

CHAPTER 26**SOLID WASTE****Authority**

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

Source and Effective Date

R.1996 d.578, effective November 18, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26, Solid Waste, expires on May 17, 2002.

Chapter Historical Note

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

Subchapter 2 was partially repealed and partially recodified to Subchapter 2A and a new Subchapter 2, Disposal, was adopted by R.1987 d.235, effective June 1, 1987.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

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

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

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

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 Subchapter 3A, Special Medical Waste, was repealed and a new Subchapter 3A, Regulated Medical Waste, was adopted as an emergency repeal and new rule by R.1989 d.396, effective June 26, 1989.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

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

Subchapter 4A, Hazardous Waste Fees, was adopted as R.1989 d.54, effective January 17, 1989. See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Subchapter 4A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

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

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

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

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

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

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

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

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

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

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

Subchapter 14, Resource Recovery Grants or Loans, was adopted as R.1981 d.184, effective June 4, 1981. See: 13 N.J.R. 9(a), 13 N.J.R.

340(d). Subchapter 14 was repealed by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

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

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

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

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

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 26, Bureau of Solid Waste Management, was readopted as Chapter 26, Solid Waste, by R.1996 d.578, effective November 18, 1996. See: Source and Effective Date. See, also, section annotations.

Chapter 26 was extensively amended by Emergency Adoption R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997). New rule N.J.A.C. 7:26-1.9 and the amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10, and 6.11 became operative on September 2, 1997. All other amendments and repeals were to become operative upon final disposition of *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*. See: 29 N.J.R. 4170(a). The provisions of R.1997 d.404 were readopted by R.1997 d.510, effective October 31, 1997, with changes upon adoption effective December 1, 1997. Concurrent new rule N.J.A.C. 7:26-1.9 and the concurrent amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10 and 6.11 became operative on October 31, 1997. All other concurrent amendments and repeals became operative on November 10, 1997, the date of final disposition (denial of certiorari by the United States Supreme Court) of *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*. All changes upon adoption became operative on December 1, 1997. See: 29 N.J.R. 5084(a).

Research Note

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

Law Reviews and Journal Commentaries

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:26-1.1 Scope of rules
- 7:26-1.2 Construction and severability
- 7:26-1.3 (Reserved)
- 7:26-1.4 Definitions
- 7:26-1.5 (Reserved)
- 7:26-1.6 Definition of solid waste
- 7:26-1.7 Exemption from SWF permitting
- 7:26-1.8 Exemption from registration—land application and sewage sludge operations
- 7:26-1.9 Temporary exemption from solid waste facility permit modification procedures for permitted solid waste facilities
- 7:26-1.10 Transfer station facility master performance permits
- 7:26-1.11 (Reserved)
- 7:26-1.12 Public access to information and requirements for Department determination of confidentiality
- 7:26-1.13 Burden of proof

SUBCHAPTER 2. DISPOSAL

- 7:26-2.1 Scope and applicability
- 7:26-2.2 Construction
- 7:26-2.3 Purpose
- 7:26-2.4 Application procedures for a solid waste facility permit
- 7:26-2.5 Public hearing procedures
- 7:26-2.6 Procedures and grounds for modification, revocation and reissuance and termination of SWF permits
- 7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit
- 7:26-2.8 Registration and general prohibitions
- 7:26-2.9 Environmental and Health Impact Statement requirements
- 7:26-2.10 General engineering design submission requirements
- 7:26-2.11 General operational requirements
- 7:26-2.12 Generator requirements for disposal of asbestos containing waste materials
- 7:26-2.13 Solid waste facilities; records
- 7:26-2.14 Solid waste facility performance partnership agreements

SUBCHAPTER 2A. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR SANITARY LANDFILLS

- 7:26-2A.1 Scope and applicability
- 7:26-2A.2 Construction
- 7:26-2A.3 Purpose
- 7:26-2A.4 General prohibitions and requirements
- 7:26-2A.5 Additional engineering design submittal requirements for sanitary landfills
- 7:26-2A.6 Sanitary landfill environmental performance standards
- 7:26-2A.7 Sanitary landfill engineering design standards and construction requirements
- 7:26-2A.8 Sanitary landfill operational and maintenance requirements
- 7:26-2A.9 Closure and post-closure care of sanitary landfills

APPENDIX A GUIDELINES FOR A GROUND WATER MODELING EFFORT

SUBCHAPTER 2B. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR THERMAL DESTRUCTION FACILITIES, TRANSFER STATIONS, MATERIALS RECOVERY FACILITIES, CO-COMPOSTING AND SOLID WASTE COMPOSTING FACILITIES

- 7:26-2B.1 Scope and applicability
- 7:26-2B.2 Construction
- 7:26-2B.3 Purpose

SOLID WASTE

- 7:26-2B.4 Additional engineering design submission requirements for thermal destruction facilities
- 7:26-2B.5 Additional engineering design submission requirements and design requirements for transfer stations and materials recovery facilities
- 7:26-2B.6 Additional engineering requirements for solid waste composting and co-composting facilities
- 7:26-2B.7 Additional operational requirements for solid waste composting and co-composting facilities
- 7:26-2B.8 Additional operational requirements for thermal destruction facilities
- 7:26-2B.9 Additional operational requirements for transfer stations and materials recovery facilities
- 7:26-2B.10 (Reserved)

APPENDIX COMPOST QUALITY MONITORING PARAMETERS

SUBCHAPTER 3. TRANSPORTATION

- 7:26-3.1 Improper transportation prohibited
- 7:26-3.2 Registration
- 7:26-3.3 Exemptions and conditions
- 7:26-3.4 Transportation requirements (General)
- 7:26-3.5 Transporter requirements (specific)
- 7:26-3.6 Intermodal container facility
- 7:26-3.7 Smoking, smoldering or burning solid waste in solid waste vehicles
- 7:26-3.8 Applicability

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

- 7:26-3A.1 Purpose, scope and applicability
- 7:26-3A.2 Construction
- 7:26-3A.3 Severability
- 7:26-3A.4 Record retention
- 7:26-3A.5 Definitions
- 7:26-3A.6 Definition of regulated medical waste
- 7:26-3A.7 Mixtures
- 7:26-3A.8 Registration and fees for regulated medical waste generators, transporters, and owners and operators of collection facilities, transfer stations, intermediate handlers and destination facilities
- 7:26-3A.9 Education
- 7:26-3A.10 Segregation requirements
- 7:26-3A.11 Packaging requirements
- 7:26-3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal
- 7:26-3A.13 Decontamination standards for reusable containers
- 7:26-3A.14 Labeling requirements
- 7:26-3A.15 Marking (identification) requirements
- 7:26-3A.16 General requirements for regulated medical waste generators, transporters, collection facilities, intermediate handlers and destination facilities
- 7:26-3A.17 Exemptions
- 7:26-3A.18 Solid waste facility acceptance of regulated medical waste
- 7:26-3A.19 Generator use of tracking form
- 7:26-3A.20 Generators exporting regulated medical waste
- 7:26-3A.21 Generator recordkeeping
- 7:26-3A.22 Exception reporting for generators
- 7:26-3A.23 Additional reporting for generators
- 7:26-3A.24 Generators of regulated medical waste that incinerate regulated medical waste on-site
- 7:26-3A.25 Recordkeeping for generators with on-site incinerators
- 7:26-3A.26 Recordkeeping for generators who incinerate regulated medical waste on-site
- 7:26-3A.27 Transporters
- 7:26-3A.28 Transporter acceptance of regulated medical waste
- 7:26-3A.29 (Reserved)
- 7:26-3A.30 Vehicle requirements
- 7:26-3A.31 Tracking form requirements for transporters
- 7:26-3A.32 Transporter compliance with the tracking form
- 7:26-3A.33 Transporters consolidating waste to a new tracking form
- 7:26-3A.34 Recordkeeping for transporters of regulated medical waste

- 7:26-3A.35 Transporter reporting
- 7:26-3A.36 Additional reporting for transporters of regulated medical waste
- 7:26-3A.37 Transporter management of spills
- 7:26-3A.38 Temporary authorization to operate a regulated medical waste incinerator
- 7:26-3A.39 Collection facilities for medical wastes
- 7:26-3A.40 Intermediate handlers and destination facilities
- 7:26-3A.41 Use of the tracking form for intermediate handlers and destination facilities
- 7:26-3A.42 Tracking form discrepancies for intermediate handlers and destination facilities
- 7:26-3A.43 Recordkeeping for collection facilities, intermediate handlers and destination facilities
- 7:26-3A.44 Additional reporting for collection facilities, intermediate handlers and destination facilities
- 7:26-3A.45 Rail transporters
- 7:26-3A.46 Rail shipment tracking form requirements
- 7:26-3A.47 Alternative or innovative technology authorization
- 7:26-3A.48 Requirements for generators using out-of-State facilities disposing of regulated medical waste from New Jersey

SUBCHAPTER 4. FEES FOR SOLID WASTE

- 7:26-4.1 General provisions
- 7:26-4.2 Payment of fees
- 7:26-4.3 Fee schedule for solid waste facilities
- 7:26-4.4 Fee schedule for transporters
- 7:26-4.5 County enforcement activity fees for solid waste control program
- 7:26-4.6 Adjustment of fees
- 7:26-4.7 Fee schedule for intermodal container facilities
- 7:26-4.8 Confidentiality claims

SUBCHAPTER 4A. (RESERVED)

SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

- 7:26-5.1 Scope and purpose
- 7:26-5.2 Procedures for assessment and payment of civil administrative penalties
- 7:26-5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings
- 7:26-5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act
- 7:26-5.5 Civil administrative penalty determination
- 7:26-5.6 Civil administrative penalty for submitting inaccurate or false information
- 7:26-5.7 Civil administrative penalty for failure to allow lawful entry and inspection
- 7:26-5.8 Civil administrative penalty for failure to pay a fee
- 7:26-5.9 Civil administrative penalty for economic benefit
- 7:26-5.10 Severability

SUBCHAPTER 6. SOLID WASTE PLANNING REGULATIONS

- 7:26-6.1 Authority
- 7:26-6.2 Purpose
- 7:26-6.3 Types of waste covered
- 7:26-6.4 Informational requirements
- 7:26-6.5 through 7:26-6.7 (Reserved)
- 7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility
- 7:26-6.9 (Reserved)
- 7:26-6.10 Modifications to district solid waste management plans; plan amendments
- 7:26-6.11 Administrative actions concerning a district solid waste management plan
- 7:26-6.12 Compliance with district solid waste management plan

SUBCHAPTERS 7 THROUGH 14. (RESERVED)

SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

- 7:26-14A.1 Scope
- 7:26-14A.2 Construction
- 7:26-14A.3 Purpose
- 7:26-14A.4 Definitions
- 7:26-14A.5 Eligibility for project loans
- 7:26-14A.6 Application procedures
- 7:26-14A.7 Use and disclosure of information
- 7:26-14A.8 Loan terms and administration of disbursements
- 7:26-14A.9 Payment procedures
- 7:26-14A.10 Loan agreement
- 7:26-14A.11 Effect of loan agreement
- 7:26-14A.12 Repaid funds
- 7:26-14A.13 Fraud and other unlawful or corrupt practices
- 7:26-14A.14 Administration and performance of loan
- 7:26-14A.15 Access
- 7:26-14A.16 Assignment
- 7:26-14A.17 Publicity and signs
- 7:26-14A.18 Debarment
- 7:26-14A.19 Termination of loans
- 7:26-14A.20 Certifications
- 7:26-14A.21 Administrative hearings
- 7:26-14A.22 Severability
- 7:26-14A.23 through 7:26-14A.26 (Reserved)

SUBCHAPTER 15. RECYCLING GRANTS AND LOANS PROGRAM

- 7:26-15.1 Scope
- 7:26-15.2 Construction
- 7:26-15.3 Practice where these rules do not govern
- 7:26-15.4 Definitions
- 7:26-15.5 Application and award procedures for Recycling Tonnage Grants
- 7:26-15.6 Application and award procedures for Recycling Business Loans
- 7:26-15.7 Application and award procedures for Planning and Program Grants and Education Grants
- 7:26-15.8 Application and award procedure for Supplementary Projects
- 7:26-15.9 Execution of award documents
- 7:26-15.10 Unused monies
- 7:26-15.11 Debarment
- 7:26-15.12 Discriminatory practices
- 7:26-15.13 Procedure for withholding or rescission of grants
- 7:26-15.14 Return of grants
- 7:26-15.15 Procedure for termination of loans and loan guarantees
- 7:26-15.16 Severability

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

- 7:26-16.1 Scope and authority
- 7:26-16.2 Definitions
- 7:26-16.3 Filing of disclosure statement
- 7:26-16.4 Content of disclosure statement
- 7:26-16.5 Investigative report by Attorney General
- 7:26-16.6 Change of information on disclosure statement
- 7:26-16.7 Additional information; duty to cooperate
- 7:26-16.8 Disqualification criteria
- 7:26-16.9 Cause for license revocation
- 7:26-16.10 Administrative hearing; requests
- 7:26-16.11 Severance of disqualifying individuals
- 7:26-16.12 License revocation; ineligibility for reapplication
- 7:26-16.13 Fees charged by the Attorney General and the Department
- 7:26-16.14 Confidential information
- 7:26-16.15 through 7:26-16.19 (Reserved)
- 7:26-16.20 Policies on disqualification
- 7:26-16.21 Convicted persons generally

- 7:26-16.22 Persons convicted of environmental crimes
- 7:26-16.23 "Independent contractors" or "consultants"
- 7:26-16.24 "Brokerage" by convicted persons

SUBCHAPTER 16A. SPECIAL RULES FOR SUBMISSION OF DISCLOSURE STATEMENTS BY EXISTING LICENSEES AND APPLICANTS WHOSE APPLICATIONS WERE PENDING BEFORE THE DEPARTMENT PRIOR TO JULY 2, 1984

- 7:26-16A.1 Scope and applicability; conflicts
- 7:26-16A.2 Schedule for submitting disclosure statements
- 7:26-16A.3 Applications pending on July 2, 1984

SUBCHAPTER 17. CONFIDENTIALITY DETERMINATIONS

- 7:26-17.1 Scope
- 7:26-17.2 Definitions
- 7:26-17.3 Procedure for making a confidentiality claim
- 7:26-17.4 Designation by claimant of an addressee for notices and inquiries
- 7:26-17.5 Correspondence, inquiries and notices
- 7:26-17.6 Time for making confidentiality determinations
- 7:26-17.7 Notice of initial confidentiality determination and of requirement to submit substantiation of claim
- 7:26-17.8 Substantiation of confidentiality
- 7:26-17.9 Time for submission of substantiation
- 7:26-17.10 Final confidentiality determination
- 7:26-17.11 Treatment of information pending confidentiality determination
- 7:26-17.12 Availability of information to the public after determination that information is not confidential
- 7:26-17.13 Preparation of final public copy
- 7:26-17.14 Class confidentiality determinations
- 7:26-17.15 Disclosure of confidential information to other public agencies
- 7:26-17.16 Disclosure of confidential information to contractors
- 7:26-17.17 Disclosure to alleviate an imminent and substantial danger
- 7:26-17.18 Notice to claimants of disclosure of confidential information
- 7:26-17.19 Disclosure by consent
- 7:26-17.20 Incorporation of confidential information into cumulations of data
- 7:26-17.21 Disclosure of confidential information in rulemaking, permitting and enforcement proceedings
- 7:26-17.22 Hearing before disclosure of information for which a confidentiality claim has been made
- 7:26-17.23 Nondisclosure of confidential information
- 7:26-17.24 Safeguarding of confidential information
- 7:26-17.25 Confidentiality agreements
- 7:26-17.26 Wrongful access or disclosure; penalties

SUBCHAPTER 1. GENERAL PROVISIONS

7:26-1.1 Scope of rules

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

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

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

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

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

2. Container-pickup facilities as herein defined;

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

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

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

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

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

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

Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a), deleted "and hazardous" preceding "waste facilities" throughout.

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 serpentine (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 curbline 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, wall-board, 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.

“Exempt transporter” shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

“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 and/or permitted capacity, areal 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.

“Licensee” shall, for purposes of N.J.A.C. 7:26-3.2, be defined as set forth in N.J.S.A. 13:1E-127i.

“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.

“Permittee” shall, for purposes of N.J.A.C. 7:26-3.2, be defined as set forth in N.J.S.A. 13:1E-127i.

“Person” means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), corporate official, partnership, associa-

tion, 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, irridium, 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 or transferring source separated recyclable material (Class A, Class B, Class C and/or Class D recyclable material as defined at N.J.A.C. 7:26A-1.3). Recycling centers shall not include recycling depot, manufacturers, or scrap processing facility as defined at N.J.A.C. 7:26A-1.3.

“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. 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, 13C, 23, 25, 27, 27A and 27I.

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 recompacted 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. 511(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), 21 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 acknowledgment 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).
Amended by R.2000 d.75, effective February 22, 2000.
See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).
Inserted "Exempt transporter", "Licensee" and "Permittee".
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
In "Expansion", inserted "and/or permitted" following "the design"; rewrote "Recycling center"; in "Sanitary landfill", inserted "13C" and substituted "27, 27A and 27I" for "27, 72" at the end of paragraph 1.

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 nonmerchantable 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 in 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.

(b) The owner or operator of any facility or operation of a class exempted pursuant to this section shall comply with all conditions set forth in its certificate of authority to operate. Noncompliance with a certificate of authority to operate shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to operate.

1. The owner or operator of a facility for which authority to operate has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 51:14B-1 et seq., subsequent to the revocation or suspension. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402.

2. In no way shall the granting of a temporary certificate of authority to operate be interpreted as entitling the holder to final registration and engineering design approval.

(c) General criteria for all exemptions:

1. Any exemption granted to a class of facilities or operations pursuant to this section shall be consistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

2. No exemption shall be granted to a class of facilities or operations which will pose a threat to public health or the environment.

(d) This subsection sets forth the specific criteria for exempting sanitary landfills:

1. A certificate of authority to operate shall be granted to a sanitary landfill facility provided that:

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to demonstrate sufficient integrity, expertise and competence to operate a sanitary landfill facility in compliance with the Solid Waste Management Act and the certificate of authority to operate;

ii. It would be possible for the facility to qualify for a registration pursuant to the Solid Waste Management Act;

iii. All preparatory work necessary to permit safe and environmentally sound operation can be accomplished prior to the commencement of operations at the site;

iv. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the operation of one or more solid waste management plans or in order to comply with a judicial decree or statutory requirement to provide disposal facilities in a particular district; and

v. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements for registration under N.J.S.A. 7:26-2. The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

(e) This subsection sets forth the specific criteria for exempting transfer stations.

1. A certificate of authority to operate shall be granted to a transfer station facility provided that:

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to demonstrate sufficient integrity, expertise and competence to operate a transfer station facility in compliance with the Solid Waste Management Act and the certificate of authority to operate. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c), the certificate of authority to operate shall not be issued for a period exceeding six months and may, in the Department’s discretion, be renewed for one additional consecutive six month period;

ii. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances.

Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the certificate of authority to operate; and

iv. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements of N.J.A.C. 7:26-2 and 7:26-2B for registration of this facility or of an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

2. Notwithstanding any other provision of this chapter, the proposed owner or operator of the facility shall submit the following in application for a certificate of authority to operate a transfer station:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1E-126 et seq. and N.J.A.C. 7:26-16 on such forms as the Department requires. The disclosure statement, where appropriate, should be accompanied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c).

ii. An emergency environmental and health impact statement pursuant to (e)3 below; and

iii. An engineering design which specifies the following:

- (1) Site plan map including layout of the facility buildings or structures, profile and elevation views and interior floor plan;
- (2) Access roads;
- (3) Fencing;
- (4) Scales, if required pursuant to N.J.S.A. 13:1E-117;
- (5) On site queueing;
- (6) Facility and equipment design sufficient to handle specified capacity;
- (7) Facility construction plans;
- (8) Washdown and control of wastewater;
- (9) On-site drainage controls;
- (10) Design and surfacing of on-site roadways;
- (11) Operational safety and environmental monitoring procedures; and
- (12) Housekeeping procedures such as litter, odor, dust and vector control.

3. Notwithstanding any other provision of this chapter, the following shall constitute the requirements for an emergency environmental and health impact statement for a transfer station meeting the exemption criteria in (e)1 above. An emergency environmental and health impact statement shall be in narrative form and must be approved prior to or concurrent with issuance of the certificate of authority to operate a transfer station. The environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the land use of the area immediately surrounding the proposed facility;

ii. A description of possible environmental impacts on the immediately surrounding area and the facility design elements or other measures that will address them. This description shall address, at a minimum, the following environmental concerns:

- (1) Noise;
- (2) Air quality;
- (3) Traffic;
- (4) Stormwater and washdown drainage; and
- (5) Any other concerns described in the solid waste disposal regulations, N.J.A.C. 7:26 which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

4. The proposed owner or operator of the facility shall file copies of the applications for a certificate of authority to operate a transfer station, except for the disclosure statement, in the offices of the municipality and county in which the proposed facility is to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days of filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require that the notice identify a public comment period and specify the address at which the Department will receive public comments.

(f) This subsection sets forth the specific criteria for exempting research, development and demonstration (RD & D) projects.

1. The Department shall issue a certificate of authority to operate an RD&D project provided the project is designed, constructed and operated in a manner consistent with environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be constructed and operated in accordance with the specific conditions of the certificate of authority to operate.

2. A certificate of authority to operate shall be granted for an RD&D project which meets the following criteria for exemption:

i. The RD&D project consists of a new or innovative technology or a new or innovative operational process modification made to an existing solid waste facility or operation;

ii. The RD&D project is for a fixed period of time not to exceed one year, unless the RD&D applicant can demonstrate to the satisfaction of the Department that a longer time period is required to adequately assess long term environmental impacts and operational effects of the technology or process being evaluated. In no case shall the duration of the certificate extend beyond five years;

iii. The RD&D project will operate within the Department's standards for air emissions including noise and fugitive dust, water discharges to surface or ground waters and soil quality;

iv. The RD&D project has a design capacity of less than 100 tons per day of any waste or material, unless otherwise approved by the Department;

v. The RD&D project is consistent with any applicable Solid Waste Facility Performance Partnership Agreement established pursuant to N.J.A.C. 7:26-2.14 and is not deemed to be a material and significant alteration or addition to the existing facility as set forth at N.J.A.C. 7:26-2.6(a)4.

3. A certificate of authority to operate an RD&D project shall not be issued to a demonstrated technology or operation, to a project that would cause an exceedance of air emissions, water quality or soil standards or criteria or be deemed to cause an unacceptable risk to human health and the environment.

4. The RD & D project shall be included by administrative action within the district solid waste management plan for the county or district within which the project is located or the Statewide Solid Waste Management Plan.

5. The owner and/or operator of a proposed RD & D project shall submit an application to the Department that includes:

i. The location of the RD&D project, including a site plan map;

ii. A description and process flow diagrams of the proposed project;

iii. The proposed duration of the project, including a start and end date;

iv. An outline of the need for the project;

v. A description of the information or improved operation that this project will provide and/or a description of the data gaps this project will fill;

vi. A description of the improved environmental effectiveness and/or the economic efficiency of the solid waste facility or operations that will be demonstrated;

vii. The operational procedures to minimize, control and mitigate impacts such as noise, air quality, traffic, and stormwater runoff;

viii. A description of the sampling and analytical plan of the material and process being demonstrated and the potential air, water or soil emissions or discharges;

ix. A description of the quality assurance/quality control plan for the overall demonstration and the sampling and analytical plan; and

x. A copy of the written approval issued by the designated plan implementation agency which indicates that the project is included by administrative action within the district solid waste management plan for the county/district within which the project is located or as determined by the Department to be consistent with the Statewide Solid Waste Management Plan.

6. The Department may require additional information to establish a demonstration project in order to ensure that the proposed project will meet the requirements of (f)1 and 2 above.

7. The RD&D applicant shall submit semi-annual reports detailing the progress of the RD&D project. A final report addressing the specific goals for the project shall be submitted to the Department. The requirements for the semi-annual and final report shall be set forth in the conditions of the certificate of authority to operate.

8. The Department shall issue a certificate of authority to operate the RD&D project or deny the application for a certificate of authority to operate for an RD&D project, in writing to the applicant, within 90 days of receipt of a complete application.

9. The Department shall order the immediate termination of all operations at a RD&D project if it determines that the RD&D project is operating in contravention of the criteria set forth in (f)2 above, any applicable SWFPPA, or that termination is necessary to protect human health and the environment. The owner or operator of the RD&D project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

10. At the end of the RD&D project and if the RD&D Certificate of Authority to Operate for a new or innovative technology or operation is not terminated as set forth in (f)9 above, the owner and/or operator of an RD&D project shall be required to obtain a SWF permit or a permit modification pursuant to N.J.A.C. 7:26-2, or a recycling approval pursuant to N.J.A.C. 7:26A-3, as applicable.

