

TITLE 7

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 1

RULES OF PRACTICE AND PROCEDURE

Authority

N.J.S.A. 13:1K-15 et seq. (P.L. 1984 c.210); 52:14B-1 et seq.

Source and Effective Date

R.1990 d.457, effective August 15, 1990.
See: 22 N.J.R. 1457(a), 22 N.J.R. 2965(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Rules of Practice and Procedure, expires on August 15, 1995.

Chapter Historical Note

All provisions of Chapter 1, Rules of Practice and Procedure, became effective prior to September 1, 1969.

1971 Revisions: New Rules became effective August 25, 1971 as R.1971 d.143. See: 3 N.J.R. 176.

1973 Revisions: The original text of subchapter 3 (Sulfur in Fuels) became effective November 21, 1973 as R.1973 d.326. See: 5 N.J.R. 404(a).

1974 Revisions: The original text to subchapter 4 (Importation of Solid and Liquid Waste from Outside New Jersey) became effective February 1, 1974 as R.1974 d.10. See: 6 N.J.R. 58(a). Amendments became effective March 12, 1974 as R.1974 d.64. See: 6 N.J.R. 134(a).

1976 Revisions: Subchapter 6 was adopted effective September 20, 1976 as R.1976 d.296. See: 8 N.J.R. 460(d). Subchapter 5 was adopted effective October 13, 1976 as R.1976 d.318. See: 8 N.J.R. 375(b), 8 N.J.R. 510(c).

1980 Revisions: Subchapters 3 and 4 were repealed on October 7, 1980 as R.1980 d.433. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a).

1983 Revisions: Subchapter 3 was adopted as an Emergency Adoption effective December 30, 1983 as R.1983 d.649. See: 16 N.J.R. 151(a).

1984 Revisions: The subchapter 3 became effective March 5, 1984 as R.1984 d.81. See: 16 N.J.R. 151(a), 16 N.J.R. 523(a).

1985 Revisions: Subchapter 4 was adopted effective September 16, 1985 (operative October 1, 1985) as R.1985 d.487. See: 17 N.J.R. 1622(a), 17 N.J.R. 2260(a).

1986 Revisions: Subchapter 3 was readopted effective March 5, 1986 as R.1986 d.87. See: 18 N.J.R. 242(a), 18 N.J.R. 645(a). Subchapter 7 was adopted effective June 16, 1986 as R.1986 d.229. See: 17 N.J.R. 1826(a), 18 N.J.R. 1272(a). There was a Public Notice for section 3.8: The Department will be soliciting public comments on the draft ECRA Sampling Plan Guide. See: 18 N.J.R. 1714(c).

1987 Revisions: Subchapter 6 "Bureau of Solid Waste Management Procedural Rules" was repealed effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 3 "Interim Environmental Cleanup Responsibility Act Rules" and Subchapter 4 "Fee Schedule for Environmental Cleanup Responsibility Act" were repealed effective December 21, 1987 (operative January 1, 1988) as R.1987 d.528. See: 19 N.J.R. 681(a), 19 N.J.R. 2435(a).

1988 Revision: Subchapter 1, General Provisions of the Department of Environmental Protection became effective July 25, 1988 as R.1988 d.403. See: 20 N.J.R. 2058(a).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1990 d.457. See: Source and Effective Date.

Repeal and new rule, Subchapter 1, by R.1992 d.441, effective October 9, 1992. See: 24 N.J.R. 4085(a).

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

7:1-1.1 Organization of the Department of Environmental Protection and Energy

(a) The Commissioner is the administrator and head of the Department of Environmental Protection and Energy (Department), and has the duties listed in N.J.S.A. 13:1B-3.

