

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

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

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

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

2. Container-pickup facilities as herein defined;

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

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

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

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

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

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

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

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

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

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

(b) added.

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

(c) added.

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

(a)6 added.

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

Substantially amended.

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

Substantially amended (a).

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

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

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

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

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

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

Case Notes

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

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

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

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

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

7:26-1.2 Construction and severability

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

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

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

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

Formerly the Department and the Bureau of Solid Waste Management.

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

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

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

7:26-1.3 (Reserved)

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

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

Bureau Chief deleted.

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

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

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

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

Section was "Practice where rules do not govern".

7:26-1.4 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Maintains at least a 60 percent thermal energy recovery efficiency during operation, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

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

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

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

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

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

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

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

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

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

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

"Clay" means a fine grain soil containing sufficient plastic fines (N. 200 sieve), on the order of 20 percent or greater such that the soil acts as a clay and will achieve the required

degree of impermeability. The soil should be classified as a CL, or CH (Unified Soil Classification System), with a liquid limit between 30-60, placed above the A-line on the plasticity chart and a minimum plastic index of 15. The soil should have a cation exchange capacity (CEC) greater than 15 meq/100 grams and be in the neutral pH range.

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

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

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

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

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

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

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

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

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

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

“Containerized solid waste” means solid waste as defined at N.J.A.C. 7:26-2.13 that is completely sealed, locked, or otherwise enclosed in containers of sufficient structural integrity to prevent unauthorized access to the container’s contents, spillage and leakage. Containerized solid waste shall not be enclosed by use of a tarp or other cover that does not form a complete seal around the waste, or be accessed in any way while at the facility, or be allowed to emit any contaminants or odors to the air that may reasonably result in citizen complaints, or be in violation of N.J.A.C. 7:27-5.1.

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

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

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

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

“Controlling slopes” means slopes on those areas of the liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

“Convenience center” means a site where one or more containers are located for temporary storage of solid waste and/or recyclable materials brought to the site by persons transporting only their own household solid waste and/or recyclable materials in passenger automobiles bearing general registration plates.

“Co-product” means a material that is not a primary product, but is an incidentally produced product, of such quality that its composition is consistently equivalent to, or exceeds the standards for, a manufactured product of the same name. A co-product is used as a commodity in trade by the general public in the same form as it is produced, in lieu of an intentionally manufactured product.

“Cover material” means soil, earth or other material approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14 which is used to cover compacted solid waste in a sanitary landfill for the purpose of rodent and vector control, to minimize moisture entering the fill, to provide a fire break, and in the case of final cover, to grow vegetation for erosion control. The depth or thickness of cover material to be measured after compaction with at least one pass of a bulldozer or other suitable equipment having a gross weight in excess of 10,000 pounds.

“Cutting” means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

“Daily cover” means cover material that is a minimum of six inches of depth or as approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14.

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

“Dike” means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

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

“Discard or discarded” means disposal; burning or incinerating; use or reuse; and/or reclaim or reclamation, all as defined in this section.

“Discharge” or “hazardous waste discharge” means the unintentional or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land, water or air.

“Disposal” means the storage, treatment, utilization, processing or final disposition of solid waste, specifically including the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Disposal facility” means a solid waste facility used for the disposal of solid waste.

“Division” means the Division of Solid and Hazardous Waste in the Department.

“Domestic sewage” means waste or wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

“Double liner” means a two liner system separated by a leak detection/leachate removal system.

“Dump” means a land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors and scavengers.

“Empty tank” means a tank that meets the following criteria:

1. All wastes have been removed that can be removed by direct pumping or drainage; and
2. The quantity of residue remaining in the tank after waste removal is no more than one percent of the volume of the tank.

“Engineering design” means reports and drawing, including a narrative operating description, prepared by a New Jersey licensed professional engineer to describe a solid waste facility and its proposed operation.

“Environmental and health impact statement” or “EHIS” means a statement as to the realistically identifiable, probable impact of the proposed solid waste facility upon the geology, soils, hydrology, air quality, ecology, land use, socioeconomic, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at the project site and in the surrounding region; a listing of alternatives to all or any part of the project with reasons for their acceptability or nonacceptability; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

“Environmental assessment” means an evaluation of the positive and negative changes to the environmental conditions at and around a particular site which may result from the implementation of a proposed action. Included is a determination of the magnitude of the potential changes and, where applicable, the identification of recommended mitigative measures to be incorporated.

“Environmental inventory” means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

“Environmentally unsound” means any persistent or continuous condition resulting from the methods of operation or design of the solid waste facility which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated Federal, State, county or municipal standard.

“Environmental upgrading” means the addition or modification of the construction, operation or maintenance of a solid waste facility to abate or prevent the occurrence of an environmentally unsound condition.

“EPA” or “USEPA” means the United States Environmental Protection Agency.

“Existing solid waste facility” means that portion of an active solid waste facility which, as of the effective date of these regulations, possesses a valid approved registration from the Department.

