

## CHAPTER 26

## SOLID WASTE

## 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.181, effective May 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

## Chapter Expiration Date

Chapter 26, Solid Waste, expires on May 17, 2007.

## Chapter Historical Note

Chapter 26, Bureau of Solid Waste Management, was filed and became effective prior to September 1, 1969, pursuant to authority delegated at N.J.S.A. 26:2C-1, et seq. and N.J.S.A. 26:2D-1 et seq. Amendments to Chapter 26 became effective July 1, 1974 as R.1974 d.172. See: 5 N.J.R. 369(b), 6 N.J.R. 305(c).

Subchapter 2 was partially repealed and partially recodified to Subchapter 2A and a new Subchapter 2, Disposal, was adopted by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2A, Additional Specific Disposal Regulations for Sanitary Landfills, was partially recodified from Subchapter 2 and the remainder was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2B, Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Composting Facilities, was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 2B, was renamed Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Solid Waste Composting Facilities by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 3, was adopted as R.1984 d.279, effective July 2, 1984. See 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Subchapter 3 expired on June 9, 1985 and a new Subchapter 3, Transportation, was adopted as R.1985 d.558, effective November 4, 1985. See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Subchapter 3A, Special Medical Waste, was adopted as an emergency new rule by R.1988 d.429, effective August 10, 1988 (to expire October 9, 1988). See: 20 N.J.R. 2321(a). The concurrent proposal was adopted as R.1988 d.523, effective October 7, 1988. See: 20 N.J.R. 2321(a), 20 N.J.R. 2760(a). Subchapter 3A, Special Medical Waste, was repealed and an new Subchapter 3A, Regulated Medical Waste, was adopted as an emergency repeal and new rule by R.1989 d.396, effective June 26, 1989. See: 21 N.J.R. 2109(a). The concurrent proposal was adopted as R.1989 d.506, effective August 25, 1989. See: 21 N.J.R. 2109(a), 21 N.J.R. 2967(a).

Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was amended by R.1975 d.110, effective April 29, 1975. See: 7 N.J.R. 101(a), 7 N.J.R. 259(a). Subchapter 4 was further amended by R.1976 d.327, effective November 1, 1976. See: 8 N.J.R. 374(d), 8 N.J.R. 510(d); and R.1978 d.205, effective July 1, 1978. See: 10 N.J.R. 327(c). Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was renamed Fees for Solid Waste by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 4A, Hazardous Waste Fees, was adopted as R.1989 d.54, effective January 17, 1989. See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a). Subchapter 4A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 5, Rules of Practice and Procedure, was adopted, pursuant to authority of N.J.S.A. 13:1E-1 et seq., by R.1973 d.300, effective October 23, 1973. See: 5 N.J.R. 370(c). Subchapter 5 was further amended by R.1982 d.433, effective December 6, 1982. See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a); and R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Pursuant to Executive Order No. 66(1978), Subchapter 5, Rules of Practice and Procedure, expired on October 7, 1985 and the Department does not intend to readopt its provisions. Subchapter 5, Rules of Practice and Procedure, was repealed by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 5, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted as R.1990 d.50, effective January 16, 1990. See: 21 N.J.R. 2734(a), 22 N.J.R. 187(a).

Subchapter 6, was adopted as R.1979 d.502, effective December 31, 1979. See: 11 N.J.R. 616(b), 12 N.J.R. 71(b). Subchapter 6 was repealed and a new Subchapter 6, Interdistrict and Intradistrict Solid Waste Flow, was adopted by R.1982 d.434, effective December 6, 1982, in accordance with a New Jersey Supreme Court decision modifying Department of Environmental Protection authority to direct the inter-district flow of waste (A.A. Mastrangelo, Inc., et al. v. Commr. Env. Prot., August 11, 1982). See: 14 N.J.R. 1027(b), 14 N.J.R. 1368(a).

Subchapter 7, Labeling, Records and Transportation Requirements, was adopted as R.1978 d.72, effective February 27, 1978. See: 9 N.J.R. 459(d), 10 N.J.R. 146(a). Subchapter 7 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was adopted as R.1981 d.281, effective August 6, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 484(b). Public Notice: Petition for Rulemaking. See: 22 N.J.R. 994(a). Public Notice: Action on Petition for Rulemaking. See: 22 N.J.R. 994(d). Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 9, Requirements for Hazardous Waste Facilities, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 9 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 10, Additional Operational and Design Standards for Hazardous Waste Facilities, was adopted as R.1982 d.324, effective October 4, 1982. See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d). Subchapter 10 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 11, Additional Requirements for Hazardous Waste Facilities Operating Under Existing Facility Status, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 11 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 12, Hazardous Waste Facility Permit Requirements, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 12 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13, Siting Criteria for New Major Commercial Hazardous Waste Facilities, was adopted as R.1983 d.276, effective July 5, 1983. See: 15 N.J.R. 113(a), 15 N.J.R. 1096(a). Subchapter 13 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13A, Hazardous Waste Facilities Siting Commission: Policies and Procedures, was adopted as R.1984 d.304, effective July 16, 1984. See: 16 N.J.R. 408(b), 16 N.J.R. 1989(a). Subchapter 13A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 14, Resource Recovery Grants or Loans, was adopted as R.1981 d.184, effective June 4, 1981. See: 13 N.J.R. 9(a), 13 N.J.R. 340(d). Subchapter 14 was repealed by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 14A, Resource Recovery and Solid Waste Disposal Facility Loans, was adopted as R.1988 d.268, effective June 20, 1988. See: 19 N.J.R. 828(a), 20 N.J.R. 1346(a).

Subchapter 15, Recycling Grants and Loans Program, was adopted as R.1982 d.32, effective February 16, 1982. See: 13 N.J.R. 865(a), 14 N.J.R. 206(b).

Subchapter 16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a).

Subchapter 16A, Special Rules for Submission of Disclosure Statements by Existing Licensees and Applicants Whose Applications Were Pending Before the Department Prior to July 2, 1984, was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Subchapter 17, Availability of Information; Confidential Business Information, was adopted as R.1988 d.57, effective February 1, 1988. See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a). Subchapter 17, Availability of Information; Confidential Business Information, was repealed and a new Subchapter 17, Confidentiality Determinations, was adopted by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter 26, Bureau of Solid Waste Management, was renamed Division of Waste Management and amended by R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a). Amendments to Chapter 26 became effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Pursuant to Executive Order No. 66(1978), Chapter 26, Bureau of Solid Waste Management, was readopted as R.1990 d.578, effective October 25, 1990. See: 22 N.J.R. 2882(a), 22 N.J.R. 3514(a). The expiration date of Chapter 26, Bureau of Solid Waste Management, was extended by gubernatorial directive from October 25, 1995 to October 25, 1996. See: 27 N.J.R. 4700(a). The expiration date of Chapter 26, Division of Waste Management, was further extended by gubernatorial directive from October 25, 1996 to November 25, 1996. See 28 N.J.R. 4959(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Bureau of Solid Waste Management, was readopted as Chapter 26, Solid Waste, by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter 26 was extensively amended by Emergency Adoption R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997). New rule N.J.A.C. 7:26-1.9 and the amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10, and 6.11 became operative on September 2, 1997. All other amendments and repeals were 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. Concurrent new rule N.J.A.C. 7:26-1.9 and the concurrent amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10 and 6.11 became operative on October 31, 1997. All other concurrent amendments and repeals 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).

Chapter 26, Solid Waste, was readopted as R.2002 d.181, effective May 17, 2002. See: Source and Effective Date. See, also, section annotations.

**Research Note**

The Water Quality Regulations of the Interstate Environmental Commission appear as Appendix A to Title 7.

**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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7:26-17.26	Wrongful access or disclosure; penalties

## SUBCHAPTER 1. GENERAL PROVISIONS

### Law Reviews and Journal Commentaries

Environmental Crimes: Considerations in Prosecutions. Ed Neafsey, Edward Bonanno, 159 N.J.L.J. 37 (1994).

### 7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection that govern the registration, operation, maintenance, and closure of sanitary landfills and other solid waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for services provided by the Department to solid waste facilities, generators and transporters; and the assessment of civil administrative penalties. These rules shall not apply to the following:

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

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

greater risk to human health or the environment than the use of the product or raw material it is replacing.

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

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

2. Container-pickup facilities as herein defined;

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

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

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

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

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

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

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

9. A small vehicle transfer area meeting the following requirements:

i. Solid waste is transferred from a collection vehicle not exceeding 16,000 pounds gross vehicle weight directly to a registered solid waste collection vehicle;

ii. Such solid waste is collected in the collection vehicle not exceeding 16,000 pounds gross vehicle weight because the point of generation is not accessible to a registered solid waste collection vehicle (that is,

down a narrow lane or private driveway, or on public property such as a park or beach);

iii. All waste collected at the small vehicle transfer area shall be removed by the end of each operating day (or next operating day if collected on a weekend or holiday);

iv. Waste received in the area shall not be processed, segregated, sorted, or handled in any fashion other than direct transfer from the collection vehicle not exceeding 16,000 pounds gross vehicle weight into the registered collection vehicle or other collection container;

v. Area operations shall not result in the generation of odors, litter, dust, leachate, or any other negative environmental impacts;

vi. Small vehicle transfer areas shall receive approval from the municipality in which they are located prior to commencing transfer operations. In addition, operators of small vehicle transfer areas shall notify the Department in writing and the respective county health department following municipal approval and prior to commencing operations; and

vii. The operator of a small vehicle transfer area is subject to compliance with all other applicable solid waste regulations.

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

(c) The exemptions set out at (a)1 through 9 above are not applicable to activities associated with hazardous waste or regulated medical waste.

As amended, R.1981 d.84, effective March 6, 1981.  
See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

(b) added.

As amended, R.1982 d.433, effective December 6, 1982.  
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

(c) added.

As amended, R.1983 d.610, effective January 3, 1984.  
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

(a)6 added.

Amended by R.1987 d.534, effective December 21, 1987.  
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.

Amended by R.1989 d.54, effective January 17, 1989.  
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substantially amended (a).

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

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

Amended by R.1996 d.500, effective October 21, 1996.  
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

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

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

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

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a), deleted "and hazardous" preceding "waste facilities" through-out.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (a)9.

#### Case Notes

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

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

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

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

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

#### 7:26-1.2 Construction and severability

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

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

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

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

Formerly the Department and the Bureau of Solid Waste Management.

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

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

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

#### 7:26-1.3 (Reserved)

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

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

Bureau Chief deleted.

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

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

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

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).  
Section was "Practice where rules do not govern".

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

**7:26-1.4 Definitions**

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

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted without change.

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

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

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

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

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

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

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

In (a), substituted "N.J.A.C. 7:26A, 2B, 2C and 2D" for "N.J.A.C. 7:26A and 2B" preceding "shall constitute"; added (c).

#### Case Notes

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

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

#### 7:26-2.2 Construction

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

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

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

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

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

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

Rule was "Registration".

#### 7:26-2.3 Purpose

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

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

3. To establish the general engineering design requirements for solid waste facilities; and
4. To establish the general operational requirements for solid waste facilities.

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

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

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

1. A site location map plotted on a USGS topographic map;
2. A written description of the type of facility;
3. A written estimate of the proposed design capacity of the facility;
4. A written description of the type of waste to be handled;
5. A written plan establishing the tentative construction schedules;
6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;
7. Written documentation that the facility is included in the applicable district solid waste management plan pursuant to N.J.S.A. 13:1E-23 or that an application has been submitted to the appropriate public authority seeking inclusion in the solid waste management plan.

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

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.;
2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;
3. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d);

4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;
5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;
6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;
7. For sanitary landfills, a closure plan prepared and submitted in accordance with N.J.A.C. 7:26-2A.9; and
8. All applications for a SWF permit shall be submitted to:

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

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

1. For a small-scale thermal destruction facility:
  - i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:
    - (1) The waste intended for thermal destruction is nonhazardous;
    - (2) The waste is generated at the site of the thermal destruction operation, at other associated intracompany plants located within the State of New Jersey; or is regulated medical waste, or home self-care waste managed as regulated medical waste, that is received and managed by the operator of the small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;
    - (3) The small-scale thermal destruction unit is not a major facility as defined at N.J.A.C. 7:27-8.1;
    - (4) The facility has been included in the applicable district solid waste management plan; and
    - (5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.
  - ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;
  - iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;
  - iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;
  - v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement

shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d); and

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

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

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

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

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

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;

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

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

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

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

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

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

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

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

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

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

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

iii. The written authorization is submitted to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. The municipal clerk of any municipality in which any portion of the facility is proposed to be located;

ii. The County Solid Waste Coordinator of any county in which any portion of the facility is proposed to be located; and

iii. Any other governmental agencies that the Department deems appropriate, such as the County Clerk of any county in which any portion of the facility is

proposed to be located; District Solid Waste Advisory Committee of the Solid Waste Management District; Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs; and other affected states.

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

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

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

i. The applicant's name;

ii. The agency application number;

iii. The type of facility proposed by the applicant;

iv. The location of the proposed facility;

v. The date and description of significant agency action on the application;

vi. The locations where and when application materials are available for review; and

vii. A statement that comments concerning the pending permit action may be submitted to the Department at the address specified in N.J.A.C. 7:26-2.4(b)8.

11. Not later than six months after the date upon the Department's letter notifying the applicant that the application is complete pursuant to (g)2 above, except in the case set forth in (g)3 above, the Department shall reject

the SWF permit application, without prejudice, as technically incomplete, or deny or grant tentative approval of the application.

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

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

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

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

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

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

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

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

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

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

(1) The applicant;

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

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

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

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

(6) Any interested person requesting such notice.

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

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)14i and ii above. Where the notice of opportunity for a public hearing results in the scheduling of a hearing, a subsequent notice of the hearing date shall be provided in accordance with (g)14i and ii above.

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

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

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

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

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

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

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

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

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

ii. A description of the proposed facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vi. The tentative approval and final permit documents; and

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

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

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

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

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

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

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

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

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

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

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

25. If Department efforts at settlement fail, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

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

Rule was "Submission of engineering designs".