(b) The Deputy Commissioner is second in command to the Commissioner, coordinates staff functions in the Commissioner's office, is responsible for the day-to-day administration of Department activities, and oversees the following organizational units:

1. The Office of Legal Affairs, which, pursuant to Executive Order No. 6(1990), is the legal liaison with the Division of Law in the Department of Law and Public Safety, and with the Office of Administrative Law. In that capacity, the office manages the preparation of the Department's regulations for proposal and adoption, the Commissioner's final decisions adopting, modifying or rejecting initial decisions rendered by Administrative Law Judges in administrative appeals, and requests for legal advice from the Division of Law. The office also manages the response to requests for adjudicatory hearings in contested cases, manages requests for copies of public records, and receives all subpoenas of Department employees and records. In addition, the office organizes the agenda for the Commissioner's weekly legal affairs meetings. The office includes the Department's Ethics Liaison Officer and Administrative Practice Officer;

2. The Office of Audit, which provides the Department with external audits of grants, contracts, and leases, and internal financial and operational audits of its programs;

3. The Office of Employee Relations and Equal Opportunity, which implements a comprehensive labor-management relations policy in the Department, administers all collective bargaining agreements covering unionized Department employees, and provides Department management with advice concerning the interpretation and application of labor contracts and of State and Federal statutes governing public employment. The office also represents Department management in employee grievance and arbitration proceedings, and administers the Department disciplinary program, Employee Advisory Services referrals and conflict resolution in employee-related matters. The office is also responsible for the development and implementation of the Department's affirmative action program. The office monitors all personnel practices to ensure compliance with equal employment opportunity and affirmative action policies, investigates all complaints of alleged discrimination, and, in the Department's contracting processes, enforces compliance with Federal and State statutes concerning micro, urban, small, and socially and economically disadvantaged businesses;

4. The Municipal Wastewater Assistance Element, which assists municipalities with planning, design, construction, management and administration of municipal wastewater treatment and conveyance of facilities, and with combined sewer corrective actions. The element also administers the New Jersey Wastewater Treatment Financing Program, a State revolving loan fund; and

5. The Water Supply Element, which is responsible for programs that assure adequate and safe supplies of drinking water.

(c) The Department has six Assistant Commissioners, as follows:

1. Enforcement;
2. Environmental Regulation;
3. Management and Budget;
4. Natural and Historic Resources;
5. Policy and Planning; and
6. Site Remediation.

(d) The Assistant Commissioner for Enforcement oversees overall Department enforcement policies and generally supervises the Department's enforcement programs associated with the following: water; coastal resources; hazardous waste generation, transportation, treatment, storage and disposal; and air pollution. The Assistant Commissioner for Enforcement also manages the issuance and settlement of enforcement documents for radiation; pesticides; noise; land use; toxic release; discharge prevention; laboratory certification; and Right-to-Know. The Assistant Commissioner for Enforcement provides general enforcement policy direction and guidance to the Department's programs for solid waste, contaminated site remediation, and fish, game and wildlife. The Assistant Commissioner for Enforcement implements and generally supervises Operation Clean Shores, the Cooperative Coastal Monitoring Program, the County Environmental Health Act, and all Statewide water monitoring programs. The Assistant Commissioner for Enforcement also oversees the following organizational units:

1. The Division of Facility-Wide Enforcement, which is responsible for developing a team approach to multimedia enforcement of regulated facilities. This Division is directly responsible for enforcement associated with hazardous waste management, air pollution control, water pollution control, and safe drinking water. The Division also oversees enforcement policy and issues and settles enforcement documents for the pesticide, radiation, noise, toxic release, discharge prevention, Right-to-Know and laboratory certification programs;

2. The Coastal and Land Use Enforcement Management Unit, which is responsible for enforcement matters involving freshwater and coastal wetlands, coastal area facility review, waterfront development, stream encroachment and dam safety. This unit also provides general oversight of the enforcement policies of the fish, game and wildlife rules, and provides coordination with the State Police, Marine Bureau;

3. The Water Monitoring Management Unit, which is responsible for conducting ambient surface and ground-water monitoring, including biological and toxics monitoring and analysis, industrial pretreatment compliance monitoring, intensive water quality surveys, lake classification management, and associated data management. This unit is also responsible for co-authoring a field procedures manual for water data management and water investigations. This unit also includes the Marine Water Classification and Analysis program, which is responsible for the classification of shellfish growing areas, operation of the Southern Regional Laboratory to support the classification program and laboratory support for Department water monitoring programs and other agencies (EPA, Delaware River Basin Commission, Food and Drug Administration) and administering a shellfish resource recovery program. The laboratory has specialized capability in nutrient analysis of marine waters and studies involving microbial indicators; and

4. The Office of Enforcement Coordination, which serves as the liaison with all enforcement programs throughout the Department, and is responsible for assuring that a uniform enforcement policy is implemented throughout the Department. The office is also responsible for developing enforcement regulations, and handling economic issues related to enforcement cases for all programs listed above as well as the Department's Solid Waste and Site Remediation programs. The office also supervises the Department's County Environmental Health Act program, Operation Clean Shores, and the Cooperative Coastal Monitoring program.

