

**CHAPTER 26H**

**SOLID WASTE UTILITY REGULATIONS**

**Authority**

N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1E-9, 13:1D-125 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11 and 58:10A-1 et seq.

**Source and Effective Date**

R.2002 d.356, effective October 11, 2002.  
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

**Chapter Expiration Date**

Chapter 26H, Solid Waste Utility Regulations, expires on October 11, 2007.

**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 by 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: Source and Effective Date. See, also, section annotations.

**Law Reviews 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 Solid and Hazardous Waste or any person designated to act on the Director’s behalf.

“Division” means the Division of Solid and Hazardous Waste 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 consumption of meals at commercial restaurant establishments consisting of food scraps, soiled paper and other organic materials.

“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.

“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.

“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.

“Peak rate” means the last, permanent Department approved rate for each type of ID waste accepted at a solid waste disposal utility prior to elimination of flow control except that the peak rate can be adjusted following elimination of flow control through petition and full justification to the Department. When a solid waste utility petitions the Department for a new rate different from the existing peak rate, then upon Departmental approval, the new rate becomes the peak rate.

“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.

“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.

“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. 7:26H4.

“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”.

#### 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 Solid Waste and Hazardous Waste  
Bureau of Solid Waste Regulation  
PO Box 414  
Trenton, New Jersey 08625-0414

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

#### 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 complete or 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".

#### 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.

(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 Act. 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 list updates, 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.

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

(a) In order to assess a penalty under the Act, for violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, 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 Act, 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, recodified to N.J.A.C. 7:26H-5.17.

#### **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 Act**

(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)

Example:  
 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, and the penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> <u>(N.J.A.C.)</u>	<u>Summary</u>	<u>Base Penalty</u>
7:26H-1.6(a)	Failure to obtain a Certificate of Public Convenience and Necessity prior to engaging in the business of solid waste collection or solid waste disposal.	\$5,000
7:26H-1.6(c)	Failure of solid waste utility to have a Certificate of Public Convenience and Necessity when bidding for a solid waste contract.	\$5,000
7:26H-1.12(c)	Failure of the disposal utility to file rate revisions, in accordance with N.J.A.C. 7:26H-3.10, for services which do not increase charges above the peak rate.	\$1,000
7:26H-1.12(d)	Failure of the disposal utility to file rate revisions, in accordance with N.J.A.C. 7:26H-3.11, for services which increase charges above the peak rate.	\$2,500
7:26H-1.14(a)	Failure of solid waste utility to furnish safe, adequate, and proper service.	\$2,000

7:26H-1.14(d)	Failure of collection utility to file a petition with the Department prior to discontinuing service to a customer, which petition shall give the reasons for such discontinuance.	\$1,000
7:26H-1.14(e)	Failure of solid waste utility to file a report with the Department when service to a customer is interrupted and it appears that the interruption will continue for more than one day or one pick up.	\$250.00
7:26H-1.20(b)1	Failure of solid waste utility to ensure all records are maintained at an office in the State of New Jersey unless otherwise approved by the Department.	\$1,000
7:26H-1.20(b)3	Failure of solid waste utility to notify the Department of the location of the office or offices where records pertaining to the provision of solid waste services are maintained.	\$500.00
7:26H-1.20(c)	Failure of solid waste utility to retain all documents for at least five years from the date that the documents were due or created, and at the office of the solid waste utility.	\$1,000
7:26H-1.21	Failure of solid waste utility to file evidence of insurance.	\$5,000
7:26H-1.24(b)	Failure of solid waste utility to have a lease on file with the Department for the use of all property, equipment and facilities which are used to provide service and are not owned by the utility.	\$2,000