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

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

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

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted without change.

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

See: 23 N.J.R. 3325(b).

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

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

Substantially amended section.

Administrative change.

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

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (c)2iv, added reference to N.J.A.C. 7:26-2B.5; in (c)13 substituted "N.J.A.C. 7:26-2.7(e)" for "N.J.A.C. 7:26-2.7(d)" preceding "the Department shall provide public notice,".

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a)7, inserted "applicable district" prior to "solid"; in (b)8, substituted "Permitting and Technical Programs" for "Engineering"; rewrote (c)1i(2) through (4); in (g)6ii, substituted "borders" for "boarders" prior to "of which lie"; rewrote (g)7; in (g)11, substituted "(g)2" for "(g)6 in the introductory paragraph; in (g)14iii, amended the N.J.A.C. references.

#### Case Notes

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

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

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

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

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

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

### 7:26-2.5 Public hearing procedures

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

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

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

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

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

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

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

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

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

3. Testimony on irrelevant matters shall be excluded; and

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

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

(i) (Reserved)

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

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

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

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

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

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

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

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

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

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

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

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

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

Repealed Sanitary landfill operational requirements (General).

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

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

### Case Notes

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

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

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

(a) When the Department receives any information concerning a solid waste facility, it may determine whether or

not one or more of the causes listed at (a)4 below for modification or revocation and reissuance exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Noncompliance with any condition of the permit;

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

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

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

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

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(e) Owners or operators of transfer stations who receive, store, treat or transfer only ID 72 liquid wastes are not required to comply with (b)1, (b)2, (b)3, (b)4, (c)2 and (c)5 above.

Amended by R.1974 d.234, effective August 21, 1974.

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

Amended by R.1978 d.72, effective February 27, 1978.

See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

Amended by R.1983 d.570, effective December 5, 1983.

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

(p) deleted.

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

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

Repealed rule was general operational requirements for incinerators, transfer stations, processing facility and resource recovery facilities. Amended by R.1989 d.216, effective April 17, 1989.

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

Required that vehicles be registered as "solid waste vehicles" in (b)9, at (b)10, operator's designation of area for exempt solid waste vehicles made mandatory.

Amended by R.1993 d.508, effective October 18, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Emergency Amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, to expire March 26, 1996).

See: 28 N.J.R. 1305(a).

Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.

See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

Added (b)19 and (c).

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

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

In (b)9, amended Division reference and inserted reference to a solid waste decal; in (b)10, inserted third through fifth sentences, inserted reference to ACWM waste in seventh sentence, and deleted last sentence prohibiting scavenging.

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

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

Deleted (b)19 and (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

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

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Rewrote (b)5; in (b)13, deleted the last sentence.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted " , except as noted in (e) below" in the first sentence and added a fourth sentence; rewrote (b); added (c) through (e).

#### Case Notes

Under Tort Claims Act (N.J.S.A. 59:1-1 et seq.) State agencies and counties are immune from nuisance claims in suit regarding the regulations of a landfill; private operator of landfill does not share in public entities immunity. *East Brunswick v. Bd. of Freeholders of Middlesex Co.*, 224 N.J.Super. 44, 539 A.2d 756 (Ch.Div.1987).

#### 7:26-2.12 Generator requirements for disposal of asbestos containing waste materials

(a) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the standards for waste disposal at 40 C.F.R. 61.149 and 40 C.F.R. 61.150.

(b) Generators of regulated asbestos containing material shall submit a written notification of intention to demolish in accordance with (d) and (e) below at least 10 days prior to beginning the demolition activity.

(c) Generators of regulated asbestos containing material shall submit a written notification to renovate in accordance with (d) and (e) below at least 10 days prior to beginning the renovation activity unless the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

1. Less than 260 linear feet on pipes or 160 square feet on other facility components; or

2. Less than 35 cubic feet of facility components where the length or area could not be measured prior to stripping, removal, dislodging, cutting, or drilling.

(d) The written notification required by (b) and (c) above shall include:

1. Name, address and telephone number of the generator.

2. Quantity and nature of waste to be disposed;

3. Name, address, telephone number, and New Jersey Department of Environmental Protection registration number of the transporter;

4. Name and address of the sanitary landfill at which disposal will occur;

5. Date and time of disposal; and

6. A copy of any written notification required by 40 CFR 61.145 to 61.155.

(e) The written notification required by (b) and (c) above shall be submitted to:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

PO Box 414

Trenton, NJ 08624-0414

(f) The Department may allow less than 10 days prior notification, where emergency circumstances require.

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

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

Repealed rule was "Guidelines and criteria for the preparation of engineering designs".

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

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

At (b)3, "collector-hauler" replaced by "transporter"; at 4. "landfill" replaced by "sanitary landfill", CFR cite corrected and address changed at (c).

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

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

In (a), inserted C.F.R. references and recodified a portion of (a) as (b); recodified former (b) through (d) as (d) through (f); inserted new (c); in (d)3, amended subsection references and inserted reference to

telephone number and waste decal; and in (e), amended subsection references.

#### Case Notes

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

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

#### 7:26-2.13 Solid waste facility; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1. Identification of the solid waste facility by name and facility identification number;
2. Identification of the transporter by the Department of Environmental Protection registration number assigned and solid waste decal number;
3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of three categories of wastes as follows:
  - i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);
  - ii. Septage and liquid sewage sludges: Waste ID 73 and 74 received (in gallons);
  - iii. Bulk liquid and semiliquids: Waste ID 72 received (in gallons);
4. Date and time of delivery to the facility;
5. The license plate number and State initials of the solid waste vehicle; and
6. The place of origin of the waste identified by municipality, county and state, except in those instances where the waste is transported from a transfer station or materials recovery facility to a final disposal facility. In those instances, the facility ID of the transfer station or materials recovery facility shall be listed instead of the municipality, county and state as indicated above.
7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste materials shall:
  - i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:
    - (1) Date and time of delivery;

(2) Identification of the transporter by name and by the New Jersey Department of Environmental Protection registration number assigned to the transporter;

(3) Quantity in cubic yards and/or tons of the waste;

(4) Name and address of the generator; and

(5) For rejected shipments, the reason for rejection and disposition of the shipment after rejection; and

ii. By the 20th day of every month, submit a copy of the daily record required by (a)7i above, covering the asbestos disposal activity of the previous calendar month. The information shall be submitted to:

New Jersey Department of Environmental Protection  
 Division of Solid and Hazardous Waste  
 Bureau of Resource Recovery and Technical Programs  
 PO Box 414  
 Trenton, New Jersey 08625-0414

8. In addition to the requirements of (a)1 through 7 above, transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13. Transfer stations and materials recovery facilities which do not have scales shall report data in accordance with N.J.A.C. 7:26-2.11(c)4.

9. In addition to the information required by (a)1 through 6 above, ID 72 liquid waste transfer stations shall include the following information in the daily record:

- i. Records of waste analyses and/or waste determinations performed as specified in N.J.A.C. 7:26-2B.9(g)2 and 3; and
- ii. A written description of any release or other incident which requires implementation of the cleanup procedures specified in N.J.A.C. 7:26-2B.9(g)4.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of the same, or on systems acceptable to the Department, shall be kept for five years, and shall be available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/disposal (O and D) form (or the duplication of same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a designated district facility pursuant to N.J.A.C. 7:26-6, the waste remaining after processing shall be designated within the O and D form and daily record as the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility.

1. The facility operator shall verify that the form has been completed by a registered transporter, that the waste as identified by the transporter may be disposed of at the facility in compliance with the host District Solid Waste Management Plan and the facility's registration, and, where applicable, the facility's computer recording of scale data is in conformance with the information supplied, and sign the completed form.

2. The facility operator shall retain all O and D forms for a minimum of one year and shall make them available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

3. If an O and D form is not completed and signed by a registered transporter for each solid waste vehicle, or if the waste disposal would not be in compliance with the facility's registration, as required in (c)3 above, the facility operator shall deny the transporter the right to dispose of the solid waste at the facility.

(d) The following solid waste collection and disposal operations are exempt from complying with the provisions of (c) above:

1. Noncommercial industrial facilities which dispose of only solid waste generated by that industrial firm;

2. Municipally operated facilities which accept only solid waste which is collected by that municipality's transporters and which is generated within that municipality;

3. Sludge farming operations which accept only ID 12 solid waste and which report to the Division of Water Quality;

4. Recycling facilities which accept only recyclable materials which have been separated at the point of generation for sale or reuse; and

5. Operations exempt from registration pursuant to N.J.A.C. 7:26-3.3(a).

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district where the facility is located on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month.

1. All solid waste facilities shall include the following within the monthly summary:

i. The tonnages and types of solid waste received by origin from each county (including municipality), transfer station, materials recovery facility or out-of-State source;

ii. The tonnages and types of solid waste returned to the county or state of origin by facility of receipt;

iii. The tonnages, types and origin (by county and municipality) of source separated recyclable materials or recyclable materials removed from the waste stream. In cases where recyclable materials are separated from mixed solid waste at the transfer station or materials recovery facility, and hence the origin (by county and municipality) cannot be identified at the time of receipt, the transfer station shall allocate the amount of recyclable materials proportionally to each municipality on the basis of the total amount of solid waste received for the calendar month;

iv. The identification of end-markets, manufacturers or recycling centers by specific name and location used for the materials designated as recyclable materials and the amount of materials sent to each specific end-market, manufacturer or recycling center. The requirements for transportation to, and identification of, end-markets, manufacturers, and recycling centers shall be the same as at N.J.A.C. 7:26A;

v. The tonnage and types of recyclable materials being stored at the transfer station or materials recovery facility at the end of the reporting month;

(f) Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 7:26H-5.9(c)5.

(g) Waste identification and definition of solids includes the following:

1. Solid wastes; waste ID number and definitions:

i. 10 Municipal (household, commercial and institutional): Waste originating in the community consisting of household waste from private residences, commercial waste which originates in wholesale, retail or service establishments, such as, restaurants, stores, markets, theatres, hotels and warehouses, and institutional waste

material originated in schools, hospitals, research institutions and public buildings.

ii. 12 Dry sewage sludge: Sludge from a sewage treatment plant which has been digested and dewatered and does not require liquid handling equipment.

iii. 13 Bulky waste: Large items of waste material, such as appliances and furniture. Discarded automobiles, trucks and trailers and large vehicle parts, and tires are included under this category.

iv. 13C Construction and demolition waste: Waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures. The following materials may be found in construction and demolition waste: treated and untreated wood scrap; tree parts, tree stumps and brush; concrete, asphalt, bricks, blocks and other masonry; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and non-ferrous metal; non-asbestos building insulation; plastic scrap; dirt; carpets and padding; glass (window and door); and other miscellaneous materials; but shall not include other solid waste types.

v. 23 Vegetative waste: Waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes.

vi. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries, including animal manure when intended for disposal and not reuse. Also included are dead animals. Deceased animals that are intended for cremation in an animal crematorium with the residual ashes either returned to the pet owner or interred in a burial plot at a legally recognized pet cemetery, or deceased animals intended for internment at a legally recognized pet cemetery are not considered solid waste pursuant to this chapter. (Carcasses which are cremated at a crematorium but whose final destination of the residual ashes is a solid waste facility are considered disposed of and are considered solid waste pursuant to this chapter.) Animal manure, when intended for reuse or composting, is to be managed in accordance with the criteria and standards developed by the Department of Agriculture as set forth at N.J.S.A. 4:9-38.

vii. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26G. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and residue from the operations of a scrap metal shredding facility.

viii. 27A Waste material consisting of asbestos or asbestos containing waste.

ix. 27I Waste material consisting of incinerator ash or ash containing waste.

(h) Waste identification and definition of liquids include the following:

1. Liquid wastes; waste ID number and definitions:

i. 72 Non-hazardous liquid and semiliquids: Liquid or a mixture consisting of solid matter suspended in a liquid media which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of 20 gallons or more. Also included are non-hazardous pesticide liquids. Not included in this waste classification are septic tank clean-out wastes and liquid sewage sludge.

ii. 73 Septic tank clean-out wastes: Pumping from septic tanks and cesspools. Not included are wastes from a sewage treatment plant.

iii. 74 Liquid sewage sludge: Liquid residue from a sewage treatment plant consisting of sewage solids combined with water and dissolved materials.

(i) For all waste disposed of within or leaving the district for further transfer, materials recovery or disposal (either in-State or out-of-State), each waste district shall record at a minimum the following information: district of waste origin; the identity of the transfer facility (if applicable); the identity of the final destination facility; the tonnage or cubic yards of waste; the waste type; and the tonnage or cubic yards of any material recycled. This information shall be compiled into monthly summaries which shall be retained for a period of one year or longer in the event of an unresolved enforcement action. If a district chooses to impose an in-district weighing requirement consistent with N.J.A.C. 7:26-6.10(b)2, to institute a mechanism to ensure the payment of outstanding debt and other financial obligations, the district may gather this information through in-district weighing, but only for the period set forth in N.J.A.C. 7:26-6.10(b)2. Districts which do not conduct in-district weighing shall develop an alternate recordkeeping method to ensure that accurate information is collected on a monthly basis as set forth above.

(j) The operator of a designated district weighing facility shall ensure that all weighing is conducted in a manner that facilitates proper operation and minimizes systems interruptions.

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

See: 8 N.J.R. 374(d), 8 N.J.R. 509(a).

Amended by R.1978 d.72, effective February 27, 1978.

See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

Amended by R.1983 d.192, effective June 6, 1983.

See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).

(a)5 and new (c) added; existing (c)-(e) recodified (d)-(f).

Amended by R.1983 d.570, effective December 5, 1983.

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

(d)-(f) Substantially amended.

Emergency Amendment, R.1984 d.148, effective April 2, 1984.

See: 16 N.J.R. 930(a).

