to provide collection services:

1. The Department may order any solid waste collector into any geographic area for any class of customers or any type of collection service, where there is reasonable cause to believe the collection of solid waste has been discontinued and public health and safety may be affected. Circumstances constituting cause include, but are not limited to:

i. The collection of solid waste is discontinued as a result of a solid waste collector's failure or refusal to complete, execute or perform any contract or agreement for the provision of solid waste collection services;

ii. Any class of customers within a specific geographic area is unable to secure collections services;

iii. Any person seeking a specific type of solid waste collection service is unable to secure solid waste collection services; or

iv. The Department has received complaints pertaining to the adequacy of existing solid waste collection services.

2. Should the Department order any solid waste collector to provide collection services pursuant to (c) above, the solid waste collector shall file tariff adjustments in accordance with the provisions of N.J.A.C. 7:26H-3.10. After the transition period, the rates and charges for the extended solid waste collection services shall be determined by the collector ordered to extend the services.

3. Within five business days of any order requiring a solid waste collector to extend its services to a customer or class of customer pursuant to (c)1 above, the Department shall provide notice to the former collector, if known, and an opportunity to be heard at a date to be set on the issues of the duration of the order extending services, additional conditions that should be imposed, penalties, and any other issues as the Department deems are warranted under the circumstances. Hearings shall be conducted in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq.

Administrative change.

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b)1, substituted "On its own initiative, or upon" for "Upon"; in (b)6, rewrote the first sentence and amended the N.J.A.C. reference throughout.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (a)3, inserted "and Hazardous" following "Bureau of Solid", and substituted "County Environmental and Waste Enforcement" for "Solid and Hazardous Waste"; and in (c)2, substituted "tariff" for "Uniform Tariff", updated the N.J.A.C. reference and inserted a comma following "period".

7:26H-5.12 Customer bill of rights

(a) Collection utilities shall comply with all customer bill of rights provisions identified in (c) below.

(b) At least once each year, every solid waste collector shall notify its customers that solid waste collection services in this State are available on a competitive basis and include with that notice a copy of a customer bill of rights.

(c) The customer bill of rights shall set forth the following information:

1. A commercial, industrial or institutional customer has the right to select their solid waste collector on a competitive basis and to discontinue service at any time, unless contractually obligated by a service agreement, provided that the collector is provided with a minimum of seven days' written notice;

2. Residential customers who are responsible for hiring their own collection service have the right to select their solid waste collector on a competitive basis and to discontinue service at any time, provided the collector is given seven days written notice.

3. The solid waste collector shall provide collection service in the service territories listed in its tariff;

4. A statement that the solid waste collector's tariff showing terms and conditions is available for review at the Department and that a complete list of solid waste collectors registered to provide service in their service territory is available from the Bureau of Solid and Hazardous Waste Regulation;

5. The solid waste collector shall handle customer complaints in a prompt, courteous, and efficient manner and that in the event a solid waste collector fails to pick up solid waste on a regularly scheduled day and such failure is not caused by an act or omission of the customer, the collector shall make the pick up as soon as possible, but in no event shall it be later than the next regularly scheduled collection day. Should a collector fail to pick up solid waste from a commercial, industrial or institutional customer on two consecutive collection days, and such failure is not caused by an omission or act of the customer, the customer may cancel any service agreement or contract with the collector.

6. The solid waste collector shall remove and transport solid waste in an environmentally sound manner that safeguards the public health and preserves the quality of the environment;

7. The solid waste collector shall notify its customers in writing at least 10 days prior to any increase in the service component of its rate;

8. The solid waste collector shall provide 10 days written notice to the customer prior to the discontinuation of service. A collector may discontinue service for non-

payment of bills provided it gives the customer at least 10 days for payment of the bill before issuing the 10-day notice of discontinuing service;

9. Where solid waste collection service is provided in containers or other equipment supplied by the solid waste collector, and the service is discontinued either by the solid waste collector or the customer, the solid waste collector shall be required to remove its container or other equipment from the customer's premises within three days of the effective date of discontinuance regardless of the status of the account;

10. The Department is available to resolve service or pricing issues and disputes and the solid waste collector shall not terminate service for non-payment of disputed charges during a Department investigation;

11. The customer may make partial payments on collection service and disposal fees without risk of additional charges, penalties or disruption of service on the unresolved amount of a service or pricing issue or dispute and/or on disputes forwarded to the Department for resolution;

12. If a customer will be absent from their residence or business for at least 30 days, the customer may request suspension of solid waste collection services and billing for that period without charge;