“Expansion” means the process of increasing the design capacity, aerial or structural dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

“Final cover” means cover material that is a minimum of 24 inches in depth.

“Food waste” means food processing by-products (food processing vegetative wastes and/or food processing residuals generated from food processing and packaging operations or similar industries that process food products), vegetative waste (produce trimmings and over-ripe produce generated by supermarkets, produce brokers and produce distributors), off-spec food products, food product overruns, and similar food waste materials.

“Foundation” means the supporting soil layers beneath a liner or cutoff wall.

“Freeboard” means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

“Free liquids” means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

“Free moisture” means liquid that drains freely by gravity from solid materials.

“Friable asbestos material” means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. part 763 section 1, polarized light microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content shall be verified by point counting using PLM.

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

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

“Ground water” means that water below ground, the static pressure of which is equal to or greater than prevailing

atmospheric pressure; that water present in the saturated zone of an aquifer.

“Hydraulic asphalt concrete” means a controlled mixture of asphalt cement and high quality mineral aggregate compacted into a uniform dense mass.

“Impermeable liner” means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of 1×10^{-7} cm/sec at the maximum anticipated hydrostatic pressure.

“Incinerator” means a thermal device in which solid waste is burned for the purposes of volume reduction (an incinerator used to obtain energy shall be classified as a resource recovery facility).

“Incompatible waste” means a solid waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or
2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

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

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

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

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

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

5. Other factors as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Nonfriable asbestos-containing material” means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. part 763 section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

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

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

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

“Pathological waste”: See “Infectious waste.”

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

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

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

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

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

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

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

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

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

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

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

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

“Registration”: See “Approved registration.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Solid waste” see N.J.A.C. 7:26-1.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Surface water” means water at or above the land’s surface which is neither ground water nor contained within the unsaturated zone, including, but not limited to, the ocean and its tributaries, all springs, streams, rivers, lakes, ponds, wetlands, and artificial waterbodies.

“Tank” means a stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials which provide structural support.

“Thermal destruction facility” means a nonhazardous solid waste facility which utilizes a thermal device to either

burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere. Energy recovery systems may be utilized in conjunction with the thermal device.

“Toe” means the bottom of the working face or side slope of a land disposal site where deposited solid waste is in contact with virgin ground or previous lift.

“Transfer station” means a solid waste facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle, including a rail car, for transportation to an off-site solid waste facility, except that a “transfer station” shall not include any solid waste facility at which solid waste is received for onsite transfer and processing or disposal utilizing facility-owned or operated equipment and vehicles operated therefor.

“Transit country” means any foreign country, other than a receiving country, through which a hazardous waste is transported.

“Transportation” or “transporting” means the act of collecting and/or moving solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

“Transporter” means a person engaged in the act of collecting and/or moving of solid waste off-site by road, rail, water, or air.

“Treat” or “treatment” means any method, technique, or process, including neutralization or other pH adjustment, designed to change the physical, chemical, or biological character or composition of a material so as to:

1. Neutralize or otherwise change the pH of such material;
2. Recycle energy or material resources from the material;
3. Render such material non-hazardous, or less hazardous;
4. Render the material safer to transport, store, or dispose of; or
5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

“Trust fund” means a fund established by an owner or operator and held by a financial institution (licensed by the State of New Jersey) as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in this chapter for the benefit of the New Jersey Department of Environmental Protection.

“Used oil” means any oil that has been refined from crude oil, or any synthetic oil that has been used, and as a result of such use, storage or handling is contaminated by physical or chemical impurities.

“Vector” means an organism, including insects, other arthropods or rodents, that is capable of transmitting pathogen from one organism to another.

“Vicinity” means the area encompassing one half mile from the perimeter of a nonhazardous solid waste facility.

“Visible emissions” means any emissions that are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

“Working face” means that portion of a sanitary landfill site where solid waste is discharged by a solid waste vehicle and is spread and compacted prior to placement of cover material.

As amended, R.1978 d.72, effective February 27, 1978.

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

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

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

Substantially amended.

As amended, R.1981 d.370, effective October 8, 1981.

See: 12 N.J.R. 5111(a), 13 N.J.R. 706(b).

Substantially amended.

As amended, R.1982 d.324, effective October 4, 1982.

See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).

“Authorized facility” and “Incinerator” amended; “Hazardous waste incinerator” and “New hazardous waste incinerator” defined.

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

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

“Container”, “Disposal”, “Generator”, “Hazardous waste”, “Hazardous waste landfill”, “Leachate”, “Opening burning”, and “Personnel”, amended.

As amended, R.1983 d.25, effective February 7, 1983.

See: 15 N.J.R. 146(a), 15 N.J.R. 333(a).

“Authorized facility”: last sentence added.

As amended, R.1983 d.192, effective June 6, 1983.

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

“Sanitary landfill” revised.

As amended, R.1983 d.350, effective September 6, 1983.

See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).