(a)6 and new (c) and (d) added, existing (c)-(f) redesigned (e)-(h); inspection by local health department added to (b), monthly summary submittal deleted.

Adopted concurrent proposal, R.1984 d.231, filed June 4, 1984.

See: 16 N.J.R. 930(a), 16 N.J.R. 1497(a).

Provisions of emergency amendment R.1984 d.148 readopted with technical and substantive changes, requiring solid waste transporters to provide landfill operators with documentation of origin and contents of waste load.

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

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

(a)7 added.

Correction: Added text in (a) "resource recovery facilities and transfer stations".

See: 18 N.J.R. 983(a).

Amended by R.1988 d.73, effective February 16, 1988.

See: 19 N.J.R. 171(a), 20 N.J.R. 393(a).

Section title was Sanitary landfills, resource recovery facilities and transfer stations; records.

In (a), the above was repealed and "Each solid waste facility permit-tee" was substituted.

Correction: Added text to (g)1vi "oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous".

See: 20 N.J.R. 1958(b).

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

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

Added text to (g)1 in "Also included are . . .".

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of emergency amendment R.1988 d.547, readopted with-out change.

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

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

Added tonnage as an available description for the capacity of a solid waste vehicle; replaced vehicles with solid waste vehicle and changed 15th to 20th day of month for submitting daily records; changed address.

Public Notice: Notice of receipt of petition for rulemaking.

See: 23 N.J.R. 2187(c).

Action on Petition for Rulemaking: Amend Type 27 waste and amend certain classes of waste from interdistrict and intradistrict waste flow orders.

See: 23 N.J.R. 2428(b).

Amended by R.1993 d.27, effective January 4, 1993.

See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

Revised the description of dry industrial waste, ID 27, to specifically state that the residue from the operations of a scrap metal shredding facility is included within this class of solid waste.

Amended by R.1993 d.508, effective October 18, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Emergency Amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, to expire March 26, 1996).

See: 28 N.J.R. 1305(a).

Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.

See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

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

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

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

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

In (a)2, added reference to solid waste decal number; in (a)7 and (e), amended Department and Division references; and added (g)viii and (g)ix.

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

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

Deleted (a)3ii; recodified existing (a)3iii and (a)3iv as (a)3ii and (a)3iii; rewrote (a)8; deleted (c)6; deleted (e)1vi through (e)1viii and (e)2; and added (k) and (l). Readopted provisions of Emergency Amendment R.1997 d.404 with changes effective December 1, 1997.

Administrative change.

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

Amended by R.2001 d.86, effective March 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Rewrote the section.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote 6, substituted "Programs" for "Assistance" in 7ii, inserted 9; in (c), rewrote 2; in (e)1i, substituted ", transfer station, materials recovery facility or" for "and" following "(including municipality)"; rewrote (g)1vi; in (h)1i, substituted "Non-hazardous" for "Bulk" following "72" and added the second sentence; rewrote (i).

#### Law Review and Journal Commentaries

Environmental Law—Administrative Procedure—Solid Waste. P.R. Chenoweth, 134 N.J.L.J. No. 13, 54 (1993).

Relief from Exorbitant Garbage Disposal Costs. Sandra T. Ayres, 138 N.J.L.J. No. 8, S22 (1994).

#### Case Notes

Licensed solid waste hauler violated regulatory recordkeeping requirements by transporting out of country waste to landfill and for failing to properly record origin of waste on an origin and disclosure form. Middlesex County Dept. of Health v. Importico, 315 N.J.Super. 397, 718 A.2d 727 (N.J.Super.L. 1998).

Waste hauler who had permit to haul its own self-generated construction waste, and who accepted and hauled others' construction waste in violation of that permit, would suffer permit revocation. Division of Solid Waste Management v. Loughran, 96 N.J.A.R.2d (EPE) 367.

Solid waste collector violated site-specific waste flow directives and interim relief orders; certificate of public convenience and necessity revoked and penalties assessed. Board of Regulatory Commissioners v. Jersey Carting, Inc., 93 N.J.A.R.2d (EPE) 56.

#### 7:26-2.14 Solid waste facility performance partnership agreements

(a) Any thermal destruction facility, materials recovery facility, transfer station, municipal solid waste composting or co-composting facility processing greater than 100 tons per day may negotiate a 15-year solid waste facility performance partnership agreement (SWFPPA) with the Department.

1. The eligibility requirements for a SWFPPA follow:

i. The solid waste facility shall have obtained all applicable permits and licenses required by the Department and shall have been in operation for at least one year;

ii. The solid waste facility shall be in substantial compliance with all permit conditions; and

iii. The solid waste facility shall not have a history of substantial noncompliance with environmental obligations as defined in (r) below.

2. The Department shall convene an informational meeting at least annually with the owners and/or operators of the facilities listed in (a) above to outline the SWFPPA planning process.

(b) The SWFPPA shall include the following:

1. A discussion of the operating conditions and requirements in the facility's existing permit, their associat-

ed environmental and/or agricultural impacts and the potential to improve operating conditions over those required by the permit. This discussion shall, at a minimum, address:

- i. Facility storage requirements;
- ii. Litter control;
- iii. Fugitive dust controls;
- iv. Odor controls;
- v. Noise controls;
- vi. Equipment and facility on-line availability;
- vii. On-site vehicle routing and traffic; and
- viii. Off-site vehicle routing;

2. A discussion of the long-term environmental goals and milestones selected by the applicant for inclusion in the SWFPPA. The applicant shall select those goals and milestones which will reduce the existing environmental and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals. The applicant shall select from the goals and milestones listed below and/or propose alternative goals and milestones:

- i. An accounting of the inputs and outputs of materials at the facility, including estimates of the quantities of raw materials used and wastes generated at each source;

- ii. Baselines to be utilized to measure progress towards achieving the goals and milestones established in the SWFPPA;

- iii. Methods to increase the recovery of materials from solid waste through the addition of manual or mechanical materials recovery systems in furtherance of State and solid waste management district recycling goals;

- iv. Methods to reduce levels of discarded products containing heavy metals, particularly those containing cadmium, lead and mercury from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

- v. Methods to reduce levels of discarded products containing volatile organic compounds from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

- vi. Methods to reduce energy usage by the facility, including both the facility equipment usage and vehicle transportation. This reduction shall be based on an energy balance for the facility and vehicle transportation;

- vii. Methods to eliminate or reduce levels of hazardous substances used by facility through material or product substitution or other means;

- viii. Methods to reduce the quantity of household hazardous waste, small quantity generator waste and/or universal waste disposed of by the solid waste facility;

- ix. Formulation of a landfill mining plan to extract valuable resources for recycling, reduce the size of the landfill footprint, reclaim additional disposal capacity or otherwise improve resource management;

- x. Methods to reduce the likelihood of accidental spills or releases of hazardous substances;

- xi. Methods to reduce the level of the facility's process residue and/or the development of programs to more effectively treat or use residue as a product;

- ii. Methods to reduce water usage by the facility;

- xiii. Methods to reduce wastewater discharges by the facility; and

- xiv. Methods to reduce direct and/or fugitive air emissions from the facility;

3. A schedule for improving operational conditions identified pursuant to (b)1 above and specific methodologies for effecting the improvements;

4. A schedule for achieving the goals and milestones established pursuant to (b)2 above;

5. A discussion of the policies and procedures established to create a compliance assurance program, including:

- i. Internal inspection schedules to ensure that all site conditions and operations are in compliance with internal assurance policies and standard operating procedures and environmental obligations;

- ii. Procedures for correcting actual noncompliance observed during inspections; and

- iii. Procedures for reporting noncompliance to the appropriate facility official and tracking corrective actions;

6. A discussion explaining the facility specific data and information and direct measurement utilized to develop the goals and milestones established pursuant to (b)2 above. This discussion may also include information based on reasonable calculations and estimates from the best available data and/or experience and judgment; and

7. The SWFPPA shall be developed for a 15 year period, with major goals and milestones scheduled to be reviewed on a five-year basis in accordance with the procedure established at (l) below.

**7:26-3.6 Intermodal container facility**

(a) This section contains the regulations of the Department governing the authorization and operation of intermodal container facilities.

1. This section shall not apply to a rail carrier that transfers solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption under this section is applicable are being conducted by it or on its behalf as part of its rail transportation services. Such rail carriers, although exempted from this section, are fully subject to regulation pursuant to N.J.A.C. 7:26-2D.

2. Intermodal container facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.6 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 13C, 23, 25, 27, 72, 73, and 74. Such facilities shall not accept or in any manner handle hazardous waste or regulated medical waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6, respectively. This subsection does not prohibit the operator of an authorized intermodal container facility from conducting other solid waste, regulated medical waste, or hazardous waste management activities at the site of the intermodal container facility, provided the operator complies with all applicable permitting and operating requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G.

(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3.16 and 16A to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified in (c) below, and at the same time one copy each to the host municipality and district solid waste plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed facility;
2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3, 16 and 16A;
3. Photocopies of documents as evidence of all authorizations for siting, construction and operation, and conformance with all local, regional, State or Federal requirements of any governmental agency, or other body with jurisdiction over any aspect of the proposed facility;

4. A description of the geographical location of the facility, identifying the name of the municipality in which the facility is located and the address of the facility;

5. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;

6. A description of the current use of the facility site and of all adjoining properties;

7. An administrative action issued by the district solid waste management plan implementing agency, established pursuant to N.J.S.A. 13:1E-21b(1), of the district where the facility is proposed to be located, which shall include any applicable comments from the host municipality. The Department may issue an authorization in the absence of a district administrative action should the Department determine, at its discretion, that the intermodal container facility is needed to help fulfill the objectives of the adopted and approved Statewide Solid Waste Management Plan or individual district solid waste management plans. In the event of such a determination, the Department shall notify the host district and municipality of its determination and reasons justifying facility authorization in writing prior to any approval of operations;

8. A list of all solid wastes by waste type as defined at N.J.A.C. 7:26-2.13, to be received and transferred at the facility;

9. A description of the maximum amount of each type of solid waste to be received and transferred at the facility each day, expressed in tons per day and cubic yards per day, or gallons where applicable;

10. A description of the sources of the containerized solid waste and the anticipated disposal locations of the waste, both in-State and out-of-State;

11. A description of the type(s) and number of containers that will be used at the facility and the type and means of storage and staging of the containers;

12. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer or surveyor. The site plan must:

i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading, unloading and temporary storage of containerized solid waste;

ii. Be drawn to a scale no greater than one inch equals 100 feet;

iii. Indicate the routing of vehicles between the facility and all nearby roadways serving the site, as well as the traffic flow within the site. Such routing must ensure safe and efficient vehicular and pedestrian circulation, parking, and loading and unloading of containers;

iv. Delineate floodplains as defined at N.J.A.C. 7:13-1.2;

v. Delineate the location of State-designated wetlands, New Jersey Pinelands, existing or suitable agricultural lands, Federal or New Jersey-registered historic sites and other environmentally sensitive areas such as State parks, wildlife management areas and National Wildlife Refuges;

vi. Identify the direction of water runoff both on-site and off-site and the screening and landscaping on the site;

vii. Indicate topographic contours, drawn at two-foot intervals; and

viii. Indicate all site access controls to be employed at the facility;

13. An original current 7.5 minute USGS Quadrangle map with the boundary of the facility plotted thereon. The map shall delineate any public access roads to the site and any streams, ponds or other potential sensitive receptors such as, but not limited to, hospitals, schools, and shopping areas within a one-half mile radius of the site;

14. A copy of the deed of record establishing ownership of the facility property or, if the applicant is a person other than the landowner, a legal agreement (for example, a lease) to use the real property for the purpose of operating the facility;

15. A description of the design capacity of the facility, setting forth the number and types of all vehicles arriving at the facility and the number and types of all vehicles leaving the facility on a daily basis, stating the maximum number of vehicles per hour that will arrive at and leave the facility;

16. A copy of any New Jersey air pollution control permit application as applicable, in accordance with N.J.A.C. 7:27;

17. A narrative describing the facility operations from the receipt of containerized waste through the point of transfer to destination. The narrative must clearly demonstrate that containers will not be opened and that employees, the public or the environment will not be exposed to solid waste except as allowed in accordance with this section; and

18. Where applicable, additional information in support of a request for a variance from the 72-hour storage time limit, pursuant to (o) below.

(c) The application described in (b) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-4.7, to:

Bureau of Resource Recovery and Transfer Facilities  
Division of Solid and Hazardous Waste  
New Jersey Department of Environmental Protection  
PO Box 414  
Trenton, New Jersey 08625-0414

(d) Within 45 days after the Department receives the application submitted pursuant to (b) above, the Department will take one of the following actions:

1. Issue either a letter of authorization to operate the intermodal container facility that shall specify that any other waste management activities conducted at the site where the intermodal container facility is operated shall be conducted in compliance with all applicable permitting and operational requirements under this chapter, or a denial of the application, to the applicant, with a copy to the host municipality and district solid waste plan implementation agency. A letter of authorization shall not be transferred to any other person;

2. Notify the applicant in writing of missing information, with a copy of the notice sent to the host municipality and district solid waste plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (b) above, with a copy of the notice sent to the host municipality and district solid waste plan implementation agency.

(e) An applicant shall submit to the Department and to the host municipality and district solid waste plan implementation agency any additional or corrected information required pursuant to (d)2 or 3 above within 30 days of receipt of the notification from the Department of missing and/or insufficient information.

(f) The Department will deny without prejudice the application of any applicant that fails to submit the additional or corrected information required pursuant to (d)2 or 3 above or that otherwise fails to meet the application criteria of these regulations. The applicant may thereafter submit a new application for authorization to operate an intermodal container facility at the same location pursuant to the requirements of this section.