(g) This subsection sets forth the specific criteria for exempting beneficial use projects.

1. The Department shall issue a certificate of authority to operate for a beneficial use project, provided the project is designed and managed in a manner consistent with the environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be developed and operated in accordance with the specific conditions of the certificate of authority to operate.

2. This subsection is not applicable to materials produced by a recycling center as approved pursuant to N.J.A.C. 7:26A. The materials produced at a permitted recycling center as regulated pursuant to N.J.A.C. 7:26A are deemed to be approved for beneficial use provided the recycled product is used or reused directly as a product or as a substitute for raw material that is incorporated into a product meets the generally accepted products specifications and standards for a similar manufactured product or raw material, and provided the recycled product poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.

3. This subsection is not applicable to materials used or reused directly as a product or as a substitute for raw material which is incorporated into a product that meets the original product specifications, provided the material poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.

4. The following materials are categorically approved for beneficial use and require no future approval or authorization for use or reuse provided they are used or reused in a manner consistent with N.J.A.C. 7:26-1.1:

i. (Reserved);

ii. Uncontaminated glass used as a substitute for conventional aggregate in asphalt or concrete applications;

iii. Tire chips as aggregate for road base materials or asphalt pavements in accordance with New Jersey Department of Transportation standard specifications, or whole tires or tire chips when used for energy recovery;

iv. Soils for on-site reuse that contain contaminants at levels below the most stringent site clean-up levels established by the Department for a specific site, except for sites located in the Pinelands Area;

v. Contaminated soil that has been decontaminated to the satisfaction of the Department and is used or reused in a manner acceptable to the Department;

vi. Nonhazardous solid waste approved in advance by the Department for use or reuse as cover material, landfill liner, cap material, or other landfill design and management components;

vii. Coal combustion bottom ash used or reused as a component in the manufacture of roofing shingles or bituminous asphalt products;

viii. Coal combustion fly ash or gas scrubbing by-products used or reused as an ingredient to produce light-weight block, light-weight aggregate, manufactured gypsum or manufactured calcium chloride;

ix. Coal combustion fly ash or coal combustion bottom ash used or reused as a cement or aggregate substitute in structural concrete, structural concrete products, or a raw feedstock in the manufacture of cement or as a cement substitute for structural grade products, or subbase in roadway construction; or

x. Coal combustion fly ash or coal combustion bottom ash used or reused to serve as an aggregate substitute in structural asphalt product.

5. The owner and/or operator of a new proposed beneficial use project shall submit an application to the Department that includes the following:

i. A description of the beneficial use project including:

(1) The specific location of the site of origin of the material to be beneficially used, including a description of the location of the material at the site of origin;

(2) A general description of the site of origin of the material to be beneficially used, including its current use or activity and its historical uses and a discussion of the reasons for creating or excavating the material at the site of origin, the dates of material generation, and the process by which the material was generated;

(3) A description of any regulatory activity at the site of origin undertaken by the Department or any other agency;

(4) A description of any regulatory activity at the site of destination undertaken by the Department or any other agency; and

(5) The quantity of material for the beneficial use project;

ii. A site location map where the material are to be used plotted on a USGS topographic map. The site plan map shall, at a minimum, indicate wetlands, tidal water limits, and the depth to the mean seasonal high ground water table across the entire site;

iii. A site location map of the site of origin plotted on a USGS topographic map;

iv. A description of the material, including a contaminant profile including, but not limited to, the following:

- (1) An evaluation of the general quality of the material including a contaminant profile of the material in relation to current Department soil cleanup criteria (SCC) guidance levels and other standards as specified by the Department on a case-by-case basis, and in accordance with the sampling, quality assurance, analytical and other technical requirements of N.J.A.C. 7:26E, and/or other guidance as specified by the Department;
- (2) A narrative description of the characteristics of the material and all sampling conducted in relation to the material. Material Safety Data Sheets (MSDS), all studies or analytical characterizations performed by any person on the material, and any other material specification information shall be included;
- (3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;
- (4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used or reused to monitor material produced in the future for use or reuse;
- (5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and
- (6) A determination of the waste classification of the material and the rationale used for that classification;
 - v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;
 - vi. A description of any treatment undertaken prior to the use of the material;
 - vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts; and
 - viii. The schedule for initiation and completion of the beneficial use project.
6. The Department may require additional information in order to ensure that the proposed beneficial use project will meet the requirements of (g)1 and 2 above.

7. The Department shall issue a certificate of authority to operate for a beneficial use project or deny the application for a certificate of authority to operate for a beneficial use project, in writing to the applicant, within 90 days of receipt of a complete application.

8. The owner and/or operator of a beneficial use project shall submit, on an annual basis, a report to the Department detailing the amount of material used, the date(s) of such use, the location(s) of the use, and any other information as required by the Department in the certificate of authority to operate.

9. The Department shall order an immediate termination of all operations at a beneficial use project if it determines that termination is necessary to protect human health and the environment. The owner and/or operator of the beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

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

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

Amended by R.1984 d.40, effective February 21, 1984.

See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

“Variance” not readopted.

R.1984 d.174, effective April 25, 1984.

See: 16 N.J.R. 1100(a).

Filed as an emergency rule to expire June 24, 1984. Also proposed concurrently.

R.1984 d.399, effective August 17, 1984.

See: 16 N.J.R. 1100(a), 16 N.J.R. 1627(a), 16 N.J.R. 2367(a).

Readopted without change, Emergency R.1984 d.174.

Amended by R.1985 d.666, effective January 6, 1986.

See: 17 N.J.R. 1040(a), 18 N.J.R. 99(a).

(e) added.

Emergency Amendment and Concurrent Proposal, R.1987 d.231, effective April 30, 1987 (expires June 29, 1987).

See: 19 N.J.R. 886(a).

Subsection (f) added.

Readoption of Concurrent Proposal, R.1987 d.311, effective June 29, 1987.

See: 19 N.J.R. 1452(a).

Correction: “May” substituted for “shall” in (a) and (d)1; added text to (d) “This subsection sets forth the”.

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

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

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

Added (g).

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

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

Provisions of Emergency Amendment R.1988 d.547, readopted with a change in (g)4iv: added “emergency”.

Administrative change in (b)1.

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

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

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

In (c)2, added reference to class of facilities; in (d)1, deleted one year limitation period reference relating to certificates; in (d)1i, substituted “Department” for “Commissioner”; deleted (e) and (g); recodified former (f) as (e); substantially amended (e); added new (f) and (g).

Administrative change.

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

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

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

In (f)4, substituted "included by administrative action" for "determined to be consistent with"; in (f)5x, substituted "that the project is included by administrative action within" for "consistency with".

Case Notes

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.

7:26-1.8 Exemption from registration—land application and sewage sludge operations

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludge) and storage facilities for such non-hazardous solid waste which receive:

i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (NJPDDES) permit issued pursuant to N.J.A.C. 7:14A; and

ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDDES permit.

(b) All sewage sludge management equipment and operations for which permits are obtained pursuant to N.J.A.C. 7:14A and/or 7:27, except operations involving the transportation of sewage sludge or the commingling of sewage sludge with municipal solid waste, are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

(c) Transporters of marketable residual product are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

New Rule, R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Old rule recodified to 7:26-1.9.

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

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

In (a), amended N.J.A.C. reference; and added (b) and (c).

Case Notes

There is implied duty on part of Department of Environmental Protection, when deciding whether facility using sludge-derived products is exempt from permitting requirements, to give notice to affected municipalities and to consider their public health and safety concerns and zoning and land-use regulations, but there is no requirement of plenary or general public hearing. *Holgate Property Associates v. Township of Howell*, 145 N.J. 590, 679 A.2d 613 (1996).

7:26-1.9 Temporary exemption from solid waste facility permit modification procedures for permitted solid waste facilities

(a) General criteria for all exemptions are as follows:

1. Any exemption granted to a permitted solid waste facility pursuant to this section shall be consistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

2. No exemption shall be granted for a significant modification which will pose a threat to public health or the environment.

(b) This subsection sets forth the specific criteria for temporarily exempting modifications to permitted solid waste facilities, which are not small-scale solid waste facilities as defined at N.J.A.C. 7:26-1.4 or are Class I sanitary landfill as defined at N.J.A.C. 7:26-1.4, from the solid waste permit modification procedures at N.J.A.C. 7:26-2.6.

1. A temporary permit modification approval shall be granted to a solid waste facility provided that:

i. The temporary permit modification approval shall not be issued for a period exceeding six months and may, in the Department's discretion, be extended for one additional consecutive six month period;

ii. Issuance of a temporary permit modification approval prior to the time that such modification to the solid waste facility permit can be issued pursuant to N.J.A.C. 7:26-2.6 is essential in order to ensure the viability of the facility to avoid a disruption in the provision of solid waste services. Such a disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The modification to facility engineering design and/or operation shall be consistent with the protection of public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility engineering design and/or operational modification(s) to be implemented shall be those specified as conditions in the temporary permit modification approval;

iv. All preparatory work necessary to permit safe and environmentally sound operation of the facility can be accomplished prior to implementing the proposed modification(s) to the facility engineering design and/or its operations; and

v. A schedule has been established and incorporated into the temporary permit modification approval which provides for the formal processing of the request for facility modification of engineering design and/or operation in accordance with all requirements of N.J.A.C. 7:26-2.6. The schedule may call for accomplishing one or more milestones related to procedural requirements outlined at N.J.A.C. 7:26-2.6 after modification(s) of the facility engineering design and/or operation have been implemented.

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

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

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

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

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

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

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

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

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

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

1. For a small-scale thermal destruction facility:
 - i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:
 - (1) The waste intended for thermal destruction is nonhazardous;
 - (2) The waste is generated at the site of the thermal destruction operation, at other associated intracompany plants located within the State of New Jersey, or is regulated medical waste received by the onsite small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;
 - (3) The small-scale thermal destruction unit has a design capacity of less than 800 pounds per hour (9.6 tons per day);
 - (4) The facility has been included in the applicable solid waste management plan; and
 - (5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.
 - ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;
 - iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;
 - iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;
 - v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. The written authorization is submitted to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. Any other governmental agencies that the Department deems appropriate, such as Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality,

and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs; and other affected states.

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

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

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

i. The applicant's name;

ii. The agency application number;

iii. The type of facility proposed by the applicant;

iv. The location of the proposed facility;

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

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

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

11. Not later than six months after the date upon the Department's letter notifying the applicant that the application is complete pursuant to (g)6 above, except in the case set forth in (g)3 above, the Department shall reject the SWF permit application, without prejudice, as technically incomplete, or deny or grant tentative approval of the application.

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

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

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

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

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

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

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

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

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

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

(1) The applicant;

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

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

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

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

(6) Any interested person requesting such notice.

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

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)17i and ii below. Where the notice of opportunity for a public hearing results in the scheduling of a hearing, a subsequent notice of the hearing date shall be provided in accordance with (g)17i and ii below.

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

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

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

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

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

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

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

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

- i. The principal facts and the significant factual, legal, methodological or policy questions considered in granting the tentative approval;
- ii. A description of the proposed facility;
- iii. The types and quantities of solid waste which may be disposed of at the proposed facility; and
- iv. A brief summary of the impacts and bases for the conditions of the tentative approval.

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

- i. The public comment period shall be the opportunity for any interested person to submit comments to the Department concerning a proposed facility and operator;
- ii. For purposes of this subchapter the public comment period shall begin upon notice by the Department that a tentative approval has been issued or other agency action taken;
- iii. The public comment period shall close 15 days after the date of the last public hearing, if any, on any tentative approval, unless the Department decides to extend the comment period in accordance with (g)17v below or reopen the comment period in accordance with (g)18 below. For agency actions on which no public hearing is held, the public comment period shall close 30 days after publication of the notice of the agency action;

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

v. A public comment period longer than 15 days following the public hearing may be necessary, in certain cases, to give interested persons an opportunity to comply with the requirements of (g)17iv above. Any interested person who reasonably requires additional time within which to supplement the administrative record should request, in writing, an extension of the public comment period, and the Department shall exercise reasonable discretion in setting the closing date for public comment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vi. The tentative approval and final permit documents; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule was "Submission of engineering designs".

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

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

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

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

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

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

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

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

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

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

Substantially amended section.

Administrative change.

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

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

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

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

Case Notes

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

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

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

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

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

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

7:26-2.5 Public hearing procedures

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

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

(c) The public hearing shall be a non-adversarial hearing at which any interested person may submit oral or written

statements and data concerning the proposed operation, tentative approval or other agency action.

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

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

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

2. A minor modification shall be effective within 60 days from the receipt by the Department of the request submitted pursuant to (d)1 above. In the event that the Department determines, based on the information submitted, that a modification of permit conditions or the revocation and reissuance of the permit pursuant to (a)3 above is warranted, the Department shall notify the permittee within 60 days of the receipt of the request. In the event that the Department fails to take action on a request for a minor modification within 60 days, the minor modification shall be deemed effective.

(e) Permits may be modified, revoked and reissued, or terminated either upon written request of the permittee, or upon the Department's initiative. The request shall set forth the relevant factors and rationale supporting the request. Upon receipt of any request, the Department shall follow the procedures set forth below:

1. Within 30 days of receipt of a request to modify or revoke and reissue, or terminate a permit, the Department shall review the request and determine whether the grounds exist for modification, revocation and reissuance or termination.

i. If the Department determines that grounds exist for modification, revocation and reissuance or termination consistent with (a)4, (b) or (c) above, it shall notify the permittee and, if necessary, require the permittee to submit information, including, but not limited to, a new or updated application.

ii. If the Department determines that grounds do not exist for modification, revocation and reissuance or termination, the Department shall notify the requesting party.

2. If a new or updated application is required, the Department shall follow the procedures for review and tentative approval outlined at N.J.A.C. 7:26-2.4(g).

3. If a new or updated application is not required, the Department shall, within 60 days of determining that a request is complete, deny or prepare a tentative approval incorporating the proposed change pursuant to N.J.A.C. 7:26-2.4(g)12.

4. In a permit modification only those conditions to be modified shall be reopened for public comment in accordance with the procedures set forth at N.J.A.C. 7:26-2.4(g)13 through 25. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

5. During any modification proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until the modification proceedings are completed.

6. When a permit is revoked and reissued, the entire permit shall be reopened in accordance with the procedures set forth at N.J.A.C. 7:26-2.4. During any revocation and reissuance proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until a new final permit is issued; or

7. Minor modifications as defined in (d) above are not subject to the requirements of this subsection.

8. If the Department tentatively decides to terminate a permit under (c) above, it shall issue a notice of intent to terminate. The notice of intent to terminate shall be processed in accordance with the same procedures as a tentative approval pursuant to N.J.A.C. 7:26-2.4(g)11 through 25.

As amended, R.1975 d.66, effective March 14, 1975.

See: 7 N.J.R. 149(b).

As amended, R.1975 d.271, effective September 15, 1975.

See: 7 N.J.R. 463(b).

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.1983 d.570, effective December 5, 1983.

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

(e) deleted.

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

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

(e) added.

Amended by R.1986 d.388, effective September 22, 1986.

See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).

(e)2i and ii deleted; (e)2i through vi added and new (e)5 added.

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

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

Repealed subsection (a)-(d) of "Sanitary landfill operational requirements (Specified)" and recodified subsection (e) to 7:26-2A.8(l).

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

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

Substantially amended section.

Administrative change.

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

Case Notes

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

Determination that Thermal De-NO_x control technology for removal of nitrogen oxide emissions satisfied "advances in art" standard Act and issuance of air pollution control permit was not unreasonable administrative action. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Solid waste collector and transfer station operator seeking to make improvements to facility; application for SWF permit modification. Vincent M. Ippolito v. Tenafly Board of Adjustment, 95 N.J.A.R.2d (EPE) 17.

Revocation of solid waste license; res judicata doctrine. DEPE v. Carmine Franco and Company, Inc., 94 N.J.A.R.2d (EPE) 128.

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) A permit issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years except as provided in (c) and (d) below or N.J.A.C. 7:26-2.14. A permit may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the District Solid Waste Management Plan and provided the permitted capacity, as specified in the approved engineering design, is not exceeded.

1. The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

2. Nothing herein shall be construed to allow the permittee to exceed the maximum permitted capacity of the facility as set forth in the SWF permit for the facility at any time during the term of the permit. Any expansion, extension, enlargement or other increase beyond permitted capacity conditions shall be considered a new facility and shall require the application for the Departmental approval of a new permit.

3. The Department may issue any permit for a duration that is less than the full allowable term under this section.

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. The permittee of a permitted solid waste facility shall apply for permit renewal at least 90 days prior to the expiration date of the existing SWF permit if the facility has remaining permitted capacity in accordance with its SWF permit and if the facility is included in the District Solid Waste Management Plan.

2. The permittee, owner or operator shall submit all fees required by N.J.A.C. 7:26-4 and the following materials to the Department, if needed to update the facility's operations, as an application to renew the SWF permit for that facility:

- i. An updated registration statement on forms provided by the Department;
- ii. An updated engineering design for the facility;
- iii. An updated Operations and Maintenance Manual for the facility; and
- iv. An amendment to the disclosure statement as required pursuant to N.J.A.C. 7:26-16.6; and
- v. An updated environmental and health impact statement, including a complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-2.4(g)6 and 7 of the SWF permit renewal application.

4. The Department shall review the application for completeness in accordance with procedures set forth at N.J.A.C. 7:26-2.4(g).

5. The Department shall provide notice of its tentative decision on the permit renewal application and of the opportunity for a public hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

6. A request for a public hearing must be filed within 30 days of publication of a notice of opportunity for such hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

7. The public comment period shall close 15 days after the date of last public hearing or 30 days after the notice of opportunity for a public hearing on the renewal application.

8. The final agency decision on the SWF permit renewal application shall be based on the administrative record as defined in N.J.A.C. 7:26-2.4(g)19.

(c) The conditions of an expired permit are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for a renewal pursuant to (b) above;

2. The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit, due to time or resource constraints;

(d) Permits continued under this section remain fully effective and enforceable;

1. If the permittee is not in compliance with any one of the conditions of the expiring or expired permit the Department may choose to do any or all of the following:

i. Initiate enforcement action based upon the permit which has been continued;

ii. Issue a notice of intent to deny the new permit under N.J.A.C. 7:26-2.4. If the permit is denied, the owner or operator would then be required to cease activities and operations authorized by the continued permit or be subject to an enforcement action for operating without a permit;

iii. Issue a new permit under N.J.A.C. 7:26-2.4 with appropriate conditions; or

iv. Take such other actions as are authorized by these regulations or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(e) A permittee shall not transfer the SWF permit directly to a new owner or operator without the Department's approval.

1. Any transfer of a permit must be preapproved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of a facility. The request for approval shall include the following:

i. A registration statement, completed by the prospective new permittee on forms provided by the Department;

ii. A disclosure statement as required by N.J.A.C. 7:26-16.4 completed by the proposed transferee;

iii. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-2A.9 will be met by the proposed new permittee; and

iv. A written agreement between the existing permittee and the proposed new permittee containing a specific future date for transfer of ownership or operations.

2. A new owner or operator may commence operations at the facility only after the existing permit has been revoked and a permit is issued pursuant to N.J.A.C. 7:26-2.4.

3. The permittee of record remains liable for ensuring compliance with all conditions of the permit unless and until the existing permit is revoked and a new permit is issued in the name of the new owner or operator.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the permittee from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

Amended by R.1986 d.388, effective September 22, 1986.

See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).

(f) added.

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

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

Repealed disrupted landfill requirement.

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

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

Required fees to be submitted at time of permit renewal application and referenced, at (b)2.v., updated environmental and health impact statement.

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

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

In (a) and (b)4, amended N.J.A.C. reference.

Administrative change.

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

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

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

In (b)8, amended the N.J.A.C. reference.

7:26-2.8 Registration and general prohibitions

(a) The registration statement shall be executed, in accordance with the requirements of N.J.A.C. 7:26-2.4(e), on forms furnished by the Department, and shall state such

information necessary and proper for the enforcement of this subchapter as the Department may require.

(b) Prior to May 1 of each calendar year, each permittee shall submit to the Department, a statement updating the information contained in the initial registration statement. This update shall be on forms furnished by the Department. In no case shall submission of an updated statement alter the conditions of the permit.

(c) The permittee shall notify the Department in writing within 30 days of any change in the information set forth in this current registration statement.

(d) The failure to submit an updated registration statement and to submit all applicable fees, required by N.J.A.C. 7:26-4, on or before July 1 of each calendar year shall be sufficient cause for the Department to revoke the permit or take such other enforcement action as is appropriate.

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1, 1.7 or 1.8 in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

1. No person shall be issued an approved registration or a SWF permit if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(g) No person shall continue to operate a solid waste facility, unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8 without obtaining a SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved SWF Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) The fulfillment of the application and approval requirements set forth in this subchapter shall not exempt the applicant from obtaining all other permits or approvals required by law or regulations.

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11, unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(j) No person shall engage or continue to engage in disposal of solid waste in this State in a manner which does not meet all the conditions, restrictions, requirements or any other provisions set forth in its SWF permit.

(k) Except for minor modifications as set forth at N.J.A.C. 7:26-2.6(d), no permit condition shall be modified, revised or otherwise changed without prior written approval of the Department.

(l) No owner shall transfer ownership of the permit without receiving prior written approval of the Department, in accordance with N.J.A.C. 7:26-2.7(e).

(m) No permittee shall begin construction of a sanitary landfill until the Department approves the final Quality Assurance/Quality Control Plan submitted in accordance with N.J.A.C. 7:26-2A.8.

(n) No permittee shall begin operating a sanitary landfill, composting or co-composting facility, transfer station, materials recover facility, or thermal destruction facility until:

1. The Department approves the final Operations and Maintenance manual in accordance with N.J.A.C. 7:26-2.10; and

2. The Department receives and approves the certification of construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2A.9(a).

(o) No thermal destruction facility shall begin operations until:

1. The Department receives and approves the certification of the construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2B; and

2. The Department approves the testing period results in accordance with standards and procedures set forth in N.J.A.C. 7:26-2B.8(c).

(p) The owner or operator of any solid waste facility which is determined by the Department to be operating in an environmentally unsound manner shall:

1. Within 90 days of notification by the Department, submit a plan to close or environmentally upgrade the facility in conformance with the applicable standards, as determined by the Department and set forth in this chapter;

2. Within 90 days of receipt of written approval by the Department of the submitted plan, begin to close or construct the environmental upgrading at the facility; and

3. Within one year of receipt of written approval by the Department of the submitted plan, complete closure or construction of the environmental upgrading at the facility.

(q) A one time extension of the compliance schedule established by (p) above shall be granted by the Department provided the facility owner or operator demonstrates that he or she has made a good faith effort to meet the schedule.

(r) Should the closure or environmental upgrading required pursuant to (p) above not be completed or should continued operations be determined by the Department to be environmentally unsound despite the implementation of the plan approved pursuant to (p) above, the solid waste facility shall temporarily or permanently cease operations and close or enter into receivership, as provided for in N.J.S.A. 13:1E-9, for that period of time necessary to rectify the environmentally unsound conditions.

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

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

Repealed "Smoking, smoldering or burning landfill".

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

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

Added sections 1.11 or 1.12.

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

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

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

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

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

In (e), (f), (g) and (i), amended N.J.A.C. references; in (k), inserted text "Except for . . . 7:26-2.6(d)"; and added (p) through (r).

Administrative change.

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

Case Notes

Revocation of solid waste transporter's license due to lack of permit and failure to pay sales taxes modified. New Jersey Department of Environmental Protection and Energy, Division of Solid Waste Management, 97 N.J.A.R.2d (EPE) 50.

Denial and revocation of licenses was justified for recycling facility that handled solid waste without a permit. Department of Environmental Protection and Energy v. Tempesta & Sons, Inc., 96 N.J.A.R.2d (EPE) 247.

7:26-2.9 Environmental and Health Impact Statement requirements

(a) The Environmental and Health Impact Statement, (hereinafter EHIS), shall be prepared utilizing a systematic, interdisciplinary approach in order to ensure the integrated assessment of technical, economic, environmental and social parameters potentially affected by the proposed facility.

(b) An EHIS prepared and submitted pursuant to this section shall address each category described at (c)3 below. The magnitude and detail of the environmental inventory, the environmental assessment, the health impact assessment and the overall EHIS shall reflect the type, size and location of the proposed solid waste facility. Where the information addressing a requirement of the inventory is supplied in the engineering designs or reports, reference to such designs or reports may be noted in the inventory, provided the appropriate section and page number of the design or report is cross referenced and indexed. If any category described at (c)3 below presents no impact relative to the proposed facility, a notation of non-applicability shall be entered in the environmental inventory for that category. The Department shall allow variances to the requirements of this section for any category, or to reduce the size of the general area to be described in the inventory relative to site specific impacts, if the applicant demonstrates during the pre-application conference that specific categories are not applicable or the area is not appropriately subject to the EHIS based on the type, size and location of the proposed solid waste facility.