2. The violations of N.J.A.C. 7:26H-3, Transactional Filings, and the penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> <u>(N.J.A.C.)</u>	<u>Summary</u>	<u>Base Penalty</u>
7:26H-3.2(a)	Failure of solid waste utility to receive authorization of the Department prior to consummating the sale, transfer, or encumbrance of the assets of the solid waste utility or any change in majority control of such utility.	\$3,000
7:26H-3.2(c)	Failure of the solid waste utility to ensure notice of sale appears in newspapers at least 30 days before sale occurs.	\$1,000
7:26H-3.3(a)	Failure of solid waste utility to petition for authority to transfer capital stock; Transfer without authorization.	\$3,000
7:26H-3.4(a)	Failure of solid waste utility to obtain Department approval prior to consolidating or merging with another solid waste utility, merging or consolidating with any other person or business concern, or dissolution of the solid waste utility.	\$3,000
7:26H-3.5(a)	Failure of solid waste utility to petition the Department for authority to issue stocks, bonds, notes, other evidence of indebted-	\$3,000

7:26H-3.6(a)	Failure of solid waste utility to file a Notice of Intent and obtain Department approval prior to entering into a management agreement with any person.	\$3,000
7:26H-3.6(c)	Failure of solid waste utility to ensure a Notice of Intent to enter into a management agreement appears in newspapers at least 30 days prior to the completion of the transaction.	\$1,000
7:26H-3.7(a)	Failure of solid waste utility to receive approval of the Department prior to taking any action which would cause a change in the utility's depreciation rates.	\$2,500

3. The violations of N.J.A.C. 7:26H-4, Solid Waste Tariffs, and the penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> <u>(N.J.A.C.)</u>	<u>Summary</u>	<u>Base Penalty</u>
7:26H-4.2(a)	Failure of solid waste utility to file a tariff and maintain a copy for public inspection.	\$3,000
7:26H-4.4(a)1	Failure of utility customer to allow unencumbered access to containers. All containers and areas from which solid waste is to be collected shall be kept free from all hazards and potential hazards.	\$250.00
7:26H-4.4(a)2	Failure of solid waste utility to comply with collection service provisions of the approved tariff.	\$2,000
7:26H-4.4(a)3	Failure of solid waste utility to assist customers in the selection of the rate schedule most favorable for their individual requirements.	\$1,000
7:26H-4.4(a)4	Failure of solid waste utility to identify in the tariff, miscellaneous collection services, prior to providing any of these same services.	\$750.00
7:26H-4.4(a)6	Failure of solid waste utility to ensure that loads of solid waste and designated source separated recyclable materials are not commingled; Disposing of leaves in any manner that differs from that outlined in N.J.S.A. 13:1E-99.21.	\$2,500
7:26H-4.4(a)7	Failure of solid waste utility to make a pick up, not later than the next regularly scheduled collection day should the collector fail to pick up solid waste on a regularly scheduled day.	\$1,000
7:26H-4.4(a)9	Failure of the collector to provide the customer at least 10 days written notice of its intention to discontinue service.	\$1,000
7:26H-4.4(b)3	Failure of solid waste utility to include all required items, listed separately, on all bills for collection.	\$1,000
7:26H-4.7(a)1	Failure of the disposal utility to operate according to the schedule contained in its permits and approved tariff; Failure to ensure all	\$1,000

	hours and rates are publicly posted.	
7:26H-4.7(b)2	Failure of the disposal utility to comply with billing and invoicing requirements.	\$1,000
7:26H-4.7(b)4	Failure to comply with the facility's applicable rate schedule by assessing a late payment charge on an unpaid bill when such a charge is not provided for in the disposal facility's applicable rate schedule approved by the Department.	\$1,000
7:26H-4.7(c)1	Failure of the solid waste utility to comply with advanced payment account requirements.	\$2,500