(g) All intermodal container facilities authorized by the Department pursuant to this section shall operate in accordance with the following standards:

1. Solid waste shall not remain at any intermodal container facility for more than 72 hours, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers and ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below may be stored for up to 10 days. An intermodal container facility at which solid waste is staged or stored for more than 72 hours, or at which ID 72 liquid solid waste is stored for more than 180 days, or at which ID 10 (non-putrescible), ID 13, ID 13C or ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below is stored for more than 10 days shall be deemed to be an unpermitted solid waste facility, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

2. Solid waste received, stored or transferred at any intermodal container facility shall at all times be contained in sealed containers registered as solid waste containers with the Department in accordance with N.J.A.C. 7:26-3 that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that an ID 72 liquid solid waste container may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed.

3. Solid waste contained in solid waste containers at any intermodal container facility shall not emit odors that are detectable at the facility or in the vicinity of the facility.

4. Access to any intermodal container facility shall be restricted to facility operators, solid waste vehicle operators and authorized visitors only. Effective security procedures shall be implemented to control entry and exit at all times. All solid waste containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the containers and their contents.

5. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of any intermodal container facility, at any time. This right to enter and inspect includes, but is not limited to:

- i. Observing and sampling any materials on site;
- ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and
- v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

6. Intermodal container facilities shall comply with the requirements of the Federal Occupational Safety and Health Administration and all other applicable standards of any agency for the operation of the facility and the maintenance of the health and safety of the employees or other persons.

7. Routine housekeeping and maintenance procedures shall be implemented at the facility to prevent the accumulation of dust, debris and to maintain general cleanliness throughout the facility and in the working environment.

8. Any release or discharge of any solid waste at the intermodal container facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

9. The intermodal container facility operator shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations, such as, but not limited to, spills, discharges or releases of solid wastes at the facility.

10. Unless exempted under N.J.A.C. 7:26-6.3, all containerized solid waste accepted at the intermodal container facility from New Jersey sources shall be disposed of in accordance with applicable District Solid Waste Management Plans. Any out-of-State solid waste accepted at an intermodal container facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or, where applicable, at permitted out-of-State disposal facilities authorized by the receiving state.

11. The intermodal container facility operator shall develop and maintain at the site an operations and maintenance (O&M) manual that shall describe all operating conditions and procedures of the facility. The O&M manual shall be made available to all facility personnel. The O&M manual shall be prepared in accordance with N.J.A.C. 7:26-2.10(b)9.

(h) An intermodal container facility operator shall maintain the following records at the facility site at all times and shall file reports as follows:

1. Daily records shall be maintained on forms supplied by the Department, in accordance with N.J.A.C. 7:26-2.13. These reports shall note the name of the registered transporter, transporter's DEP registration number, vehicle plate number, waste type, waste quantity, solid waste container DEP registration number, source, destination facility name and State registration number and quantity, by vehicle, of all solid waste received, transferred and shipped at the facility. The records shall specify the source and date of every shipment of waste received and the destination and date of every shipment of waste out of the facility. Quantities of solid waste shall be listed in tons and cubic yards. Quantities of liquid solid wastes shall be listed in gallons.

2. The daily records shall be compiled into standard quarterly reports, which shall be submitted to the following address within 20 days of the end of each calendar quarter:

Bureau of Recycling and Planning  
 Division of Solid and Hazardous Waste  
 New Jersey Department of Environmental Protection  
 PO Box 414  
 Trenton, NJ 08625-0414

3. Records that document all violations of any local, State or Federal requirements including violations of the intermodal container facility authorization issued by the Department.

4. Records that document all incidents in which a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A, or container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the type of solid waste in the container. These incidents shall also be reported within 24 hours to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP.

(i) Any person that conducts any of the activities of an intermodal container facility as defined in this section without authorization from the Department, or without a solid waste transfer station permit issued pursuant to N.J.A.C. 7:26-2A, shall be deemed to be operating an unpermitted solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

(j) Any authorized intermodal container facility that accepts unauthorized waste, or fails to operate in compliance with the requirements of this section, shall be deemed an unpermitted solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

(k) Any authorized intermodal container facility that accepts containerized solid waste from a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A shall be subject to penalties for violation New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter, registration, certification and licensing, and revocation of intermodal container facility authorization.

(l) The Department may revoke the authorization of an intermodal container facility if that facility fails to comply with the requirements for such facilities or any law in any way related to the operation of an intermodal container facility pursuant to New Jersey statute or the Department determines that any of the causes for modification in (m) below are sufficient cause for revocation in order to protect human health, safety and the environment.

(m) The Department may modify an intermodal container facility authorization for the following reasons. The operator shall pay a fee as specified in N.J.A.C. 7:26-4.7(e) on issuance of any intermodal facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized facility or operation that occurred after the Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

2. The Department receives information that was not available at the time it issued the letter of authorization that would have warranted the issuance of conditions in the authorization different from those imposed in the existing authorization. This information may include, but not be limited to, information concerning the effects of the facility on the properties surrounding the facility or the effects of the facility on the environment;

3. A change in Federal or State laws, regulations or policies governing solid waste management;

4. The regulatory compliance record of the intermodal container facility operator;

5. A relevant judicial decision after the authorization was issued; or

6. An operator of an intermodal container facility shall request a modification of its authorization whenever the operator proposes to change any aspect of the operation as originally described in the application. Such changes include, but are not limited to, changes in the amount and type of solid waste managed at the facility.

i. A request for modification of the intermodal container facility authorization pursuant to this paragraph need not be submitted for a change in the origin or disposal location for containerized waste transported to or from the facility, provided:

(1) The waste is transported only to disposal facilities that possess all required permits and authorizations pursuant to Federal and state law where such facility is located; and

(2) The intermodal container facility notifies the Department and the district from which the waste originated of the change in origin or disposal location within 24 hours of any shipment of waste.

(n) The Department shall provide 30-day prior notice of a modification to an authorization to operate an intermodal container facility pursuant to (m) above and its reasons for determining a modification is warranted. This notice shall be sent to the operator of the facility and the host municipality and district solid waste plan implementation agency.

(o) The owner/operator of an intermodal container facility may obtain a variance from the 72-hour storage time limit in (g)1 above for ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes if the Department finds, as a result of a demonstration by the owner/operator, that no additional hazard or potential hazard will be posed to human health or the environment.

1. The owner/operator shall apply to the Department for the variance. The application shall address the relevant criteria contained in (o)2 below.

2. In deciding whether to grant a variance based on no additional hazard or potential hazard, the Department will consider:

- i. The types and amounts of solid wastes stored;
- ii. The method of storage;
- iii. Whether any contaminants are likely to be released into the environment; and
- iv. Other relevant factors.

3. If a variance is granted under this paragraph, the owner/operator will be allowed to store ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes at the intermodal container facility for up to 10 days. The Department shall require the owner/operator to construct and operate the facility in the manner that was demonstrated to meet the requirements for the variance. If the facility is not constructed and operated in the manner that was demonstrated to meet the requirements for the variance, the facility shall be deemed an unpermitted solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

New Rule, R.1996 d.169, effective April 1, 1996.

See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

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

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

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

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (b)7, substituted "An administrative action issued by" for "A letter of consistency with the district solid waste management plan from"; substituted "administrative action" for "letter of plan consistency". Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted "13c" in the second sentence and added a N.J.A.C. reference in the fourth sentence; added (b)18; in (g), rewrote 1 and 8; in (h)1 and 4, rewrote the third sentence; in (i) and (j), substituted "unpermitted" for "illegal" and amended the N.J.S.A. reference; added (o).

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

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

Rewrote (a).

### 7:26-3.7 Smoking, smoldering or burning solid waste in solid waste vehicles

(a) No transporter shall provide service where waste materials to be collected and transported show evidence of smoking, smoldering or burning.

(b) All wastes in transit that must be dumped in an emergency due to smoking, smoldering or burning shall be the responsibility of the transporter. The operator of the solid waste vehicle shall immediately notify the police and fire departments having jurisdiction. The transporter shall be responsible for cleanup of all materials dumped in an emergency.

(c) In the event of an incident involving smoking, smoldering or burning solid waste in any solid waste vehicle, the registrant shall notify the Department at 1-877-WARNDEP within 24 hours of the incident.

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

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

References to "collector-haulers" changed to "transporter", "solid waste vehicle" added in title line.

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

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

Added (c).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), updated the Department's 24-hour emergency response hotline.

### 7:26-3.8 Applicability

See N.J.A.C. 7:26G to find additional hazardous waste rules.

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

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

Amended by R.1985 d.558, effective November 4, 1985.

See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Deleted text "The regulations in ... with hazardous waste." and added "additional".

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

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

## SUBCHAPTER 3A. REGULATED MEDICAL WASTE

### 7:26-3A.1 Purpose, scope and applicability

(a) The purpose of this subchapter is to establish a program for regulated medical waste pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

(b) The rules in this subchapter apply to regulated medical waste as defined at N.J.A.C. 7:26-3A.6. that is generated, stored, transported, collected, transferred, treated, destroyed, disposed of or otherwise managed in New Jersey.

(c) Generators, transporters, collection facilities and owners or operators of intermediate handling facilities (for example, treatment and destruction facilities, incineration facilities, and disposal facilities) that generate, store, transport, collect, transfer, treat, destroy, dispose of or otherwise manage regulated medical waste in New Jersey shall comply with this subchapter.

(d) In addition to the requirements of this subchapter, all applicable requirements of the Department of Health shall be met.

(e) In addition to the requirements of this subchapter, generators, transporters, collection facilities and owners and operators of intermediate handling facilities and destination facilities shall comply with all applicable Federal, State, county and local statutes, rules and ordinances.

(f) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.1995 d.205, effective April 17, 1995.

See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

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

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

Inserted references to collected medical waste and collection facilities throughout; deleted former (f); and recodified (g) as (f).

### 7:26-3A.2 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

### 7:26-3A.3 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

### 7:26-3A.4 Record retention

(a) The length of time that parties shall keep records required under this subchapter is automatically extended in the case where EPA, the Departments or another State agency initiates an enforcement action, for which those records are relevant, until the conclusion of the enforcement action.

(b) All records, reports, logs and tracking forms required to be made and/or kept in accordance with this subchapter shall be made available for inspection by the Department.

### 7:26-3A.5 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. In addition, the following terms, when used in this subchapter, shall have the following meanings:

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“Alternative or innovative technology” means any technology, including proprietary or patented methods, that permanently alters the composition, volume, weight, or other relevant waste or material characteristics of regulated medical waste, through chemical, biological, or physical means so as to have a beneficial and long-term effect on the environment by reducing the quantity (volume or weight), infectiousness, toxicity, or constituent mobility of waste or materials generated, recovered, recycled, treated, stored, disposed of or otherwise managed. The term also includes products or production processes that promote or enhance material recovery, recycling or marketing of secondary materials, or that reduce or eliminate waste or emissions at the source of generation.

“Biologicals” means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

“Blood products” means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

“Body art” means the practice of physical body adornment in permitted establishments by operators utilizing, but not limited to, the following techniques: body piercing, tattooing, and permanent cosmetics.

“Body art establishment” means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.

“Body fluids” means liquid emanating or derived from humans and limited to blood; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

“Central collection point” means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (for example, incineration).

“Collection facility” means a facility where individual shipments of packaged, tracked regulated medical waste are assembled and/or consolidated, or transferred between vehicles, but are not opened or unpackaged prior to transport off-site for disposal.

“Commercial facility” means a facility or on-site generator, accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal, for a fee in excess of the costs actually incurred by the facility or on-site generator for managing the regulated medical waste.

“Consolidated tracking form” means the tracking form on which a transporter consolidates or transfers other tracking forms representing shipments of regulated medical waste.

“Container” means any portable device in which a regulated medical waste is stored, transported, disposed of or otherwise handled. The term “container” does not include items listed in the table at N.J.A.C. 7:26-3A.6(a).

“Decontamination” means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

“Departments” means the New Jersey Department of Environmental Protection and the New Jersey Department of Health.

“Destination facility” means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form. The term “destination facility” also means any generator or facility that treats and destroys its own regulated medical waste.

“Destroyed regulated medical waste” means regulated medical waste that is no longer generally recognizable as regulated medical waste because all components of the waste have been ruined, torn apart, or mutilated to produce unrecognizable and unusable pieces smaller than three-quarters of an inch, except that all sharps must be smaller than one-half inch. It does not mean compaction or encapsulation except through:

1. Processes such as thermal treatment or melting, during which treatment and destruction occur;
2. Processes such as shredding, grinding, tearing, or breaking, during which only destruction takes place; or
3. Processes that melt plastics and fully encapsulate metallic or other sharps in the melted plastic and, in addition, the resulting melted plastic mass must be completely sealed in a secondary puncture-proof container that will not be opened or penetrated by undestroyed sharps in any circumstance of handling.

“Destruction facility” means a facility that destroys regulated medical waste by ruining or mutilating it, or tearing it apart.

“DHSS” means the New Jersey Department of Health and Senior Services.

“EPA” means the United States Environmental Protection Agency.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of regulated medical waste. A facility may consist of several treatment, destruction, storage, or disposal operational units.

“Generator” means any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. Noncontiguous properties owned or operated by the same person are separate sites and in the case where more than one person (for example, doctors with separate medical practices) are located in the same building and office, each individual business entity is a separate generator for the purposes of this subchapter. However, households utilizing home self-care are not generators.

“Home self-care” means the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services. Excluded from this definition are direct patient care services provided in the home by home health agencies as described in N.J.A.C. 8:42-1, durable medical equipment companies, home infusion companies, hospice care companies, and any other services or companies as determined by the State Department of Health that generate regulated medical waste in the home setting.

“Infectious agent” means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

“Intermediate handler” is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term does not include transporters.

“Laboratory” means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

“Medical waste” means any solid waste that is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, in the production or testing of biologicals, or in home self-care. The term does not include any hazardous waste identified or listed under 40 C.F.R. Part 261.

“Mobile treatment and/or destruction equipment” means equipment which treats and/or destroys regulated medical waste and which does not operate from a permanent location but which is capable of being transported from site to site.

“New Jersey medical waste tracking form” means the New Jersey medical waste tracking form available from the Department that must accompany all applicable shipments of regulated medical wastes.