26. Where feasible, the facility subsystems shall be equipped with automatic process controls which contain the necessary instrumentation and related feedback mechanisms to ensure that process operational parameters are being met. Automated systems shall be equipped with manual override capabilities. Instrumentation displays and related control mechanisms shall be positioned within the facility in such a manner as to be readily accessible and highly visible for monitoring purposes;

27. The design of the facility shall not place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, potable and non-potable water supplies, waste water and stormwater collection and treatment, energy supply and transmission, transportation systems, or any other site related infrastructure subsystems, except in those cases where plans have been developed or are being implemented to provide for the expansion of existing utility systems or establishment of new utility systems which will meet the additional demand generated by the construction and operation of the facility. Copies of existing utility expansion plans and implementation time frames shall be submitted in those cases where such expansions are needed to meet the additional demand described above; and

28. All thermal destruction facilities shall be equipped with an independent, auxiliary power system capable of supplying energy in the case of a power supply failure sufficient to complete a controlled facility shutdown.

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

On-site and off-site hyphenated throughout rule, "vehicles" replaced by "solid waste vehicles" and "hauling" replaced by "transporting".
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

Waste control authority complied with regulatory provision requiring it to identify proposed disposal locations for facility-generated waste residues. Matter of Pennsauken Solid Waste Management Authority, 238 N.J.Super. 233, 569 A.2d 826 (A.D.1990).

Evidence sustained air pollution control permit for resource recovery facility. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

7:26-2B.5 Additional engineering design submission requirements and design requirements for transfer stations and materials recovery facilities

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10.

(b) All solid waste transfer stations and materials recovery facilities, except for those regulated pursuant to N.J.A.C. 7:26-2.4(c)2, shall be designed in accordance with the following:

1. Facilities shall be designed with a system capable of collecting, storing, treating and disposing of wastewater

generated during normal operations, including the wash-out and cleaning of equipment, trucks and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A;

2. Facilities shall be designed with facility processing, tipping, sorting, loading, storage and compaction areas located within the confines of an enclosed building.

3. Facilities shall be designed with concrete or equivalent tipping floors or ramps to ensure the proper containment and channeling of wastewater to sanitary sewer connections or corrosion resistant holding tanks and to withstand heavy vehicle usage, in compliance with the applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14A and 7:14B;

4. Facilities' on site roadways and storage areas shall be designed with concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

5. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste to ensure an environmentally sound operation and for proper processing of the maximum permitted daily incoming waste loading;

6. Facilities and all appurtenances, including all vehicles while onsite, shall be designed, positioned and buffered in such a manner that the sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29;

7. Facilities shall be designed in a manner which will prevent the migration of odors and dust outside the confines of the enclosed building;

8. Facilities shall be designed in such a manner so as to afford fluid vehicular movement onsite in accordance with the approved on-site queuing plan and prevent traffic backups and related traffic hazards on access roads servicing the facility;

9. Offsite truck routes for the conveyance of solid waste shall be defined and delineated in such a manner as to minimize impacts on surrounding residential development or similar sensitive receptor. The truck traffic to and from the proposed facility shall not result in an unacceptable decrease in the level of service, as described and defined in the New Jersey Department of Transportation (NJDOT) Highway Access Management Code (N.J.A.C. 16:47), at major intersections located along the designated truck routes;

10. Facility layout design shall conform to the configuration of the site. A setback area shall be provided to allow for adequate buffering of the site. All main building enclosures shall be designed with a minimum setback of 50 feet from the facility property line. The Department shall allow a reduction in the setback limit if the applicant satisfactorily demonstrates that such a reduction

will not pose an adverse impact on the adjacent land use activities;

11. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling, and extinguishing any and all fires that may occur. All fire protection systems shall be designed to comply with N.J.A.C. 5:23-3.17 and the standards established by the National Fire Protection Association (NFPA);

12. The interior layout shall provide for system installations that maximize accessibility for repairs, maintenance, and cleaning, while affording employee safety;

13. Facilities shall be designed and constructed in full conformance with the specifications and requirements of the Uniform Construction Code, N.J.A.C. 5:23;

14. The facility shall be designed so as not to place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, water supply, wastewater and stormwater collection and treatment systems, energy supply and transportation systems; and

15. The proposed ultimate disposal facility and location for all waste processed by the facility shall be identified.

(c) The site plan map shall include the following:

1. A layout of all facility buildings, structures and roadways which shall indicate the type of construction materials;

2. Profile views of all structures and enclosures showing dimensions. Plan views showing building setback, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas, and site boundaries;

3. Interior floor plan showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas; and

4. A description with detailed specifications of the proposed onsite and offsite transportation system which shall indicate the type of construction materials.

(d) The engineering report shall include:

1. Descriptive and detailed specifications of all process equipment to be used, including the equipment's rated and designed capacity. Schematic diagrams shall be provided;

2. Equipment specifications including information pertaining to the make, model and manufacturer, if available, and the related processing equipment, reliability and efficiency shall be submitted;

3. A discussion of the maximum length of time that waste and, where applicable, recyclable materials will be stored at the facility; and

4. A description of any materials recycling or reclamation activities to be operated in conjunction with the facility.

(e) If the facility is to handle liquid or liquid-solid waste mixtures, the proposed methods to protect and monitor the quality of groundwater and nearby surface waters shall be indicated.

(f) If the materials recovery facility is designed with mechanical size reduction equipment, an explosion suppression system shall be included in the engineering design.

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 (b); in (c)1, inserted reference to roadways; and in (c)5, inserted reference to energy system.

Administrative change.

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

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

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

Rewrote section.

7:26-2B.6 Additional engineering requirements for solid waste composting and co-composting facilities

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10.

(b) Co-composting facilities require a SWF permit and may also require one or more NJPDES permits from the Department in accordance with N.J.A.C. 7:14A.

(c) The engineering report for these facilities shall include the following:

1. A discussion of the quantity and composition of the waste streams entering the proposed facility in terms of:

i. Municipality of origin; and

ii. Weight, volume and corresponding load density characteristics.

2. If sewage sludge is to be co-composted with solid waste, identify the quantity and physical/chemical characteristics of each source of sewage sludge. Sludge characteristics will be reviewed by the Department for a determination of their suitability for acceptance and processing at the proposed solid waste composting facility. The following information shall be submitted for each individual source of sludge:

i. Identify the type of processing carried out at the sewage treatment plant source prior to dewatering (e.g. lime stabilization, digestion, long term storage, other);

(2) A minimum of five turnings over 15 consecutive days, maintaining a temperature of not less than 55 degrees Celsius/131 degrees Fahrenheit.

ii. Aerated static pile method which meets PFRP as follows:

(1) Pile insulated with six to 12 inches of insulating material (for example, sawdust, cured compost, or wood chips); and

(2) Temperature of at least 55 degrees Celsius/131 degrees Fahrenheit maintained throughout mixture for three consecutive days.

iii. Enclosed (within) vessel composting method which meets PFRP by:

(1) Temperature maintained at 55 degrees Celsius/131 degrees Fahrenheit throughout mixture for at least three consecutive days.

iv. Any future PFRP provided by Federal or State regulation.

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 (b) and (c); in (d), inserted "Minimum depth of borings" column; and added (f).

Administrative change.

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

7:26-2B.7 Additional operational requirements for solid waste composting and co-composting facilities

(a) The requirements of this section are in addition to the general operational requirements of N.J.A.C. 7:26-2.11 and the solid waste facilities records maintenance requirements of N.J.A.C. 7:26-2.13.

(b) The owner and/or operator shall submit a quarterly report to the Department within 30 days after the end of each calendar quarter. The quarterly report shall include the following:

1. The quantity, type and source of incoming waste;
2. The quantity and types of recovered recyclables;
3. The quantity of compost produced;
4. The results of compost analysis;
5. The quantity, before blending, of compost sold or distributed, and markets;
6. The quantity of disposed residue, and sites;
7. Daily temperature readings and retention times during the composting process;
8. A summary of leachate management (collected, reused, and treated/ disposed);
9. A summary of major maintenance on leachate, temperature or other monitoring and control systems in operation; and

10. The standard procedures to assure data reliability.

(c) All compost analysis shall be performed by a laboratory certified pursuant to N.J.A.C. 7:18.

(d) The facility shall be operated under the supervision and control of properly trained individuals during all hours of operation, and access to facility shall be prohibited when facility is closed.

1. The owner and/or operator shall train all employees in appropriate facility operations, maintenance procedures, and safety and emergency procedures in accordance with the training plan developed pursuant to N.J.A.C. 7:26-2B.6(d)10.

(e) The owner and/or operator shall monitor and record the temperature of composting materials daily to ensure that the pathogen reduction criteria at N.J.A.C. 7:26-2B.6(f)11 are met.

(f) The owner and/or operator shall begin processing all incoming waste within three days. Any waste that is not processed within three days shall be sent for disposal. The owner and/or operator shall begin processing incoming waste containing grass within 24 hours unless the receiving area is fully enclosed and equipped with odor controls. For facilities without fully enclosed receiving areas, any waste containing grass that is not processed within 24 hours shall be sent for disposal.

(g) Incoming, unprocessed waste shall not be mixed with finished compost.

(h) Stored finished compost that is not sold or distributed within 15 months shall be removed for disposal or reprocessed for sale or distribution.

(i) In addition to the information required by N.J.A.C. 7:26-2.13(a), the daily record of facility operations shall include:

1. Daily temperature and moisture monitoring of the composting process;
2. Laboratory analyses;
3. The retention time of the composted material; and
4. The sale and distribution of recovered materials.

(j) The owner and/or operator shall develop a quality assurance (QA)/quality control (QC) plan to be included in the final operation and maintenance manual. Such plan shall outline the monitoring, sampling and analysis plans for testing the compost process and product.

(k) The Department shall set an appropriate monitoring and sampling schedule for the start-up period (one year) as part of the facility permit.

(l) Using information gained during the start-up period, a monitoring and sampling schedule for ongoing operations will be developed with the Department based on statistical methods for quality assurance.

(m) Representative samples of the compost shall be obtained in accordance with the approved plan. Samples of the compost produced at the facility shall be analyzed for the compost quality monitoring parameters listed in the Appendix to this subchapter, incorporated herein by reference, in accordance with the appropriate methods as approved in the sampling plan.

(n) Results of all laboratory analyses for each parameter shall be recorded and maintained at the facility and shall be reported to the Department as specified at (b) above.

(o) Any package containing compost offered for sale or distribution shall be labeled with the recommended safe uses and application rates, and restrictions, if any, on use of the product. If compost is offered for bulk sale or distribution, signs or printed literature containing such information shall be made available.

(p) Compost offered for sale or distribution shall satisfy the standards established by the USEPA at 40 C.F.R. 503. Specifically, compost offered for sale or distribution shall meet the pollutant concentrations in 40 C.F.R. 503.13(b)(3), the Class A pathogen requirements in 40 C.F.R. 503.32(A), and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) through 503.33(b)8. Compost not satisfying the standards established by the USEPA may be used only as authorized by the Department, or it shall be disposed.

(q) This subsection shall govern the closure and post-closure care of all composting and co-composting facilities.

1. The owner and/or operator of a permitted composting or co-composting facility shall not revise the final closure plan submitted pursuant to (c)12 above without prior approval of the Department. The owner and/or operator may submit an updated final closure plan, containing the proposed revisions to the Department at any time, provided that all revisions are submitted at least 180 days prior to termination of operations at the facility.

2. The owner and/or operator shall notify the Department, in writing, return receipt requested, at least 60 days prior to the date of termination of operations at the facility.

3. The owner and/or operator shall publish notice of termination of operations at the facility in a newspaper of general circulation in the district where the facility is located and in the district(s) or municipality(ies) sending at least 25 percent of their waste to the facility at least 30 days prior to the date of termination of operations at the facility.

4. Within 10 days of ceasing operation, all residuals and waste shall be removed from the site and recycled or disposed and the owner and/or operator shall arrange for a final cleaning of any containers, equipment, machines, floors and facility surfaces having come in contact with solid waste.

5. A composting facility shall be considered finally closed when all the requirements of the closure plan have been met.

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

7:26-2B.8 Additional operational requirements for thermal destruction facilities

(a) The requirements of this section are in addition to the general requirements of N.J.A.C. 7:26-2.11;

(b) Subsequent to completion of the facility construction phase and prior to the initiation of facility operations, the New Jersey licensed professional engineer retained by the applicant to supervise the construction of the facility shall certify in writing to the Department that he or she has personally examined the facility during each major stage of construction and that the facility has been constructed in accordance with the documents, statements, designs and plans submitted to and as approved by the Department.

(c) The owner and/or operator of the facility shall provide written notification to the Department of the intent to initiate the start up of operations at the facility at least 30 days in advance of the planned date. During this initial period of facility start up the Department reserves the right to have a representative present at the facility to observe any equipment testing that is being conducted as well as the right to collect samples to verify results.

(d) Immediately following the initiation of operations, facility personnel shall begin routine inspections for equipment malfunction or deterioration and operating effectiveness, in accordance with the following:

1. The owner or operator shall conduct inspections as indicated in the approved final O and M manual in order to identify and remedy any problems; and

2. The owner and/or operator shall record the results of the inspections in a log book or by means of an electronic storage system approved by the Department which shall be accessible at the facility at all times for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial actions taken.

(e) A Department inspector may, at the option of the Department, be stationed at district facilities on a daily basis and during all facility operating hours. The owner and/or operator of such a facility shall allow entry to the inspector at any time during operating hours. The owner and/or operator shall make available office space for Department personnel to prepare inspection reports.

(f) The owner or operator shall implement waste receiving area control procedures that provide for the inspection of the incoming waste stream for the purpose of removing unprocessable or potentially explosive materials prior to the initiation of processing. In addition, the inspection shall effectively prevent the acceptance of unauthorized waste types. These procedures and necessary contingency plans shall be incorporated into the approved final O and M manual.

(g) Should situations arise where the facility experiences equipment or system malfunction to the extent that the waste received cannot be handled or processed in the normal manner, as specified in the facility's SWF permit, then the operator shall notify the Department of the existence of such a situation and the circumstances contributing to the situation within the working day of its occurrence. The operator shall immediately pursue corrective measures. The continued receipt of wastes at the facility shall be limited to that quantity and type that can be handled, stored and processed in conformance with that facility's remaining approved operational capacity.

(h) Arrangements for facility generated waste disposal shall be established and maintained throughout the life of the facility. These waste disposal arrangements shall be in conformance with the Solid Waste Management Plan of the District in which the facility is located and with the rules of the Department.

(i) Unprocessed incoming waste, facility process waste residues and effluents, and recovered materials shall be stored in bunkers, pits, bins, or similar containment vessels and shall be kept at all times at levels that prevent spillage or overflow.

(j) During periods when the facility is not processing wastes and during hours when waste is not being received, waste delivery tipping hall doors shall be kept closed to minimize potential migration of odors and dust to the exterior in accordance with N.J.A.C. 7:27.

(k) The delivery of waste to the facility and the removal of residues and recovered products from the site shall be scheduled so as to eliminate traffic backups and allow for fluid vehicular movement on site. Delivery routes shall be clearly delineated and adhered to. Arteries that pass through non-residential areas shall be utilized wherever possible.

(l) Samples and measurements taken for the purpose of monitoring facility process and treatment operations shall be representative of the process or operation and shall be performed in accordance with the conditions of the facility's SWF permit, as well as the requirements of other regulatory agencies where applicable. Monitoring shall be conducted through the use of continuous monitoring instrumentation, where feasible.

(m) Prior to disposal, the owner and/or operator shall perform a waste determination on all residual ash, in accordance with N.J.A.C. 7:26G-6. Such determination shall be based on analyses of representative composite samples collected in the manner specified in the facility's SWF permit. At a minimum the sampling shall include analyses for toxicity characteristic and total TCDDs (all tetrachlorodibenzo-p-dioxins), and shall be performed at the frequency specified in the facility's SWF permit.

(n) The Department may alter the list of ash test parameters, the methods of sample collection, the analytical procedures employed and the frequency of sampling and analysis, as it deems is necessary. The permittee may request the Department to reduce the number of ash test parameters specified within the solid waste facility permit by applying qualitative knowledge of incoming waste streams. If the owner and/or operator demonstrates through testing that the concentration of any given parameter is consistently below method detection levels as determined using the Toxicity Characteristic Leaching Procedure (TCLP), as defined in USEPA's Test Methods for Evaluating Solid Waste—Physical/Chemical Methods SW 846 (SW 846), or the concentration of any given parameter as determined using a total metals analysis, as defined in SW 846, is consistently below 20 times the regulatory threshold levels of the TCLP, the permittee may request the Department to eliminate those parameters from subsequent analysis.

(o) The analyses required by (m) and (n) above shall be performed in accordance with procedures outlined in the most recent edition of "Test Methods for Evaluating Solid Waste—Physical/Chemical Methods," U.S.E.P.A. publication SW-846.

(p) The results of ash analysis, including the statistical evaluation of the analytical data conducted in accordance with SW 846, and related quality assessment and quality control information pertaining to sample collection, handling and laboratory analytical methodology, shall be submitted to the Department for evaluation. The owner and/or operator shall dispose of the onsite generated residual ash at a facility authorized and permitted to receive the waste type I.D. number assigned to the residual ash by the Department in accordance with its classification.

(q) The operator shall retain original records of all waste analyses and operations' monitoring reports at the facility for a period of three years from the date of measurement.

(r) Records of operations' monitoring and waste analyses required by (q) above shall include:

1. The date, time and place of sampling, measurement or analysis;
2. Chain of custody for all samples collected;
3. The name of the individual who performed the sampling, measurement or analysis;
4. The sampling and analytical methods including the minimum detection levels for the analytical procedure utilized;
5. The results of such sampling, measurement or analyses; and
6. The signature and certification of the report by an appropriate authorized agent for the facility.

(s) The owner and/or operator shall act to prevent accidental or unintentional entry and minimize the possibility for unauthorized entry into the facility. The facility shall have a 24-hour surveillance system which continuously monitors and controls entry to the facility or an artificial or natural barrier which completely surrounds the facility. In addition, the facility shall have a means to control entry at all times through the gates or other entrances to the facility.

(t) The owner and/or operator shall comply with the following requirements pertaining to facility staffing:

1. Facilities shall maintain sufficient personnel during each scheduled shift to assure the proper and orderly operation of all system components, along with the ability to handle all routine facility maintenance requirements. Such personnel shall have sufficient educational background, employment experience and/or training to enable them to perform their duties in such a manner as to ensure the facility's compliance with the requirements of the Act, this chapter, and the conditions of its SWF permit;
2. Each shift shall have a designated shift supervisor authorized by the owner or operator to direct and implement all operational decisions during that shift;
3. A facility utilizing a boiler to generate steam, power or heat shall employ individuals licensed in accordance with the Rules and Regulations of the New Jersey Department of Labor, "Boilers, Pressure Vessels and Refrigeration," N.J.A.C. 12:90; and
4. Every district facility shall have under contract a New Jersey licensed professional engineer as a consultant to oversee the general plant operations. This engineer shall possess experience in the design and operation of the major system components or equipment that constitute the facility.

(u) The owner and/or operator shall comply with the following requirements pertaining to facility personnel training:

1. All personnel who are directly involved in facility waste management activities or who operate, service, or monitor any facility equipment, machinery or systems shall successfully complete an initial program of classroom instruction and on-the-job training that includes instruction in the operation and maintenance of the equipment, machinery and systems which they must operate, service or monitor in the course of their daily job duties, and which teaches them to perform their duties in a manner that ensures the facility's compliance with the requirements of the Act, this chapter and the conditions of its SWF permit;
2. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the facility's permits;
3. The training program shall ensure that facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise. The training program shall provide instruction in the use of personal safety equipment, procedures for inspecting and repairing facility equipment, the use of communications or alarm systems, the procedures to be followed in response to fires, explosions or other emergencies, and the procedures to be followed during planned or unplanned shutdown of operations;
4. Employees hired shall not work in unsupervised positions until they have completed the training program required herein;
5. Facility personnel shall take part in a planned annual review of the initial training program; and
6. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least one year from the date the employee last worked at the facility.

(v) The following actions shall be implemented in the case of an emergency:

1. The plant operator or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;
2. Concurrently, the plant operator or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

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.

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

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

In (j), added "in accordance with N.J.A.C. 7:27"; in (m), substituted "7:26G-6" for "7:26-8.5".

7:26-2B.9 Additional operational requirements for transfer stations and materials recovery facilities

(a) At no time shall ID 27 solid waste be subject to mechanized processing, such as grinding, shredding or baling, such that the physical appearance of the material is altered prior to disposal at a designated district facility.

(b) All facility processing, tipping, sorting, loading, storage and compaction of materials (that is, solid waste and mixtures of solid waste and recyclable materials) shall occur within the confines of an enclosed building.

(c) The installation, maintenance, operation, and repair of all systems identified within the interior layout of the facility shall comply with the requirements established by the Federal Occupational Health and Safety Administration and the New Jersey Worker and Community Right to Know Act.

(d) The queuing and staging of solid waste vehicles on any public roadway is prohibited.

(e) The queuing and staging of solid waste vehicles shall be conducted in accordance with the approved on-site queuing plan for the facility so as to prevent traffic backups and related traffic hazards on access roads servicing the facility.

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".

New Rule, R.2001 d.86, effective March 5, 2001.

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

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
O ₂ consumed	VS/hr
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
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) Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and 7:26A-6.6(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 "hauling" 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.

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

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

In (a), substituted "Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and 7:26A-6.6(a), the" for "The".

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 for the transportation 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 with a generator 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 with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to this subchapter, of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

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 by another person, unless such person is an employee of the applicant or registrant, or unless such use is in

accordance with a lease of vehicle operators pursuant to this subchapter.

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. The leasing of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchapter, shall not be deemed engaging or contracting to engage in said solid waste activities.

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. The leasing of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchapter, shall not be deemed engaging or contracting to engage in said solid waste activities.

(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), but shall apply in the case of a licensee or permittee which must file a disclosure statement for any lessor which holds a beneficial interest in the licensee or permittee pursuant to N.J.A.C. 7:26-16.6(i) or (j).

(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 leased operators of 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) A permittee, licensee or exempt transporter 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 permittee, licensee or exempt transporter will operate, shall ensure that such lease is signed and dated by the parties thereto, provides for the exclusive use, control and possession of such equipment by the permittee, licensee, or exempt transporter during the lease and also includes:

1. The dates on which the lease begins and ends, during which the permittee, licensee, or exempt transporter 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 or certification by the president, chief executive officer, managing partner or sole proprietor or other appropriate officer or key employee of the permittee or licensee for whom a disclosure statement has been filed in accordance

with N.J.A.C. 7:26-16.4(a)10, or if an exempt transporter, by the president, chief executive officer, managing partner or sole proprietor, or other appropriate officer or official, or key employee of the exempt transporter. The following statement shall immediately precede the signature of the affiant or certifier:

1. "I swear (or certify) that I am the _____ (title) of _____ (name of licensee, permittee, or exempt transporter) and am authorized to make this certification/affidavit on behalf of _____ (name of licensee, permittee, or exempt transporter), and that I have personal knowledge of the facts set forth below.

2. 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.

3. I further swear (or certify) that my company and I understand that it must exercise exclusive use, possession and control over each piece of solid waste equipment which is included in this application for a registration statement while such equipment is used to transport solid waste.

4. I further swear (or certify) that my company and I understand that it must take reasonable measures to ensure that the above-described equipment will not, during the period of the lease, be used by any other person for the purpose of transporting solid waste."

In the case of a certification, the certification shall end with the following statement immediately preceding the signature and date: "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, when a permittee, licensee, or exempt transporter files a lease in connection with an application for a registration statement for a solid waste vehicle, cab, trailer, single-unit vehicle or transport unit, the lease shall provide that the leased equipment is or will be under the exclusive management, direction, and control of the permittee, licensee, or exempt transporter while being used to conduct solid waste activities for the licensee, permittee, or exempt transporter. This subsection is in no way intended to affect whether the operator or operators of solid waste vehicles leased to a permittee, licensee, or exempt transporter are or should be deemed to be employees of the permittee, licensee, or exempt transporter.

(k) In all situations in which the Department issues decals to a permittee, licensee, or exempt transporter for affixation to the solid waste vehicle(s) of a lessor from which the permittee, licensee, or exempt transporter is leasing solid waste vehicles, the permittee, licensee, or exempt transporter to which the lessor has leased solid waste vehicles, and the lessor itself, are under independent obligations to notify the Department, return the NJDEP registration certificate to the Department, and remove and destroy the NJDEP registration number and decals from the solid waste vehicles of the lessor at the expiration and non-renewal of the lease pursuant to which the decals were issued. Such decals, after the expiration and non-renewal of the lease pursuant to which the decals were issued or at the expiration of the decals (whichever comes first), shall be deemed expired. When used for solid waste transportation purposes, such vehicles may only be used pursuant to the lease, and in compliance with all requirements of this subchapter.