(e) The Assistant Commissioner for Environmental Regulation oversees the Department's permit programs. Environmental Regulation is responsible for making permit decisions that carry out the purposes and requirements of the enabling legislation and regulations; conducting reviews of permit applications in a manner which promotes meaningful public input; developing procedural and regulatory changes, as well as non-regulatory studies and outreach efforts, to consider in the Department's permit decision-making pollution prevention, protection of critical watersheds, and the Interim State Plan; helping permit applicants to comply with applicable requirements and promptly informing applicants when their applications are incomplete or when compliance does not appear to be possible; and finding opportunities to improve efficiency of permit reviews while maintaining or improving environmental protection, eliminating procedures and requirements which do not lead to greater environmental protection, and consolidating the reviews of multiple permits for individual facilities or projects. The Assistant Commissioner for Environmental Regulation also oversees the following organizational units:

1. The Office of Permit Information and Assistance, which provides general information about the State's environmental regulations, including information about what kinds of permits are needed for various projects, and

information which permits applicants can use to ensure that their applications are administratively complete. The office also works to promote a coordinated permit review process; prevent duplication of efforts; enhance communication between Department staff, applicants and the public; and provide guidance on permit requirements, issues, and likely time frames for decision-making;

2. The Air Quality Regulation Program, which includes bureaus which: evaluate proposed new major stationary sources of air pollution; review air quality modeling and risk assessments which predict ground level air contaminant concentrations and their health effects; evaluate applications for new or modified equipment which emit air contaminants; and oversee the measurement of contaminant emissions from stationary sources;

3. The Hazardous Waste Regulation Program, which includes bureaus responsible for: tracking and reporting requirements for hazardous waste; developing regulations necessary to implement the program; developing legislation, regulations, rules, policies and procedures to enable New Jersey to maintain Federal authorization to implement the Federal Resource Conservation and Recovery Act hazardous waste management program for New Jersey; and performing a technical review of applications and issuing permits to regulate the treatment, storage and disposal of hazardous waste;

4. The Land Use Regulation Program, which administers the programs associated with the Waterfront Development Act, the Wetlands Act of 1970, the Coastal Area Facility Review Act, the Flood Hazard Area Control Act (stream encroachment), the Freshwater Wetlands Protection Act, and the Riparian Lands (Tidelands) Management Program;

5. The Office of Pollution Prevention, which is responsible for implementing the Pollution Prevention Act, and for developing the following: a pilot program to design single facility-wide permits for a set of facilities; a framework for industry to report reductions in the use and generation of hazardous substances; a systematic approach to integrate multimedia pollution prevention into existing media-specific permit programs; and policy initiatives to coordinate media-specific permit programs while emphasizing multimedia source reduction;

6. The Office of Regulatory Policy, which oversees regulations and plans upon which regulatory decisions are based, with an emphasis upon comprehensive watershed management issues. Regulatory Policy is also responsible for water quality management plans, the Coastal Zone Management Program, the Coastal Nonpoint Pollution Control Program, and stormwater management planning; and

7. The Wastewater Facilities Regulation Program, which includes bureaus responsible for: implementing the sewer connection ban program and reviewing permit applications for construction and operation of wastewater

treatment facilities, sanitary sewers and alternate design septic systems; issuing New Jersey Pollutant Discharge Elimination (NJPDES) permits for discharges from industrial wastewater treatment facilities to surface waters, from industrial dischargers to municipal facilities, from municipal wastewater treatment facilities to surface waters, and from municipal and industrial treatment systems for process wastewater to groundwater; and regulating the discharge of contaminants and toxics into wastewater treatment facilities and regulating the management of residuals such as sludge, grit and screenings.