“Noncommercial facility” means a facility or on-site generator accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal operating in accordance with section 501(c)(3) of the Federal Internal Revenue Service tax code, receiving only a cost-based rate or fee not in excess of the fixed and variable capital and operating costs actually incurred.

“Original generation point” means the location where regulated medical waste is generated. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

“Oversized regulated medical waste” means medical waste that is too large to be placed in a plastic bag or standard container.

“Package” means packaging and/or a container and its contents.

“Packaging” means the assembly of one or more containers and any other components necessary to ensure compliance with N.J.A.C. 7:26-3A.11 and applicable Federal laws and regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented.

“Person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

“Regulated medical waste” or “RMW” means those medical wastes that have been listed or meet the waste characteristic classification criteria described at N.J.A.C. 7:26-3A.6 and that must be managed in accordance with the requirements of this subchapter.

“Storage” means the temporary holding of regulated medical wastes before treatment, disposal, or transport to another location.

“Tracking form” means a medical waste tracking form, including the New Jersey medical waste tracking form, the Federal tracking form, and the tracking form from other states that must accompany all applicable shipments of regulated medical waste.

“Transfer facility” means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a “transporter”. A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered a collection facility if it meets the requirements of N.J.A.C. 7:26-3A.39; if such location does not meet the requirements of N.J.A.C. 7:26-3A.39, the facility must hold a permit as a transfer station pursuant to N.J.A.C. 7:26-2.4.

“Transportation” means the shipment or conveyance of regulated medical waste by air, rail, highway, or water.

“Transporter” means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water, and, for the purposes of N.J.A.C. 7:26-3A.9(h), means a supplier of radioactive medical supplies.

“Treated regulated medical waste” means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

“Treatment”, “treated”, or “treats” when used in any section of this subchapter except for N.J.A.C. 7:26-3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. If antimicrobial chemicals are used in regulated medical waste treatment the chemicals must be registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) program specifically for this purpose. When used in the context of N.J.A.C. 7:26-3A.6(a), treatment means either the provision of medical services or the preparation of human or animal remains for interment or cremation.

“Treatment facility” means a facility which treats regulated medical waste.

“Universal biohazard symbol” means the symbol design that conforms to the design shown in 29 C.F.R. § 1910.145(f)(8)(ii).

“Untreated regulated medical waste” that has not been treated to substantially reduce or eliminate its potential for causing disease.

“Waste category” means either untreated regulated medical waste or treated regulated medical waste.

“Waste Class” means the description of Waste Class found at N.J.A.C. 7:26-3A.6(a).

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

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

Section formerly divided into two subsections which were combined into single definition list; added “collection facilities”, “commercial facility”, “consolidated tracking form”, “container”, “DOH”, “noncommercial facility”, “package”, and “packing”; deleted “federal demonstration project”; and amended “generator”, “transfer facility”, “transporter”, and “treatment”.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added “Body art”, “Body art establishment” and “Mobile treatment and/or destruction equipment”; amended “Body fluids”, “Destroyed regulated medical waste”, “DHSS” and “Packaging”.

#### 7:26-3A.6 Definition of regulated medical waste

(a) A regulated medical waste is any solid waste, generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under (b) below, and that is listed or meets any waste characteristic classification criteria described in the following table:

TABLE  
REGULATED MEDICAL WASTE

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
3. Human Blood and Blood Products	Liquid waste human blood; blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags (only if they have come into contact with blood or other regulated body fluid), soft plastic pipettes and plastic blood vials are also included in this category.

Waste Class	Description
4. Sharps	Sharps that were used in animal or human patient care or treatment or in medical research, or industrial laboratories, including sharp, or potentially sharp if broken, items such as, but not limited to, hypodermic needles, all syringes to which a needle can be attached (with or without the attached needle) and their components, including those from manufacturing research, manufacturing and marketing, pasteur pipettes, scalpel blades, blood vials, carpules, needles with attached tubing, acupuncture needles and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals. Carcasses that are not known to have been exposed to agents infectious to humans are considered Waste Type ID 25, and, therefore, are not included in this class.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
7. Unused Sharps	The following unused, discarded sharps, that were intended to be used: hypodermic needles, suture needles, syringes, and scalpel blades.

(b) The following are excluded from the definition of regulated medical waste:

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;
2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26-3A.5(b);
3. Ash from incineration of regulated medical waste once the incineration process has been completed;
4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed;
5. Human corpses, remains and anatomical parts that are intended for interment or cremation;
6. Biological materials, including, but not limited to, those blood or blood products and pathological waste listed at (a)2 and 3 above, intended for use, reuse or recycling as raw materials or products, except materials classified as Class-6. Isolation Waste pursuant to (a)6 above if the following conditions are met:

- i. The materials are used, reused or recycled in accordance with all applicable Federal, State and local statutes and regulations for handling and managing the materials;

- ii. The materials and their by-products are managed as regulated medical waste when discarded after use, reuse or recycling if not treated and destroyed as those terms are defined at N.J.A.C. 7:26-3A.5; and

- iii. The generator of the materials reports the type, destination, and method of use, reuse or recycling of the materials to the Bureau of Medical Waste and Technical Assistance in the Department at the address given at N.J.A.C. 7:26-3A.8(e)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency;

7. Nonbiological materials intended for use, reuse or recycling, except materials classified as Class-6, Isolation Waste pursuant to (a)6 above, if the following conditions are met:

- i. The generator treats all used materials, or any unused materials, that have come into contact with a regulated body fluid or blood, or pathological waste as defined at (a) above at the site of generation before shipping the materials off site;

- ii. The generator destroys all sharps at the site of generation before shipping the destroyed sharps off site for recycling of the devices' component raw materials; and

- iii. The generator of the materials reports the type, quantity, destination, and method of use, reuse or recycling of the materials to the Bureau of Medical Waste and Technical Assistance in the Department at the address given at N.J.A.C. 7:26-3A.8(e)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency; and

8. RMW, or non-regulated medical waste managed as RMW, that is either generated by a person and is less than 100 pounds or has become the property of a person other than the original generator except through the sale or transfer of assets, and where such person has not generated RMW within a two year period prior to requesting the exemption nor to the best of their knowledge plans to generate RMW in the future, may have a "one time only" exemption from registering as a generator and may offer RMW to a licensed RMW transporter using its own number as the generator number. The Department shall issue an authorization for this exemption in response to written notification sent to the address listed at N.J.A.C. 7:26-3A.8(f)4 prior to the disposal of the RMW in order for a one-time exemption of this type to be valid. Authorizations for registration exemption will not be granted to persons the Department expects will generate RMW in the future.

(c) The following are exempted from the definition of regulated medical waste:

1. Etiologic agents being transported interstate pursuant to the requirements of the U.S. Department of Transportation, U.S. Department of Health and Human Services, and all other applicable shipping requirements are exempt from the requirements of this subchapter; and

2. Samples of regulated medical waste transported off-site by the EPA, the Department, the Department of Health or the New Jersey Department of Law and Public Safety for enforcement purposes are exempt from the requirements of this subchapter during the enforcement proceeding.

(d) In accordance with DHSS rules (N.J.A.C. 8:27), body art establishments shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned Act.

(e) Acupuncturists shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Act, and all rules promulgated pursuant to the aforementioned Act.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted text "or meets . . . criteria described" and amended descriptions in medical waste table; and added (b)6 and (b)7.  
Amended by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a)3 inserted "(only if they have come in contact with blood or other regulated body fluid)" following "Intravenous bags"; in (a)4 inserted "acupuncture needles" following "attached tubing," in (a)5 added a second sentence; added (b)8; and added (d) and (e).

**7:26-3A.7 Mixtures**

(a) Except as provided in (b) below, mixtures of solid waste and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are a regulated medical waste.

(b) Mixtures of hazardous waste identified or listed in 40 C.F.R. Part 261 and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are subject to the requirements in this subchapter, unless the mixture is subject to the hazardous waste manifest requirements in 40 C.F.R. Part 262 or 40 C.F.R. Part 266. In addition, the applicable hazardous waste requirements of N.J.A.C. 7:26-1 also apply.

**7:26-3A.8 Registration and fees for regulated medical waste generators, and owners and operators of transporters, collection facilities, transfer stations, intermediate handlers and destination facilities**

(a) Any person that generated regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (e) below, and shall pay annual fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated into five categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Base Fee
1	less than 50	\$ 85.00
2	50-200	\$ 255.00
3	greater than 200-300	\$ 425.00
4	greater than 300-1,000	\$ 850.00
5	greater than 1,000	\$2,950.00

i. For annual regulated medical waste generator fee purposes only, quantities of body fluids and blood and blood products that are discharged or removed from a human and are disposed of into a sanitary sewer system, which shall be in compliance with all applicable Federal, State, and county and local statutes, rules and ordinances, shall not be included in a generator's annual calculation of regulated medical waste generated, but at a minimum, if the generator generates no other regulated medical waste, the generator shall be included in generator category 1.

(b) Any person that engages or continues to engage in the transportation of regulated medical waste in this State, except generators that transport their own waste and that meet the requirements of N.J.A.C. 7:26-3A.17(a), shall register with the Department as a regulated medical waste transporter in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste commercial transporters shall pay an annual fee of \$3,950.00.
2. All noncommercial generator transporters of RMW (except radiopharmacies listed at (b)3 below) shall pay an annual fee of \$650.00.
3. All noncommercial generator transporters of RMW that transport solely spent radiopharmaceuticals back to a radiopharmacy to allow for the safe decay of the radioactive material prior to disposal as RMW shall pay an annual fee of \$200.00.

(c) Commercial intermediate handlers, intermediate handlers treating, destroying or disposing of their RMW on-site and owners and operators of destination facilities shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall register with the Department and pay an annual registration, compliance inspection, technical advisement and report analysis fee in accordance with the following:

**7:26-3A.16 General requirements for regulated medical waste generators, transporters, collection facilities, intermediate handlers and destination facilities**

(a) A generator, transporter, collection facility, intermediate handler or destination facility that generates a medical waste, as defined in N.J.A.C. 7:26-3A.5 and who is located in New Jersey, or that stores, transfers, transports, treats, destroys or disposes of, or otherwise manages medical waste in New Jersey shall determine if that waste is a regulated medical waste.

(b) A generator, transporter, collection facility, intermediate handler or destination facility that either treats and/or destroys and disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act,) or any generator, transporter, collection facility, intermediate handler or destination facility that neither treats nor destroys regulated medical waste on site but disposes of regulated medical waste via sewer disposal in compliance with all applicable Federal, State, county and local statutes, rules and ordinances is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including, but not limited to, the generator reporting, registration, all fee requirements of this subchapter and the following conditions:

1. Bulk blood, body fluids and small amounts of pathological wastes that are liquefied or suspended in liquids, or have passed through the filters in alternative or innovative technologies may be disposed of in sanitary sewer, septic or municipal sewer system in accordance with Section 307(b) through (d) of the Clean Water Act.

2. Nonbiological regulated medical waste (for example, plastic blood bags, gauze bandages and similar substances) shall not be disposed of in a sanitary sewer, septic or municipal sewer system except for very minute amounts of such wastes that may escape retention on filters in alternative or innovative technologies designed to capture the insoluble waste particles in order to prevent their disposal into the sewer system.

(c) Vessels at port in New Jersey are subject to the requirements of this subchapter for those regulated medical wastes that are transported ashore in New Jersey. The owner or operator of the vessel and the person(s) removing or accepting waste from the vessel are considered co-generators of the waste.

(d) Any person offering regulated medical waste for transport shall use transporters that meet the requirements of N.J.A.C. 7:26-3A.27(c), unless the transporter is a generator meeting the requirements of N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the requirements of N.J.A.C. 7:26-3A.17(b) are met.

(e) Persons shall dispose of regulated medical waste only with a registered intermediate handler, at a registered destination facility, a regulated medical waste sanitary landfill permitted in accordance with N.J.A.C. 7:26-3A.18, a resource recovery facility authorized to accept such waste and permitted in accordance with N.J.A.C. 7:26-2, or a facility in another state authorized to accept such wastes by such state. Shipments to out-of-State facilities shall be made in accordance with N.J.A.C. 7:26-3A.28 and 3A.46.

(f) A generator receiving regulated medical waste from other generators for transfer to a facility for treatment, destruction or disposal is considered a collection facility for the purposes of this section, except:

1. Any generator generating regulated medical wastes in the ordinary course of business and receiving home self-care medical waste for management in accordance with N.J.A.C. 7:26-3A.16(h).

(g) Any generator generating regulated medical waste in the ordinary course of business and operating a noncommercial collection facility, an intermediate handler facility or a destination facility registered pursuant to this chapter, is not subject to the requirements at N.J.A.C. 7:26-16 or 16A.

(h) A generator generating regulated medical waste in the ordinary course of business, transporters, collection facilities, intermediate handlers or destination facilities may accept home self-care medical waste for management in accordance with the following requirements:

1. The generator, transporter, collection facility, intermediate handler or destination facility receiving the home self-care medical waste shall maintain a list of all persons delivering the home self-care medical waste, including such person's name, address, and telephone number, and the dates and the number of the medical waste containers received.

2. Containers shall meet the packaging requirements for regulated medical waste at N.J.A.C. 7:26-3A.11. Coffee cans, glass or soft thin-walled plastic bottles are not acceptable containers for collection and transportation of used or unused syringes. All containers shall be clearly labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste."

3. The home self-care medical waste, after receipt, shall be managed in compliance with the requirements for regulated medical waste in this subchapter in addition to the following specific requirements:

- i. For reporting purposes, home self-care medical waste shall be considered regulated medical waste by the person accepting it for disposal;

- ii. Collected home self-care medical waste shall be transported in compliance with this subchapter;

- iii. A person that offers home self-care medical waste for off-site treatment, destruction, or disposal

shall use the tracking form required by N.J.A.C. 7:26-3A.19;

iv. Packaged cardboard shipping boxes in which containers of home self-care medical waste is transported shall be labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste";

v. The tracking form shall be prepared in accordance with all State standards, except that Box 14 on the tracking form shall contain the words "Home Self-Care Medical Waste." Box 14 shall be used to identify the total number of containers shipped and total quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L) of the shipment;

vi. Treatment and destruction shall be in accordance with this subchapter. A separate log shall be maintained to record the total number of containers and total quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L) of home self-care medical waste treated and destroyed.