“Authorized facility” revised; “Gas cylinder facility” added.

As amended, R.1983 d.570, effective December 5, 1983.

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

“Chemical waste” deleted; “Infectious waste” revised.

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

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

“Permit” and “Publicly-owned treatment works” added.

As amended, R.1983 d.623, effective January 17, 1984.

See: 14 N.J.R. 1435(a), 16 N.J.R. 132(a).

“Recycling” and “reclamation” defined; “reclamation” added “Recycling facility”.

As amended, R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).

“Waste pile” added to “Hazardous waste landfill”.

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

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

Revised to reflect Division of Waste Management jurisdiction.

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

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

Added definition “Friable asbestos material”; deleted “Non-friable asbestos-containing waste”.

Amended by R.1985, d.620, effective June 17, 1985.

See: 17 N.J.R. 1501(a), 17 N.J.R. 2885(a).

Added definition “empty tank.”

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

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

Added definition "tolling agreement".
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).

Added definitions "Use or reuse", "waste reuse facility" and "waste reuse facility identification number".
Amended by R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Substantially amended.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).

The text deleted from "waste oil" definition was "after sale to a customer".
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).

Changed CFR parts in definition "Authorized facility" from 122 to 270 and 123 to 271.
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988.)
See: 20 N.J.R. 2817(a).

Amended definition "leaf composting facility" by deleting text "or in combination ..." and adding "and shall also ..."; added "vegetative waste composting facility".
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 20 N.J.R. 190(a).

Substantially amended.
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of emergency amendment R.1988 d.547, readopted without change.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).

Added definitions "active life", "final closure", "hazardous waste management unit" and "partial closure".
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Deleted definitions for "collection-hauler" and "collection-vehicle"; amended definitions "collection" by adding "or collecting", "transfer station" by referring to solid waste vehicle and "working face" by changing land disposal to sanitary landfill site; and added new definitions for "solid waste cab", "solid waste container", "solid waste single-unit vehicle", "solid waste trailer", "solid waste vehicle", "transportation" or "transporting" and "transporter".
Amended by R.1990 d.228, effective May 7, 1990.
See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).

Added "Treatability study".
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).

Added "PCB hazardous waste" and "Polychlorinated biphenyls".
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).

Definition of hazardous waste hauler changed to hazardous waste transporter, definitions added for consignee, EPA, EPA acknowledgement of consent, primary exporter, receiving country and transit country.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).

Corrected formula in "impermeable liner".
Amended by R.1993 d.27, effective January 4, 1993.
See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

Defined "scrap metal shredding facility".
Emergency Amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, to expire March 26, 1996).
See: 28 N.J.R. 1305(a).

Amended by R.1996 d.169, effective April 1, 1996.
See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

Added "containerized solid waste" and "intermodal container facility", and amended "solid waste facility".
Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.
See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

Deleted "demolition waste" and rewrote "construction waste" as "construction and demolition waste".
Amended by R.1996 d.500, effective October 21, 1996.
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

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

Added and amended numerous definitions; and deleted definitions for "administration", "asbestos containing waste", "bureau", "bureau chief", "commingled recyclable material", "degree of uncertainty of strength measurement-high", "degree of uncertainty of strength measurement-low", "leaf composting facility", "polychlorinated biphenyls", "regional", "scavenging", "set back", "vegetative waste composting facility", and "waste oil".
Administrative change.
See: 30 N.J.R. 3948(a).

Law Review and Journal Commentaries

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

Case Notes

Landfill was "sanitary landfill" within meaning of Sanitary Landfill Closure and Contingency Fund Act; facilities "approved for disposal of hazardous waste". State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J. 1994, 866 F.Supp. 826.

Landfill was "sanitary landfill facility" within meaning of New Jersey's Sanitary Landfill Facility Closure and Contingency Fund Act; disclosure in purchase agreement. National-Standard Co. v. Clifton Ave. Corp., D.N.J.1991, 775 F.Supp. 151.

Unlicensed facility was properly enjoined from operating without a permit in violation of Solid Waste Management Act; penalty. State, Dept. of Environmental Protection v. Interstate Recycling, Inc., 267 N.J.Super. 574, 632 A.2d 526 (A.D.1993).

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

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

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

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

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

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

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

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

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

Former N.J.A.C. 7:1-4.1 definition of hazardous waste falls into the category of nonmerchandise material not subject to Commerce Clause restrictions on regulation. *Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority*, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974), reversed 68 N.J. 451, 348 A.2d 505, (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

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

7:26-1.5 (Reserved)

As amended, R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

"Repealed or regulations" not readopted.

Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).

Revised "Existing hazardous waste facility".