(f) The Assistant Commissioner for Management and Budget oversees the Department's administrative, financial, contracting, personnel and central services activities. The Assistant Commissioner also oversees the following organizational units:

1. The Division of Financial Management and General Services, which plans, budgets and manages the Department's finances; manages purchasing and contract administration; coordinates information systems and office automation; and provides printing, telecommunications, mailing and general services to the Department; and
2. The Division of Personnel, which provides recruitment, placement, job classification, payroll processing, compensation administration, job specification development, counseling, and employee and health benefits services.

(g) The Assistant Commissioner for Natural and Historic Resources directly supervises the following organizational units:

1. The Division of Fish, Game and Wildlife, which is responsible for management of marine fisheries, freshwater fisheries, wildlife management, and endangered and threatened nongame species. The Division also is responsible for enforcing statutes and regulations concerning wildlife resources and their habitats; education; providing wildlife information; performing laboratory services which monitor wildlife diseases; and reviewing the impacts of various types of development on wildlife;
2. The Division of Parks and Forestry, which is responsible for natural lands management, historic preservation, management of the forest environment, and management of state parks;
3. The Green Acres Program, which provides planning assistance and low-interest loans and grants to municipalities and counties for open space acquisition and recreational development projects, and provides matching grants to nonprofit organizations for open space acquisition projects. The program also serves as the Department's land acquisition agent in purchasing land for state parks, forests and wildlife management areas. The program also prepares and updates the Statewide Comprehensive Outdoor Recreation Plan, and manages all Federal funds granted to New Jersey for open space preservation and recreational development; and

4. The Engineering and Construction Program, which includes offices responsible for the following: planning and designing shore protection projects, conducting waterway maintenance, and overseeing the development of the State's Shore Protection Plan; regulating the construction and maintenance of dams to ensure their safety; removing derelict barges and scows and debris along the Hudson River and the Newark Bay area; and flood plain management.

(h) The Assistant Commissioner for Policy and Planning is principally responsible for: working in concert with the Department's programs to formulate and implement policy and management initiatives for the Department as a whole; providing a forum for the free exchange of information and ideas in developing a cohesive foundation for environmental policy; coordinating with the various programs of the Department to identify priorities and apply resources so as to achieve policy and management goals as efficiently and effectively as possible; providing science and technical information to the Department; coordinating efforts on the setting of standards and complex contamination issues that cross environmental media lines; and acting as the Department's research and development branch. The Assistant Commissioner for Policy and Planning directly supervises the following organizational units:

1. The Office of Energy, which includes Energy Planning and Conservation, and Air Quality Management. Energy Planning and Conservation is responsible for energy planning and policy functions, including the development and implementation of the State Energy Master Plan. Energy Planning and Conservation is also responsible for awarding and overseeing of grants for energy conservation projects. Air Quality Management is responsible for monitoring of the State's air quality, evaluation of stationary, mobile and natural source emissions, control of air pollution from mobile sources, development of air quality regulations, and coordination and implementation of the State's responsibilities under the Federal Clean Air Act;
2. Environmental Programs Development, which initiates outreach projects such as urban park beautification and environmental education, seeks funding for such projects, identifies potential outside funding sources, assists in the development of project ideas, and prepares funding applications;
3. Program Coordination, which coordinates the Department's review and issuance of comments on all environmental impact statements for major projects required by the National Environmental Policy Act and the Governor's Executive Order on environmental assessment;
4. The Policy Team, which develops long-term Department-wide policy and planning strategies in coordination with other areas of the Department, interested outside organizations and the regulated community;

5. The Division of Science and Research, which provides scientific and technical information to the Department, coordinates efforts on the setting of standards and complex contamination issues that cross environmental media lines, coordinates the Department's Geographic Information System, and acts as the Department's research and development branch, providing a scientific basis for the Department's regulatory, enforcement and legislative actions. The Division also includes the New Jersey Geological Survey, which is responsible for characterizing ground water resources; mapping and evaluating aquifers; providing technical assistance in geophysics including delineation of ground water contamination; maintaining a satellite Geographic Information System office and hydrogeologic database; constructing geologic maps; and locating and evaluating mineral resources and naturally occurring hazards;