(i) No person shall install or use any alternative or innovative technology, or any modification thereof, for the treatment and/or destruction of regulated medical waste unless such technology or modification has been approved and authorized by the Department and DOH for such purpose pursuant to N.J.A.C. 7:26-3A.47.

(j) No person shall abandon regulated medical waste on any public or private property or cause regulated medical waste to be abandoned. For the purpose of this section, "abandoned" means the intentional or unintentional placement, discard or loss of regulated medical waste in any area outside of the direct control of the person generating, transporting, managing, or disposing of the waste.

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

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

In (a), (b), and (d), specified the applicable medical waste generators; added (b)1 and (b)2; and added (e) through (j).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), substituted "any generator, transporter, collection facility, intermediate handler or destination facility" for "person" following the reference to the Clean Water Act and inserted "neither treats nor destroys regulated medical waste on site but" preceding "disposes of regulated medical waste via sewer disposal"; in (h)3v and vi, substituted "quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L)" for "weight".

### 7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that transport only their own regulated medical waste and home self-care medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27(c). The generator shall meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a vehicle with a gross weight of less than 8,000 pounds that is owned by the generator, the same operator as the generator at that site or the same operator's or generator's authorized employee;

2. The original generation point and the storage point or disposal facility are located in New Jersey; and

3. The generator complies with the requirements of N.J.A.C. 7:26-3A.19.

(b) Generators that transport by the U.S. Postal Service regulated medical waste, Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6, are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) if the generator generates less than three cubic feet (50 pounds) of regulated medical waste per month and ships less than three cubic feet (50 pounds) of regulated medical waste per shipment. The generator shall meet the following conditions:

1. The package shall be sent registered or certified mail, return receipt requested (indicating the person to which the package is sent, signature of sender, date, and address where delivered) or Priority Mail;

2. The generator shall retain the original mailing receipt and the returned registered or certified mail receipt, or in the case of Priority Mail, a hard copy of the electronic delivery confirmation (containing at a minimum the name, address, city, state, and zip code of the facility as well as the date of delivery and the amount of RMW delivered) attached to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26-3A.19.

(c) Generators of less than 500 pounds of regulated medical waste per year, excluding blood and body fluids disposed of in a municipal sewer system in accordance with N.J.A.C. 7:26-3A.16(b), are exempt from the tracking requirements of N.J.A.C. 7:26-3A.19 provided:

1. Such generators generate regulated medical waste within the boundaries of a medical care room operated by another registered generator generating regulated medical waste in the ordinary course of business, such as a doctor or hospital; and

2. Each generator using the medical care room has a written agreement with the operator of the medical care room providing that such operator will dispose of the generator's regulated medical waste according to the requirements of this subchapter.

(d) A generator that collects regulated medical waste from other generators, in the same building or in other buildings on the generator's property or on contiguous property owned by the generator not divided by public roads, is exempt from the requirements of N.J.A.C. 7:26-3A.16(d) provided:

## Case Notes

Dentist had duty to protect sanitation worker stuck in forearm by dental instrument while collecting trash; dentist consciously disregarded regulatory requirements regarding disposal of medical waste materials; sanitation worker claimed emotional distress, fearing HIV infection. *De Milio v. Schragger*, 285 N.J.Super. 183, 666 A.2d 627 (L.1995).

**7:26-3A.20 Generators exporting regulated medical waste**

(a) Generators (including transporters, collection facilities, transfer stations, and intermediate handlers that initiate tracking forms) that export regulated medical waste to a foreign country (for example, Canada) for treatment, destruction, or disposal, shall request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator shall submit an exception report as required under N.J.A.C. 7:26-3A.22.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted reference to collection facilities and transfer stations.

**7:26-3A.21 Generator recordkeeping**

(a) Each generator shall:

1. Keep the copy of each tracking form required by N.J.A.C. 7:26-3A.19 and the signed "Copy 1—Generator Copy" of each completed tracking form signed by the owner or operator of the destination facility, intermediate handler or collection facility for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26-3A.22(b) for at least three years after the day the exception report was submitted unless the Department specifically requires an additional retention period.

(b) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, shall maintain the following records:

1. The approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;

2. The approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and

3. For regulated medical waste accepted from other generators, the name and address of the generators, the date the waste was accepted from each generator, the weight of waste accepted from each generator, and the date the waste was treated and destroyed for each generator.

(c) Each generator in (b) above shall maintain records for a period of at least three years from the date the waste was treated and destroyed, unless the Department specifically requires an additional retention period.

(d) All generators of regulated medical waste shall submit annual generator reports to the Department for the period June 22 through June 21 of each calendar year on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) covering all regulated medical waste generated, treated or destroyed, and disposed of and shall be submitted to the Department by July 21 of each calendar year. The generator annual report shall include, but not be limited to, the following information:

1. The date of the report;

2. A description of the regulated medical waste, identified by Waste Class;

3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;

4. The name and NJDEP solid waste transporter registration number of every transporter who transported the generator's regulated medical waste;

5. The name and address of each intermediate handler or destination facility and a description of quantity in pounds for each Waste Class of regulated medical waste sent to each facility; and

6. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer).

(e) Generators of regulated medical waste that is reused or recycled shall comply with the reporting requirements of N.J.A.C. 7:26-3A.6(b)6iii and 7iii.

(f) All copies of the generator's annual reports, tracking forms and other documents required to be maintained under this subchapter as well as copies of the Department's compliance inspection reports and the certificate of generator registration for the site shall be retained at the generator's site, for at least three years from the date that the documents were due, or created, unless the Department specifically requires an additional retention period.

(g) Generators required to file Annual Generator Reports pursuant to (d) above shall have the option to file the required data electronically via the Division of Solid and Hazardous Waste's Internet web site at <http://www.state.nj.us/dep/online>.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)1, inserted reference to the generator copy; in (a)2, inserted three year provision; deleted (d); recodified former (h) as (d); rewrote (e); deleted (f); recodified former (i) as (f) and substantially amended. Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).  
In (f), deleted "logs," preceding "tracking"; added (g).

#### 7:26-3A.22 Exception reporting for generators

(a) A generator shall contact the owner or operator of the destination facility, transporter(s), intermediate handler(s) and collection facility(s), as appropriate, to determine the status of any tracked waste if the generator does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26-3A.8(d) if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter, or if the tracking form for the waste was consolidated onto a new tracking form by a transporter or a collection facility in accordance with N.J.A.C. 7:26-3A.33, within 60 days of the date the waste was accepted by the initial transporter. The exception report must be post-marked on or before the 46th day following the date the waste was accepted by the initial transporter, or for loads consolidated by transporters or collection facilities, on or before the 61st day, and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and
2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

(c) A copy of the generator exception report shall be kept by the generator for a period of a least three years from the date the exception report was submitted unless the Department specifically requires an additional retention period.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted reference to collection facilities; in (b), inserted provisions relating to consolidated tracking forms and consolidated loads; and in (c), amended the starting date for measuring required record retention period.

#### 7:26-3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

#### 7:26-3A.24 Generators of regulated medical waste who incinerate regulated medical waste on-site

(a) The requirements of N.J.A.C. 7:26-3A.25 and 3A.26 shall apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(b) Generators of regulated medical waste that incinerate such waste on-site and that accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26-3A.39 through 3A.43.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26-2, 2B, 4 and 16 unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26-3A.38.

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

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

In (b), amended N.J.A.C. references.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), amended N.J.A.C. reference.

#### 7:26-3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;
2. The length of the incineration cycle;
3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;
4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and
5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;
2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;
3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and

4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall initiate the generator on-site incinerator operating log required by (a) above as of June 22, 1989 and shall retain operating log for three years, unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26-3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

#### 7:26-3A.26 Recordkeeping for generators who incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of an Annual Intermediate Handler and Destination Facility Report as required by N.J.A.C. 7:26-3A.44 on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(f) and submit one copy of the Intermediate Handler and Destination and Facility Report to the Department and two copies to:

Chief, Waste Characterization Branch  
Office of Solid Waste (OS-332)  
U.S. Environmental Protection Agency  
401 M. Street, SW  
Washington, DC 20460

(b) The Intermediate Handler and Destination Facility Report submitted by generators with incinerators shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;
2. Facility type (for example, hospital, laboratory);
3. Contact person;
4. Waste feed information;
5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and
6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration

number of the transporter(s), and the name and address of the disposal facility.

(c) Each Intermediate Handler and Destination Facility Report submitted by generators with incinerators shall contain the following certification, signed by the facility owner or his authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Deleted (d) and (e), recodified (f) as (d).  
Amended by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), substituted "an Annual Intermediate Handler and Destination Facility Report as required by N.J.A.C. 7:26-3A.44" for "a generator on site incinerator report", amended N.J.A.C. reference; in (b), substituted "The Intermediate Handler and Destination Facility Report submitted by generators" for "The generator on site incinerator reports"; in (c), substituted "Each Intermediate Handler and Destination Facility Report submitted by generators with incinerators" for "Each generator on site incinerator report"; deleted (d).

#### 7:26-3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26-3A.27 through 3A.37 apply to transporters and collection facilities, including generators that transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26-3A.8;
2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements of N.J.A.C. 7:26-3.1, 3.4, 3.7, and 16; and
3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6;

(d) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from the requirements of (c) above.

(e) Generators, such as a hospitals or doctors, that generates regulated medical waste in the ordinary course of business and transports such regulated medical waste only among facilities that such generators wholly owns and oper-

ates are exempt from the requirements of (c) above, provided:

1. The generator files an affidavit with the Bureau of Registration in the Department verifying its limited transporter status;

2. The generator transports the regulated medical waste to a registered noncommercial treatment and destruction facility or a collection facility, wholly owned and operated by the generator; and

3. Pays the annual generator's noncommercial transporter fee pursuant to N.J.A.C. 7:26-3A.8.

(f) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26-3A.16, 3A.18, 3A.20, 3A.21, 3A.22, 3A.23 and 3A.39, when it consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(g) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26-3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or

2. Remove regulated medical waste from a reusable container; or

3. Modify packaging of regulated medical waste.

(h) Persons transporting regulated medical waste through New Jersey, when roadways and highways in New Jersey constitute a segment of such vehicle's route, are exempt from the requirements of (c) above, provided:

1. Transportation is completed in less than 24 hours, unless mechanical breakdown occurs and repair is necessitated;

2. Regulated medical waste is not collected, treated, transferred, or destroyed or disposed of in New Jersey;

3. Regulated medical waste is packaged, stored, labeled and marked in accordance with any applicable Federal law and regulations and with the requirements at N.J.A.C. 7:26-3A.11, 12, 15, and 16;

4. Containers of regulated medical waste are securely locked at all times during transit through New Jersey; and

5. The owner and/or operator of the vehicle transporting such waste is licensed in accordance with all applicable Federal law and regulations and all applicable law and regulations of the state of licensing of the owner and/or operator.

(i) Regulated medical waste transporters registered with the Department pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A that transport regulated medical waste of New Jersey origin may retain regulated medical waste in a transportation vehicle for up to 14 consecutive calendar days provided the waste does not become putrescent or emit any odors. If the regulated medical waste becomes putrescent, or emits any odors, the transporter shall dispose of the waste immediately.

(j) Regulated medical waste shall not be removed from or be transferred between vehicles by transporters or other persons unless the site of transfer is authorized as a solid waste transfer station for regulated medical waste pursuant to this chapter, or is registered and operating as a regulated medical waste collection facility pursuant to N.J.A.C. 7:26-3A.39.

(k) Regulated medical waste transported in New Jersey shall be transported in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted reference to collection facilities; deleted (c)4, requiring EPA notification; inserted new (e); recodified former (e) and (f) as (f) and (g); in (f), amended N.J.A.C. references; and added (h) through (j).

Amended by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (k).

#### **7:26-3A.28 Transporter acceptance of regulated medical waste**

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container:

1. Is labeled and marked in accordance with N.J.A.C. 7:26-3A.14 and 3A.15; and

2. Appears to be in good condition and shows no signs of leakage or other visible packaging deficiencies.

(b) Transporters shall accept a shipment of regulated medical waste only from a registered regulated medical waste generator and all shipments shall be accompanied by a properly completed tracking form as required by N.J.A.C. 7:26-3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;

2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

(d) Before accepting regulated medical waste for transport to a facility outside New Jersey, a transporter shall obtain certification from the out-of-state facility that such a facility is authorized or permitted to accept such waste by the receiving state and shall submit the certification to the Bureau of Medical Waste and Technical Assistance in the Department.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Added (a)1 and (a)2; substantially amended (b); and added (d).

#### 7:26-3A.29 (Reserved)

Repealed by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Section was "Transporter EPA notification".

#### 7:26-3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26-3, transporters shall use vehicles to transport regulated medical waste in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented and that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;
2. The transporter shall ensure that the waste does not become putrescent in the vehicle through lengthy storage and is not subject to mechanical stress or compaction during loading and unloading or during transit;
3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and
4. The cargo-carrying body shall be securely locked if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;
2. The transporter's NJDEP solid waste transporter registration number; and
3. A sign or the following words imprinted:
  - i. MEDICAL WASTE; or
  - ii. INFECTIOUS WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26-3A.27 through 3A.36.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)2; inserted reference to becoming putrescent; and in (b)3ii, substituted "Infectious Waste" for "Regulated Medical Waste".

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote the introductory paragraph.

#### 7:26-3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for collection, transport or transporting any regulated medical waste, the transporter shall:

1. Certify that the tracking form accurately reflects the number of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and
2. Return a signed "Copy 4—Generator Copy" of the tracking form to the generator before leaving the generator's site.