7:26H-5.12(b)15	Failure of the solid waste collector to transmit copies of any notice of discontinuance of service to the Department at the same time it is transmitted to the customer.	\$500.00
7:26H-5.12(b)16	Failure of solid waste utility to ensure solid waste services contracts or agreements do not include any clause which calls for automatic renewal of the contract or agreement.	\$1,000
7:26H-5.12(b)17	Failure of collection utility to display their name, as it appears on their Certificate of Public Convenience and Necessity, and any "trading as" name on all vehicles and containers.	\$1,000
7:26H-5.12(c)	Failure of collector to include in the customer bill of rights all the information set forth at N.J.A.C. 7:26H-5.12(c)1 through 17.	\$1,000
7:26H-5.12(d)	Failure of the collector to submit a certification to the Department certifying that each customer was provided with a customer bill of rights.	\$500.00

4. The violations of N.J.A.C. 7:26H-5, Solid Waste Collection Regulatory Reform, and the penalty amounts are as set forth in the following table.

<u>Citation</u> <u>(N.J.A.C.)</u>	<u>Summary</u>	<u>Base Penalty</u>
7:26H-5.4(a)	Failure of the solid waste collector to charge or receive only those rates or charges for solid waste collection service which would result from effective competition. No solid waste collector shall charge or receive rates or charges for solid waste collection service which are greater than or less than rates or charges what would result from effective competition.	\$2,500
7:26H-5.6(a)	Failure of solid waste utility to pay annual utility fee.	\$1,000
7:26H-5.9(c)1	Failure of solid waste utility to submit annual Customer List	\$1,000
7:26H-5.9(c)7	Failure of solid waste utility to maintain customer lists in proper format and available for inspection.	\$2,500
7:26H-5.12(a)	Failure of the collector to notify customers at least once each year that solid waste collection services in this State are available on a competitive basis and include with that notice a complete copy of a customer bill of rights.	\$2,000
7:26H-5.12(b)5	Failure of the solid waste collector to handle customer complaints in a prompt, courteous, and efficient manner.	\$1,000
7:26H-5.12(b)6	Failure of the solid waste collector to remove and transport solid waste in an environmentally sound manner that safeguards the public health and preserves the quality of the environment.	\$1,000
7:26H-5.12(b)7	Failure of the solid waste collector to notify its customers in writing at least 10 days prior to any increase or decrease in rates.	\$1,500
7:26H-5.12(b)9	Failure of the solid waste collector 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.	\$1,000

5. The violations of N.J.A.C. 7:26H-6, Uniform Bid Specifications for Municipal Solid Waste Collection Contracts and the penalty amounts are as set forth in the following table.

<u>Citation</u> <u>(N.J.A.C.)</u>	<u>Summary</u>	<u>Base Penalty</u>
7:26H-6.15(b)	Failure of the contractor to promptly and properly attend to all complaints of residents and all notices, directives and orders of the contract administrator within 24 hours of the receipt of same; to keep a record of complaints and the date and time of the responses to such complaints, as well any action taken; to provide a written summary of all complaints and responses to the contract administrator each month.	\$1,000

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

**7:26H-5.19 Matrix penalty determination**

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26H-5.18, when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26H-5.18 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26H-5.18.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued 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 the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued 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 assess a penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the midpoint of the following ranges, unless adjusted pursuant to (h) below and in accordance with the applicable severity frequency multipliers identified in (i) below.

**SERIOUSNESS**

		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
CONDUCT	Major	\$9,000-\$10,000 range (\$9,500 midpoint)	\$7,000-\$8,000 range (\$7,500 midpoint)	\$5,000-\$6,000 range (\$5,500 midpoint)
	Moderate	\$7,000-\$8,000 range (\$7,500 midpoint)	\$4,000-\$5,000 range (\$4,500 midpoint)	\$2,000-\$3,000 range (\$2,500 midpoint)
	Minor	\$5,000-\$6,000 range (\$5,500 midpoint)	\$2,000-\$3,000 range (\$2,500 midpoint)	\$250.00-\$1,500 range (\$875.00 midpoint)

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

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause a serious risk to the health, safety and welfare of the people of this State and the economic viability and competitiveness of the solid waste collection industry; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause a substantial risk to the health, safety and welfare of the people of this State and the economic viability and competitiveness of the solid waste collection industry;

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

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

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

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (g)1 or 2 above.