Case Notes

Former regulation banning disposal of out-of-state wastes in Hackensack Meadowlands sanitary landfills held unconstitutional as an undue burden on interstate commerce. *Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority*, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974), reversed 68 N.J. 451, 348 A.2d 505, (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

7:26-1.6 Definition of solid waste

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

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

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

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

Case Notes

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

7:26-1.7 Exemption from SWF permitting

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

3. If the plant operator or emergency coordinator determines that the facility has had an uncontrolled discharge, a discharge above standard levels permitted by the Department, or a fire or explosion, he or she shall:

i. Immediately notify appropriate local authorities if an assessment indicates that evacuation of local areas may be advisable;

ii. Immediately notify the Department at (609) 292-7172; and

iii. When notifying the Department, report the type of substance and the estimated quantity discharged, if known, the location of the discharge, actions the person reporting the discharge is currently taking or proposing to take in order to mitigate and discharge and any other information concerning the incident which the Department may request at the time of notification.

4. The plant operator shall take all reasonable measures to ensure that fires, explosions and discharges do not recur or spread to other areas of the facility. These measures shall include, where applicable, the cessation of process operations and the collection and containment of released waste;

5. Immediately after an emergency, the plant operator or emergency coordinator shall provide for treating, storing or disposing of waste, contaminated soil or water or any other material contaminated as a result of the discharge, fire or explosion;

6. The plant operator or emergency coordinator shall insure that no waste is processed until cleanup procedures are completed and all emergency equipment listed in the contingency plan is again fit for its intended use;

7. The plant operator or emergency coordinator shall notify the Department and appropriate local authorities when operations in the affected areas of the facility have returned to normal; and

8. Within 15 days after the incident, the plant operator or emergency coordinator shall submit a written report on the incident to the Department. The report shall include, but not be limited to:

i. The name, address and telephone number of the facility;

ii. The date, time and description of the incident;

iii. The extent of injuries, if applicable, with names and responsibilities indicated;

iv. An assessment of actual damage to the environment, if applicable;

v. An assessment of the scope and magnitude of the incident;

vi. A description of the immediate actions that have been initiated to clean up the affected area and prevent a recurrence of a similar incident; and

vii. An implementation schedule for undertaking measures to effect cleanup and avoid recurrence of the incident, if applicable.

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

500 tons-per-day capacity replaced by 250 tons-per-day minimum that allows an inspector to be stationed at a thermal destruction facility.
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 (b), substituted "facilities operations" for the "the testing phase"; rewrote (c), (j), and (n); in (d)2, inserted reference to electronic storage system; in (e) and (t)4, amended reference from facilities operating at a specified capacity to district facilities generally; in (m), inserted reference to owner and amended analysis requirements; substantially amended (p); inserted new (r)2; recodified existing (r)2 through (r)5 as (r)3 through (r)6; and in (r)4, added reference to minimum detection levels.

7:26-2B.9 (Reserved)

New Rule, R.1993 d.508, effective October 18, 1993.

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

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26-6".

7:26-2B.10 (Reserved)

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

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

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6".

APPENDIX

COMPOST QUALITY MONITORING PARAMETERS

Parameter	Unit
Stability—respirometry	mg O ₂ /kg VS/hr
O ₂ consumed	
Soluble salts-electrical	mmhos/cm
Fecal coliform	MPN/g
Salmonella	MPN/4 g
pH	
Regulated parameters:	
Arsenic (As)	mg/kg dry wt.
Cadmium (Cd)	mg/kg dry wt.
Chromium (Cr)	mg/kg dry wt.
Copper (Cu)	mg/kg dry wt.
Lead (Pb)	mg/kg dry wt.
Mercury (Hg)	mg/kg dry wt.
Molybdenum (Mo)	mg/kg dry wt.
Nickel (Ni)	mg/kg dry wt.
Selenium (Se)	mg/kg dry wt.
Zinc (Zn)	mg/kg dry wt.
Man-made Inerts >4 mm, <13 mm	visual
Film plastic >4 mm	cm ² /m ³

<u>Parameter</u>	<u>Unit</u>
Sharps	PRS
Notes:	
1. VS means volatile solids.	
2. MPN means most probable number per gram of total solids in the sewage sludge or compost. MPN is an index of the number of coliform bacteria, reported by the multiple-tube fermentation procedure of the coliform test, that, more probably than any other number, would give the results shown by the laboratory examination; it is not an actual enumeration.	
3. Mmhos is a unit of electrical conductivity, it is the reciprocal of ohm.	
4. Man-made inert material includes glass shards and metal fragments that pose a human and animal safety hazard with unprotected exposure or through direct ingestion.	
5. Film plastic can be a potential hazard to small animals through direct ingestion.	

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

SUBCHAPTER 3. TRANSPORTATION

7:26-3.1 Improper transportation prohibited

(a) The transportation of organic and/or combustible matter, including used oil as defined at N.J.A.C. 7:26A-1.3, or other forms of solid waste on the roadways and highways in this State shall be made only through the use of:

1. Transportation systems established, operated and maintained in accordance with the rules set forth in this subchapter;
2. Other methods of transportation as may be approved by the Department.

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

"Collection" and "haulage" replaced by "transportation" throughout.
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 used oil.