(c) Each transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Complete Boxes 17 through 22 of the tracking form and obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility or destination facility on the tracking form;
2. Retain "Copy 3—Transporter Copy" of the signed tracking form in accordance with N.J.A.C. 7:26-3A.34; and

3. Give the remaining copies of the tracking form to the second transporter, intermediate handler, or destination facility.

4. Third and/or subsequent transporters shall enter information required of transporter 2 in Boxes 17 through 21 in Box 14b.

5. Photocopies of the signed tracking form shall be retained by the second and/or any subsequent transporter(s).

(e) Any transporter that transports regulated medical waste across an international border, or that delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Obtain the signature of the accepting foreign transporter or destination facility; or

2. Verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction or destination facility by writing a statement to that effect in Box 14, certifying that the entire shipment (as specified in Boxes 11, 12 and 13 of the tracking form) has been delivered to the next (foreign) party, including the accepting party's name, company name, and mailing address, and signing directly below that certification statement; and

3. Retain "Copy 3—Transporter Copy" of the signed tracking form for that transporter's records; and

4. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26-3A.45 apply to rail transporters in lieu of the requirement of (b), (c) and (d) above.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (b)2, amended form reference; in (d)1, inserted text "Complete Boxes... form and"; in (d)2, amended form reference; added (d)4 and (d)5; rewrote (e)1; inserted new (e)2; and recodified (e)2 and (e)3 as (e)3 and (e)4; in (e)3 and (f), amended form references.

#### 7:26-3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) and (c) below, the transporter shall deliver the entire quantity of regulated medical waste that the transporter has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or

2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

(c) Notwithstanding (b) above, a transporter may deliver all or a portion of the regulated medical waste, in unopened containers, to a destination facility other than the destination facility designated on the generator's tracking form, if the generator in writing consents to the use of such specific alternative destination facility prior to the transfer of regulated medical waste from the generator to the transporter. The transporter shall enter the required information in Box 14 of the tracking form and shall comply with all other tracking form requirements of N.J.A.C. 7:26-3A.31.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), added reference to (c); and added (c).

#### 7:26-3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter that chooses to consolidate to a single tracking form shipments of regulated medical waste shall:

1. Enter the new consolidation tracking form number in Box 21 on the original generator's tracking form;

2. Enter the consolidating transporter's identification data as the generator of the consolidation tracking form in Boxes 1 through 4 of the consolidation tracking form;

3. Complete Boxes 5 through 14 of the consolidation tracking form.

i. Enter the tracking form number of the original generator's tracking form in Box 14 of the consolidation tracking form. If more than 20 tracking forms are being consolidated, reference shall be made in Box 14 to the consolidation log pursuant to (b) below and enter the total number of tracking forms being consolidated.

4. Sign Box 15 of the consolidation tracking form; and

5. Comply with N.J.A.C. 7:26-3A.31 through 3A.33, as applicable, to complete the remainder of the consolidation tracking form.

(b) When the transporter receives the signed tracking form that the transporter initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

**7:26-3A.44 Additional reporting for collection facilities, intermediate handlers and destination facilities**

(a) Beginning July 30, 2002, all regulated medical waste commercial collection facilities, intermediate handlers and destination facilities are required to submit an annual medical waste collection facility, intermediate handler and destination facility report to the Department, except that non-commercial collection facilities are not required to comply with (a)1 and 2 below, covering the period from July 1 through June 30 of each calendar year and shall be submitted by July 30 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(f), which shall include, but not be limited, to the following information:

1. A description of the sources, the types and amounts of regulated medical waste and medical waste collected, treated and/or destroyed;
2. The methods used for treatment and/or destruction; and
3. A description of any injuries and illnesses resulting from the maintenance, operation or any other activity related to a regulated medical waste treatment and/or destruction device(s).

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

Recodified from 7:26-3A.42 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a) inserted references to commercial collection facilities, medical waste collection facilities, and noncommercial collection facilities; recodified (a)i and (a)ii as (a)1 and (a)2; and added (a)3. Former section, "Rail shipment tracking form requirements", was recodified to N.J.A.C. 7:26-3A.46.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), substituted "Beginning July 30, 2002, all" for "All", "July 1 through June 30" for "January 1 through December 31" and "July 30" for "February 15" and amended the N.J.A.C. reference in the introductory paragraph.

**7:26-3A.45 Rail transporters**

(a) The requirements in this section and in N.J.A.C. 7:26-3A.46 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

Recodified from 7:26-3A.43 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a), amended N.J.A.C. reference.

**7:26-3A.46 Rail shipment tracking form requirements**

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

- i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;
- ii. Return a signed copy of the tracking form to the non-rail transporter;
- iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

Recodified from 7:26-3A.44 by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

**7:26-3A.47 Alternative or innovative technology authorization**

(a) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste, and any modification thereof, shall be authorized by the Department and DHSS prior to any marketing, sale or use in New Jersey, in accordance with the following:

1. Persons seeking to market, sell or use an alternative or innovative technology shall submit an application to the Bureau of Medical Waste and Technical Assistance in the Department for authorization and pay the alternative technology review fee in accordance with N.J.A.C. 7:26-3A.8. The application shall be on forms provided by the Department and shall include the following:

- i. A description of the proposed method of operation;
- ii. Actual performance data;
- iii. Vendor and independently verified treatment efficacy data;
- iv. Information on parametric monitoring and controls;
- v. Limits on waste acceptance;
- vi. Information on residuals produced;
- vii. Potential environmental impacts, including emissions and noise impacts;
- viii. Occupational exposures;
- ix. Safety procedures; and
- x. Installation and operating costs, including data on energy efficiency.

2. The DHSS may require additional information concerning the ability of the technology to effectively treat regulated medical waste.

3. The information provided in the application and all other information of any nature provided to or obtained by the Department and DHSS in their administration of this section, shall be available to the public for review, unless a specific claim of confidentiality is submitted pursuant to in N.J.A.C. 7:26-17.1.

4. The Department and DHSS may use the information and recommendations of the State and Territorial Association on Alternative Treatment Technologies, and other sources as needed, in evaluating regulated medical waste alternative or innovative technologies.

5. An alternative or innovative technology authorization to operate shall specify general operating conditions and other applicable requirements, such as, but not limited to, requirements for general operation; maintenance and housekeeping; injury reporting; emergency management and reporting; media; fugitive emissions and equipment performance monitoring and control; equipment operation; design; pollution control; data reporting; a DHSS protocol to monitor treatment efficacy or other conditions of operation or performance; periodic technology evaluation progress reports as required by the Department and DHSS and other reports as needed; financial assurance; and operation termination and remedial action; and other applicable requirements as shall be determined by the Department and DHSS on a case-by-case basis. At a minimum, authorization shall include a DHSS protocol to monitor treatment efficacy.

6. An alternative or innovative technology authorization shall be issued only for the specific technology applied for. Any modifications to the technology shall be submitted to the Department and DHSS for review and approval pursuant to (a)1 through 5 above before introduction and use in New Jersey.

(b) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste authorized pursuant to (a) above:

1. May be marketed or sold for use in New Jersey;
2. Shall be authorized on a case-by-case basis at each facility intending to operate the alternative or innovative technology; and
3. Shall be installed and operated in compliance with all applicable Federal, State and local statutes and regulations.

(c) For the purposes of expediting development, demonstration, evaluation or implementation of alternative or innovative technologies and for the purpose of obtaining operational data and information on which the application for authorization to operate can be reviewed pursuant to (a) above, the Department may, in consultation with the DHSS, exempt any regulated medical waste alternative or innovative technology research, development or demonstration project from applicable waste management regulations in accordance with the procedures at N.J.A.C. 7:26-1.7(f).

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

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a) and (c), substituted "DHSS" for "DOH" throughout.

**7:26-3A.48 Requirements for generators using out-of-State facilities disposing of regulated medical waste from New Jersey**

(a) A generator using an out-of-State intermediate handler, destination facility, transfer facility, or other medical waste disposal facility operating for any purpose that uses the U.S. Postal Service or other parcel delivery service in New Jersey and uses the U.S. Postal Service or other authorized mail or parcel delivery service to transport regulated medical waste from New Jersey to the out-of-State facility, shall request a certification from the out-of-State facility, which shall include copies of any state and local authorizations and/or permits. Copies of this certification shall be sent by the generator to the Bureau of Medical Waste and Technical Assistance. This information shall be provided by the generator prior to sending any RMW out-of-State for disposal,

(b) A generator using the out-of-State facility described in (a) above shall also submit a certification of any and all changes to the out-of-State facilities authorizations or permits within 30 days of such changes.

(c) A generator of regulated medical waste in this State shall not send regulated medical waste by the U.S. Parcel Service or other parcel delivery service to an out-of-State facility that has not submitted a certification to the Department in accordance with this section.

New Rule, R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).  
Administrative change.  
See: 30 N.J.R. 3948(a).

**7:26-3A.49 Duration of the letter of authorization; letter of authorization renewal requirements; continuation of an expiring letter of authorization and transfer of an existing letter of authorization for commercial collection facilities**

(a) A letter of authorization issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years except as provided in (c) and (d) below. A letter of authorization may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the applicable District Solid Waste Management Plan and provided that the waste processing rate, as specified in the letter of authorization is not exceeded.

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

2. Nothing in this section shall be construed to allow the bearer of a letter of authorization to exceed the maximum waste processing rate of the facility as set forth in the letter of authorization for the facility at any time during the term of the letter of authorization. Any expansion, extension, enlargement or other increase beyond the letter of authorization waste processing rate shall be

considered a new facility and shall require submittal of an application to the Department for approval of a new letter of authorization.

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

(b) Commercial collection facility letter of authorization renewal submission requirements and procedures shall be as follows:

1. The bearer of a letter of authorization of an authorized commercial collection facility shall apply for a letter of authorization renewal at least 90 days prior to the expiration date of the existing letter of authorization provided the facility is included in the applicable District Solid Waste Management Plan.

2. As an application to renew the letter of authorization for a commercial collection facility, the bearer of the letter of authorization for the facility, or the owner or operator of the facility shall submit all fees required by N.J.A.C. 7:26-3A.8(d)2, a letter requesting renewal of the letter of authorization for the facility and the following additional documents, if necessary to update the facility's operations:

i. An updated registration statement on forms provided by the Department;

ii. An updated engineering design for the facility;

iii. An updated Operations and Maintenance Manual for the facility; and

iv. An amendment to the disclosure statement as required pursuant to N.J.A.C. 7:26-16.6.

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

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

(c) The conditions of an expired letter of authorization are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, until the effective date of a new letter of authorization if:

1. The bearer of the letter of authorization has submitted a timely and complete application for a renewal pursuant to (b) above; and

2. The Department, through no fault of the bearer of the letter of authorization, does not issue a new letter of authorization with an effective date on or before the expiration date of the previous letter of authorization, due to time or resource constraints.

(d) Letters of authorization continued under this section remain fully effective and enforceable. If the bearer of a letter of authorization is not in compliance with any one of the conditions of the expiring or expired letter of authorization during the continuance, the Department may do any or all of the following:

1. Initiate enforcement action based upon the letter of authorization which has been continued;
2. Issue a notice of intent to deny the new letter of authorization under N.J.A.C. 7:26-2.4. If the letter of authorization is denied, the owner or operator shall immediately cease activities authorized by the continued letter of authorization or be subject to enforcement action for operating a commercial collection facility without an approved letter of authorization;
3. Issue a new letter of authorization under N.J.A.C. 7:26-2.4 with appropriate conditions; or
4. Take such other actions as are authorized by these regulations or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(e) A bearer of a letter of authorization shall not transfer the letter of authorization directly to a new owner or operator without the Department's approval.

1. Any transfer of a letter of authorization shall be pre-approved by the Department and a written request for permission to allow such transfer shall be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of the facility. The request for approval shall include the following:
  - i. A registration statement completed by the prospective new bearer of the letter of authorization on forms provided by the Department;
  - ii. A disclosure statement as required by N.J.A.C. 7:26-16.4 completed by the proposed transferee; and
  - iii. A written agreement between the bearer of the existing letter of authorization and the proposed bearer of the new letter of authorization containing a specific future date for transfer of ownership or operations.
2. A new owner or operator may commence operations at the facility only after the existing letter of authorization has been revoked and a new letter of authorization is issued pursuant to N.J.A.C. 7:26-3A.39.
3. The bearer of a letter of authorization of record remains liable for ensuring compliance with all conditions of the letter of authorization unless and until the existing letter of authorization is revoked and a new letter of authorization is issued in the name of the new owner or operator.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the bearer of the letter of authorization to be transferred from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision which may apply.

New Rule, R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

## SUBCHAPTER 4. FEES FOR SOLID WASTE

### 7:26-4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, requiring licensing and registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with a motor vehicles agency as having a maximum gross vehicle weight of 9,000 pounds for a single vehicle or 16,000 pounds combined maximum gross vehicle weight for a vehicle pulling a trailer, and claiming said exemption under N.J.A.C. 7:26-3.3, need not pay any solid waste fee to the Department. Any person transporting solid waste who does not meet the criteria for exemption under this subsection shall be subject to the fee requirements applicable to transporters of solid waste set forth at N.J.A.C. 7:26-4.4.

(c) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.1974 d.234, effective August 21, 1974.

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

Amended by R.1983 d.269, effective July 5, 1983.

See: 15 N.J.R. 662(a), 15 N.J.R. 1095(b).

Amended by R.1989 d.54, effective January 17, 1989.

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

Added text "of solid waste, excluding hazardous waste".

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.

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

Amended by R.1995 d.205, effective April 17, 1995.

See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

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

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

In (a), inserted reference to thermal destruction facilities and composting facilities; and in (b), added last sentence.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), substantially amended first sentence.

(8) Secretarial, office and general administrative support; and

(9) Costs based on (b)1ii(1) through (5) above.