1. Failure to remove and destroy such decals and registration numbers after the expiration and non-renewal of the lease shall constitute a violation of this subchapter, and shall subject both the lessor and the permittee, licensee, or exempt transporter to penalties and licensing action. It shall be an affirmative defense to a penalty proceeding or licensing action for a permittee, licensee or exempt transporter if it can show that it made reasonable efforts to remove and destroy the decal and gave the Department timely written notice of its inability to remove and destroy the decal.

2. All expired decals and registration numbers shall be confiscated by the Department upon discovery.

3. Use of decaled vehicles by a lessor receiving decals for its vehicles pursuant to a lease, for the transportation of solid waste within, or into or out of New Jersey other than pursuant to a lease with a permittee, licensee, or exempt transporter, and in conformity with (j) above, shall constitute unlicensed hauling, and shall subject the lessor to penalties and debarment from involvement in the solid and hazardous waste and recycling industry in the State of New Jersey, including a prohibition on leasing solid or hazardous waste vehicles or solid or hazardous waste operators to permittees, licensees, and exempt transporters.

(l) Permittees, licensees and exempt transporters shall, for purposes of solid waste activities and to the extent provided for under New Jersey law, be responsible for the actions and omissions of their lessors and their vehicle operators, and for selecting lessors and vehicle operators with appropriate qualifications; and the fact that the underlying relationship between a permittee, licensee or exempt transporter, and a lessor and/or vehicle operators was other than that of employer-employee shall be no defense in a licensing or enforcement action taken against the permittee, licensee, or exempt transporter because of the actions, omissions, or lack of qualifications of the lessor or vehicle operator.

(m) 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.

Amended by R.2000 d.75, effective February 22, 2000.

See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Rewrote the 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 Exemptions 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; and

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.

(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).

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

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

In (a), deleted 3.

7:26-3.4 Transportation requirements (General)

(a) Length of service routes shall be kept consistent with the proper operation of solid waste vehicles and/or equipment in order that the area or route services can be completed during a normal operating day.

(b) All collected solid waste shall be properly deposited at an approved facility in accordance with N.J.A.C. 7:26-1 and 2. Solid waste or recyclable materials shall be deposited at a solid waste or recycling facility only to the extent the materials contained in an individual load are waste types and recyclable materials permitted for acceptance at that facility and commingled only to the extent permitted in the operating approvals for that facility.

(c) Unless an emergency, such as inclement weather, equipment breakdown or accident warrant, no solid waste shall be allowed to remain or be stored in any solid waste vehicles in excess of 24 hours.

(d) No solid waste vehicle shall be used for transportation if the design of the solid waste vehicle is such that any solid waste material will spill onto the roadways and highways of this State.

(e) No solid waste vehicle used for transportation shall be used beyond its design capabilities or in such a manner that littering and spillage of solid waste onto the roadways and highways of this State will occur.

(f) All solid waste vehicles used for the transportation of solid waste shall be maintained in good working condition to protect the health and safety of the workers and citizens of this State and to provide prompt and efficient service. The registered operator of any transportation system shall provide a means of continuous service in the event an emergency arises.

(g) All workers or collection crews operating solid waste transportation systems shall take reasonable care to protect the property of customers being served. Any damage or spillage of solid waste as a result of the transporter's actions shall be his or her responsibility.

(h) Each registered unit, including each container, of a solid waste vehicle, except those exempted from fee payment under N.J.A.C. 7:26-3.3, used in the collection or transportation of solid waste shall properly, permanently, and conspicuously display a current State of New Jersey solid waste decal and the New Jersey Department of Environmental Protection (N.J.D.E.P.) registration number in letters and numbers at least three inches in height, and, except for containers, shall carry the current N.J.D.E.P. registration certificate in the solid waste vehicle. Current solid waste decals must be permanently affixed to both sides of each solid waste vehicle, cab, trailer, single-unit vehicle, transport unit and container prior to use on a public roadway or highway and prior to the unit being placed into service or before receiving waste.

1. A copy of any lease filed in connection with the solid waste registration of a vehicle, cab, trailer, single unit vehicle, transportation unit or container shall be carried in the vehicle and made available to Department representatives upon inspection or request.

2. Only current year decals shall be displayed. The registrant of solid waste vehicles, cabs, trailers, single-unit vehicles, transport units and containers which are owned by the registrant shall, upon the interruption or termination of the exclusive use, possession or control of any such equipment by the registrant, notify the Department, return the N.J.D.E.P. registration certificate to the Department, and remove and destroy the N.J.D.E.P. registration number and decal on such solid waste vehicles, cabs, single-unit vehicles, transport units, trailers and containers. A registrant of solid waste vehicles, cabs, trailers, single-unit vehicles, transport units and containers which are leased shall, upon the expiration of the lease, or upon the interruption or termination of the exclusive use, possession or control of any such equipment by the registrant, notify the Department, return the N.J.D.E.P. registration certificate to the Department, and remove and destroy the N.J.D.E.P. registration number and decal on such solid waste vehicles, cabs, trailers, single-unit vehicles, transport units and containers.

3. In addition, there shall be affixed to both sides of each registered solid waste vehicle, cab, trailer, single-unit vehicle, transport unit and container in letters and numbers at least three inches in height, the capacity of the container in cubic yards, in tons or in gallons, with the appropriate unit designated, so as to be visible to the operator of the solid waste facility.

(i) Tarpaulins or covers shall be provided and used as needed while transporting solid wastes.

(j) All solid waste vehicles used for transportation of solid waste shall, except for operations of their collection service routes, access and exit solid waste facilities in accordance with designated solid waste vehicle routes as specified in either the appropriate district solid waste management plan or the permit for the particular solid waste facility.

(k) Any transporter that transports solid waste to or from an intermodal container facility operating without authorization pursuant to N.J.A.C. 7:26-3.6 shall be subject to all applicable penalties for violation of New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including revocation of transporter registration, certification and transporter license.

(l) Any person that transports regulated medical waste to or from a collection facility operating without authorization pursuant to N.J.A.C. 7:26-3A.39 shall be subject to all applicable penalties set forth at N.J.A.C. 7:26-5 including revocation of transporter registration, certification and transporter license.

(m) All solid waste transporters shall haul solid waste in accordance with the Solid Waste Management Plan developed by the county or district of waste origin pursuant to N.J.A.C. 7:26-6. In a district which has designated in its District Solid Waste Management Plan a weighing facility or facilities for waste leaving the district, transporters shall deliver solid waste to a designated in-district weighing facility before the solid waste is removed from the district for out-of-district transfer, materials recovery, or disposal.

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

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

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

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

Added (j).

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

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

References to "collection and haulage" changed to "transportation", "vehicles" changed to "solid waste vehicles", at (h) requirement that N.J.D.E.P. registration number be permanently displayed.

Amended by R.1996 d.169, effective April 1, 1996.

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

Added (k).

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), inserted N.J.A.C. reference and added last sentence; substantially amended (h); and added (l).

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

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

Added (m). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

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.

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).

Regulation sets standards for use of collection vehicles to prevent spillage of solid wastes onto roadways; statute and regulations preempt municipal zoning ordinance as to sanitary landfill access road construction. *Chester Twp. v. Dept. of Environmental Protection*, 181 N.J.Super. 445, 438 A.2d 334 (App.Div.1981).

7:26-3.5 Transporter requirements (specific)

(a) Rules concerning sewage sludge and other fecal material include:

1. All solid waste vehicles used for the transportation of such wastes shall be of such a design as to preclude any spillage or leakage onto the roadways and highways of the State.

2. Sewage sludge and other fecal material shall not be intermixed with other wastes of a chemical or industrial nature for transportation to a disposal operation.

(b) All solid wastes vehicles used for transportation of bulky wastes shall be of such a design so as to preclude any spillage onto the roadways and highways of the State.

(c) Radioactive materials regulated by the Atomic Energy Act of 1954 and lethal chemicals shall not be transported in or through the State of New Jersey without prior approval in writing by all authorities having jurisdiction in such matters and by the New Jersey Department of Environmental Protection.

(d) Rules concerning transportation of asbestos and asbestos-containing waste materials follow:

1. All solid waste vehicles used for the transportation of asbestos and asbestos-containing waste materials shall be of such a design so as to prevent any spillage or leakage or emissions therefrom.

2. No transporter shall transport asbestos and/or asbestos-containing waste materials unless such waste is properly packaged in accordance with 40 C.F.R. 61.150 and N.J.A.C. 7:26-2.12.

3. The asbestos or asbestos-containing waste materials shall be transported in a manner that prevents the rupture of the asbestos containers in loading, transport, and unloading operations.

4. Once collected, asbestos and/or asbestos containing waste materials shall be transported directly from the point of generation to the solid waste landfill or transfer station permitted to receive such wastes.

5. There shall be no visible air emissions during loading, transporting, or unloading operations.

(e) Each transporter, who hauls solid waste directly to out-of-State facilities from districts which have not designated an in-county weighing facility pursuant to N.J.A.C. 7:26-6, shall maintain a daily record of waste transported directly out-of-State. The record shall be retained for a period of at least one year or longer in the event of an unresolved enforcement action or at the Department's request. The daily record shall include but not be limited to the following information:

1. Identification of the transporter's DEP registration number and solid waste decal number;

2. Identification of the out-of-State disposal facility where the solid waste was disposed including the state in which the facility is located, the facility name and location address of the facility;

3. The cubic yardage or tonnage of solid waste types: ID 10 through ID 27, including any variants;

4. Date of delivery to the out-of-district facility;

5. The license plate number and State of the solid waste vehicle; and

6. The place of origin of the waste identified by municipality, county and state.

(f) Each transporter, who hauls solid waste directly to out-of-State facilities from districts which have not designated an in-county weighing facility pursuant to N.J.A.C. 7:26-6, shall submit monthly summaries of wastes transported directly out-of-State to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district of origin on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month. The summary shall include, but not be limited to, the following information:

1. Identification of the out-of-State disposal facility where the solid waste was disposed including the state in which the facility is located, the facility name and location address of the facility;
2. The tonnages and types of waste disposed of at each out-of-State facility; and
3. A listing by out-of-State disposal facility of the origin of the waste identified by New Jersey municipality and county and State.

(g) O and D form requirements for transporters hauling solid waste to in-State solid waste facilities are as follows:

1. The Department shall provide the registered transporter with an approved O and D form. The transporter shall thereafter duplicate the form for use with each load of solid waste destined for an in-State solid waste facility.
2. Prior to disposing of the solid waste, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information.
3. The completed and signed O and D form shall be given to the facility operator in accordance with N.J.A.C. 7:26-2.13(c).

(h) Transporters of asbestos and asbestos containing waste materials shall be responsible for providing respirators, any mandatory training and fit testing for its drivers and passengers.

Amended by R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).

(e) added.

Amended by R.1985 d.558, effective November 4, 1985.
See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Substantially amended.

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

Reference to "collection and haulage" changed to "transportation", "vehicle" changed to "solid waste vehicle" and CFR cite updated. Old (d) deleted. Old (e) recodified as new (d).

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

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

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

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

Added (e).

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

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

In (d)2, amended N.J.A.C. references and rewrote (d)4.

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

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

Deleted (a)5; recodified existing (a)6 as (a)5; rewrote (e); and added (f). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

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

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

Added (g) and (h).

7:26-3.6 Intermodal container facility

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

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

1. The name, address and telephone number of the person or persons seeking to operate the proposed facility;
2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3, 16 and 16A;
3. Photocopies of documents as evidence of all authorizations for siting, construction and operation, and conformance with all local, regional, State or Federal requirements of any governmental agency, or other body with jurisdiction over any aspect of the proposed facility;
4. A description of the geographical location of the facility, identifying the name of the municipality in which the facility is located and the address of the facility;
5. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;
6. A description of the current use of the facility site and of all adjoining properties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Issue either a letter of authorization to operate the intermodal container facility that shall specify that any other waste management activities conducted at the site

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

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

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

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

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

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

1. Solid waste shall not remain at any intermodal container facility for more than 72 hours, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. An intermodal container facility at which solid waste is staged or stored for more than 72 hours, or at which ID 72 liquid solid waste is stored for more than 180 days, shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

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

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

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

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

i. Observing and sampling any materials on site;

ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and

v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

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

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

8. Any release or discharge of any solid waste at the intermodal container facility must be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at (609)292-7172. The report must specify the type of substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The Department determines that there are material and significant alterations or additions to the authorized facility or operation that occurred after the Department issued the existing letter of authorization that warrant the

imposition of conditions different from or lacking in the existing authorization;

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

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

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

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

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

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

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

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

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

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

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

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

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

Readopted provisions of Emergency Amendment R.1997 d.404 with-out change.

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

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

In (b)7, substituted "An administrative action issued by" for "A letter of consistency with the district solid waste management plan from"; substituted "administrative action" for "letter of plan consistency".

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

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

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

(c) In the event of an incident involving smoking, smoldering or burning solid waste in any solid waste vehicle, the registrant shall notify the Department at (609) 292-7172 within 24 hours of the incident.

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

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

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

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

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

Added (c).

7:26-3.8 Applicability

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

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

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

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

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

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

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

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

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

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

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

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

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

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

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

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

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

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

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

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

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

7:26-3A.2 Construction

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

7:26-3A.3 Severability

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

7:26-3A.4 Record retention

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

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

7:26-3A.5 Definitions

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. In addition, the following terms, when used in this subchapter, shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Processes such as thermal treatment or melting, during which treatment and destruction occur;
2. Processes such as shredding, grinding, tearing, or breaking, during which only destruction takes place; or
3. Processes that melt plastics and fully encapsulate metallic or other sharps and seals waste completely in a container that will not be penetrated by undestroyed sharps.

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

“DOH” or “NJDOH” means the New Jersey Department of Health.

“EPA” means the United States Environmental Protection Agency.

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

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

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

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

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

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

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

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

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

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

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

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

“Packaging” means the assembly of one or more containers and any other components necessary to ensure compliance with N.J.A.C. 7:26-3A.11.

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

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

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

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

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

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

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

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

“Treatment”, “treated”, or “treats” when used in any section of this subchapter except for N.J.A.C. 7:26-3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods,

techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. If antimicrobial chemicals are used in regulated medical waste treatment the chemicals must be registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) program specifically for this purpose. When used in the context of N.J.A.C. 7:26-3A.6(a), treatment means either the provision of medical services or the preparation of human or animal remains for interment or cremation.

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

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

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

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

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

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

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

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

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

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

TABLE
REGULATED MEDICAL WASTE

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids

Waste Class	Description
3. Human Blood and Blood Products	that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers. Liquid waste human blood; blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags, soft plastic pipettes and plastic blood vials are also included in this category.
4. Sharps	Sharps that were used in animal or human patient care or treatment or in medical research, or industrial laboratories, including sharp, or potentially sharp if broken, items such as, but not limited to, hypodermic needles, all syringes to which a needle can be attached (with or without the attached needle) and their components, including those from manufacturing research, manufacturing and marketing, pasteur pipettes, scalpel blades, blood vials, carpules, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
7. Unused Sharps	The following unused, discarded sharps, that were intended to be used: hypodermic needles, suture needles, syringes, and scalpel blades.

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

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;
2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26-3A.5(b);
3. Ash from incineration of regulated medical waste once the incineration process has been completed;
4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed;
5. Human corpses, remains and anatomical parts that are intended for interment or cremation;

6. Biological materials, including, but not limited to, those blood or blood products and pathological waste listed at (a)2 and 3 above, intended for use, reuse or recycling as raw materials or products, except materials classified as Class-6, Isolation Waste pursuant to (a)6 above if the following conditions are met:

- i. The materials are used, reused or recycled in accordance with all applicable Federal, State and local statutes and regulations for handling and managing the materials;
- ii. The materials and their by-products are managed as regulated medical waste when discarded after use, reuse or recycling if not treated and destroyed as those terms are defined at N.J.A.C. 7:26-3A.5; and
- iii. The generator of the materials reports the type, destination, and method of use, reuse or recycling of the materials to the Bureau of Medical Waste and Technical Assistance in the Department at the address given at N.J.A.C. 7:26-3A.8(e)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency; and

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

- i. The generator treats all used materials, or any unused materials, that have come into contact with a regulated body fluid or blood, or pathological waste as defined at (a) above at the site of generation before shipping the materials off site;
- ii. The generator destroys all sharps at the site of generation before shipping the destroyed sharps off site for recycling of the devices' component raw materials; and

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

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

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

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

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

In (a), inserted text "or meets . . . criteria described" and amended descriptions in medical waste table; and added (b)6 and (b)7.

7:26-3A.7 Mixtures

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

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

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

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

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

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

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

regulated medical waste, the generator shall be included in generator category 1.

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

1. All regulated medical waste commercial transporters shall pay an annual fee of \$3,950.00.
2. All noncommercial generator transporters of RMW shall pay an annual fee of \$650.00.

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

1. All regulated medical waste intermediate handlers and destination facilities shall register with the Department and pay an annual registration, compliance inspection, technical advisement and report analysis fee in accordance with the following:
 - i. A destination facility that treats and destroys less than 1,000 pounds of regulated medical waste produced shall pay a registration fee of \$50.00 per year.
 - ii. A destination facility that treats and destroys from 1,000 pounds up to and including 10,000 pounds of regulated medical waste produced per year shall pay a registration fee of \$500.00 per year.
 - iii. A destination facility that treats and destroys more than 10,000 pounds of regulated medical waste per year shall pay a registration fee of \$2,000 per year.

2. A commercial intermediate handler shall pay an annual registration fee of \$1,500.

3. A noncommercial intermediate handler, or an intermediate handler treating only its own waste that treats any quantity of liquid regulated medical waste that is disposed of into the sanitary sewer system, and treats less than 10,000 pounds of nonliquid regulated medical waste per year and sends that waste off-site as RMW for treatment, destruction or disposal is exempt from the intermediate handler annual registration fee but shall register as an intermediate handler pursuant to this section.

4. Persons that only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local

statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) Each person authorized by the Department pursuant to N.J.A.C. 7:26-3A.39 to operate a collection facility for medical wastes shall pay fees in accordance with the following:

1. Commercial collection facilities shall pay an application fee of \$500.00. The application fee shall be submitted with the application required pursuant to N.J.A.C. 7:26-3A.39(c).

2. Commercial collection facilities shall pay an annual fee of \$350.00 for the costs of registration, quarterly compliance monitoring, and review and maintenance of the quarterly reports submitted pursuant to N.J.A.C. 7:26-3A.39(j) and the annual reports submitted pursuant to N.J.A.C. 7:26-3A.44.

3. Collection facilities shall pay the costs of any other inspections or activities conducted by the Department for the authorization, inspection, and revocation of authorization to operate a collection facility. Such costs shall be in accordance with the fee schedule set forth at (f) below and N.J.A.C. 7:26-4.3.

4. Commercial collection facilities shall pay a fee of \$250.00 for an authorization modification issued pursuant to N.J.A.C. 7:26-3A.39(o), which shall be paid on issuance of the authorization modification.

5. Noncommercial collection facilities collecting up to 2,000 pounds of medical wastes per year shall pay an annual fee of \$10.00 for the cost of registration.

6. Noncommercial collection facilities collecting more than 2000 pounds of medical wastes per year shall pay an annual fee of \$150.00 for the cost of registration.

(e) Each person operating a transfer station and authorized by the Department to manage medical waste pursuant to N.J.A.C. 7:26-3A.39 shall pay an annual fee of \$2,000 in addition to all other solid waste transfer station facility-related fees pursuant to N.J.A.C. 7:26-4, for the costs of registration under this subchapter, review and maintenance of reports, and compliance monitoring.

(f) Each generator, transporter, intermediate handler, collection facility, transfer station and destination facility shall register with the Department on regulated medical waste registration forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment or refund for prior registration year payment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;

2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and fees shall be payable by May 30 of each calendar year;

3. The registration year for intermediate handlers, collection facilities and destination facilities shall extend from January 1 through December 30 of each calendar year and fees shall be payable by January 29 of each calendar year; and

4. The Department's address for regulated medical waste is:

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

(g) The Department shall charge fees for regulated medical waste program services as follows:

1. Any person not registered for regulated medical waste activities in accordance with the requirements of this subchapter that requests a written interpretation of any solid waste regulation from the Department shall submit a fee of \$150.00 with the request for interpretation.

2. Any person that requests the authorization of an alternative or innovative technology pursuant to N.J.A.C. 7:26-3A.47(a) shall submit a fee of \$1,500 with the request for the authorization; and

3. Any person that requests the authorization of an alternative or innovative technology demonstration program pursuant to N.J.A.C. 7:26-3A.47(c) shall submit a fee of \$2,000 with the request for authorization of the demonstration program.

(h) The omission of any type of Department service from the fee schedule set forth in (f) above shall not prevent the Department from assessing a reasonable fee for such service. Any person that requests a Department service not listed at (f) above shall request an initial review of the service for purposes of determining the fee for performing such service.

1. If the Department determines that the service is of a type listed in (g)1 through 3 above, the fee shall be the applicable fee specified at (g) above.

2. If the Department determines that the service is not one of those listed in (g)1 through 3 above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$74.73.

(i) The Department shall charge an excess fee at the hourly rate of \$55.88 for excess person-hours required to perform any service for which a fee is established pursuant to (a) through (g) above. The Department shall notify the applicant or permittee of such excess fee in writing before performing the additional work.

(j) The determination of a fee pursuant to (h) above shall expire 90 days after the date such determination was issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the request for services for which the fee determination has expired, such applicant or permittee shall request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (h) above, as applicable.

(k) The Department may refrain from commencing work on the service for which a fee is established pursuant to (g) through (i) above until the Department receives full payment of such fee. If the Department has commenced work on the service the Department may suspend such work until it receives full payment of such fee.

(l) Any generator that fails to register pursuant to this section and that submits the annual fee pursuant to (a) above later than August 20 of each calendar year shall pay a late fee in the amount of 25 percent of the annual fee up to 15 days, 50 percent up to six months, and 100 percent up to one year, in addition to the annual fee. Neither the assessment of a late fee nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

(m) Any generator that submits the annual generator report required by N.J.A.C. 7:26-3A.21(d), 30 or more days after such report is due shall pay a late fee of \$50.00. Neither the assessment nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

Amended by R.1990 d.358, effective July 16, 1990.
See: 22 N.J.R. 1478(a), 22 N.J.R. 2145(a).

Generator categories expanded to 5; fees restructured.
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, amended base fees; in (a)1i, inserted "annual" preceding "regulated medical waste" and inserted reference to discharged fluids and blood; substantially amended (b) and (c), inserted new (d); recodified former (d) as (f); in (f), inserted references to collection facilities and transfer stations, and to refunds for prior years; in (f)2, deleted reference to 1989 registration year; rewrote (e) and (g) through (h); and added (i) through (m).

Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a)1, increased Pounds Generated Per Year for Generator Categories 3 and 4.

7:26-3A.9 Education

The supervisory personnel of all transporters, except generators that transport their own regulated medical waste and satisfy the requirements of N.J.A.C. 7:26-3A.17(a), collec-

tion facilities, intermediate handlers and destination facilities shall attend education and training sessions provided by the Department, and shall also be required to disseminate the information obtained at the sessions to all employees.

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

Inserted reference to collection facilities.

7:26-3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6(a)) including sharps containing residual fluid;
2. Fluids (quantities greater than 20 cubic centimeters); and
3. Other regulated medical waste.

(c) Other regulated medical waste described at (b)3 above may be included in sharps containers. Such containers shall be managed at all times as sharps containers in accordance with N.J.A.C. 7:26-3A.11. The waste in these containers shall not be allowed to putrefy or be malodorous in any detectable manner.

(d) If other nonregulated medical waste and/or solid waste is placed in the same container(s) as regulated medical waste, or if regulated medical waste cannot be initially segregated from other solid waste, then the generator shall package, label, and mark the container(s) and manage its entire contents according to the requirements for regulated medical waste in this subchapter.

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

Inserted new (c) and recodified former (c) as (d) and substantially amended.

7:26-3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;
2. Leak-resistant;
3. Impervious to moisture;

4. Sufficiently strong to prevent tearing or bursting under normal conditions of use and handling; and

5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging or containers that are puncture-resistant; and

2. Package fluids (quantities greater than 20 cubic centimeters) in packaging or containers that are break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

(e) Solid waste that is not being managed as regulated medical waste shall not be packaged for shipment inside a regulated medical waste container or in containers attached to, or part of, a regulated medical waste container.

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

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

In (c)1 and (c)2, inserted reference to containers; and added (e).

Case Notes

Fact issue: cleaning employee's fear that she would develop acquired immune deficiency syndrome (AIDS) after she was pricked by lancet while cleaning medical office precluded summary judgment in action for negligent infliction of emotional distress; it could not be said as matter of law that person who receives puncture wound from medical waste reacts unreasonably in suffering serious psychic injury from fear of AIDS. *Williamson v. Waldman*, 291 N.J.Super. 600, 677 A.2d 1179 (A.D.1996).