Case Notes

Township ordinances were not preempted, with exception of section of township ordinance permitting township to ban persons deviating from access routes from further access to solid waste facility. *Clyde v. Mansfield Tp.*, 263 N.J.Super. 140, 622 A.2d 270 (A.D.1993).

Claim of broker status; unregistered transporter of solid waste was subject to fine. In the Matter of Penn Foundry, Inc., 94 N.J.A.R.2d (EPE) 36.

7:26-3.2 Registration

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. The registration year, unless otherwise established by the Department, shall run from May 1 through April 30. An approved registration statement shall expire at the end of the registration year unless renewed pursuant to (d) below.

1. No person shall act as a prime contractor or subcontractor of solid waste in this State without first obtaining an approved registration statement from the Department.

i. For the purposes of this subchapter, a "prime contractor" means any person who enters into an oral or written agreement to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle.

ii. For the purposes of this subchapter, a "subcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle pursuant to an oral or written agreement entered into by or on behalf of another person.

2. Any device used for transportation of solid waste shall be registered with the Department as either a solid waste cab, trailer, container, or single-unit vehicle.

3. The registration statement shall be signed by the person engaged in or desiring to engage in the transportation of solid waste, shall be executed on forms prescribed by and furnished by the Department and shall state such information necessary and proper to the enforcement of this subchapter, as the Department may require.

4. A registrant shall not allow, through a subcontract or any other means, any such registered equipment to be used, controlled or possessed by another person, unless such person is an employee of the applicant or registrant.

5. A person who has not obtained an approved registration statement shall not, through a subcontract or any other means, engage or contract to engage in the transportation, storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste cab, vehicle, trailer, container, transport unit, or single-unit vehicle registered to any other person, or through any other means.

6. In addition to obtaining an approved registration statement from the Department, the person engaged in or desiring to engage in the transportation of solid waste shall comply with all of the rules and regulations of the New Jersey Division of Motor Vehicles. No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

(b) After July 2, 1984, any person who files an application for approval of a registration statement shall submit with the application the disclosure statement described in N.J.A.C. 7:26-16.4. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d).

(c) No person shall engage in the transportation of solid waste in this State if such an operation does not meet the transporter requirements listed in this subchapter. In addition, the transporter shall comply with any other conditions or limitations which may be specified on the approved registration.

1. New Jersey Department of Environmental Protection (N.J.D.E.P.) solid waste transporter registration certificates and decals shall be void if altered. Departmental representatives shall confiscate altered or stolen solid waste transporter registration certificates and decals upon discovery.

(d) Prior to May 1 of each calendar year, or such other date as the Department may establish, each registrant, not including hazardous waste transporters, shall submit to the Department a registration statement updating the information contained in the previous registration statement. This update shall be on forms furnished by the Department. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration was granted.

(e) A registrant shall notify the Department in writing within 30 days of any change in the information supplied on its current registration statement, or on any leases submitted for registered solid waste vehicles, cabs, trailers, containers, single-unit vehicles or transport units, or on any documentation of employment of the operators of leased equipment submitted pursuant to (j) below.

(f) The failure to submit an updated registration statement and all applicable fees (see N.J.A.C. 7:26-4) on or before June 1 in each calendar year or the failure to submit an updated disclosure statement pursuant to N.J.A.C. 7:26-16 and all applicable fees shall be sufficient cause for the Department to revoke the approved registration of a solid waste transporter or to declare it expired.

1. The Department shall withhold the registration certificate and solid waste decal of any registrant who fails to submit the updated registration statement, the updated disclosure statement and the applicable fees (see N.J.A.C. 7:26-4 and 16) on or before June 1.

2. No person shall engage in or continue to engage in the transportation of solid waste during the period when a solid waste decal and registration certificate are withheld pursuant to this subsection.

(g) No person shall be issued an approved registration if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

(h) All solid waste cabs, trailers, containers or single-unit vehicles, registered with the Department for the transportation of solid waste must be owned or leased by the applicant, and, if leased, a copy of the lease, along with a copy of

the Motor Vehicles Registration card, shall be supplied when filing the registration statement.

(i) An applicant who files a lease in connection with the registration statement for a solid waste vehicle, cab, trailer, single-unit vehicle, transport unit or container which the applicant will operate shall ensure that such lease is signed and dated by the parties thereto, provides for the exclusive use, control and possession by the applicant during the lease and also includes:

1. The dates on which the lease begins and ends, during which the applicant will have exclusive use, possession and control over the equipment;

2. The amount and method of payment for the lease;

3. The company or person responsible for payment of gas, oil, maintenance and insurance for the equipment;

4. The company or person responsible for payment of any tipping fees;

5. Identification of the equipment by vehicle identification number (VIN) as it appears on the Motor Vehicles Registration card, license plate number, state which issued license plate and vehicle type;