2. Fees for the Program are as follows:

i. After review by the Department of its Program, and pursuant to a resolution or ordinance adopted by the county governing body, any county department may charge and collect fees from the owner or operator of any sanitary landfill facility within its jurisdiction, as follows:

(1) At the maximum rate of \$0.01 per cubic yard of solid waste accepted for disposal at a facility;

(2) In the event that any solid waste is measured, upon acceptance for disposal, by other than cubic yards, the fee shall be assessed on the equivalents utilized pursuant to the Sanitary Landfill Closure and Contingency Fund Act, P.L. 1981, c.306, and the Recycling Act, P.L. 1981, c.278;

(3) Fees shall be assessed and collected by a county department each month in the manner provided for in (b)2 of this section;

(4) Except as otherwise provided for herein, the owner or operator of every sanitary landfill facility subject to a county department program shall submit to the appropriate county department, on or before the 20th of each month, a fee equal to \$0.01 per cubic yard of solid waste accepted for disposal during the preceding month, together with a completed copy of Department form No. SFA-001 which is submitted for that month to the Department in accordance with the escrow account reporting requirements pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, P.L. 1981, c.306.

ii. Subject to the approval of the Department, a higher fee may be assessed in the event that the county department documents the need for a greater amount in a succeeding year's program.

3. Utilization of fees: Fees provided for in this section shall be utilized exclusively to fund county solid waste monitoring and enforcement activities as identified in the Program.

R.1974, d.234, effective August 21, 1974.

See: 6 N.J.R. 343(c): The rule originally at this cite was entitled "Exemptions".

Deleted and Reserved by R.1975 d.110, effective April 29, 1975.

See: 7 N.J.R. 101(a), 7 N.J.R. 259(a).

R.1983 d.50, effective March 7, 1983.

See: 14 N.J.R. 1328(a), 15 N.J.R. 330(d).

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

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

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

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

In (a)4, deleted "department".

**7:26-4.6 (Reserved)**

New Rule, R.1992 d.311, effective August 3, 1992.

See: 24 N.J.R. 3690(a), 24 N.J.R. 2726(a).

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

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

In (a), substituted "may adjust" for "shall adjust"; and in (b), report was required annually; in (b)2i, inserted reference to direct support and overhead costs.

Repealed by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Section was "Adjustment of fees".

**7:26-4.7 Fee schedule for intermodal container facilities**

(a) Each person authorized by the Department pursuant to N.J.A.C. 7:26-3.6 to operate an intermodal container facility shall:

1. Pay an application fee of \$11,206. Such fee shall be submitted with the application required pursuant to N.J.A.C. 7:26-3.6(b);

2. Pay an annual fee of \$216.00 on January 1 of each year for the costs of reviewing and maintaining the quarterly reports submitted pursuant to N.J.A.C. 7:26-3.6(e);

3. Pay the compliance monitoring fee set forth at N.J.A.C. 7:26-4.3(b);

4. Pay the costs of any other inspections or activities conducted by the Department as related to the authorization, inspection, and revocation of authorization to operate an intermodal container facility. Such costs shall be in accordance with the fee schedule set forth at N.J.A.C. 7:26-4.3; and

5. Pay a fee of \$2,586 for an authorization modification issued pursuant to N.J.A.C. 7:26-3.6(m), which shall be paid on issuance of the authorization modification.

As amended, R.1982 d.289, effective September 7, 1982 (operative September 15, 1982).

See: 14 N.J.R. 368(a), 14 N.J.R. 979(b).

(b)1 and 2 added.

As amended, R.1980 d.250, effective June 9, 1980.

See: 12 N.J.R. 70(b), 12 N.J.R. 391(d).

As amended, R.1981 d.49, effective February 6, 1981.

See: 13 N.J.R. 129(a).

(a): Amend "April 1 through March 31" to "May 1 through April 30".

(b): Amend "April 1 through March 31" to "May 1 through April 30".

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

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

(b): "October 1 through September 30" was "May 1 through April 30."

Amended by R.1989 d.54, effective January 17, 1989.

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

Substantially amended.

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

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

The rule at this cite was entitled "Fee schedule for transporting".

New Rule, R.1996 d.169, effective April 1, 1996.

See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

Amended by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Increased fees throughout.

**7:26-4.8 Confidentiality claims**

Any person submitting information to the Department and asserting a confidentiality claim in accordance with the procedures set forth in N.J.A.C. 7:26-17 or 7:26-16.4 shall pay a fee of \$350.

As amended, R.1984, d.279, effective July 2, 1984.  
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

In (a) and (b), "Board of Public Utilities" was "Board of Public Utility Commissioners", reference to form N.J.B.S.W.M. 41 deleted. Repealed by R.1989 d.216, effective April 17, 1989.  
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

The rule formerly at this cite was entitled "Exemption from fee payment".

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

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

**SUBCHAPTER 4A. (RESERVED)****SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS****7:26-5.1 Scope and purpose**

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., including the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, amending and supplementing the Solid Waste Management Act (hereinafter "the Act"), including violation of any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act. This subchapter shall also govern the procedures for requesting adjudicatory hearings on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$50,000 for each violation of each provision of the Act, or any rule promulgated, any administration order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act.

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

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

(e) 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, the Department may revoke or suspend a permit, license or other operating authority, without regard to whether or not a civil administrative penalty has been or will be assessed pursuant to this subchapter.

(f) For purposes of this subchapter, any person who undertakes or performs an obligation imposed upon another person pursuant to the Act, or any rules promulgated, any administrative, order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act, may at the discretion of the Department be subject to a civil administrative penalty pursuant to this subchapter in the same manner and in the same amount as such other person.

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

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

Deleted references to Part A permit application.

**Case Notes**

In criminal prosecution the State was required to offer evidence establishing that land was acquired after the enactment of statute and that the United States had not filed an acceptance of exclusive jurisdiction. *State v. Ingram*, 226 N.J.Super. 680, 545 A.2d 268 (L.1988).

**7:26-5.2 Procedures for assessment and payment of civil administrative penalties**

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

1. Identify the section of the Act, rule, administrative order, permit, license, district solid waste management plan violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative 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. 7:26-5.3.

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

1. If no hearing is requested pursuant to N.J.A.C. 7:26-5.3, the notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of civil administrative penalty assessment;
2. If a hearing is requested pursuant to N.J.A.C. 7:26-5.3 and the Department denies the hearing request, a notice of civil administrative 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. 7:26-5.3 and an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a) and (a)1, deleted references to Part A permit application.

#### Case Notes

Violator's ability to pay penalty under Solid Waste Management Act. *DEPE v. Summco, Inc.*, 94 N.J.A.R.2d (EPE) 252.

Company penalized for odors from plant. Department of Environmental Protection and Energy v. *Westchester Lace, Inc.*, 94 N.J.A.R.2d (EPE) 243.

#### **7:26-5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings**

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, at Office of Legal Affairs, ATTENTION: Ad-

judicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, telephone number of the violator and its authorized representative;
  2. The violator's defenses, to each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment, stated in short and plain terms;
  3. An admission or denial of each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding which the violator denies, the violator shall allege the fact or facts as the violator believes such fact or facts to be;
  4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;
  5. An estimate of the time required for the hearing (in days and/or hours); and
  6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.
- (b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that such a conviction warrants a finding of "unreliability" under N.J.A.C. 7:26-16.8(a) if the date the conviction became final (including the exhaustion of any appeals) is less than ten years preceding the filing of the application or notice of intent to revoke a license.

(c) Notwithstanding (a) and (b) above, the Department may still deny or revoke a license because of a conviction more than ten years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

#### 7:26-16.23 "Independent contractors," or "consultants"

(a) Applicants, permittees and licensees may not avoid the effects of N.J.A.C. 7:26-16.8 and 16.9 by designating an employee as an "independent contractor" or "consultant". The Department will look beyond the form of such contracts, and if it finds that a person designated as an "independent contractor", "consultant" or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant, permittee or licensee, the Department will regard that person as an employee.

(b) The Department may deny or revoke a license if it finds that an applicant, permittee or licensee has entered into an "independent contractor" arrangement, "consultant" agreement or similar arrangement for the purpose of avoiding disqualification under N.J.A.C. 7:26-16.8 or 16.9.

Amended by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), in first sentence inserted ", permittees" after "Applicants", and in second sentence inserted ", permittee" after "applicant"; in (b), inserted ", permittee" after "applicant".

#### 7:26-16.24 (Reserved)

Repealed by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Section was "'Brokerage' by convicted persons".

### SUBCHAPTER 16A. SPECIAL RULES FOR SUBMISSION OF DISCLOSURE STATEMENTS BY EXISTING LICENSEES AND APPLICANTS WHOSE APPLICATIONS WERE PENDING BEFORE THE DEPARTMENT PRIOR TO JULY 2, 1984

#### 7:26-16A.1 Scope and applicability; conflicts

(a) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing permittees or licensees.

(b) Except where the context would require otherwise, the provisions of N.J.A.C. 7:26-16 are applicable to this subchapter.

(c) In case of any conflict between a provision of this subchapter and any other provision of this chapter, the provision of this subchapter shall govern.

(d) The Commissioner or Director may relax the application of any part of this subchapter if necessary to prevent unreasonable delay in the processing of any application that was pending before the Department prior to July 2, 1984.

Amended by R.1987 d.54, effective January 20, 1987.

See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).

Deleted text from (b) "so as to . . . two year period."

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Deleted former (a); recodified former (b) through (e) as new (a) through (d); in new (a), inserted "permittees or" before "licensees".

#### 7:26-16A.2 Schedule for submitting disclosure statements

(a) All persons who had received a license from the Department prior to July 2, 1984 shall submit a disclosure statement to the Department and the Attorney General on or before May 1, 1987. Disclosure statements shall be submitted according to the procedures and requirements set forth in N.J.A.C. 7:26-16.3 and 16.4.

(b) A person shall be deemed to have "received a license" if he had received from the Department final approval to operate a solid or hazardous waste collector-hauler business or treatment, storage or disposal facility, or was actually operating pursuant to any authorization equivalent to an approved registration, such as a temporary operating authorization, judicial order or administrative consent order, or the authorization conferred by "existing facility" status pursuant to N.J.A.C. 7:26-12.3.

(c) The Department may require any applicant, permittee or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

(d) Any permittee or licensee may voluntarily submit a disclosure statement earlier than demanded.

(e) The applicant, permittee or licensee shall have 90 days from the time of receipt of the demand to file a disclosure statement with the Department and the Attorney General. Refusal to file the disclosure statement shall be deemed a refusal to comply under N.J.S.A. 13:1E-128b and N.J.A.C. 7:26-16.7.

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

Amended by R.1987 d.54, effective January 20, 1987.

See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).

Substantially amended.

Amended by R.2002 d.181, effective June 17, 2002.  
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).  
Inserted references to permittee throughout.

**7:26-16A.3 Applications pending on July 2, 1984**

(a) Persons with applications pending before the Department on the effective date of these rules (July 2, 1984) shall submit a disclosure statement to the Department and the Attorney General no later than September 30, 1984.

(b) It is the Department's intention that applicants whose applications were pending before the department prior to the proposal date of subchapter 16 (May 7, 1984) shall have the licensing process delayed as little as possible by reason of the new licensing requirements imposed by L. 1983, c.392. When it finds that it is in the public interest to do so, or to prevent unreasonable economic hardship, the Department may conditionally issue a license to an applicant whose application was pending on May 7, 1984 before it has received a full investigative report from the Attorney General, provided that:

1. The disclosure statement has been filed, and a preliminary review by the Department indicates no reason for disqualification;

2. The Attorney General has conducted a check of applicable criminal history information and reported to the Department that such check indicates no reason for disqualification; and

3. The applicant has signed a statement indicating its understanding that its license may be revoked if the full investigative report or subsequent investigation indicate reasons for disqualification.

(c) Applicants who filed their applications after May 7, 1984 may not be issued licenses until completion of the investigative report. However, the Department will attempt to expedite processing of such applications by requesting the Attorney General to accord highest priority to completing investigative reports on applicants whose applications are pending before the Department prior to July 2, 1984. Also, in appropriate cases, the Department will continue technical review of such applications concurrent with the disclosure statement review and investigative report.

## SUBCHAPTER 17. CONFIDENTIALITY DETERMINATIONS

### 7:26-17.1 Scope

(a) This subchapter sets forth the procedures for making information received by the Department in administering the solid waste program under N.J.A.C. 7:26 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with solid waste regulatory activities under N.J.A.C. 7:26 shall be generally available to the public except as provided otherwise in this subchapter. Any owner or operator of a solid waste facility or any solid waste collector or transporter required to submit any information pursuant to the Act or this chapter, which in the owner's or operator's opinion, constitutes trade secrets or proprietary information may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the fee set forth in N.J.A.C. 7:26-4.7.

### 7:26-17.2 Definitions

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

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:26-17.14 for a class of information.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines, in accordance with the procedures of this subchapter, to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:26-17.3 through 17.5, and such confidentiality claim has not expired by its terms, been waived or withdrawn;
2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;
3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of this subchapter that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been

blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:26-17.8.

### 7:26-17.3 Procedure for making a confidentiality claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:26-17.5) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:26-17.4.

### 7:26-17.4 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under this subchapter. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including, without limitation, the inquiries and notices listed in N.J.A.C. 7:26-17.5(a), be directed to the designee.

### 7:26-17.5 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:26-17.4, including, without limitation, the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:26-17.7(a)1ii;
2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:26-17.10(a)1;
3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:26-17.17(a);
4. Notices of disclosure under N.J.A.C. 7:26-17.18; and
5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:26-17.21.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following:

Division of Solid and Hazardous Waste  
CN 414  
Trenton, New Jersey 08625-0414

### 7:26-17.6 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:26-17.22 through 17.26 to inspect or copy records containing asserted confidential information which is the subject of a confidentiality claim; or
2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:26-17.22 through 17.26.

(b) The Department may, in its discretion, make a confidentiality determination at any time.