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

1. The compliance history of the violator;

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

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

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

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

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

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

(i) To obtain the penalty, multiply the matrix penalty as determined by (e), (f), (g) and (h) above, by the applicable severity factor offense multiplier as follows:

<u>Severity Factor</u>	<u>Multiplier</u>
1. First Offense	Initial Matrix Penalty (no multipliers)
2. Second Offense	Initial Matrix Penalty x (2.5)
3. Third and subsequent Offenses	Initial Matrix Penalty x (5.0)
<u>Example:</u>	
Matrix penalty (for violation of N.J.A.C. 7:26H-4.5(a)) = \$4,500 (First Offense)	
For a second offense, the penalty is \$4,500 x (2.5) = \$11,250	
For the third and subsequent offenses, the penalty is \$4,500 x (5.0) = \$22,500	

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

**7:26H-5.20 Penalty for submitting inaccurate or false information**

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

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

(c) The Department shall assess a penalty for violations described in this section based on the conduct of the violator except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

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

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

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

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

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

**7:26H-5.21 Penalty for failure to allow lawful entry and inspection**

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

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

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

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Act, the penalty shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

2. For any refusal, inhibition, or prohibition of immediate lawful entry and inspection not covered under (c)1 above, the penalty shall be in an amount of not more than \$5,000 or less than \$3,000 per violation.

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

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
  - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

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

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

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

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

**7:26H-5.22 Vehicles used to transport food not to be used to transport solid waste; exceptions and penalties**

(a) Except as provided in (b), (c) or (d) below, no vehicle, including any truck, trailer or other haulage vehicle other than a truck tractor, utilized for the transportation of solid waste in this State, shall be subsequently utilized for the transportation of fresh food or fresh food products, including meat, poultry, produce or other non-processed fresh food products intended for sale for human consumption. The presence of refrigeration equipment in a vehicle shall be prima facie evidence that the vehicle is used for the transportation of fresh food or fresh food products, unless the vehicle is lawfully registered, equipped and operated for the transportation of medical waste.

(b) No vehicle which is registered pursuant to State solid waste laws and regulations for lawful solid waste transportation activities in this State shall be utilized for the transportation of fresh food or fresh food products, including meat, poultry, produce or other non-processed fresh food products intended for sale for human consumption, unless that vehicle has been appropriately cleaned and sanitized in accordance with rules adopted by the Department, after consultation with the Department of Health and Senior Services, prior to any use for the transportation of fresh food or fresh food products.

(c) The provisions of this section shall not apply to any vehicles utilized for the transportation of source separated recyclable materials as defined in section 2 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.12).

(d) A vehicle, including any truck, trailer or other haulage vehicle other than a truck tractor, owned or operated by any person engaging in the transportation of fresh produce intended for human consumption, may be utilized for the transportation of vegetative waste material generated from the fresh produce that was transported in that vehicle if the vegetative waste material is transported without delay to a vegetative waste composting facility.

(e) Any owner or operator who knowingly violates the provisions of N.J.S.A. 48:13A-12.1 is guilty of a crime of the third degree.

(f) The provisions of N.J.S.A. 2C:43-3 to the contrary notwithstanding, any person convicted of a violation of the provisions of N.J.S.A. 48:13A-12.1 is subject to a fine of not less than \$7,500 for a first offense, not more than \$10,000 for a second offense and not more than \$25,000 for a third and every subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.

(g) If a person is convicted of a violation of the provisions of N.J.S.A. 48:13A-12.1, the court shall, in addition to the penalties provided under that statute, require the person to perform community service for a term of not more than 90 days, and the person shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year.