6. The Division of Solid Waste Management, which contains the following subunits:

i. Engineering, which reviews permit applications for energy recovery facilities, large-scale municipal solid waste compost projects, new and expanded landfills, landfill disruptions, transfer stations, small-scale incinerators, materials recovery facilities, vegetative compost facilities, and recycling centers; reviews and approves closure plans for landfills; and approves the use of funds from the Sanitary Landfill Facility Contingency Fund (except for the payment of claims against the Fund, which is handled by the Environmental Claims Administration under the Assistant Commissioner for Site Remediation);

ii. Recycling and Planning, which administers statewide solid waste planning programs, and coordinates the county solid waste planning process; plans source reduction, recycling and market development activities; plans for special waste materials such as medical waste, contaminated soils, and asbestos; and administers statewide sludge management planning and policy development;

iii. Investigation and Enforcement, which administers a screening program to prevent persons with known criminal records, habits or associations from obtaining a permit to collect, transport, treat, store or dispose of solid waste; inspects permitted solid waste facilities, investigates unpermitted activities, and otherwise enforces solid waste statutes and regulations;

iv. Economic Regulation, which oversees the tariffs and rates charged in New Jersey for solid waste collection and disposal; performs staff analysis for Departmental approval for mergers and acquisitions, bulk sales, and certain debt transactions in the solid waste industry; issues registrations to solid waste haulers, haulage vehicles and facilities, as well as licenses to solid waste utilities; and coordinates the billing, collecting and reporting for the division's fee programs;

v. Finance and Management, which administers the Department's solid waste financial assistance programs, and the Division's research contracts personnel, budget, case management, management information systems, and physical plant; and

vi. Communication Coordination, which coordinates the division's research programs, regulation development, legislative review and communications; and

7. The Division of Environmental Safety, Health and Analytical Programs, which contains the following subunits:

i. Laboratories and Quality Assurance, which develops and administers the Department's quality assurance policies and procedures; administers the laboratory certification program; administers the Department's analytical services agreements; inspects laboratories; and assists the Department's laboratories in environmental, chemical and analytical research;

ii. Pesticide Control, which enforces laws and regulations regarding pesticides; investigates and conducts inspections to ensure that pesticides are used safely and properly; administers certification examinations; registers pesticide applicators, dealers, businesses and products; performs technical evaluations and environmental monitoring; and maintains and supports data management needs;

iii. Radiation Protection, which licenses users of radioactive materials; addresses radioactively contaminated sites; assesses exposure to non-ionizing radiation; administers the radon program and certifies radon testing and mitigation firms; maintains the environmental surveillance for nuclear power plants and serves as the lead State agency for emergencies at nuclear facilities; and registers x-ray producing machines and licenses radiological technologists; and

iv. Release Prevention, which gathers information on the use, storage and release of toxic chemicals to the environment; identifies companies which handle extraordinarily hazardous substances and works to ensure that procedures are in place to prevent the occurrence of devastating accidental chemical releases; and works to reduce the possibility of spills of hazardous substances, and to mitigate the consequences of spills which do occur.

(i) The Assistant Commissioner for Site Remediation directly supervises the following organizational units:

1. The Division of Publicly Funded Site Remediation, which includes units responsible for implementing and monitoring cleanup plans at sites being remediated with public funds; conducting remedial activities for contaminated sites where public funds are being expended; overseeing the remediation of sites that require ground water discharges by private parties; and providing contracting,

program development, geologic, technical and scientific support to the Department's site remediation programs;

2. The Division of Responsible Party Site Remediation, which includes units responsible for evaluating sites to determine the existence of contamination; overseeing the cleanup of major contaminated waste sites as conducted by responsible parties; implementing the Environmental Cleanup Responsibility Act and the Underground Storage of Hazardous Substances Act; undertaking emergency activities related to discharges of hazardous substances and wastes; and developing and maintaining a master list of contaminated waste sites in the State; and

3. Environmental Claims Administration, which administers the New Jersey Spill Compensation Fund to provide compensation to individuals and businesses which have suffered damages from the discharge of petroleum products or other hazardous substances, and processes claims against the Sanitary Landfill Facility Contingency fund for damages resulting from the operation or closure of a sanitary landfill.