6. A provision that the lease shall not be assigned to any person; and

7. The lease shall be submitted along with an affidavit which shall be sworn to or affirmed and signed and dated by the president, chief executive officer, managing partner or sole proprietor of the applicant before a person legally competent to take an oath or affirmation, who shall himself or herself subscribe and date the signature of the affiant and shall indicate the basis of his or her authority to take oaths and affirmations. The following statement shall immediately precede the signature of the affiant:

i. "I swear (or affirm) that the lease filed by me as part of this registration statement for the equipment, vehicle type: _____, with the VIN number: _____, license number: _____, issued by the State of: _____, contains the true terms of the lease and has a bonafide business purpose and is not filed with the purpose of preventing the discovery of information which would disqualify, for any reason set forth in N.J.S.A. 13:1E-133, the lessor or any other person from receiving a license. I further swear (or affirm) that my company, the applicant, will exercise exclusive use, possession and control over each piece of solid waste equipment which is included in this application for a registration statement. I further swear (or affirm) that the above-described equipment will not, during the period of registration, be used, controlled or possessed by any other person. I am aware that if any of the foregoing information or statement is willfully false, I am subject to punishment."

(j) In addition to the requirements of (i) above, an applicant who files a lease in connection with the registration statement for a solid waste vehicle, cab, trailer, single-unit vehicle or transport unit which an employee of the applicant will operate shall certify that the operator of the solid waste vehicle, cab, trailer, single-unit vehicle or transport unit is or will become an employee of the applicant and will be under the exclusive management, direction, and control of the applicant. In addition, the applicant shall certify that the applicant is responsible to supervise, direct and control the solid waste activities to be performed by such an employee.

(k) The Department, after notice and opportunity for hearing pursuant to 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, may revoke the registration of a solid waste transporter for the following:

1. Any of the disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9;
2. Violation of any applicable provision of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., this chapter, any administrative order issued by the Department, or any environmental protection statute of this State; or
3. A pattern of violations of the environmental protection statutes or regulations of this or any other State or of the United States.

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).

(d): Amend "February 1" to "March 15."

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

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

(a): references to the Bureau deleted.

New (b) added, former (b)-(e) made (c)-(f). In (c), "without first obtaining" was "without having"; in (e), May 1 was March 15, "initial registration" was "implementation", hazardous waste haulers excepted from May 1 updating and required to file by October 1.

(g) and (h) added.

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

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

Text "or hazardous" deleted.

Amended by R.1987 d.535, effective December 21, 1987.

See: 19 N.J.R. 1610(a), 19 N.J.R. 2434(a).

Added registrant and its operators to subsection (d).

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

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

New (h) added requiring all applicants to own or lease a vehicle being registered and if leased a copy of the lease must be supplied.

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

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

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

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

Substantially amended section.

Case Notes

Moving solid waste between states without approved registration or certificate triggers penalty for violating state's solid waste management laws. Department of Solid Waste Management v. Atlantic Inland Carriers, Inc., 97 N.J.A.R.2d (EPE) 3.

Dewatered sludge is solid waste; registrations and licenses to provide solid waste transportation services. In the matter of Solid Waste Services, Inc. 94 N.J.A.R.2d (EPE) 61.

7:26-3.3 Exceptions and conditions

(a) The provisions of this subchapter shall not be applicable to the following:

1. Persons transporting only their own household solid waste in passenger automobiles bearing general registration plates;
2. Persons transporting only their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds; and
3. A person transporting used oil from mobile field changing operations.

(b) No provision of these rules shall be interpreted as permitting the transportation of domestic sewage in any manner other than that prescribed by law.

(c) Vehicles not registered with the Department as solid waste vehicles are not permitted to discharge solid waste at or near areas where commercial type solid waste vehicles are unloading or where heavy equipment is operating.

(d) A person transporting solid waste through New Jersey, when roadways and highways in New Jersey constitute a segment of such person's route, is not required to obtain an approved registration with the Department the circumstances listed in (d)1 and 2 below exist, and at least one of the circumstances listed in (d)3, 4 or 5 below exists:

1. The solid waste being transported through New Jersey is not discharged from the solid waste transportation vehicle;
2. Solid waste is not being collected, treated, processed, transferred, or disposed of in New Jersey by the solid waste transportation vehicle;
3. Solid waste is not being stored in excess of 24 hours in the solid waste transportation vehicle or container while in New Jersey;
4. The solid waste transportation vehicle has a mechanical breakdown and repair is necessary; and
5. The operator of the solid waste transportation vehicle must stop for a mandatory rest or break.

As amended, R.1974 d.234, eff. August 21, 1974.

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

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

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

"Hauling" replaced by "transporting", "vehicles" as "solid waste vehicles" and maximum gross weight in (a)2 changed from 5,000 to 8,000 pounds.

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)3 and (d).

Formerly codified as 7:26-15.14.
 Amended by R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.16 Severability

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

As amended, R.1983 d.119, effective April 18, 1983.
 See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
 Formerly codified as 7:26-15.15.