7:26-3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;

2. Maintain the regulated medical waste in a nonpu-trescent state, using refrigeration when necessary;

3. Lock the outdoor storage areas containing regulated medical waste (for example, dumpsters, sheds, tractor trailers, or other storage areas) to prevent unauthorized access;

4. Limit access to on-site storage areas to authorized employees; and

5. Store the regulated medical waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents.

(b) The storage period for regulated medical waste is limited as follows:

1. Regulated medical waste shall be disposed of immediately if it becomes putrescent or emits any odors;

2. All regulated medical waste shall be disposed of within one year of the date of generation, or sooner as determined by the generator, except that:

i. The storage period may exceed one year for regulated medical wastes that must be stored for longer periods to provide for the decay of radioactive materials in accordance with applicable Federal or State statutes and regulations.

(c) Any container that is being used to accumulate or store sharps shall be secured so that the contents are not accessible to any unauthorized person.

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

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

Added (b) and (c).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 2481(a), 29 N.J.R. 2570(a).

7:26-3A.13 Decontamination standards for reusable containers

(a) Generators, transporters, intermediate handlers and destination facility owners and operators shall comply with the following requirements with respect to reusing containers:

1. All non-rigid containers and inner liners shall be managed as regulated medical waste under this subchapter and shall not be decontaminated or reused;

2. Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, shall be decontaminated if the container shows signs of visible contamination;

3. If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of visible signs of contamination on its outer surface in accordance with (a)2 above, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this subchapter; and

4. Decontaminated containers shall be free of all removable contaminating material from the inner and outer surfaces.

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 "containers" for "packaging"; and added (a)4.

7:26-3A.14 Labeling requirements

(a) Generators shall label each package of regulated medical waste and each individual container used at the specific location of initial generation immediately on use, to meet the packaging requirements of N.J.A.C. 7:26-3A.11, before the waste is transported or offered for transport off-site as follows:

1. Each container of untreated regulated medical waste shall have a water-resistant label affixed to or printed on the outside of the container. The label shall include the words "Medical Waste," or "Infectious Waste," or display the universal biohazard symbol. Red plastic bag(s) used as an inner container need not display a label; and

2. Packages containing treated regulated medical wastes are not required to be labeled under this section but are required to be marked in accordance with the requirements of N.J.A.C. 7:26-3A.15.

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 (a); and in (a)1, substituted "container" for "package".

7:26-3A.15 Marking (identification) requirements

(a) Generators (including intermediate handlers) shall mark each individual container of regulated medical waste according to the following marking requirements before the waste is removed from the generator's storage area and is transported or offered for transport off-site:

1. The outermost surface of the outer container or any inner container used to meet the packaging requirements at N.J.A.C. 7:26-3A.11 shall be marked with a water-resistant identification tag of sufficient dimension to contain the following information:

i. The generator's or intermediate handler's name;

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address;

iii. The transporter's name;

iv. The transporter's NJDEP solid waste registration number;

v. The date of shipment; and

vi. Identification of contents as medical waste.

2. In addition to the requirements of (a)1 above, if the generator has used inner containers, including sharps and fluid containers, each inner container shall be marked with indelible ink or imprinted with water-resistant tags. The marking or the tag shall contain the following information:

- i. The generator's or intermediate handler's name; and
- ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address.

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

In (a) and (a)1, substituted references to containers for references to packages.

Case Notes

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

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

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

(b) A generator, transporter, collection facility, intermediate handler or destination facility that either treats and/or destroys or disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act,) or any person that disposes of regulated medical waste via sewer disposal in compliance with all applicable Federal, State, county and local statutes, rules and ordinances is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including, but not limited to, the generator reporting, registration, all fee requirements of this subchapter and the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. A person that offers home self-care medical waste for off-site treatment, destruction, or disposal shall use the tracking form required by N.J.A.C. 7:26-3A.19;

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

v. The tracking form shall be prepared in accordance with all State standards, except that Box 14 on the tracking form shall contain the words "Home Self-Care Medical Waste". Box 14 shall be used to identify the total number of containers shipped and total weight of the shipment;

vi. Treatment and destruction shall be in accordance with this subchapter. A separate log shall be maintained to record the total number of containers and total weight of home self-care medical waste treated and destroyed.

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

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

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

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

7:26-3A.17 Exemptions

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

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

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

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

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

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

2. The generator shall retain the original mailing receipt and the returned registered or certified mail receipt and attach them to the generator copy of the tracking form; and

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

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

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

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

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

1. The generator collecting the regulated medical waste is registered as a collection facility, intermediate handler or destination facility;
2. The generator or its employee collects the regulated medical waste;
3. All the regulated medical waste is managed in compliance with this subchapter at all times; and
4. The collected regulated medical waste is not transported on public roads.

(e) A generator that generates regulated medical waste at a temporary facility operating less often than 15 days each year is exempt from the registration requirement of N.J.A.C. 7:26-3A.8(d) provided:

1. The generator maintains a permanent registered regulated medical waste generator facility; and
2. The generator transports the regulated medical waste from the temporary facility to the generator's permanent facility at the end of each working day for management as a regulated medical waste in accordance with this subchapter.

Administrative Correction in (a).

See: 23 N.J.R. 3138(a).

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

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

Specified the weight of three cubic feet throughout; in (a), inserted reference to home self-care medical waste; in (b)1 and (b)2, inserted reference to certified mail; in (b)3 amended N.J.A.C. reference; and added (c) and (d).

7:26-3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste may be transported to or otherwise unloaded at any transfer station permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

1. Transfer stations accepting regulated medical waste shall comply with the requirements for regulated medical waste collection facilities at N.J.A.C. 7:26-3A.39(b)3 and (d)2 through 8.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

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

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

Added (a)1.

7:26-3A.19 Generator use of tracking form

(a) A generator that transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators that meet the requirements of N.J.A.C. 7:26-3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26-3A.8(e).

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

1. Generators that transport regulated medical waste to the supplier of the radioactive medical materials from which the waste was derived and such supplier of radioactive medical materials shall complete the tracking form in accordance with (h) below.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Complete Boxes 1 through 15 of the tracking form for each shipment of regulated medical waste off-site;
 - i. The quantity of the regulated medical waste in pounds shall be entered in Box 13.
2. Sign and date the certification statement in Box 15 on the tracking form by hand;
3. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form in Box 16; and
4. Retain "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

(e) Generators that transport their own regulated medical waste and that meet the requirements of N.J.A.C. 7:26-3A.17(a) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand, and enter in Box 5 the words "Self-Transport";
2. Sign the transporter section of the tracking form in Box 16, noting the date the regulated medical waste was transported;
3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Enter the name, address, telephone number and Generator Identification number of the collection facility in Box 14.

5. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

6. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

7. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26-3A.31(d).

(f) Generators that transport their regulated medical waste through the U.S. Postal Service and that meet the requirements of N.J.A.C. 7:26-3A.17(b) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand;

2. Sign and date the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service in Box 5. The person delivering the RMW to the U.S. Postal Service shall sign and note the date the shipment was mailed in Box 16;

3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1; and

5. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or
2. The intermediate handler or destination facility if transported solely by rail; or
3. The last rail transporter to handle the waste in the United States if exported by rail.

(h) For regulated medical waste derived from radioactive medical materials the tracking form shall prepared as follows:

1. The generator shall complete Boxes 1 through 10 on the tracking form;

2. The generator shall indicate in Box 14 that radioactive regulated medical waste is being transported to the supplier of the original radioactive medical materials;

3. The generator shall complete Box 15 (generator's certification) and enter the first date the tracking form is used. A copy of that specific tracking form may then be

used for up to one year from the original date entered in Box 15;

4. A copy of the tracking form shall accompany each shipment of radioactive regulated medical waste from the generator to the supplier;

5. The generator shall use a registered regulated medical waste transporter;

6. The supplier shall maintain a receiving log for each shipment, which may be in the form of its usual record-keeping for the radioactive waste inventory, in which the following information is recorded:

i. The date of receipt of the radioactive regulated medical waste shipment;

ii. The type of radioactive regulated medical waste received and the number of containers of each type; and

iii. The total weight of each type of radioactive regulated medical waste received; and

7. The supplier shall, on a quarterly basis, submit a summary of the receiving log information to the generator of the radioactive regulated medical waste and to the Department.

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

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

Inserted new (d)1; recodified former (d)1 through (d)3 as (d)2 through (d)4; in (e)1, inserted date requirement and reference to "self-transport"; inserted new (e)3 and (e)4; recodified former (e)3 through (e)5 as (e)5 through (e)5; in (e)5; in (f)1 and (f)2 inserted date; inserted new (f)3; recodified former (f)3 and (f)4 as (f)4 and (f)5; in (f)4, inserted reference to "self-transport"; and added (g).

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

Case Notes

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

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

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

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

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

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

7:26-3A.21 Generator recordkeeping

(a) Each generator shall:

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

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

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

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

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

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

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

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

1. The date of the report;
2. A description of the regulated medical waste, identified by Waste Class;
3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;

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

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

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

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

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

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

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

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

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

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

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

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

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

In (a), inserted reference to collection facilities; in (b), inserted provisions relating to consolidated tracking forms and consolidated loads; and in (c), amended the starting date for measuring required record retention period.

7:26-3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.24 Generators of regulated medical waste that incinerate regulated medical waste on-site

(a) The requirements of N.J.A.C. 7:26-3A.25 and 3A.26 shall apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(b) Generators of regulated medical waste that incinerate such waste on-site and that accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26-3A.39 through 3A.43.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26-2, 2B, 4 and 16 unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26-3A.37.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
In (b), amended N.J.A.C. references.

7:26-3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;
2. The length of the incineration cycle;
3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;
4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and

5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;
2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;
3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and
4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall initiate the generator on-site incinerator operating log required by (a) above as of June 22, 1989 and shall retain operating log for three years, unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26-3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

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

7:26-3A.26 Recordkeeping for generators who incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of a generator on-site incinerator report on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), and submit one copy of the generator on-site incinerator report to the Department, and two copies to:

Chief, Waste Characterization Branch
Office of Solid Waste (OS-332)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

(b) The generator on-site incinerator reports shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;
2. Facility type (for example, hospital, laboratory);
3. Contact person;
4. Waste feed information;
5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and
6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration number of the transporter(s), and the name and address of the disposal facility.

(c) Each generator on-site incinerator report shall contain the following certification, signed by the facility owner or his authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

(d) Beginning July 1, 1991, the owner or operator of an on-site incinerator shall submit to the Department only, an annual generator on-site incinerator report on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) for the period from July 1 through June 30 which shall be due July 30 of each calendar year.

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

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

Deleted (d) and (e), recodified (f) as (d).

7:26-3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26-3A.27 through 3A.37 apply to transporters and collection facilities, including generators that transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26-3A.8;
2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements of N.J.A.C. 7:26-3.1, 3.4, 3.7, and 16; and
3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6;

(d) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from the requirements of (c) above.

(e) Generators, such as a hospitals or doctors, that generates regulated medical waste in the ordinary course of business and transports such regulated medical waste only among facilities that such generators wholly owns and operates are exempt from the requirements of (c) above, provided:

1. The generator files an affidavit with the Bureau of Registration in the Department verifying its limited transporter status;
2. The generator transports the regulated medical waste to a registered noncommercial treatment and destruction facility or a collection facility, wholly owned and operated by the generator; and
3. Pays the annual generator's noncommercial transporter fee pursuant to N.J.A.C. 7:26-3A.8.

(f) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26-3A.16, 3A.18, 3A.20, 3A.21, 3A.22, 3A.23 and 3A.39, when it consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(g) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26-3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or
2. Remove regulated medical waste from a reusable container; or
3. Modify packaging of regulated medical waste.

(h) Persons transporting regulated medical waste through New Jersey, when roadways and highways in New Jersey constitute a segment of such vehicle's route, are exempt from the requirements of (c) above, provided:

1. Transportation is completed in less than 24 hours, unless mechanical breakdown occurs and repair is necessitated;

2. Regulated medical waste is not collected, treated, transferred, or destroyed or disposed of in New Jersey;

3. Regulated medical waste is packaged, stored, labeled and marked in accordance with any applicable Federal law and regulations and with the requirements at N.J.A.C. 7:26-3A.11, 12, 15, and 16;

4. Containers of regulated medical waste are securely locked at all times during transit through New Jersey; and

5. The owner and/or operator of the vehicle transporting such waste is licensed in accordance with all applicable Federal law and regulations and all applicable law and regulations of the state of licensing of the owner and/or operator.

(i) Regulated medical waste transporters registered with the Department pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A that transport regulated medical waste of New Jersey origin may retain regulated medical waste in a transportation vehicle for up to 14 consecutive calendar days provided the waste does not become putrescent or emit any odors. If the regulated medical waste becomes putrescent, or emits any odors, the transporter shall dispose of the waste immediately.

(j) Regulated medical waste shall not be removed from or be transferred between vehicles by transporters or other persons unless the site of transfer is authorized as a solid waste transfer station for regulated medical waste pursuant to this chapter, or is registered and operating as a regulated medical waste collection facility pursuant to N.J.A.C. 7:26-3A.39.

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

In (a), inserted reference to collection facilities; deleted (c)4, requiring EPA notification; inserted new (e); recodified former (e) and (f) as (f) and (g); in (f), amended N.J.A.C. references; and added (h) through (j).

7:26-3A.28 Transporter acceptance of regulated medical waste

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container:

1. Is labeled and marked in accordance with N.J.A.C. 7:26-3A.14 and 3A.15; and

2. Appears to be in good condition and shows no signs of leakage or other visible packaging deficiencies.

(b) Transporters shall accept a shipment of regulated medical waste only from a registered regulated medical waste generator and all shipments shall be accompanied by

a properly completed tracking form as required by N.J.A.C. 7:26-3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;

2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

(d) Before accepting regulated medical waste for transport to a facility outside New Jersey, a transporter shall obtain certification from the out-of-state facility that such a facility is authorized or permitted to accept such waste by the receiving state and shall submit the certification to the Bureau of Medical Waste and Technical Assistance in the Department.

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

Added (a)1 and (a)2; substantially amended (b); and added (d).

7:26-3A.29 (Reserved)

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

Section was "Transporter EPA notification".

7:26-3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26-3, transporters shall use vehicles to transport regulated medical waste that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;

2. The transporter shall ensure that the waste does not become putrescent in the vehicle through lengthy storage and is not subject to mechanical stress or compaction during loading and unloading or during transit;

3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and

4. The cargo-carrying body shall be securely locked if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on

the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;
2. The transporter's NJDEP solid waste transporter registration number; and
3. A sign or the following words imprinted:
 - i. MEDICAL WASTE; or
 - ii. INFECTIOUS WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26-3A.27 through 3A.36.

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

In (a)2; inserted reference to becoming putrescent; and in (b)3ii, substituted "Infectious Waste" for "Regulated Medical Waste".

7:26-3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for collection, transport or transporting any regulated medical waste, the transporter shall:

1. Certify that the tracking form accurately reflects the number of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and
2. Return a signed "Copy 4—Generator Copy" of the tracking form to the generator before leaving the generator's site.

(c) Each transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Complete Boxes 17 through 22 of the tracking form and obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility or destination facility on the tracking form;

2. Retain "Copy 3—Transporter Copy" of the signed tracking form in accordance with N.J.A.C. 7:26-3A.34; and

3. Give the remaining copies of the tracking form to the second transporter, intermediate handler, or destination facility.

4. Third and/or subsequent transporters shall enter information required of transporter 2 in Boxes 17 through 21 in Box 14b.

5. Photocopies of the signed tracking form shall be retained by the second and/or any subsequent transporter(s).

(e) Any transporter that transports regulated medical waste across an international border, or that delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Obtain the signature of the accepting foreign transporter or destination facility; or

2. Verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction or destination facility by writing a statement to that effect in Box 14, certifying that the entire shipment (as specified in Boxes 11, 12 and 13 of the tracking form) has been delivered to the next (foreign) party, including the accepting party's name, company name, and mailing address, and signing directly below that certification statement; and

3. Retain "Copy 3—Transporter Copy" of the signed tracking form for that transporter's records; and

4. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26-3A.45 apply to rail transporters in lieu of the requirement of (b), (c) and (d) above.

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

In (b)2, amended form reference; in (d)1, inserted text "Complete Boxes... form and"; in (d)2, amended form reference; added (d)4 and (d)5; rewrote (e)1; inserted new (e)2; and recodified (e)2 and (e)3 as (e)3 and (e)4; in (e)3 and (f), amended form references.

7:26-3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) and (c) below, the transporter shall deliver the entire quantity of regulated medical waste that the transporter has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or
2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

(c) Notwithstanding (b) above, a transporter may deliver all or a portion of the regulated medical waste, in unopened containers, to a destination facility other than the destination facility designated on the generator's tracking form, if the generator in writing consents to the use of such specific alternative destination facility prior to the transfer of regulated medical waste from the generator to the transporter. The transporter shall enter the required information in Box 14 of the tracking form and shall comply with all other tracking form requirements of N.J.A.C. 7:26-3A.31.

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

In (a), added reference to (c); and added (c).

7:26-3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter that chooses to consolidate to a single tracking form shipments of regulated medical waste shall:

1. Enter the new consolidation tracking form number in Box 21 on the original generator's tracking form;
2. Enter the consolidating transporter's identification data as the generator of the consolidation tracking form in Boxes 1 through 4 of the consolidation tracking form;
3. Complete Boxes 5 through 14 of the consolidation tracking form.
 - i. Enter the tracking form number of the original generator's tracking form in Box 14 of the consolidation tracking form. If more than 20 tracking forms are being consolidated, reference shall be made in Box 14 to the consolidation log pursuant to (b) below and enter the total number of tracking forms being consolidated.
4. Sign Box 15 of the consolidation tracking form; and
5. Comply with N.J.A.C. 7:26-3A.31 through 3A.33, as applicable, to complete the remainder of the consolidation tracking form.

(b) When the transporter receives the signed tracking form that the transporter initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

4. Maintain a transporter consolidation log on forms supplied by the Department indicating all shipments consolidated on that form. The transporter consolidation log must accompany the tracking form and shall include the following information:

- i. The name of each generator;
- ii. The generator's address or if the regulated medical waste was generated in another state which issues a permit or identification number, then use that permit or identification number and, if the generator's state does not issue permit or identification numbers, then use the generator's address;
- iii. The date the regulated medical waste was originally shipped by the generator;
- iv. The quantity in pounds of regulated medical waste (number of containers and/or weight in pounds) by waste category (i.e., "untreated" or "treated") shipped by each generator; and
- v. The names, NJDEP registration numbers of all previous transporters or, if the transporters do not transport in New Jersey, then use the permit or identification number issued by the state in which the transporter is registered, and if the state does not issue permits or identification numbers, use the transporters' addresses.

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

Added (a)1 through (a)5; in (b), inserted reference to transporter; and in (b)4, inserted text "on forms supplied by the Department".

7:26-3A.34 Recordkeeping for transporters of regulated medical waste

(a) A transporter of regulated medical waste shall keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: another transporter; or the owner or operator of an intermediate handling facility or destination facility. The transporter shall retain a copy of this form for a period of three years from the date the waste was accepted by the next party unless the Department specifically requires an additional retention period.

(b) For any regulated medical waste received by the transporter and consolidated by the transporter to another tracking form, the transporter shall:

1. Retain "Copy 3—Transporter Copy" of the tracking form signed by the transporter for three years from the date the waste was accepted by the transporter unless the Department specifically requires an additional retention period; and

2. Retain "Copy 3—Transporter Copy" of the transporter initiated tracking form signed by the intermediate handler or destination facility and all consolidation logs required by N.J.A.C. 7:26-3A.33(b)4 for three years from the date the waste was accepted by the intermediate handler or destination facility unless the Department specifically requires an additional retention period.

(c) Transporters shall retain a copy of each regulated medical waste transporter report required by N.J.A.C. 7:26-3A.35 for three years after the date of submission unless the Department specifically requires an additional retention period.

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

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

In (b)1, amended form reference; in (b)2, amended form reference and inserted reference to consolidation logs.

7:26-3A.35 Transporter reporting

(a) A transporter who accepts regulated medical waste which is generated in New Jersey or that is to be stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey shall submit a regulated medical waste transporter report to the Department describing the source and disposition of the waste. The regulated medical waste transporter reports shall be submitted on forms available from the Department and sent to the address listed at N.J.A.C. 7:26-3A.8(d).

(b) Each regulated medical waste transporter report shall include, but not be limited to, the following information:

1. The transporter's name, address, and NJDEP solid waste transporter registration number or if the transporter does not transport in New Jersey, then use the permit or identification number issued of the state in which the transporter is registered;

2. The name and telephone number of a contact person;

3. The total number of generators from whom the transporter accepted regulated medical waste;

4. The name, address, and type of each generator (for example, hospital, doctor) from whom the transporter accepted regulated medical waste;

5. The amount by weight in pounds and waste category (untreated or treated) of regulated medical waste accepted from each generator;

6. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey, or from all generators in another state that the transporter delivered to an intermediate handler or to a destination facility,

7. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey or from all generators in another state that the transporter delivered to a second transporter or to a transfer facility; and

8. The certification of the transporter report signed by the owner or operator, or his authorized representative.

(c) Transporters who transport or deliver regulated medical waste to an intermediate handler or to a destination facility shall also provide the following information:

1. The name and address of each intermediate handler and destination facility to which the waste was delivered;

2. The amount in pounds, by waste category, that was delivered;

3. The total number of intermediate handlers and destination facilities to which waste was delivered.

(d) The transporter shall submit an annual regulated medical waste transporter report to the Department which shall cover the period from July 1 through June 30 and shall be due on or before July 30 of each calendar year.

(e) Each transporter who initiates a tracking form shall meet the requirements of N.J.A.C. 7:26-3A.22, exception reporting, except that the 35 and 45 day periods begin on the day the transporter accepted the waste from the generator.

(f) In accordance with N.J.A.C. 7:26-1.12(b), the information contained in the transporter report as outlined in 3A.35(b) above, is not deemed to be public record and the public shall not have a right to inspect, copy, or obtain a copy of the same.

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

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

Deleted (b) and (c), recodified former (d) through (g) as (b) through (e): in (b)1, deleted reference to EPA medical waste ID number; in (b)6 and (b)7, reference was to generators in states "participating in Federal demonstration program"; and in (d), amended from specified reporting periods to an annual report.

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

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

Added (f).

7:26-3A.36 Additional reporting for transporters of regulated medical waste

The Department and the Administrator may require transporters to furnish additional information concerning the quantities and management methods of regulated medical waste as he or she deems necessary under RCRA Section 11004 and as the Department may deem necessary under N.J.S.A. 13:1D-9.

7:26-3A.37 Transporter management of spills

(a) All transporters shall develop and implement a Spill Management Plan to govern the management and decontamination of regulated medical waste spills. The Spill Management Plan shall be submitted to and approved by the Department.

1. This section shall not apply to transporters that are generators of less than 50 pounds of regulated medical waste per month and that transport RMW pursuant to N.J.A.C. 7:26-3A.17(a).

(b) All transporters shall maintain at each site and in each vehicle used to transport regulated medical waste a copy of the Spill Management Plan and appropriate equipment and supplies for cleaning up a spill of regulated medical waste, including but not limited to, the following:

1. A spill containment and cleanup kit in each area utilized for the collection, transfer, storage, treatment, packaging or other such handling of regulated medical waste. All vehicles operating under a New Jersey regulated medical waste transporter registration, or any out-of-State transporter transporting regulated medical waste through New Jersey in accordance with N.J.A.C. 7:26-3A.27(g), shall carry a spill containment and cleanup kit in the vehicle whenever regulated medical waste is transported. Personnel shall be trained in the use of the kit. The kit shall contain, at a minimum, the following:

i. Absorbent material for spilled liquids. The absorbent material shall have a rated capacity of one gallon of liquid for every cubic foot of regulated medical waste that is usually managed in the area for which the kit is provided or 10 gallons, whichever is less.

ii. One gallon of disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream. The disinfectant shall be of hospital grade and of a formulation described in (c) below and be effective against mycobacteria.

iii. Fifty plastic bags that meet the requirements of N.J.A.C. 7:26-3A.11(b)2, 3 and 4 along with sealing tape (or devices for sealing), and appropriate labels as required by N.J.A.C. 7:26-3A.14. The plastic bags shall be large enough to overpack any box or other container usually used by the customers of the transporter for regulated medical waste packaging;

iv. Two sets of overalls, gloves, boots, caps, protective eye covering, and protective breathing devices all of which must be disposable and impermeable to liquids. Overalls, boots and caps shall be oversized or fitted to medical waste handlers and be made of a moisture resistant or moisture-proof material. When sharps are known not to be present, gloves for handling regulated medical waste shall be durable and moisture resistant or moisture proof. When sharps are known to be present or may be present, gloves for handling such waste shall be puncture resistant or puncture proof in

addition to being moisture resistant. Boots shall be of durable moisture resistant or moisture proof material that does not tear under the stress of walking. At a minimum, protective breathing devices shall include surgical masks. The kit shall also contain tape for sealing wrists and ankles of the protective overalls;

v. Scoops, shovels, push brooms, and buckets;

vi. A first-aid kit, boundary marking tape, fire extinguisher, lights, and other appropriate safety equipment;

vii. A suitable means of communication for summoning aid in an emergency, and

viii. A copy of the approved Spill Management Plan as described at (a) above.