13. The collector is responsible for assisting the customer in the selection of the most favorable service to meet the customer's needs at the most reasonable rate;

14. In the event of inclement weather when operation of a solid waste vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collection company, pick up shall be made no later than the next regularly scheduled day. In those cases where collection is made on a once per week basis, pick up shall be made as soon as weather permits;

15. A solid waste collector shall transmit copies of any notice of discontinuance of service to the Department at the same time it is transmitted to the customer;

16. Solid waste services contracts or agreements shall not include any clause which calls for an automatic renewal of the contract or agreement. The automatic renewal clause of any existing contract shall be considered void upon November 4, 2002; and

17. Solid waste collection utilities shall display their name, as it appears on their Certificate of Public Convenience and Necessity, and any "trading as name" on all vehicles and containers.

(d) Every solid waste collector shall certify to the Department that each customer was provided with a customer bill of rights as required pursuant to (a) above. The certification shall be as follows:

"I certify under penalty of law that I have notified each of my customers at least once this year that solid waste collection services in this State are available on a competitive basis as provided in the customer bill of rights and that I have provided each of my customers with a copy of the customer bill of rights in the form set forth at N.J.A.C. 7:26H-5.12(b). I am aware that there are penalties for failing to comply with the provisions of these regulations, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I will be responsible for penalties as set forth at N.J.S.A. 48:13A-12 and that violating any provision of these regulations may be grounds for suspension or revocation of any certificate of public convenience and necessity for which I may now hold."

Administrative change.

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (c)4, substituted "Bureau of Solid and Hazardous Waste Regulation" for "Division of Solid and Hazardous Waste"; and in (c)7, substituted "in the service component of its rate" for "or decrease in rates".

7:26H-5.13 (Reserved)

7:26H-5.14 Refunds

If the Department orders a solid waste collector to pay a refund pursuant to N.J.S.A. 48:13A-7.20, the solid waste collector shall pay said refund, plus simple interest at a rate equal to 400 basis points over the short-term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. §1274, in effect on the date of the order. Interest will be calculated from the date of receipt of notice as described at N.J.A.C. 7:26H-5.11(b) 1.

7:26H-5.15 Sanctions for non-compliance

(a) The Department may assess a penalty pursuant to N.J.S.A. 48:13A-12 when the Department determines that a solid waste collector has violated any provision of the Acts, including any violation of any rule or any administrative order adopted pursuant thereto.

(b) Any person who violates any provision of the Acts, or any rule, regulation or administrative order issued pursuant thereto, or who engages in the solid waste collection business or solid waste disposal business without having been issued a Certificate of Public Convenience and Necessity, shall be liable to pay a penalty of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense.

(c) Any person or any officer or agent thereof who knowingly violates any of the provisions of the Acts or aids or advises in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act

comprising a part of such violation, is guilty of a crime of the fourth degree and may be punished by imprisonment for not more than 18 months or by a fine of not more than \$50,000 or both; and if a corporation, by a fine of not more than \$100,000.

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

(e) Neither the assessment of a penalty nor the payment of any such penalty shall be deemed to affect the availability of any other enforcement provisions provided for by N.J.S.A. 48:13A-1 et seq. or any other statute in connection with the violation for which the assessment is levied.

(f) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the Acts. Specifically, and in addition to any other cause set forth in this chapter, the Department may revoke or suspend a solid waste collector's certificate of public convenience and necessity for any of the following causes:

1. Refusal or failure to maintain and file an annual report or any other business record requested pursuant to N.J.A.C. 7:26H-5.11, which may include, but not be limited to, the following: annual reports, customer lists, financial or operational information, contracts, books, accounts and records;

2. Refusal or failure to provide requested information in accordance with N.J.A.C. 7:26H-5.9, 5.11 or 5.12;

3. Refusal or failure to comply with an order of the Department to extend solid waste collection services under N.J.A.C. 7:26H-5.11; or

4. Failure to comply with an order of the Department to adjust rates to a sum which results in competitive pricing.

(g) Whenever a solid waste collector has failed to satisfy the requirements of this subchapter, the Department shall transmit a notice of a pending revocation or suspension of the solid waste collector's certificate of public convenience and necessity to the solid waste collector in conformance with the provision of N.J.S.A. 52:4A-4.

Administrative change.

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (a), substituted "Acts" for "Solid Waste Utility Control Act, N.J.S.A. 48:13-1 et seq. or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq."; in (b), substituted "Acts" for "Solid Waste Utility Control Act (N.J.S.A. 48:13A-1 et seq.), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1)"; in (c), substituted "the Acts" for "this Act"; in the introductory paragraph of (f), substituted "Acts" for "Act"; and in (f)1, deleted "customer list updates," following "annual reports,".