SUBCHAPTER 16. SOLID AND HAZARDOUS WASTE LICENSING AND REVOCATION—DISCLOSURE STATEMENTS AND INTEGRITY REVIEW

7:26-16.1 Scope and authority

(a) This subchapter 16 implements P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), and the public policy declared therein to preclude from participation in the solid and hazardous waste industries persons with known criminal records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise or competence that his or her participation would create or enhance the danger of unsound, unfair or illegal practices, methods or activities in the business of those industries.

(b) This subchapter applies to any proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a solid or hazardous waste business in New Jersey, including any temporary operating authorization, hazardous waste hauler license, or hazardous waste facility permit.

7:26-16.2 Definitions

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

“Applicant” means any person seeking a license.

“Application” means the forms and accompanying documents filed in connection with the applicant’s request for a license.

“Broker” means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

“Business concern” means any corporation, association, firm, partnership, trust or other form of commercial organization.

“Disclosure statement” means a statement containing information about an applicant or licensee as set forth in N.J.A.C. 7:26-16.4.

“Key employee” means any person employed by an applicant or licensee in a supervisory capacity with respect to the solid or hazardous waste operations of the business concern in New Jersey or empowered to make discretionary decisions with respect to those operations, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

“License” means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste including hazardous waste in this State, except that “license” shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). “License” includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

“Licensee” means any person who has received a license.

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

Substituted “transporter” for “hauler” in the definition for “license”.

7:26-16.3 Filing of disclosure statement

(a) Every applicant shall file a disclosure statement with the Department and the Attorney General at the time the application is filed, unless exempted under (d) below. Applicants for siting under the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., shall file a disclosure statement at the time specified in N.J.A.C. 7:26-13A.6.

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
 Division of Solid Waste Management
 Bureau of Registration and Permits Administration
 CN 414
 Trenton, New Jersey 08625

1. The Department will transmit copies to the Attorney General for purposes of the investigative report.
2. Additional conformed copies of disclosure statements, or any portions thereof, shall be supplied upon the request of the Department or the Attorney General.

3. Within 30 days of receipt of a disclosure statement from an applicant, the Department shall advise the applicant if the disclosure statement is incomplete on its face, and shall specify what additional information is required. Otherwise the Department shall transmit the disclosure statement to the Attorney General, and shall notify the applicant of the date the transmittal is made.

(c) Any person required to be listed in the disclosure statement, other than a nonsupervisory employee required to be listed under N.J.A.C. 7:26-16.4(a)9, shall be fingerprinted for identification and investigation purposes in accordance with procedures established by the Attorney General.

1. Completed fingerprint cards shall be supplied by the applicant with the filed disclosure statement. The applicant shall arrange for the taking of fingerprints.

2. Fingerprints shall be supplied on fingerprint cards specified for the purpose by the Attorney General and made available by the Department. Fingerprints must be taken and verified by an employee of a police agency authorized to take fingerprints. (Most local police departments will provide this service. Some charge a fee).

(d) Exemptions: The following persons are exempted from the requirement to submit a disclosure statement:

1. Any department, division, agency, commission or authority of the Federal government or any State, or any county, municipality or agency thereof;

See: 21 N.J.R. 2275(a), 21 N.J.R. 3658(b).

Changed length of time for which a temporary approval is issued from 1 year to 6 months and established discretion of department to renew.

Case Notes

County municipal utilities authority's communications with Department of Environmental Protection regarding sanitation company's application for registration did not breach implied covenant of good faith and fair dealing in its waste disposal contract with sanitation company. *East Penn Sanitation, Inc. v. Grinnell Haulers, Inc.*, 294 N.J.Super. 158, 682 A.2d 1207 (A.D. 1996).

Issuance of permit prior to approval of disclosure statement not prohibited by Solid Waste Management Act. *Matter of Stream Encroachment Permit No. 12400*, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

Public hearing prior to issuance of Master Performance Permit. *Mount Olive Twp. v. DEP*, 225 N.J.Super. 94, 541 A.2d 1089 (App.Div. 1988).

7:26-16.6 Change of information on disclosure statement

(a) Where an applicant has an application pending before the Department and any of the information required to be included in a disclosure statement changes, or any additional information should be added after the filing of the statement, the applicant or licensee shall provide that information to the Department and the Attorney General in writing within 30 days of the change or addition.

(b) Licensees shall report to the Department and the Attorney General within 30 days any changes or additions in the following information required to be included in the disclosure statement:

1. The name of the licensee;
2. The names or identities of any officers, directors, partners or key employees of the licensee;
3. The names or identities of any holders of equity in or debt liability of the licensee, if they would have been required on the original disclosure statement; except that holders of less than five per cent of the debt liability of the licensee need only be reported on the annual update described in (c) below;
4. The name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the licensee acquires an equity interest;
5. A listing and explanation of any notices of violation, administrative orders or license revocations issued by any State or Federal authority, except that notices issued by the Department and notices demanding a penalty of less than \$5,000 and not involving an intent to revoke a license need only be reported annually;
6. Any judgement of liability or conviction rendered against the licensee or against any key employee, officer, director or partner thereof, other than for a motor vehicle offense;

7. Any collective bargaining agreement entered into with a labor union not previously listed on a disclosure statement, and any new membership in a trade or business association.