(c) Disinfection and routine decontamination procedures for soiled surfaces include, but are not limited to, the following:

1. Exposure to hot water of at least 82 degrees Celcius (180 degrees Fahrenheit) for a minimum of 15 seconds; or

2. Exposure to a chemical sanitizer by rinsing with or immersion in a chemical disinfectant. Such disinfectants shall be registered with the USEPA as hospital disinfectants that are tuberculocidal, fungicidal, virucidal and effective against HIV-1. Also approved for this specific purpose as a disinfectant is ten percent volume/volume of sodium hypochlorite and water.

(d) In case of any spill of any regulated medical waste, the transporter shall immediately take steps to contain and clean up the regulated medical waste in accordance with the procedures specified in the Spill Management Plan.

1. The spill of any medical waste by a transporter shall be immediately reported by the transporter or its designee to the DEP Emergency Response 24-hour Hotline at (609)292-7172.

2. The transporter shall submit a written accident report to the Department within 48 hours of the occurrence of any spill of regulated medical waste on an accident report form provided by the Department. A copy of the report shall be kept on file for a minimum of three years from the date of submission in the same location as the registration certificate. The record retention period shall be extended during the course of any unresolved litigation, or when otherwise required by the Department.

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

Former section, "Temporary authorization to operate a regulated medical waste incinerator", was recodified to N.J.A.C. 7:26-3A.38.

7:26-3A.38 Temporary authorization to operate a regulated medical waste incinerator

(a) This section applies only to and sets forth requirements for an authorization to operate an incinerator that accepts regulated medical waste for disposal.

(b) Notwithstanding the requirements of N.J.A.C. 7:26-2 and 2B, but subject to the requirements of N.J.A.C. 7:26-16, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1. The owner or operator shall submit documentation as submitted to the Department demonstrating that the incinerator was in operation accepting regulated medical waste for disposal on or before March 6, 1989;

2. The owner or operator of the disposal facility continues to accept regulated medical waste for disposal;

3. The owner or operator registers and pays fees as a regulated medical waste destination facility in accordance with N.J.A.C. 7:26-3A.8;

4. The owner or operator of the facility shall have a current certificate to operate control apparatus or equipment pursuant to N.J.A.C. 7:27;

5. The owner or operator shall be or is fully permitted pursuant to N.J.A.C. 7:26-2 and 2B prior to expiration of the facility's current certificate to operate control apparatus or equipment issued pursuant to N.J.A.C. 7:27. For the purposes of the temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate;

6. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

7. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling windblown papers and other lightweight materials such as fencing shall be implemented;

8. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

9. The owner or operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

10. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of the local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

11. The owner or operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

12. The facility owner or operator shall be responsible for the sanitary condition and orderly operation of the area;

13. The Departments' inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's authorization or permit issued by the Department; or

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

14. An operation and maintenance manual meeting the requirements of N.J.A.C. 7:26-2B.4(a)17 through 20 shall be maintained at the facility;

15. The owner or operator shall obtain or has obtained all applicable permits and approvals required by Federal, State, county and local ordinance;

16. The facility shall not pose a threat to the public health, safety or the environment; and

17. The facility shall only accept regulated medical waste from transporters who have NJDEP registration numbers and who have a certificate of public convenience and necessity issued by the Department, unless the transporter is exempt from these requirements pursuant to N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the generator who has shipped the waste has complied with N.J.A.C. 7:26-3A.17(b).

Recodified from 7:26-3A.37 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section, "Intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.40. In (b)17, deleted reference to EPA.

7:26-3A.39 Collection facilities for medical wastes

(a) This section contains the regulations of the Department governing the authorization and operation of noncommercial and commercial collection facilities for regulated medical waste. Such facilities shall accept and handle only medical waste and regulated medical waste as defined at N.J.A.C. 7:26-3A.5. Such facilities shall not accept or handle solid waste as defined at N.J.A.C. 7:26-1.4 and 1.6 other than medical waste and regulated medical waste, hazardous waste as defined at N.J.A.C. 7:26G, or recyclable material as defined at N.J.A.C. 7:26A-1.3.

(b) Any registered regulated medical waste generator that conducts activities as a collection facility and that generates regulated medical waste in the ordinary course of business at the same site, such as a doctor or hospital, that operates on a noncommercial basis and accepts only medical wastes from other generators registered pursuant to N.J.A.C. 7:26-3A.8 and home self-care medical wastes in accordance with N.J.A.C. 7:26-3A.16(h) for collection for transportation off-site for treatment and/or disposal in accordance with this subchapter shall operate as a noncommercial collection facility and shall comply with the requirements at (b)1 through 3 below and at (i) and (k)4 below.

1. Noncommercial collection facilities are exempt from registration as regulated medical waste transporters pursuant to N.J.A.C. 7:26-3A.8 provided they are operated in compliance with N.J.A.C. 7:26-3A.27(e).

2. Noncommercial collection facilities shall comply with the standards for the operation of collection facilities at (i) below.

3. The boundaries of noncommercial collection facilities shall be limited to the site for which the owner and/or operator of the facility is registered as a regulated medical waste generator pursuant to N.J.A.C. 7:26-3A.8 or as an exempted transporter pursuant to N.J.A.C. 7:26-3A.27(e), including buildings on the site and vehicles registered pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A at the site for the purpose of transporting medical wastes.

(c) Any collection facility that does not meet the criteria in (b) above as a noncommercial collection facility shall obtain authorization as a commercial collection facility pursuant to (d) below and shall operate in accordance with the requirements of this section.

(d) A person registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16, and 16A to transport regulated medical waste in the State of New Jersey that seeks to operate a commercial collection facility for medical waste shall submit an application containing the information listed at (d)1 through 15 below. All maps of the proposed facility shall be prepared in a manner and format consistent

with N.J.A.C. 7:1D, Appendix A. Three copies of the application and all accompanying documents shall be submitted to the Department at the address specified in (e) below, and one copy each to the host municipality and district solid waste management plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed commercial collection facility;
2. A photocopy of the applicant's authorized registration as a regulated medical waste transporter obtained pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A;
3. Photocopies of all authorizations for siting, construction and operation obtained pursuant to applicable local, regional, State or Federal agency with jurisdiction over any aspect of the proposed facility;
4. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;
5. A description of the current use of the facility site and of all adjoining properties;
6. Documentation establishing that the facility has been included by administrative action in the applicable district solid waste management plan. The Department may issue an authorization in the absence of an administrative action if it determines that the collection facility is needed to help fulfill the objectives of the adopted and approved Statewide Regulated Medical Waste Management Plan or any individual district regulated waste management plan. The Department shall notify the host county and municipality of such a determination and the reasons justifying facility authorization in writing prior to any approval of operations;
7. A description of the maximum amount and types of waste to be received and transferred at the facility each day, expressed in tons or gallons per day, as applicable;
8. A description of the sources of the waste and the anticipated disposal locations of the waste, both in State and out of State;
9. A description of the type(s) and number of containers that will be used at the facility and the type and means of storage and staging of the containers;
10. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer, surveyor or architect. The site plan shall:
 - i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading, unloading and temporary storage of regulated medical waste;
 - ii. Be drawn to a scale no smaller than one inch equals 100 feet;
 - iii. Indicate the routing of vehicles between the facility and all nearby roadways serving the site, as well as

the traffic flow within the site. Such routing must ensure safe and efficient vehicular and pedestrian circulation, parking, and loading and unloading of packages of regulated medical waste;

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

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

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

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

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

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

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

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

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

15. A narrative describing the facility operations from the receipt of waste through the point of transfer to destination. The narrative must clearly demonstrate that packages and containers will not be opened and that employees, the public or the environment will not be exposed to regulated medical waste or medical waste.

(e) The application described in (d) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-3A.8, to:

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

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

1. Issue a letter of authorization to operate the commercial collection facility, or a denial of the application, to the applicant and provide a copy of the letter of authorization or denial to the host municipality and district solid waste management plan implementation agency. A letter of authorization shall not be transferred to any other person;

2. Notify the applicant in writing of missing information and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (d) above and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency.

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

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

(i) The operating standards for collection facilities are as follows:

1. The maximum amount of regulated medical wastes at a collection facility including regulated medical wastes in any vehicles staged at the facility shall not exceed 300,000 pounds at any time unless a higher amount is specified in the facility's letter of authorization.

2. Collection facilities shall not receive medical wastes in excess of 150,000 pounds per day unless a higher amount is specified in the facility's letter of authorization.

3. Collection facility operators shall comply with all requirements for transporters at N.J.A.C. 7:26-3A.27 through 3A.37.

4. Collection facilities shall accept only regulated medical waste managed in accordance with this subchapter.

5. Collection facilities shall allow only collection and transportation vehicles registered in accordance with this subchapter and N.J.A.C. 7:26-2, 16, 16A and 27, and operated in accordance with N.J.A.C. 7:26-3 and this subchapter to transport regulated medical waste to and from the facility.

6. Regulated medical waste received, stored or transferred at any collection facility shall at all times remain fully contained in sealed packages and containers packaged, marked and labeled pursuant to this subchapter that do not leak any liquids or solid materials, are not opened for any purpose at the facility and are registered as solid waste containers pursuant to N.J.A.C. 7:26-3. Secondary outer packaging or containers may be removed so long as the primary packaging that contains the regulated medical waste and meets the performance requirements for packaging at N.J.A.C. 7:26-3A.11 is not opened, ruptured or compromised in any way.

7. Regulated medical waste shall not remain at a non-commercial collection facility for more than 90 consecutive calendar days, which period shall include weekends and holidays. A noncommercial collection facility at which waste is staged or stored for more than 90 days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

8. Unless exempted under N.J.A.C. 7:26-6.3, all regulated medical waste accepted at a collection facility from New Jersey sources shall be disposed of in accordance with the applicable District Solid Waste Management Plan developed pursuant to N.J.A.C. 7:26-6. A collection facility shall not accept packages or containers in which regulated medical waste generated from more than one New Jersey district or county, or out-of-State source, has been mixed. Any out-of-State waste accepted at a collection facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or at permitted out-of-State disposal facilities authorized by the receiving state.

9. Regulated medical waste at any collection facility shall not emit odors that are detectable at the facility or in the vicinity of the facility. Any waste that does emit any odor shall be immediately disposed of in accordance with this subchapter.

10. Access to any collection facility shall be restricted to facility operators, regulated medical waste vehicle operators and authorized visitors only. Effective security procedures shall be implemented to control entry and exit at all times. All regulated medical waste packages and

containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the packages and containers and their contents.

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

i. Observing and sampling any wastes or other materials on site;

ii. Photographing any portion of the facility, regulated medical waste vehicles, regulated medical waste packages and containers;

iii. Investigating an actual or suspected source of pollution of the environment or any release of regulated medical waste;

iv. Ascertaining compliance or noncompliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and

v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

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

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

14. Any areas or surfaces at a commercial collection facility that have come into contact with regulated medical waste shall be disinfected immediately in accordance with the Spill Management Plan approved pursuant to N.J.A.C. 7:26-3A.37.

15. Any release or discharge of any regulated medical waste at a collection facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at (609)292-7172. This telephone report shall specify the type of waste or substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

tion. In addition, the facility operator or emergency coordinator designated pursuant to (j) below shall:

i. Immediately identify the character, source, amount, and extent of any discharge and notify all appropriate State or local agencies with designated response roles if assistance is needed;

ii. Assess possible hazards to public health or the environment that may result and notify appropriate local authorities if such assessment indicates that evacuation of local areas may be advisable;

iii. Ensure that no regulated medical waste is processed in the affected unit and area until cleanup procedures are completed and all equipment is again fit for its intended use;

iv. Notify the Department and appropriate local authorities when operations have returned to normal; and

v. Submit a written report on the incident to the Department within 15 days after the incident. The written report shall include, but not be limited to, the name, address, and telephone number of the facility; the date, time, and description of the incident; the extent of any injuries of any severity, with names and job responsibilities of those persons injured indicated; an assessment of actual damage to the environment; an assessment of the scope and magnitude of the incident; a description of the immediate actions initiated to clean up and disinfect the affected area; a description of actions taken to prevent a recurrence of a similar incident and, an implementation schedule for undertaking long-term measures to effect cleanup and avoid recurrence of the incident, if applicable.

16. Deliveries of regulated medical waste to collection facilities shall be scheduled in such a manner as to minimize truck queuing on the facility property as well as on the street or road leading to the entrance. On-site traffic control measures shall be implemented to provide orderly vehicle movement at collection facilities. If, at any time, the additional traffic generated by the operation of the facility results in congestion of surrounding roads and intersections, corrective measures shall be developed and implemented immediately to alleviate traffic-related problems.

17. No regulated medical waste or medical waste shall be staged, placed or stored beyond the confines of a building at the collection facility or a regulated medical waste vehicle registered pursuant to this subchapter, N.J.A.C. 7:26-3, 16 or 16A.

18. Collection facilities shall pay all fees and register in accordance with all applicable regulations for any other waste management activities conducted at the facility, in addition to the complying with the requirements of this subchapter.

(j) Additional operating requirements for commercial collection facilities are as follows:

1. The commercial collection facility operator shall designate an on-site emergency coordinator who is available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges or releases of medical wastes at the facility.

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

3. All personnel directly involved in any commercial collection facility waste management activities or who operate, service or monitor any facility equipment, machinery or system at the facility shall successfully complete a training program of classroom instruction, which shall be combined with on-the-job training as needed. The training program shall:

i. Provide fire fighting training, instructions for implementing the Spill Management Plan in accordance with N.J.A.C. 7:26-3A.37 and ensure that facility personnel are able to effectively respond to any equipment malfunction and emergency situation that may arise;

ii. Provide instructions in the use and operation of safety equipment, procedures for inspecting, maintaining and repairing facility equipment, machinery and monitoring systems and the procedures to be followed during planned and unplanned shutdown of operations;

iii. Contain instructions that ensure the facility's compliance with the requirements of this chapter and the conditions of any Departmental letters of authorization and permits issued for the facility;

iv. Contain instruction for the constant monitoring of incoming loads for conformance with the requirements of this section and the identification and proper handling of suspected unauthorized wastes;

v. Be completed by all facility personnel within two weeks after the date of their employment and prior to work assignment at the facility;

vi. Be conducted on an annual basis for all facility personnel in the form of a planned annual review of the complete training program; and

vii. Be documented in the form of detailed training records that record the names of personnel trained, the dates when training occurred and the type and extent of training provided. The training documentation shall be maintained at the facility for three years from the date the training occurred.

4. Any commercial collection facility operator and any person designated by such operator to operate part or all of the collection facility or to conduct any of its waste-related activities shall be registered as a regulated medical waste transporter pursuant to N.J.A.C. 7:26-3A.3, 16 and 16A.

5. The commercial collection facility shall maintain sufficient staff to ensure the proper, orderly and safe operation of all facility systems and equipment, along with the ability to handle all routine facility maintenance requirements.

6. Fire detection and protection systems shall be maintained in operable condition at all times. Fire-fighting equipment shall be available on-site or on call to extinguish any and all fires. Fire fighting procedures shall be posted in each area of the facility and shall include the telephone number of local fire and police departments.

7. Noise control shall be implemented to ensure that sound levels generated by the facility operation, including vehicles, shall not exceed the standards set forth in Noise Control rules at N.J.A.C. 7:29.

8. One complete set of the commercial collection facility's operating records, the O&M manual and these rules shall be kept on file at the facility, and shall be available to facility personnel and for inspection by the Department or its designated representatives.

9. The commercial collection facility's material management system's safety appliances and related appurtenances shall, at all times, be kept in the proper operating order through an effective inspection, planned maintenance, repair and parts replacement program as described in the O&M manual. As part of this program, the facility operator shall maintain an inventory of spare parts and replacement equipment, records of all inspections, as well as have access to back up equipment to ensure continued operation of the facility.

10. Regulated medical waste shall not remain at a commercial collection facility for more than 14 consecutive calendar days, which period shall include weekends and holidays. A commercial collection facility at which waste is staged or stored for more than 14 calendar days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

(k) A collection facility operator shall maintain the following records at the facility at all times and shall file reports as follows. The operator shall retain records and reports for three years.

1. A commercial collection facility shall maintain daily records that shall note the source, destination and quantity, by vehicle, of all regulated medical waste received, transferred and shipped to and from the facility. The records shall specify the source for every shipment of regulated medical waste received and the destination of

every shipment of regulated medical waste out of the facility. Quantities of regulated medical waste shall be listed in tons or gallons as appropriate.

i. The daily records shall be compiled into quarterly reports in accordance with N.J.A.C. 7:26-2.13 and shall be submitted to the following address within 20 days of the end of each calendar quarter:

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

2. A commercial collection facility shall maintain records that document all violations of any local, State and Federal requirements, including violations of the collection facility authorization issued by the Department.

3. A commercial collection facility shall maintain records that document all incidents in which a transporter not registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16 and 16A, or a container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the tracking form numbers for the waste in the container. These incidents shall also be reported within 24 hours to the Department's Bureau of Solid Waste Compliance and Enforcement or the Environmental Hotline at (609) 292-7172.

4. All collection facilities shall maintain records in accordance with N.J.A.C. 7:26-3A.34, 3A.43 and 3A.44, except that noncommercial facilities are not required to comply with N.J.A.C. 7:26-3A.44(a)1 and 2.

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

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

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

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

(p) The Department may modify a commercial collection facility authorization for the following reasons and the operator shall pay a fee as specified in N.J.A.C. 7:26-3A.8 on issuance of any commercial collection facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized commercial collection facility or operation that occurred after Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;
2. The Department receives information that was not available at the time it issued the letter of authorization that would have warranted the issuance of conditions in the authorization different from those imposed in the existing authorization. This information may include, but is not limited to, information concerning the effects of the facility on the properties surrounding the facility or the effects of the facility on the environment;
3. A change in Federal or State laws, regulations or policies governing solid waste and/or regulated medical waste management;
4. The regulatory compliance record of the collection facility operator;
5. A relevant judicial decision after the authorization was issued; or
6. An operator of a commercial collection facility shall request a modification of its authorization whenever the operator proposes to change any aspect of the operation as originally described in the application. Such change include, but are not limited to, changes in the amount and type of regulated medical waste managed at the facility, and changes in the sources of regulated medical waste and changes in the regulated medical waste disposal location.

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

New Rule, R.1996 d.578, effective December 16, 1996.

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

Former section, "Use of tracking form for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.41.

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

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

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

Administrative change.

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

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

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

In (d), substituted "7:1D, Appendix A" for "7:1E, Appendix C" following "consistent with N.J.A.C." in the introductory paragraph; in (d)6, inserted "by administrative action" following "has been included" in the first sentence and substituted "an administrative action" for "a letter of consistency" in the second sentence; in (d)10ii, substituted "smaller" for "greater" preceding "than one inch".

7:26-3A.40 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26-3A.40 through 3A.44 apply to owners and operators of intermediate handler or destination facilities located in New Jersey that manage regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities, including treatment and destruction facilities, facilities that cause the regulated medical waste to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4 including incineration facilities, alternative or innovative technology facilities and disposal facilities; and
2. Intermediate handlers, including alternative or innovative technology or other facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4.

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

(c) No person shall engage in the treatment and/or destruction of regulated medical waste in New Jersey unless such person:

1. Registers the site as an intermediate handler or destination facility in accordance with N.J.A.C. 7:26-3A.8;
2. Obtains a tariff in accordance with N.J.S.A. 13:1E-48.12.b if operating commercially;

3. Uses treatment and/or destruction process(es) authorized by the Department and DOH pursuant to N.J.A.C. 7:26-3A.47;

4. Obtains the specific approval of the Department and DOH to operate an alternative or innovative technology approved pursuant to N.J.A.C. 7:26-3A.47 for the treatment and/or destruction of regulated medical waste at the registered facility; and

5. Complies with all other environmental statutes applicable to the facility, including but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the rules and regulations adopted thereunder, and any permits or orders issued pursuant thereto.

Recodified from 7:26-3A.38 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), amended N.J.A.C. references and inserted reference to intermediate handlers and destination facilities; in (a)1 and (a)2, inserted reference to alternative or innovative technology facilities; and added (c). Former section, "Tracking form discrepancies for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.42.

7:26-3A.41 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.42(a) on the tracking form;

3. Immediately give the transporter "Copy 3—Transporter Copy" of the signed tracking form:

i. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(a) immediately give the generator "Copy 4—Generator Copy" of the signed tracking form.

ii. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(b) the disposal facility shall mail "Copy 4—Generator Copy" of the signed tracking form.

4. Send "Copy 4—Generator Copy" of the tracking form to the generator (or "Copy 3—Transporter Copy" to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

5. Retain "Copy 2—Destination Facility Copy" of each tracking form in accordance with N.J.A.C. 7:26-3A.43.

(b) When an intermediate handler receives regulated medical waste the owner or operator shall meet the following requirements:

1. The owner or operator shall meet all the requirements for generators under both N.J.A.C. 7:26-3A.10 through 3A.16 and 3A.18 through 3A.23, including signing the tracking form accepting the waste as specified in Box 20, noting any discrepancies on the tracking form in Box 23, and entering the new tracking form number in Box 21 when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

2. The owner or operator shall maintain an intermediate handler log matching the original generator's tracking forms to the tracking form initiated. The intermediate handler log shall include:

i. The name(s) of generator(s);

ii. The generator's address. If the generator is not located in New Jersey, then use the generator's state permit or identification number. If the state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number; and

iv. The new tracking form number to which the waste is assigned.

3. Within 15 days of receipt of the tracking form that the intermediate handler initiated and that was signed by the destination facility, the intermediate handler shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in (b)2i above;

ii. Send a copy of each tracking form to the generator who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirement of N.J.A.C. 7:26-3A.43.

(c) If a destination facility or intermediate handler receives from a rail transporter regulated medical waste that is accompanied by shipping papers containing the information required on the medical waste tracking form, with the exception of the generator's certification and chain of custody signatures, the owner or operator or an agent of the owner or operator shall:

1. Sign and date each copy of the tracking form or the shipping papers (if the tracking form has not been received);

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.42(a) on each copy of the tracking form or shipping papers (if the tracking form has not been received);

3. Immediately give the rail transporter at least one copy of the tracking form or shipping papers (if the tracking form has not been received);

4. If the facility is a destination facility, send a copy of the signed and dated tracking form to the generator within 15 days after the delivery. If the owner or operator has not received the tracking form within 15 days of delivery, he shall send a copy of the signed and dated shipping papers to the party initiating the tracking form;

5. If the facility is an intermediate handler, retain a copy of the tracking form (or the shipping papers if the tracking form has not been received), until receiving a copy of the tracking form signed by the owner or operator of the destination facility. The facility then shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form (or the shipping papers if the tracking form has not been received) initiated by another party;

ii. Send a copy of each tracking form (or each set of shipping papers) to the party who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.43.

(d) The destination facilities and intermediate handlers as set forth in (c) above shall retain a copy of the tracking form (or shipping papers if signed in lieu of the tracking form) for at least three years from the date of acceptance of the regulated medical waste unless the Department specifically requires an additional retention period.

(e) The destination facilities and intermediate handlers receiving shipments by rail should expect to receive the tracking form from the generator, or the preceding non-rail transporter who will have sent the tracking form to the facility by some other means (for example, by mail).

Recodified from 7:26-3A.39 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)2, amended N.J.A.C. references; in (a)3 through (a)5, amended form references; in (b)1, inserted reference to discrepancies; in (b)3, inserted reference to intermediate handler; in (c)2, amended N.J.A.C. references. Former section, "Record keeping for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.43.

7:26-3A.42 Tracking form discrepancies for intermediate handlers and destination facilities

(a) Tracking form discrepancies are:

1. For packages, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;
2. For waste by categories (that is, untreated or treated), discrepancies in number of packages for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;
3. Packaging that is broken, torn, or leaking;
4. Regulated medical waste that arrives at in intermediate handler or a destination facility unaccompanied by a tracking form, or for which the tracking form is incomplete or not signed; and
5. For weight of packages, a discrepancy greater than three percent of each tracking form load or more than 200 pounds, whichever is less.

(b) Upon discovering a discrepancy, the owner or operator shall attempt to resolve (for example, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator shall submit a letter, within 15 days of receiving the waste describing the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator shall include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in (a)4 above, the letter shall specify the quantity of waste received, the transporter, and the generator(s). The letter shall be submitted to the Department at the address listed in N.J.A.C. 7:26-3A.8(d)

Recodified from 7:26-3A.40 and 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)5. Former section, "Additional reporting for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.44.