(h) All conveyances used or intended for use in the unlawful transportation of solid waste in violation of the provisions of N.J.S.A. 48:13A-12.1 are subject to forfeiture to the State pursuant to the provisions of P.L. 1981, c. 387 (N.J.S.A. 13:1K-1 et seq.).

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

**7:26H-5.23 Severability**

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

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

**SUBCHAPTER 6. UNIFORM BID SPECIFICATIONS FOR MUNICIPAL SOLID WASTE COLLECTION CONTRACTS**

**7:26H-6.1 Purpose**

The purpose of this subchapter is to establish uniform bidding practices for municipal solid waste collection contracts in order to promote competition among solid waste collectors, protect the interests of consumers and to enhance the Department's ability to adequately supervise the existence of effective competition.

**7:26H-6.2 Scope and applicability**

(a) This subchapter constitutes the rules governing the implementation of N.J.S.A. 48:13A-7.22 which mandates the establishment, in rules and regulations, uniform bid specifications for municipal solid waste collection contracts.

(b) Every municipality which provides municipal solid waste collection services shall conform to the requirements of this subchapter. These rules shall apply only to those municipal solid waste collection contracts which are required to be publicly advertised pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11 et seq.

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

### 7:26H-6.3 Definitions

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Bid guarantee” means the bid bond, cashier’s check or certified check submitted as part of the bid proposal, payable to the contracting unit, ensuring that the successful bidder will enter into a contract.

“Bid proposal” means all documents, proposal forms, affidavits, certificates, and statements to be submitted by the bidder in response to the contracting unit’s advertisement for bids.

“Bid specifications” means all documents requesting bid proposals for municipal solid waste collection services as described herein, the form of which is located at Appendix A at the end of this subchapter, incorporated hereby by reference.

“Certificate of insurance” means a document showing that an insurance policy has been written and includes a statement of the coverage of the policy.

“Collection site” means the location of waste containers on collection day.

“Collection source” means a generator of designated collected solid waste to whom service will be provided under the contract.

“Commercial waste” means any waste type 10, as defined at N.J.A.C. 7:26-2.13, generated by wholesale, retail or service establishments.

“Consent of surety” means a contract guaranteeing that the Surety will provide a performance bond on behalf of the bidder in the event that the bidder is awarded the contract.

“Contract” means the written agreement executed by and between the successful bidder and the governing body and shall include the bid proposal and the bid specifications.

“Contract administrator” is the person authorized by the contracting unit to administer contracts for solid waste collection services.

“Contracting unit” means a municipality or any board, commission, committee, authority or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts or agreements for the performance of any work or the furnishing or hiring of any materials or supplies usually required, the costs or contract price of which is to be paid with or out of public funds.

“Contractor” means the lowest responsible bidder to whom award of the contract shall be made.

“Designated collected solid waste” means garbage, refuse and other discarded materials resulting from industrial, commercial and agricultural operations and from domestic and community activities and shall include all other waste materials including liquids. Solid waste shall not consist of recyclable materials, hazardous waste, or solid animal and vegetable waste collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

“Governing body” means the governing body of the municipality, when the contract or agreement is to be entered into by, or on behalf of, a municipality, as further defined by N.J.S.A. 40A:11-2.

“Institutional waste” means any waste type 10, as defined at N.J.A.C. 7:26-2.13, generated by hospitals, colleges, schools, nursing homes, medical and dental professional buildings, research and development processes, and laboratories.

“Legal newspaper” means a publication, as defined at N.J.S.A. 35:1-2.1, selected by the contracting unit for publishing advertisements for municipal solid waste collection contracts.

“Litter” means all garbage, refuse and other discarded materials deposited in the litter receptacles belonging to the governing body.

“Multi-family home” means any housing in which four or more units of dwelling space are occupied, or are intended to be occupied, by three or more persons who live independently of one another.

“Proposal forms” means the documents to be submitted by the bidder on which the prices for services to be provided under the contract are set forth.