(j) The Department also includes the following organizational units:

1. Communications, which includes the Department's Public Information Office; monitors and supports public participation activities throughout the Department; provides editorial and design guidance to the Department in producing publications; provides centralized communications support within the Department and to other State, local, county and regional agencies; and provides writing and graphic arts services for the Department; and

2. Legislative and Intergovernmental Affairs, which tracks State and Federal legislation and coordinates development of the Department's positions and testimony on legislation; serves as a liaison with local governments; and coordinates State and local environmental protection activities through technical and financial assistance to municipal environmental commissions.

(k) Persons seeking information from the Department may contact the appropriate program listed above. In addition, the following sources of information are available:

1. To inspect, copy or obtain a copy of any public record required to be made available under N.J.S.A. 47:1A-1, Examination and Copies of Public Records, please contact:

Department of Environmental Protection and Energy
Office of Legal Affairs
Attention: Public Records Requests
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

2. Publications, press releases, notices of public hearings and other forums, proposed and adopted rules and regulations, scientific studies, and a variety of other information is available at the DEPE Public Access Center, 401 East State Street, 1st Floor, Trenton, New Jersey. In addition to visiting the Public Access Center in person weekdays from 9:00 A.M. to 5:00 P.M., the public may make inquiries by calling (609) 777-DEPE, or by writing the center at:

Public Access Center
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

3. To obtain information concerning the types of permits required for a project, timing of permit reviews, and instructions for completing permit applications, please contact:

Office of Permit Information and Assistance
Department of Environmental Protection and Energy
401 East State Street
CN 401
Trenton, New Jersey 08625-0401

4. The DEPE Bulletin is an information service provided by the Department. In compliance with the Rules and Regulations Governing 90-Day Construction Permits (N.J.A.C. 7:1C), this semi-monthly publication contains a list of construction permit applications recently filed or acted upon by the Department. Using the DEPE Bulletin, interested persons can determine the status of Coastal Area Facility Review Act (CAFRA) permits, Federal Consistency Activity permits, Freshwater Wetlands Individual and Statewide General permits, Open Water Fill permits, Stream Encroachment permits, Tidal Wetlands permits, Waterfront Development permits, and Treatment Works Approvals. The DEPE Bulletin also includes a calendar of events of interest, a schedule of public hearings (which, however, does not constitute an official notice of a hearing), and a list of Environmental Impact Statements acted upon. Persons desiring to be included on the mailing list for the DEPE Bulletin should contact:

Department of Environmental Protection and Energy
Documents Distribution Center
CN 402
Trenton, New Jersey 08625-0402
(609) 292-1553

7:1-1.2 Procedure to petition for a rule

(a) Unless otherwise provided in Title 7 of the New Jersey Administrative Code, this section shall constitute the Department of Environmental Protection's rules regarding the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Environmental Protection to promulgate, amend or repeal any rule of the Department of Environmental Protection. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority under which the Department of Environmental Protection may take the requested action; and
6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Environmental Protection shall be addressed to:

Department of Environmental Protection
CN 402
Trenton, New Jersey 08625
Attention: Administrative Practice Officer

(d) Any document submitted to the Department of Environmental Protection that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

(e) Upon receipt by the Department of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
2. The petition shall be referred to the relevant Department division or other Department office, as appropriate; and
3. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) In accordance with N.J.A.C. 1:30-3.6(c), the Department's action on a petition may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

New Rule, R.1989 d.419, effective August 7, 1989.

See: 21 N.J.R. 102(a), 21 N.J.R. 2302(a).

Notice of Action of Petition for Safe Drinking Water Act regulations.
See: 22 N.J.R. 2364(c).