(c) Any other changes in the information contained in a licensee's disclosure statement currently on file with the Department and the Attorney General shall be reported on an annual update to be filed with the Department at the time of the licensee's annual renewal of its registration with the Department; provided, however, that amending or updating of Personal History Disclosure Forms, other than to report a judgement of liability of conviction or a criminal charge, is not required unless specifically requested by the Department of the Attorney General.

(d) Changes of information required to be filed within 30 days pursuant to (b) above may be filed by letter, on amendment forms supplied by the Department, or on copies of applicable portions of disclosure statement forms. The person filing the report of change shall swear to or affirm the truth of the information contained therein.

(e) Annual updates shall be filed on amendment forms supplied by the Department, or on copies of applicable portions of the disclosure statement or Personal History Disclosure Form. Annual updates shall include a recapitulation of any changes previously reported on a 30-day notice.

(f) Changes of information shall be filed by submitting an original and one conformed copy to the Department, which shall transmit copies to the Attorney General.

(g) Annual updates shall be sworn to or affirmed and subscribed in the manner prescribed for original disclosure statements at N.J.A.C. 7:26-16.4(b).

(h) Where an applicant or licensee has submitted multiple amendments to its disclosure statement; or the information concerning an applicant or licensee has undergone substantial change; or if the disclosure statement currently on file with the Department is more than five years old, the Department, in its discretion, may require the applicant or licensee to file a new disclosure statement.

As amended, R.1984 d.541, effective December 3, 1984.

See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).

"Department" substituted for "Division of State Police"; "Attorney General" substituted for "Department".

7:26-16.7 Additional information; Duty to cooperate

(a) All applicants and licensees have the continuing duty to provide any assistance or information requested by the Department or the Attorney General, and to cooperate in an inquiry or investigation conducted by the Attorney General and any inquiry, investigation, or hearing conducted by the Department. If, upon issuance of a formal request to answer any inquiry or produce information, evidence or testimony, any applicant or licensee refuses to comply, the

license of that person may be denied or revoked by the Department.

(b) Upon request, the applicant shall supply physical evidence, including but not limited to photographs or hand-writing exemplars of any individual listed on the disclosure statement or any amendment thereof.

7:26-16.8 Disqualification criteria

(a) No license shall be approved by the Department unless the Department finds that the applicant, in any prior performance record in the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste, has exhibited sufficient reliability, expertise, and competency to operate the solid waste or hazardous waste facility, given the potential for harm to human health and the environment which could result from the irresponsible operation thereof, or if no prior record exists, that the applicant is likely to exhibit that reliability, expertise and competence.

(b) No license shall be approved by the Department if any person required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or the licensee other than an equity interest or debt liability by the investigation thereof, has been convicted of any of the following crimes under the laws of New Jersey or the equivalent thereof under the laws of any other jurisdiction:

1. Murder;
2. Kidnapping;
3. Gambling;
4. Robbery;
5. Bribery;
6. Extortion;
7. Criminal usury;
8. Arson;
9. Burglary;
10. Theft and related crimes;
11. Forgery and fraudulent practices;
12. Fraud in the offering, sale or purchase of securities;
13. Alteration of motor vehicle identification numbers;
14. Unlawful manufacture, purchase, use or transfer of firearms;
15. Unlawful possession or use of destructive devices or explosives;
16. Violation of section 19 of the "New Jersey Controlled Dangerous Substances Act," N.J.S.A. 24:21-19, except possession of 84 grams or less of marijuana;

17. Racketeering, N.J.S.A. 2C:41-1 et seq.;

18. Violation of criminal provisions of the "New Jersey Antitrust Act," N.J.S.A. 56:9-1 et seq.

19. Any purposeful, knowing, willful or reckless violation of the criminal provision of any federal or state environmental protection laws, rules, or regulations;

20. Violation of N.J.S.A. 2C:17-2;

21. Perjury, false swearing or any other offense set forth in Chapter 28 of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:28-1 et seq.

22. Any violation of the criminal provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

(c) Notwithstanding the provisions of (b) above, no applicant shall be denied a license on the basis of a conviction of any individual required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or the licensee other than an equity interest or debt liability by the investigation thereof, for any of the offenses enumerated in (b) above as disqualification criteria, if the person has affirmatively demonstrated by clear and convincing evidence his rehabilitation. In determining whether an applicant has affirmatively demonstrated rehabilitation, the Department shall request a recommendation thereon from the Attorney General, and shall consider the following factors and weigh them in light of the policies set forth in N.J.A.C. 7:26-16.20 et seq.:

1. The nature and responsibilities of the position which a convicted individual would hold;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the individual when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.