7:26H-5.16 Procedures for assessment and payment of penalties

(a) In order to assess a penalty under the Acts, for violation of the Acts, or any rule promulgated, any administrative order, permit, license or other operating authority issued thereunder, the Department shall, by means of notice of penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a penalty for more than one violation in a single notice of penalty assessment or in multiple notices of penalty assessment. This notice of penalty assessment shall:

1. Identify the section of the Acts, rule, administrative order, permit, license violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:26H-5.17.

(b) Payment of the penalty is due upon receipt by the violator of the Department's final order of a contested case or when a notice of penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:26H-5.17, the notice of penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of penalty assessment;
2. If a hearing is requested pursuant to N.J.A.C. 7:26H-5.17 and the Department denies the hearing request, a notice of penalty assessment becomes a final order upon receipt by the violator of notice of such denial; or
3. If a hearing is requested pursuant to N.J.A.C. 7:26H-5.17 and an adjudicatory hearing has been conducted, a notice of penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

New Rule, R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Former N.J.A.C. 7:26H-5.16, Administrative hearings; requests, re-codified to N.J.A.C. 7:26H-5.17.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In the introductory paragraph of (a), substituted "Acts" for "Act" twice and inserted "thereunder"; and in (a)1, substituted "Acts" for "Act".

7:26H-5.17 Administrative hearings; requests

(a) Any solid waste collector may, upon a written request to the Department within 20 days of receipt of an order described in N.J.A.C. 7:26H-5.11(b)5 or a notice of intent to suspend or revoke a Certificate of Public Convenience and Necessity, request an adjudicatory hearing thereon in the

manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq.

1. The solid waste collector shall deliver the written request to the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION—Adjudicatory Hearing Requests
PO Box 402
401 East State Street
Trenton, New Jersey 08625-0402

2. Copies of the request for an adjudicatory hearing shall also be delivered to the party issuing the order.

(b) The solid waste collector shall include the following information in a request for an adjudicatory hearing under (a) above:

- 1. The solid waste collector's name, address and telephone number;
- 2. Information supporting the request, and specific references to or copies of other documents relied upon to support the request;
- 3. An estimate of the time required for the hearing (in days and/or hours); and
- 4. A request, if necessary, for a barrier-free hearing location.

(c) The Department may deny a request for an adjudicatory hearing under (a) above if:

- 1. The solid waste collector fails to provide all information required under (b) above; and
- 2. The Department receives the request after the expiration of the time allotted under (a) above.

(d) When the Department determines that the contested suspension or revocation is necessary to alleviate an imminent danger to the environment or the public health, safety or welfare, the Department may suspend the license immediately and provide a hearing on an expedited basis.

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

Administrative change.
See: 30 N.J.R. 3948(a).
Recodified from N.J.A.C. 7:26H-5.16 and amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Rewrote (a)2; in (c)2, substituted "(a) above" for "(b) above".

7:26H-5.18 Penalties for violation of rules adopted pursuant to the Acts

(a) The Department may assess a penalty pursuant to this section of not more than \$10,000 for a first offense, not more

than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense for each violation of each requirement of any rule listed in (f) below.

(b) Each violation of a rule listed in (f) below shall constitute an additional, separate and distinct violation.

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

(d) Where any requirement of any rule listed in (f) below may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

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

- 1. Identify the rule violated as listed in (f) below;
- 2. Identify the corresponding base penalty dollar amount for the rule violated as listed in (f) below; and
- 3. To obtain the penalty, multiply the base penalty by the applicable severity factor offense multiplier as follows:

<u>Severity Factor</u>	<u>Multiplier</u>
i. First Offense	Initial Base Penalty (no multiplier)
ii. Second Offense	Initial Base Penalty x (2.5)
iii. Third and subsequent Offenses	Initial Base Penalty x (5.0)
<u>Example:</u>	
Base penalty (for violation of N.J.A.C. 7:26H-1.19) = \$1,000 (First Offense)	
For a second offense, the penalty is \$ 1,000 x (2.5) = \$2,500	
For the third and subsequent offenses, the penalty is \$1,000 x (5.0) = \$5,000	

(f) The rule summary in this subsection, which summarizes certain provisions in this chapter, is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in this chapter, then the provision in this chapter shall prevail.

- 1. The violations of N.J.A.C. 7:26H-1, General Requirements, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.