7:1-1.3 Effect of delegation of authority

(a) No provision of this Title 7 or of any other rules of the Department which delegates any power, duty or authority of the Department or the Commissioner to any delegee shall be construed to limit the power or authority of the Commissioner over the delegated subject matter. Without limiting the generality of the foregoing, the Commissioner may take any action for which responsibility has been delegated to a delegee, with the same force and effect as if such responsibility had not been delegated. Such actions include, without limitation, the grant or denial of an application for a permit; revocation of a permit; action on any other application to the Department; or the issuance of an administrative order, administrative consent order, directive, notice of violation, or penalty assessment.

(b) The election to exercise any delegated power, duty or authority shall be solely within the discretion of the Commissioner.

(c) No provision of this section shall be construed as affecting any substantive or procedural provisions of this Title 7 or of any other rules of the Department, except to the extent that any such provision delegates any power, duty or authority of the Department or the Commissioner to any delegee. No provision of this section shall be construed as affecting the right of any person to an administrative hearing under N.J.S.A. 52:14B-10, or administrative review under N.J.S.A. 52:14B-12.

New Rule: R.1992 d.473, effective December 7, 1992.

See: 23 N.J.R. 3276(a), 24 N.J.R. 4365(a).

7:1-1.4 Definitions

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

"Appellant" means a person requesting an appeal pursuant to N.J.A.C. 7:1-2.2.

"Commissioner" means the Commissioner of the Department.

"Delegee" means any Assistant Commissioner, Director, or other individual within the Department, or any organizational unit within the Department, to whom or to which any power, duty or authority of the Commissioner or the Department has been delegated.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Organizational unit" means any division, office, bureau or other entity within the Department.

"Permit decision" means a decision of the Department or any organizational unit to issue or to deny a permit.

"Third party" means, with respect to any permit decision, any person other than the applicant for the permit.

New Rule: R.1992 d.473, effective December 7, 1992.
See: 23 N.J.R. 3276(a), 24 N.J.R. 4365(a).

SUBCHAPTER 2. (RESERVED)

Subchapter Historical Note

Subchapter 2, Emergency Containment and Disposal of Pesticides, was recodified to N.J.A.C. 7:30-11 by R.1990 d.457, effective September 17, 1990.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. DEBARMENT, SUSPENSION AND DISQUALIFICATION FROM DEPARTMENT CONTRACTING

Authority

N.J.S.A. 13:1D-1 et seq.

Source and Effective Date

R.1976 d.318, effective October 13, 1976.
See: 8 N.J.R. 375(b), 8 N.J.R. 510(c).

Cross References

Water supply loan programs, effect of debarment under this subchapter, see 7:1A-2.23.

7:1-5.1 Definitions

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

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Debarment" means an exclusion from contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

"Department" means the Department of Environmental Protection.

"DEP contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for the Department of Environmental Protection, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the DEP provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in DEP contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Person" means any natural person, company, firm association, corporation, or other entity.

"State" means the State of New Jersey, or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

"Suspension" means an exclusion from DEP contracting for a temporary period of time, pending the completion of an investigation of legal proceedings.

7:1-5.2 Causes for debarment

(a) The Department of Environmental Protection shall debar a person in the public interest for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violations of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions;

5. Violation of the Law Against Discrimination (P.L. 1945, c.169, C.10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination by industries engaged in defense work in the employment of persons therein (C.114, L.1942, C.10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Willful failure to perform in accordance with contract specifications or within contractual time limits;

9. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

10. Violation of contractual or statutory provisions regulating contingent fees;

11. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the department to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

12. Debarment by some other department or agency in the executive branch.

7:1-5.3 Conditions for debarment

(a) Debarment from department contracting shall be made only by the commissioner, except as otherwise provided by law.

(b) The existence of any of the causes set forth in section 2 of this subchapter shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the head of the department or agency unless otherwise required by law, and shall be rendered in the best interests of the State.

(c) All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

(d) The existence of a cause set forth in section 2(a)1 through 7 of this subchapter shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

(e) The existence of a cause set forth in section 2(a)8 through 11 of this subchapter shall be established by evidence which the department or agency determines to be clear and convincing in nature.