7:26-3A.43 Recordkeeping for collection facilities, intermediate handlers and destination facilities

(a) The owner or operator of a collection facility, destination facility or an intermediate handler receiving regulated medical waste generated, transported, treated, destroyed, disposed of or otherwise managed in New Jersey shall maintain records at the registered site, for a minimum of three years from the date the waste was accepted unless the Department specifically requires an additional retention period. These records shall contain the following information:

1. Copies of all tracking forms required by N.J.A.C. 7:26-3A.41(a)5, (b)3iii, and (c)5iii; and the logs required by N.J.A.C. 7:26-3A.41(b)2;

2. Copies of all discrepancy reports required by N.J.A.C. 7:26-3A.42(b); and

3. Copies of Department facility compliance inspection reports and the facility registration certificates.

Recodified from 7:26-3A.41 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a), inserted reference to collection facilities and transported waste; in (a)1 and (a)2, amended N.J.A.C. references; and added (a)3. Former section, "Rail transporters", was recodified to N.J.A.C. 7:26-3A.45.

7:26-3A.44 Additional reporting for collection facilities, intermediate handlers and destination facilities

(a) All regulated medical waste commercial collection facilities, intermediate handlers and destination facilities are required to submit an annual medical waste collection facility, intermediate handler and destination facility report to the Department, except that noncommercial collection facilities are not required to comply with (a)1 and 2 below, covering the period from January 1 through December 31 of each calendar year and shall be submitted by February 15 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d), which shall include, but not be limited, to the following information:

1. A description of the sources, the types and amounts of regulated medical waste and medical waste collected, treated and/or destroyed;

2. The methods used for treatment and/or destruction; and

3. A description of any injuries and illnesses resulting from the maintenance, operation or any other activity related to a regulated medical waste treatment and/or destruction device(s).

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

Recodified from 7:26-3A.42 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a) inserted references to commercial collection facilities, medical waste collection facilities, and noncommercial collection facilities; recodified (a)i and (a)ii as (a)1 and (a)2; and added (a)3. Former section, "Rail shipment tracking form requirements", was recodified to N.J.A.C. 7:26-3A.46.

7:26-3A.45 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26-3A.46 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

Recodified from 7:26-3A.43 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a), amended N.J.A.C. reference.

7:26-3A.46 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;

ii. Return a signed copy of the tracking form to the non-rail transporter;

iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

Recodified from 7:26-3A.44 by R.1996 d.578, effective December 16, 1996.

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

7:26-3A.47 Alternative or innovative technology authorization

(a) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste, and any modification thereof, shall be authorized by the Department and DOH prior to any marketing, sale or use in New Jersey, in accordance with the following:

1. Persons seeking to market, sell or use an alternative or innovative technology shall submit an application to the Bureau of Medical Waste and Technical Assistance in the Department for authorization and pay the alternative technology review fee in accordance with N.J.A.C. 7:26-3A.8. The application shall be on forms provided by the Department and shall include the following:

i. A description of the proposed method of operation;

ii. Actual performance data;

iii. Vendor and independently verified treatment efficacy data;

iv. Information on parametric monitoring and controls;

v. Limits on waste acceptance;

vi. Information on residuals produced;

vii. Potential environmental impacts, including emissions and noise impacts;

viii. Occupational exposures;

ix. Safety procedures; and

x. Installation and operating costs, including data on energy efficiency.

2. The DOH may require additional information concerning the ability of the technology to effectively treat regulated medical waste.

3. The information provided in the application and all other information of any nature provided to or obtained by the Department and DOH in their administration of this section, shall be available to the public for review, unless a specific claim of confidentiality is submitted pursuant to in N.J.A.C. 7:26-17.1.

4. The Department and DOH may use the information and recommendations of the State and Territorial Association on Alternative Treatment Technologies, and other sources as needed, in evaluating regulated medical waste alternative or innovative technologies.

5. An alternative or innovative technology authorization to operate shall specify general operating conditions and other applicable requirements, such as, but not limited to, requirements for general operation; maintenance and housekeeping; injury reporting; emergency management and reporting; media; fugitive emissions and equipment performance monitoring and control; equipment operation; design; pollution control; data reporting; a DOH protocol to monitor treatment efficacy or other conditions of operation or performance; periodic technology evaluation progress reports as required by the Department and DOH and other reports as needed; financial assurance; and operation termination and remedial action; and other applicable requirements as shall be determined by the Department and DOH on a case-by-case basis. At a minimum, authorization shall include a DOH protocol to monitor treatment efficacy.

6. An alternative or innovative technology authorization shall be issued only for the specific technology applied for. Any modifications to the technology shall be submitted to the Department and DOH for review and approval pursuant to (a)1 through 5 above before introduction and use in New Jersey.

(b) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste authorized pursuant to (a) above:

1. May be marketed or sold for use in New Jersey;

2. Shall be authorized on a case-by-case basis at each facility intending to operate the alternative or innovative technology; and

3. Shall be installed and operated in compliance with all applicable Federal, State and local statutes and regulations.

(c) For the purposes of expediting development, demonstration, evaluation or implementation of alternative or innovative technologies and for the purpose of obtaining operational data and information on which the application for authorization to operate can be reviewed pursuant to (a) above, the Department may, in consultation with the DOH, exempt any regulated medical waste alternative or innovative technology research, development or demonstration project from applicable waste management regulations in accordance with the procedures at N.J.A.C. 7:26-1.7(f).

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

7:26-3A.48 Requirements for generators using out-of-State facilities disposing of regulated medical waste from New Jersey

(a) A generator using an out-of-State intermediate handler, destination facility, transfer facility, or other medical waste disposal facility operating for any purpose that uses the U.S. Postal Service or other parcel delivery service in New Jersey and uses the U.S. Postal Service or other authorized mail or parcel delivery service to transport regulated medical waste from New Jersey to the out-of-State facility, shall request a certification from the out-of-State facility, which shall include copies of any state and local authorizations and/or permits. Copies of this certification shall be sent by the generator to the Bureau of Medical Waste and Technical Assistance. This information shall be provided by the generator prior to sending any RMW out-of-State for disposal,

(b) A generator using the out-of-State facility described in (a) above shall also submit a certification of any and all changes to the out-of-State facilities authorizations or permits within 30 days of such changes.

(c) A generator of regulated medical waste in this State shall not send regulated medical waste by the U.S. Parcel Service or other parcel delivery service to an out-of-State facility that has not submitted a certification to the Department in accordance with this section.

New Rule, R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Administrative change.
See: 30 N.J.R. 3948(a).

SUBCHAPTER 4. FEES FOR SOLID WASTE

7:26-4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, requiring licensing and registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds, need not pay any solid waste fee to the Department. Any person transporting solid waste who does not meet the criteria for exemption under this subsection shall be subject to the fee requirements applicable to transporters of solid waste set forth at N.J.A.C. 7:26-4.4.

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

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

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

Amended by R.1983 d.269, effective July 5, 1983.

See: 15 N.J.R. 662(a), 15 N.J.R. 1095(b).

Amended by R.1989 d.54, effective January 17, 1989.

See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Added text "of solid waste, excluding hazardous waste".

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.

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

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

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

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

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

In (a), inserted reference to thermal destruction facilities and composting facilities; and in (b), added last sentence.

Case Notes

Operator was liable for certain taxes and escrow accounts on solid waste disposed in its facilities under joint order issued by Department of Environmental Protection and Board of Public Utilities requiring landfill to remain open beyond intended closing date and requiring operator to extend credit to cash-based haulers in amount of rate increase. *Edgeboro Disposal, Inc. v. Division of Taxation*, 284 N.J.Super. 208, 664 A.2d 942 (A.D.1993).

Solid waste collector who failed to comply with terms of rate increase allowance; refund. In the Matter of the Petition of A. Fiore and Sons, Inc., 94 N.J.A.R.2d (EPE) 124.

7:26-4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid by certified check or money order and made payable to "Treasurer, State of New Jersey" at the following address:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

PO Box 414

Trenton, NJ 08625-0414

(b) Engineering design fees and transporter registrations may be paid in person at the address set forth in (a) above.

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.

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

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

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

Administrative change.

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

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration is as follows:

1. Each solid waste facility permittee shall pay an annual facility registration update fee of \$1,010. The annual facility registration update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

(b) Each solid waste facility permittee shall pay the applicable annual fee listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year. The operator of one intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6 shall pay the annual fee listed below on January 1 of each year.

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	\$22,988
Sanitary Landfill—operating at less than 31,200 tpy	\$6,386
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	\$16,946
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	\$5,894
Thermal Destruction Facilities—operating at 9.6 tons per day or more	\$21,072
Thermal Destruction Facilities—operating at less than 9.6 tons per day	\$1,834
Intermodal Container Facilities	\$260
Solid Waste Composting and Co-Composting Facilities	\$3,144

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:

Class A: small scale thermal destruction facility (as such term is defined at N.J.A.C. 7:26-1.4)

Class B: design capacity greater than 9.6 tons per day

2. Sanitary landfills:

Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

3. Transfer stations and materials recovery facilities:

Class A: design capacity of less than 100 tons per day

Class B: design capacity of at least 100 tons per day

4. Compost facilities:

Class A: vegetative food waste and paper brought in separated form

Class B: separated compostable waste-no inorganic material (e.g. glass, metal, plastic, etc.)

Class C: mixed waste requiring manual and/or mechanical separation processes before composting

5. Sanitary landfill closure plan submissions:

Closure Plan

- Class A: less than 10 acres
- Class B: 10 to 30 acres
- Class C: more than 30 acres

(d) The following table sets forth fees (in dollars) for services for the classes of solid wastes facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

	Class	
	A	B
a. Completeness determination	6,734	13,467
b. Engineering design report review	29,460	106,054
c. Permit renewal	21,884	58,077
d. Major modification to permit	9,595	32,826
e. Minor modification to permit	4,040	7,575
f. Transfer of ownership of permit	5,724	9,932
g. Minor technical review	1,010	2,020

2. Sanitary Landfill Facilities

	Class		
	A	B	C
a. Completeness determination	10,100	7,575	3,788
b. Engineering design report review	106,054	73,228	53,027
c. Permit renewal	63,128	42,927	25,251
d. Major modification to permit	20,201	11,615	9,090
e. Minor modification to permit	11,363	7,575	5,050
f. Transfer of ownership of permit	12,626	9,090	7,828
g. Minor technical review	1,515	1,010	505

3. Transfer Stations and Materials Recovery Facilities

	Class	
	A	B
a. Completeness determination	5,050	7,575
b. Engineering design report review	23,736	27,776
c. Permit renewal	20,706	25,251
d. Major modification to permit	11,615	20,201
e. Minor modification to permit	3,535	5,050
f. Transfer of ownership of permit	5,555	5,555
g. Minor technical review	1,010	1,515

4. Compost Facilities

	Class		
	A	B	C
a. Completeness determination	2,525	7,575	7,575
b. Engineering design report review	12,626	22,726	50,502
c. Permit renewal	11,110	17,676	27,776
d. Major modification to permit	4,040	11,615	17,676
e. Minor modification to permit	1,515	3,535	7,575
f. Minor technical reviews	1,010	1,515	1,515
g. Transfer of ownership of permit	3,535	5,555	5,555

5. Closure Plan

	A	B	C
a. Completeness determination	1,178	1,768	2,946
b. Engineering design report review	8,417	12,626	16,834
c. Major modification to approval	2,525	3,788	5,050
d. Minor modification to approval	842	1,683	2,525
e. Transfer of ownership of approval	1,683	2,525	3,788
f. Minor technical review	421	842	1,263

6. Annual Topographic Map Submissions

a. Engineering design report review	2,805
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(e) For submissions concerning disruption, methane venting systems, on-site disposal, cover material, RD & D reviews, hearing officer's report, construction facility inspection, contaminated soil reviews, or the solid waste facility performance partnership agreement, the applicant/permittee shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplies by an hourly rate of \$84.17.

(f) The omission of any type of service from the fee schedules set forth in (a), (b), (d) and (e) above shall not be construed as a waiver of the Department's authority to assess fees for such services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. The solid waste facility performance partnership agreement will be assessed a fee based on the hour for hour negotiation of the document with the permittee. This assessment will allow for the flexibility required by the Department and the permittee in establishing its permit pursuant N.J.A.C. 7:26-2.14. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$84.17. The Department will calculate the fee for performance of the Department's services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a), (b), (d) or (e) above, the amount of the fee shall be equal to the amount listed in (a), (b), (d) or (e).
2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$84.17.

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee shall request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

(h) The Department may, in its discretion, refrain from commencing work on the activity which is the subject of a fee determined pursuant to (e) or (f) above until the Department has received full payment of the fee. If the Department has already commenced work, the Department may, in its discretion, suspend such work until it has received full payment of the fee.

(i) The following table sets forth fees (in dollars) for services in reviewing beneficial use applications and issuing certificates of authority to operate (CAO) a beneficial use project pursuant to N.J.A.C. 7:26-1.7(g). The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant has paid the designated fee.

1. Beneficial Use Review	
a. In-State (no sampling results)	\$275.00
b. In-State (sampling results)	\$642.00
c. Out-of-State	\$183.00

2. For additional activities such as pre-application meetings and site visits or any other activity which the Department determines, in its discretion, is required to fully evaluate the applicant's submission, the Department shall determine the fee for performing the additional services. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$91.70.

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

Deleted "hazardous wastes" from (a)3i.
Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Note: Reference to the repeal of N.J.A.C. 7:26-4.3 was inadvertently left out of the headings to the notices of proposal and adoption (20 N.J.R. 2668(a), 21 N.J.R. 1002(b)); however, language in the Summary of the proposal and subsequent introduction of new material clearly demonstrated the Department's intention to repeal and replace the rule.

Amended by R.1991 d.368, effective July 15, 1991.
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).

Deleted "facilities"; added "annual facility registration, volume monitoring and planning consistency activities" in (a).

Deleted "a facility monitoring fee from all facilities that are", "be paid when submitting the annual registration update", "The fee is \$500.00 per year."; added "The permittee for a facility who is", "at such facility", "pay an annual facility volume monitoring fee of \$902.00. The annual facility volume monitoring fee is due at the time the annual registration update is submitted but in no event later than May 1 of each calendar year." in (a)1.

Substituted old text with new text in (a)2.
Substituted old text with new text in (a)3.
Deleted (a)4 through 11.
Added (c), (d), (e), (f), (g), (h).
Amended by R.1991 d.368, effective July 14, 1991 (operative March 1, 1992).
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).
N.J.A.C. 7:26-4.3(b) made operative.
Administrative Correction to (b), thermal destruction facilities.
See: 24 N.J.R. 1121(a).
Administrative Correction to (b).
See: 24 N.J.R. 2058(a).
Amended by R.1993 d.98, effective March 1, 1993.
See: 24 N.J.R. 1999(a), (see also 24 N.J.R. 2687(a)), 25 N.J.R. 990(b).
Added new structure at (b).
Amended by R.1996 d.169, effective April 1, 1996.
See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).
In (b) added fee for intermodal container facilities.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Amended classes and fees.
Administrative correction.
See: 29 N.J.R. 127(b).
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
In (d), rewrote tables; in (e), deleted "beneficial use reviews"; added new (i).

7:26-4.4 Fee schedule for transporters

(a) For solid waste transporters, excluding those solely transporting hazardous waste, an annual registration and inspection fee shall be paid.

(b) The registration year shall extend from May 1 through April 30. Fees shall be payable prior to May 1 of each calendar year.

(c) All transporters shall pay an annual fee of \$178.00 for each solid waste cab or for each single-unit solid waste vehicle.

(d) All transporters shall pay an annual fee of \$178.00 for each solid waste trailer.

(e) All transporters shall pay an annual fee of \$22.00 for each solid waste container.

(f) The registration of a single-unit solid waste vehicle, solid waste trailer, solid waste cab, and solid waste container is non-transferable.

(g) All transporters shall pay a fee of \$25.00 for the replacement of a lost or stolen decal.

(h) All transporters shall pay a fee of \$10.00 for the replacement of a lost, stolen, or plate changes of registration card.

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Rule at this cite formerly entitled "Engineering design review (per design)".

Amended by R.1991 d.368, effective July 15, 1991 (operative July 15, 1991).

See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).

Added "an annual" and changed fees in (c), (d), (e).

Deleted (g).

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), deleted prohibition of pro rata adjustment; in (c) through (e), amended fees; and added (g) and (h).

7:26-4.5 County enforcement activity fees for solid waste control program

(a) General provisions are as follows:

1. Scope: Unless otherwise provided by state or statute, the following shall constitute the rules of the Department of Environmental Protection concerning fees to be charged for enforcement activities undertaken by county health departments pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H.

2. Construction: This section shall be liberally construed to permit the Department and its component divisions to effectuate the purposes of the above referenced laws.

3. Purpose: This section is promulgated for the following purposes:

i. To aid counties in the development and implementation of a solid waste control program; and

ii. To provide a basis for the Department to review county department fees for enforcement activities related to their solid waste control program based upon the objectives in N.J.S.A. 13:1E et seq. and N.J.A.C. 7:26-1.

4. Definitions: The following words and terms, when used in this section, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions at N.J.A.C. 7:26-1.4.

“County department” means a county department of health established pursuant to P.L. 1975, c.329 (N.J.S.A. 26:3A2-1 et seq.) as amended and supplemented, with the purpose of providing environmental health programs throughout the county and other local health programs in any municipality which contracts therefor with the county board (N.J.S.A. 26:3A2-21 et seq.)

“Owner or operator” means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a sanitary landfill facility is located, and any person or corporation which owns a majority interest in any other corporation which owns a majority interest in any sanitary landfill facility.

“Program” means a solid waste control program prepared by the county department pursuant to this section and the procedures and standards authorized by the County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H, and which has been submitted to the Department for review.

(b) Enforcement activity fee schedule established: In accordance with N.J.S.A. 13:1E-9, there is hereby established a fee schedule which shall apply to all sanitary landfill facilities required to be registered with the Department and subject to a county department program.

1. Duties and powers of the county department are as follows:

i. Any county department may charge and collect from the owner or operator of any sanitary landfill facility fees established by ordinance or resolution adopted by the county governing body. Such fees shall be established in accordance with this section for the purpose of enforcing the rules and regulations adopted by the Department related to solid waste collection and disposal, and in conformance with all applicable County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H, adopted pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

ii. Within six months of the effective date of this section and by September 1 of each succeeding year as part of its annual work program, pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., a county department shall submit to the Department a Solid Waste Control Program (Program). The Program shall be submitted to each municipality located in the county for review and comment prior to its submittal to the Department and shall contain monitoring and enforcement activities at least equivalent to those set forth in N.J.A.C. 7:1H-3.4(a) through (u) and shall also include the following:

(1) Identification and number of operating facilities to be inspected;

(2) Projection of the number of inspections to be conducted by facility name (minimum twice per month);

(3) Purpose of inspections;

(4) A description of the procedures for:

(A) Determining inspection frequency;

(B) Accounting for activities performed;

(C) Actions to be taken after inspections have been performed; and

(D) Taking legal action.

(5) In each succeeding year, a report on the previous year's activities, including a detailed financial statement of the previous year's expenditures, actual amount of fees collected and any surplus which can be credited to the next year's costs.

iii. The Program shall include certain county budgetary costs as follows, provided they are both reasonable and necessary. The Department may consider additional costs based upon particular local needs and abilities provided the Department is satisfied that those additional costs are both reasonable and necessary.

(1) Personnel: Identify type, number, and salary required, including benefits therefor;

(2) Local training: In addition to county department training costs, personnel performing solid waste inspections shall also be trained by the Department through the arrangement of joint inspections with departmental inspectors experienced in facility inspections. It shall be the responsibility of the county department to arrange such joint training inspections;

(3) Protective equipment;

(4) Vehicles and maintenance;

(5) Test equipment;

(6) Laboratory and analysis;

(7) Office equipment and supplies;

(8) Secretarial, office and general administrative support; and

(9) Costs based on (b)1ii(1) through (5) above.

2. Fees for the Program are as follows:

i. After review by the Department of its Program, and pursuant to a resolution or ordinance adopted by the county governing body, any county department may charge and collect fees from the owner or operator of any sanitary landfill facility within its jurisdiction, as follows:

(1) At the maximum rate of \$0.01 per cubic yard of solid waste accepted for disposal at a facility;

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

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

Administrative Change in (a).
 See: 23 N.J.R. 3325(b).
 Amended by R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 In (a)1, deleted reference to EPA identification number.

7:26-5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each requirement of any rule listed in N.J.A.C. 7:26-5.4(g).

(b) Each violation of a rule listed in N.J.A.C. 7:26-5.4(g) shall constitute an additional, separate and distinct violation.

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

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of any rule listed in N.J.A.C. 7:26-5.4(g) may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

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

1. Identify the rule violated as listed in N.J.A.C. 7:26-5.4(g)1 through 8A;
2. Identify the corresponding base penalty dollar amount for the rule violated as listed in N.J.A.C. 7:26-5.4(g)1 through 8A;
3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

Severity Factor	Multiplier
i. Violator had violated the same rule less than 12 months prior to the violation. . . .	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation. . . .	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation.	0.50
iv. Violator had violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation.	0.25

4. To obtain the civil administrative penalty, add all of the severity penalty components pursuant to (f)3 above, to the base penalty. If the sum total exceeds \$50,000, then the civil administrative penalty shall be \$50,000.

EXAMPLE:

Base penalty (for violation of N.J.A.C. 7:26-2.12(f))	=	\$1,000
Subparagraph (f)3iii applies: 0.50x1000	=	500
Subparagraph (f)3iv applies: 0.25x1000	=	+ 250
Civil administrative penalty		<u>\$1,750</u>

5. For the purpose of this section, violation of the "same rule" means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the same item on the list must be violated to be considered violation of the "same rule."

(g) The rule Summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26 and 7:26A, is provided for informational purposes only. In the event that there is a conflict between the rule Summary in this subsection and a provision in N.J.A.C. 7:26 and 7:26A, then the provision in N.J.A.C. 7:26 and 7:26A shall prevail.