(f) Debarment for the cause set forth in section 2(a)12 of this subchapter shall be proper provided that one of the remaining causes set forth in section 2 of this subchapter was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

7:1-5.4 Procedures, period and scope of debarment

(a) When the Department or any agency within its control or jurisdiction seeks to debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:

1. Debarment is being considered;
2. The reasons for the proposed debarment; and
3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice. Such request shall be filed with the Department at the following address:

Office of Legal Affairs
 ATTENTION: Adjudicatory Hearing Requests
 Department of Environmental Protection and Energy
 401 East State Street
 CN 402
 Trenton, New Jersey 08625-0402

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 54:14B-1 et seq.). Where any State department or agency has already imposed debarment upon a party, the commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the com-

missioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Debarment shall be for reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the commissioner, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as, newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

(e) A debarment may include all known affiliates of a person provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Administrative change to (a)3.
See: 23 N.J.R. 3325(b).

7:1-5.5 Suspension and causes therefor

The commissioner may suspend a person from State contracting with the department or any agency within the control or jurisdiction of the department for any cause specified in section 2 of this subchapter or upon a reasonable suspicion that such cause exists.

7:1-5.6 Conditions for suspension

(a) Suspension from State contracting shall be made only by the commissioner with the approval of the Attorney General, except as otherwise provided by law.

(b) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the commissioner with the approval of the Attorney General, if in the best interests of the State.

(c) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

(d) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

(e) Reasonable suspicion of the existence of a cause described in section 2(a)1 through 7 of this subchapter may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

(f) A suspension invoked by another department or agency in the executive branch for any of the causes described in section 2 of this subchapter may be the basis for the imposition of a concurrent suspension by the commissioner without the necessity of an approval therefor by the Attorney General.

7:1-5.7 Procedures, period and scope of suspension

(a) When the commissioner suspends a person or his affiliates from department contracting, the person or persons suspended shall be furnished with a written notice that within ten days after the effective date of the suspension stating that:

1. A suspension has been imposed and its effective date;
2. The reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
3. The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
4. If legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the position of the commissioner regarding the continuation of the suspension;
5. Where a suspension by another department or agency in the executive branch has been the basis for suspension by the commissioner, he shall note that fact as a reason for his suspension.

(b) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(c) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance or an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

(d) A request for a hearing under (a) above shall be filed with the Department at the following address:

Office of Legal Affairs
 ATTENTION: Adjudicatory Hearing Requests
 Department of Environmental Protection and Energy
 401 East State Street
 CN 402
 Trenton, New Jersey 08625-0402

Administrative change to (d).
 See: 23 N.J.R. 3325(b).

7:1-5.8 Applicability

The rules contained herein governing debarment or suspension shall be applicable to existing practices and procedures of the department and all agencies within the control or jurisdiction of the department, under laws that concern prequalification for State contracting to the extent that such practices and procedures may concern the disqualification of any person from State contracting.

7:1-5.9 Exclusions

Any exclusion from department contracting under these rules by virtue of debarment, suspension or disqualification

shall extend to all State contracting and subcontracting within the control or jurisdiction of the department; provided, however, if the commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the commissioner may grant an exception from total exclusion with respect to a particular contract.

7:1-5.10 Notice

Insofar as practicable, prior notice shall be given by the commissioner to the Attorney General and the Treasurer of any proposed debarment or suspension under these rules.

7:1-5.11 Lists

The department shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

7:1-5.12 Discretion

Nothing required by these rules shall be construed to limit the authority of the commissioner or any agency within the control or jurisdiction of the department to refrain from contracting within the discretion allowed by law.

SUBCHAPTER 6. (RESERVED)

Historical Note

Pursuant to authority of N.J.S.A. 13:1E-1 et seq., all provisions of this subchapter "Bureau of Solid Waste Management Procedural Rules" became effective September 20, 1976 as R.1976 d.296. See: 8 N.J.R. 460(d). The subchapter was repealed as R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

SUBCHAPTER 7. (RESERVED)

Historical Note

Subchapter 7, Hazardous Substance Discharge: Reports and Notices, was recodified to N.J.A.C. 7:1E-5 by R.1990 d.443. See: 22 N.J.R. 1457(a), 22 N.J.R. 2758(a).