1. The violations of N.J.A.C. 7:26-1, General Provisions, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-1.7(b)	Failure of owner or operator of any facility exempted under N.J.A.C. 7:26-1.7 to comply with all conditions set forth in its certificate of authority to operate	\$2,000

2. The violations of N.J.A.C. 7:26-2, Disposal, and the civil administrative penalty amount for each violation, are set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26-2.7(b)1	Failure of permittee to apply for a permit renewal at least 90 days prior to the expiration date of the existing SWF permit.	\$2,000
7:26-2.8(b)	Failure of permittee to submit a statement updating the information contained in the initial registration statement.	\$2,000

			<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty</u>
7:26-2.8(c)	Failure of permittee to notify the Department within 30 days of any change of information in the registration statement.	\$2,000	N.J.A.C. 7:26-2A.8(b)1	Failure to confine working face to the smallest practical area.	\$2,000
7:26-2.8(e)	Failure to apply and receive approval of a SWF permit prior to engaging in the disposal of solid waste in this State.	\$2,000	7:26-2A.8(b)2	Failure to compact waste to yield smallest volume.	\$2,000
7:26-2.8(f)	Failing to obtain a SWF permit prior to constructing or operating a solid waste facility.	\$5,000	7:26-2A.8(b)3	Failure to compact waste in shallow layers; or compacting waste over leachate collection pipes per N.J.A.C. 7:26-2A.7(d)3xiv.	\$2,000
7:26-2.8(j)	Failure to meet all conditions, restrictions, requirements or any other provision set forth in SWF permit	\$2,000	7:26-2A.8(b)4	Failure to ensure lift height of daily cell does not exceed 12 feet.	\$2,000
7:26-2.8(k)	Failure to receive Department approval prior to modifying, revising or otherwise changing a permit condition.	\$2,000	7:26-2A.8(b)5	Failure to ensure slope is no steeper than 3:1.	\$2,000
7:26-2.8(l)	Failure to receive Department approval prior to transferring ownership of a SWF permit.	\$5,000	7:26-2A.8(b)6	Failure of balefill operations to comply with working face requirements.	\$2,000
7:26-2.11(b)1	Failure of operator to clean areas where waste has been deposited or stored within each 24 hour period, for sanitary landfills all areas where waste has been deposited shall be covered.	\$2,000	7:26-2A.8(b)7	Failure to obtain department approval of separate areas for storage of demolition waste or recyclable materials.	\$2,000
7:26-2.11(b)2	Failure to ensure any waste stored overnight at any facility is effectively treated.	\$2,000	7:26-2A.8(b)8	Failure to cover exposed surfaces of solid waste at close of each operating day with daily cover.	\$2,000
7:26-2.11(b)3	Failure to maintain facility property surrounding the disposal area free of litter, debris, unprocessed waste, processed residues and effluents.	\$3,000	7:26-2A.8(b)9	Failure to progressively apply daily cover.	\$2,000
7:26-2.11(b)4	Failure to implement dust control methods.	\$2,000	7:26-2A.8(b)10	Failure to apply intermediate cover (a minimum of 12 inches of earth) to surfaces exposed more than 24 hours.	\$2,000
7:26-2.11(b)5	Failure to ensure no odors are detected off-site.	\$4,000	7:26-2A.8(b)11	Failure to maintain grade, thickness and integrity of intermediate and final cover.	\$2,000
7:26-2.11(b)6	Failure to maintain all facility systems in a manner that facilitates proper operation and minimizes system downtime.	\$2,000	7:26-2A.8(b)12	Failure to grade areas with intermediate cover to facilitate drainage.	\$2,000
7:26-2.11(b)7	Failure to maintain an adequate water supply and adequate fire-fighting equipment.	\$5,000		Failure to use appropriate daily and intermediate cover materials; not maintaining sufficient quantity of cover at site; not maintaining standby supply of cover within boundaries.	\$2,000
7:26-2.11(b)8	Failure to control insects, other arthropods and rodents.	\$3,000	7:26-2A.8(b)13	Failure to construct final cover in accordance with N.J.A.C. 7:26-2A.7(i) and to apply it to all surfaces.	\$2,000
7:26-2.11(b)9	Failure to admit only properly registered solid waste vehicles for loading or unloading of any solid waste.	\$3,000	7:26-2A.8(b)20	Failure to maintain sufficient types and quantities of equipment to adequately meet the requirements of (b) 7 through (10) above.	\$2,000
7:26-2.11(b)10	Failure to designate a secure area where solid waste may be unloaded from vehicles exempt from registration under N.J.A.C. 7:26-3.3.	\$2,000	7:26-2A.8(b)21	Failure to maintain steel wheel type compactors of at least 45,000 pounds.	\$2,000
7:26-2.11(b)11	Failure to comply at all times with the conditions of SWF permit.	\$2,000	7:26-2A.8(b)22	Failure to equip landfill equipment with safety devices.	\$5,000
7:26-2.11(b)12	Failure to designate a secure area where unpermitted waste can be deposited.	\$2,000	7:26-2A.8(b)23	Failure, in the case of breakdown of equipment, to repair or obtain replacement within 24 hours; or to include a maintenance contract in O&M plan.	\$2,000
7:26-2.11(b)13	Failure to maintain a record of the quantity of each waste type accepted for disposal.	\$5,000		Failure to limit access for disposal to operating hours only.	\$2,000
7:26-2.11(b)15	Failing to ensure waste is not received in excess of the system's designed capacity.	\$2,000	7:26-2A.8(b)24	Failure to secure landfill with a six-foot high chain link fence.	\$2,000
7:26-2.11(b)16	Failure to operate the facility in a manner that employs the use of equipment and other techniques as identified in the facility's SWF permit.	\$2,000	7:26-2A.8(b)25	Failure to maintain all weather road to working face.	\$2,000
7:26-2.11(b)17	Failure to provide a means of cleaning vehicle tires of debris.	\$2,000	7:26-2A.8(b)27	Failure to control litter.	\$3,000
7:26-2.11(b)18	Failure to maintain an approved O&M manual at the facility, changes to be submitted, at a minimum, on an annual basis.	\$3,000	7:26-2A.8(b)28 7:26-2A.8(b)29	Failure to control dust by spraying water or equivalent.	\$2,000
7:26-2.12(b)	Failure of generators of asbestos containing waste materials to submit a complete written notification of intent to demolish, 10 days prior to beginning the demolition activity.	\$1,000	7:26-2A.8(b)30	Failure to eliminate emissions which result in odors detectable in areas of human use or occupancy beyond boundary line; or to control the odors by use of daily cover; or to immediately cover odorous waste with minimum six inches of cover.	\$4,000
7:26-2.12(c)	Failure of generators of asbestos containing waste material to submit a complete written notification of intent to renovate, 10 days prior to beginning the renovation activity.	\$1,000	7:26-2A.8(b)31	Failure to control the off-site tracking of mud and soil.	\$2,000
7:26-2.13(a)7	Failure to maintain a daily record of asbestos waste and make appropriate submittals.	\$3,000	7:26-2A.8(b)32	Failure to minimize the propagation and harborage of insects, rodents, and birds.	\$2,000
7:26-2.13(a)8	Failure to maintain additional required reports in the daily record.	\$2,000	7:26-2A.8(b)33	Failure to protect all monitoring devices and environmental systems from damage.	\$5,000
7:26-2.13(c)1	Failure of facility operator to verify the O and D form	\$2,000	7:26-2A.8(b)37	Failure to have supervisor on site in order to insure proper operation, evaluate monitoring data and inspection reports, determine performance of landfill, implement all operational decisions and ensure compliance with N.J.S.A. 13:1E-1 et seq., this chapter and the SWF Permit.	\$5,000
7:26-2.13(e)	Failure to submit monthly summaries of waste to the Department.	\$3,000		Failure to ensure that landfill personnel complete a program of on-the-job training, all personnel complete training program within six months after date of employment, all personnel take part in annual update of initial training program, keep records of training received by personnel until closure.	\$2,000
7:26:2.14(j)	Failure of SWFPPA permittee to prepare and submit a complete annual progress report.	\$2,000		Failure to maintain environmental control systems in functioning manner, or to inspect them.	\$5,000
7:26:2.14(k)	Failure of SWFPPA permittee to conduct a complete facility wide benchmark audit not less than once every five years.	\$2,000	7:26-2A.8(b)38-41		
			7:26-2A.8(c)		

3. The violations of N.J.A.C. 7:26-2A, Additional Specific Disposal Regulations for Sanitary Landfills, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26-2A.8(d-e)	Failure to perform inspections required by (c) above on a weekly basis and after storm events, and comply with recordkeeping requirements.	\$3,000		received cannot be handled or processed in the normal manner, of the operator to notify the Department of the existence of such a situation and circumstances contributing to the situation within the same working day of its occurrence.	\$2,000
7:26-2A.8(f)	Failure of operator to make repairs in accordance with N.J.A.C. 7:26-2A.8(b)28 and O&M manual, if deterioration or malfunction occurs.	\$2,000	7:26-2B.8(i)	Failure to store unprocessed incoming waste, facility process waste residues and effluents, and recovered materials in bunkers, pits, bins, or similar containment vessels and to keep at all times at levels that prevent spillage or overflow.	\$2,000
7:26-2A.8(g)	Failure to maintain and inspect sanitary landfill according to requirements.	\$2,000	7:26-2B.8(j)	Failure to keep waste delivery tipping hall doors closed during non-processing or non-receiving hours.	\$2,000
7:26-2A.8(h)	Failure to monitor in accordance with parameters and schedules.	\$5,000	7:26-2B.8(k)	Failure to schedule the delivery of waste to the facility and the removal of residues and recovered products from the site so as to eliminate traffic backups and allow for fluid vehicular movement on site.	\$2,000
7:26-2A.8(i)	Failure to submit an annual topographic survey prepared according to N.J.A.C. 7:26-2A.8(i)1 through 4 by May 1 of each year.	\$2,000	7:26-2B.8(l)	Failure to ensure that samples and measurements taken for the purpose of monitoring facility process and treatment operations are representative of the process or operation and are performed with the conditions of the facility's SWF permit.	\$5,000
7:26-2A.8(j)1	Failure to obtain written approval of the Department prior to disruption/excavation.	\$2,000	7:26-2B.8(m-r)	Failure of the operator to comply with waste determination, waste analysis and required recordkeeping.	\$5,000
7:26-2A.8(j)3	Failure to keep area of excavation consistent with amount of equipment, and to keep excavation to smallest practical area.	\$2,000	7:26-2B.8(s)	Failure of the owner or operator to have a 24-hour surveillance system which continuously monitors and controls entry to the facility or an artificial or natural barrier which completely surrounds the facility.	\$5,000
7:26-2A.8(j)4	Failure to control dust, odors, fires, rodents, insects, blowing litter.	\$3,000	7:26-2B.8(t)	Failure of a facility to maintain required personnel, supervisor, boiler operator, licensed engineer to assure the proper and orderly operation of all system components, along with the ability to handle all routine facility maintenance requirements.	\$5,000
7:26-2A.8(k)6	Failure to repair any disruption of finished grade or covered surface upon completion of firefighting activities.	\$2,000	7:26-2B.8(u)	Failure to ensure that all personnel complete an initial program of classroom instruction and on-the-job training, training program directed by a person thoroughly familiar with the technology, ensure that facility personnel respond to any malfunction or emergency situation, complete the initial training program within six months, planned annual review of the initial training, records document the type and amount of training received, kept until closure, former employees records kept for at least one year.	\$2,000
7:26-2A.8(l)	Failure to comply with asbestos waste disposal requirements.	\$3,000			

4. The violations of N.J.A.C. 7:26-2B, Additional Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Mixed Solid Waste Composting Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
N.J.A.C. 7:26-2B.7(b)	Failure of solid waste composting and co-composting facility to comply with quarterly report requirements.	\$2,000			
7:26-2B.7(d)	Failure of solid waste composting and co-composting facility to comply with training requirements; Access to facility prohibited when facility is closed.	\$2,000			
7:26-2B.7(e)	Failure of solid waste composting and co-composting facility to monitor temperature of composting materials to ensure pathogen reduction criteria are met.	\$2,000			
7:26-2B.7(f)	Failure of solid waste composting and co-composting facility to comply with incoming waste processing timeframes and requirements.	\$2,000			
7:26-2B.7(g)	Failure of solid waste composting and co-composting facility to ensure incoming, unprocessed waste is not mixed with finished compost.	\$2,000			
7:26-2B.7(h)	Failure of solid waste composting and co-composting facility to comply with 15 month finished compost storage requirement.	\$1,000			
7:26-2B.7(i)	Failure of solid waste composting and co-composting facility to comply with recordkeeping requirements.	\$2,000			
7:26-2B.7(j-n)	Failure of solid waste composting and co-composting facility to comply with monitoring and sampling requirements.	\$3,000			
7:26-2B.7(o)	Failure of solid waste composting and co-composting facility to comply with labeling requirements.	\$2,000			
7:26-2B.7(p)	Failure of solid waste composting and co-composting facility to comply with USEPA 40 CFR 503 general requirements.	\$2,000			
7:26-2B.8(d)	Failure of the owner or operator to conduct inspections as indicated in the approved final O&M manual in order to identify and remedy any problems and comply with recordkeeping requirements.	\$3,000			
7:26-2B.8(f)	Failure of the owner or operator to implement waste receiving area control procedures that provide for the inspection of the incoming waste stream for the purpose of removing nonprocessable or potentially explosive materials prior to the initiation of processing.	\$3,000			
7:26-2B.8(g)	Failure, should the facility experience equipment or system malfunction to the extent that the waste				

5. The violations of N.J.A.C. 7:26-3, Transportation, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty
N.J.A.C. 7:26-3.2(a)	Failure to obtain an approved registration statement from the Department prior to engaging in the transportation of solid waste.	\$8,000
7:26-3.2(a)2	Failure to ensure that any device used for the transportation of solid waste is registered with the Department.	\$2,000
7:26-3.2(a)4	Failure of registrant to ensure registered vehicles, cabs, containers, etc. are not used, controlled or possessed by any other person.	\$5,000
7:26-3.2(c)	Failure to comply with any conditions or limitations which may be specified on the approved registration.	\$5,000
7:26-3.2(d)	Failure of a registrant to submit a transporter registration renewal updating information contained in the previous registration statement.	\$2,000
7:26-3.2(e)	Failure of registrant to notify the Department within 30 days of any change in the registration statement.	\$2,000
7:26-3.4(b)	Failure to deposit all collected solid waste at an approved facility.	\$5,000
7:26-3.4(c)	Failure to ensure solid does not remain or is stored in any solid waste vehicle in excess of 24 hours, unless an emergency.	\$2,000
7:26-3.4(d)	Failure to ensure design of solid waste vehicle is such that it will not cause spillage onto roadways.	\$2,000

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26-3.4(e)	Failure to ensure solid waste vehicle is not loaded beyond its design capacities or in such a manner that will cause spillage onto roadways.	\$2,000	7:26-3A.10(a)	Failure of generators of RMW to segregate for off-site transport prior to placement in containers.	\$1,000
7:26-3.4(f)	Failure to keep all solid waste vehicles in good working condition and to provide a means of continuous service in the event an emergency arises.	\$2,000	7:26-3A.10(d)	Failure to handle a package of RMW mixed with other waste as RMW.	\$3,000
7:26-3.4(g)	Failure to protect property of customer.	\$2,000	7:26-3A.11	Failure of a generator to ensure that RMW is properly packaged before transporting or offering for transport off site.	\$1,000
7:26-3.4(h)	Failure to properly mark each solid waste vehicle or to carry current DEP registration certificate.	\$2,000	7:26-3A.12(a)	Failure to comply with RMW storage requirements.	\$3,000
7:26-3.4(i)	Failure to use tarpaulins as needed.	\$2,000	7:26-3A.12(b)	Failure to comply with RMW storage periods.	\$1,000
7:26-3.4(j)	Failure to access or exit a solid waste facility pursuant to the district management plan or SWF permit.	\$2,000	7:26-3A.12(c)	Failure to secure sharps containers.	\$1,000
7:26-3.5(a)1	Failure to design all solid waste vehicles used for the transportation of sewage sludge to preclude any spillage or leakage onto roadways.	\$2,000	7:26-3A.13(a)	Failure to comply with container decontamination and reuse requirements.	\$3,000
7:26-3.5(a)2	Failure to ensure sewage sludge and other fecal material is not intermixed with other wastes of a chemical or industrial nature.	\$5,000	7:26-3A.14(a)	Failure to comply with labeling requirements.	\$500
7:26-3.5(b)	Failure to design all solid waste vehicles used for the transportation of bulky waste to preclude any spillage.	\$2,000	7:26-3A.15(a)	Failure to comply with marking requirements.	\$500
7:26-3.5(c)	Failure to ensure radioactive material and lethal chemicals are not transported in or through this State without prior approval from authorities having jurisdiction, and from the Department.	\$5,000	7:26-3A.16(a)	Failure to determine if waste is RMW.	\$1,000
7:26-3.5(d)1	Failure to design all solid waste vehicles used for the transportation of asbestos waste so as to preclude any spillage leakage or emissions therefrom.	\$3,000	7:26-3A.16(d)	Failure to use properly registered transporters.	\$1,000
7:26-3.5(d)2	Failure to package asbestos for transportation in accordance with 40 CFR 61.152 and N.J.A.C. 7:26-2.12.	\$5,000	7:26-3A.16(e)	Failure to dispose of RMW at an authorized facility.	\$5,000
7:26-3.5(d)3	Failure to transport asbestos in a manner that prevents the rupture of containers in loading, transporting and unloading operations.	\$5,000	7:26-3A.16(h)	Failure to comply with home self-care RMW requirements.	\$500
7:26-3.5(d)4	Failure to transport collected asbestos directly from the point of generation to the solid waste landfill permitted to receive such wastes.	\$5,000	7:26-3A.16(i)	Failure to get approval from the department prior to using an alternative or innovative technology for the treatment or destruction of RMW.	\$5,000
7:26-3.5(d)6	Failure to ensure no visible air emissions are generated during loading, transporting, or unloading operations.	\$5,000	7:26-3A.19	Failure of a generator to comply with tracking form requirements.	\$500
7:26-3.5(g)2	Failure of transporter to complete and sign O and D form prior to disposal	\$2,000	7:26-3A.21	Failure to comply with generator recordkeeping requirements.	\$500
7:26-3.7(a)	Failure to ensure waste materials to be collected and transported show no evidence of smoking, smoldering or burning.	\$5,000	7:26-3A.22	Failure of generator to comply with exception reporting requirements.	\$1,000
			7:26-3A.25	Failure of generator with on-site incinerator to comply with recordkeeping requirements.	\$1,000
			7:26-3A.26	Failure of owner/operator of on-site incinerator to comply with reporting requirements.	\$3,000
			7:26-3A.27(i)	Failure of a transporter/collection facility to dispose of RMW stored in the vehicle within fourteen calendar days, or before it becomes putrescent.	\$1,000
			7:26-3A.28	Failure of a transporter to comply with RMW acceptance requirements.	\$3,000
			7:26-3A.30(a)1	Failure of vehicle to have fully enclosed, leak resistant cargo carrying body.	\$2,000
			7:26-3A.30(a)2	Failure to ensure RMW does not become putrescent and is not subjected to mechanical stress or compaction during loading and unloading or during transit.	\$2,000
			7:26-3A.30(a)3	Failure to maintain cargo carrying body in good sanitary condition.	\$2,000
			7:26-3A.30(a)4	Failure to securely lock unattended cargo carrying body.	\$5,000
			7:26-3A.30(b)	Failure to comply with vehicle identification requirements.	\$1,000
			7:26-3A.30(c)	Failure to manage RMW/solid waste mixture as RMW.	\$5,000
			7:26-3A.31	Failure of transporter to comply with tracking form requirements.	\$2,000
			7:26-3A.32(a)	Failure to deliver entire quantity of RMW to intermediate hauler, destination facility or next transporter.	\$1,000
			7:26-3A.32(b)	Failure to contact generator for directions and make changes accordingly, if RMW cannot be delivered as intended.	\$1,000
			7:26-3A.33(a)	Failure to comply with requirements for consolidating waste to a new tracking form.	\$2,000
			7:26-3A.34	Failure of transporter to comply with recordkeeping requirements.	\$3,000
			7:26-3A.35	Failure of transporter to comply with reporting requirements.	\$3,000
			7:26-3A.37(a)	Failure of transporter to have an approved RMW spill management plan.	\$2,000
			7:26-3A.37(b)	Failure of transporter to have a RMW spill containment and cleanup kit at all sites and in all vehicles used for the storage, handling, collection, treatment and collection of RMW.	\$2,000

6. The violations of N.J.A.C. 7:26-3A, Regulated Medical Waste, and the civil administrative penalty amounts for each violation, are as set forth in the following table. The lesser penalty amount applies to persons registered in generator categories 1 through 3 (<300 lbs/year). The larger penalty amount applies to persons registered in generator categories 4 and 5 (>300 lbs/year).

Rule	Rule Summary	Base Penalty
N.J.A.C.		
7:26-3A.8(a)	Failure of a generator of RMW to register with the Department.	\$1,500
7:26-3A.8(a)1	Failure of a generator of RMW to register in the proper category.	\$5,000
7:26-3A.8(b)1	Failure of a commercial transporter of RMW to register with the Department.	\$1,000
7:26-3A.8(b)2	Failure of a non-commercial transporter of RMW to register with the Department.	\$5,000
7:26-3A.8(c)	Failure of commercial intermediate handlers and owner/operators of destination facilities to register with the Department.	\$2,500
7:26-3A.8(c)3	Failure of a non-commercial collection facility or an intermediate handler treating their own waste to register with the Department.	\$5,000
7:26-3A.8(d)1	Failure of commercial collection facility to register with the Department.	\$2,000
7:26-3A.8(d)5,6	Failure of a non-commercial collection facility to register with the Department.	\$5,000
7:26-3A.9	Failure of transporters', intermediate handlers' and destination facilities' supervisory personnel to attend an education and training session and disseminate information to employees.	\$2,000

Rule	Rule Summary	Base Penalty
7:26-3A.38(b)6	Failure of RMW incinerator to ensure waste stored overnight is effectively treated.	\$2,000
7:26-3A.38(b)7	Failure to maintain facility property surrounding the disposal area free of litter, debris, unprocessed waste, processed residues and effluents.	\$2,000
7:26-3A.38(b)8	Failure to ensure no odors are detected off-site.	\$4,000
7:26-3A.38(b)9	Failure to maintain all facility systems in a manner that facilitates proper operation and minimizes system downtime.	\$2,000
7:26-3A.38(b)10	Failure to maintain adequate water supply and fire fighting equipment, failure to post emergency numbers (fire, police, ambulance, hospital).	\$5,000
7:26-3A.38(b)11	Failure to effectively control insects, arthropods, rodents.	\$2,000
7:26-3A.38(b)12	Failure to maintain orderly operation and sanitary conditions.	\$2,000
7:26-3A.38(b)14	Failure to maintain O&M manual at the facility.	\$3,000
7:26-3A.38(b)17	Failure of facility to accept RMW only from properly registered transporters.	\$2,000
7:26-3A.39(i)1	Failure to ensure stored waste does not exceed 300,000 pounds or amount as specified in authorization.	\$2,000
7:26-3A.39(i)2	Failure to ensure collection facility receives no more than 150,000 pounds of waste per day, or as otherwise indicated in authorization.	\$2,000
7:26-3A.39(i)4	Failure to accept only RMW waste managed in accordance with N.J.A.C. 7:26-3A.	\$2,000
7:26-3A.39(i)5	Failure to ensure only registered vehicles transport to and from facility.	\$2,000
7:26-3A.39(i)6	Failure to ensure all waste at all times remains fully contained, and does not leak.	\$3,000
7:26-3A.39(i)9	Failure to ensure no odors are detected off-site. Odor causing waste to be disposed of immediately.	\$4,000
7:26-3A.39(i)10	Failure to implement and maintain effective security procedures.	\$2,000
7:26-3A.39 (i)13	Failure to implement routine housekeeping and maintenance procedures.	\$2,000
7:26-3A.39(i)16	Failure to ensure truck queuing is minimized, on-site traffic controls implemented.	\$2,000
7:26-3A.39(i)17	Failure to ensure RMW is not staged, placed or stored beyond confines of facility or vehicle.	\$2,000
7:26-3A.39(j)2	Failure to maintain O&M manual at the facility.	\$3,000
7:26-3A.39(j)3	Failure to comply with training program requirements.	\$2,000
7:26-3A.39(j)6	Failure to maintain fire protection systems in operable condition, fire procedures posted.	\$5,000
7:26-3A.39(j)7	Failure to ensure that noise levels do not exceed standards set forth in N.J.A.C. 7:29.	\$4,000
7:26-3A.39(j)8	Failure to maintain on site operating records, O&M manual.	\$3,000
7:26-3A.39(j)9	Failure to maintain safety appliances in proper operating order, comply with O&M inspection schedules, maintain inspection records.	\$5,000
7:26-3A.39(k)	Failure to comply with recordkeeping and reporting requirements.	\$3,000
7:26-3A.40(c)3	Failure of intermediate handlers and destination facilities to ensure only approved treatment and destruction processes authorized by NJDEP and DOH are utilized.	\$2,000
7:26-3A.41	Failure to comply with tracking form requirements.	\$2,000
7:26-3A.42	Failure to comply with tracking form discrepancy requirements.	\$500
7:26-3A.43	Failure to comply with recordkeeping requirements.	\$3,000
7:26-3A.44	Failure of collection facilities, intermediate handlers and/or destination facilities to comply with additional reporting requirements.	\$2,000
7:26-3A.46	Failure of rail transporter to comply with tracking form requirements.	\$2,000
7:26-3A.47(a)	Failure to ensure alternative or innovative technology processes and any modifications are approved by the NJDEP and DOH prior to any marketing, sale or use in New Jersey.	\$5,000
7:26-3A.48(a,b)	Failure of an out-of-State organization using the U.S. Postal Service or other parcel service and disposing of regulated medical waste from New Jersey to comply with certification requirements.	\$2,000
7:26-3A.48(c)	Failure of a RMW generator to ensure that RMW waste is not sent to any out-of-State facility which does not have a certificate on file with the Department.	\$5,000

7. The violations of N.J.A.C. 7:26-6, Interdistrict and Intradistrict Solid Waste Flow, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty
N.J.A.C. 7:26-6.5	Failure to comply with the district waste flow plan.	\$10,000

8. The violations of N.J.A.C. 7:26A, Recycling Rules, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty
N.J.A.C. 7:26A-3.1(a)	Failure of approved recycling center to comply with all approval conditions.	\$2,000
7:26A-3.5(f)	Failure of recycling center to post a legible sign at the recycling center entrance indicating its approval and listing items detailed in 3.2(a)13i and ii.	\$500
7:26A-3.6	Failure to submit renewal application for a general approval to the Department at least three months prior to the current approval expiration and to comply with all submittal requirements.	\$1,000
7:26A-3.7(j)	Failure, within 45 days after expiration of the time period authorized by the limited approval to operate a recycling facility, to file a final report with the Department.	\$2,000
7:26A-3.7(k)	Failure of persons operating a limited approved recycling center to ensure that no illegal dumping occurs.	\$2,000
7:26A-3.8(a)	Failure to limit processing methods for tires to slicing, shredding, chipping, crumbing or other methods approved by the Department, prohibition to incinerating, landfilling, abandoning or otherwise illegally disposing of tires.	\$3,000
7:26A-3.8(b)	Failure by the owner or operator of the tire recycling center to ensure that no mosquito colony formation develops.	\$2,000
7:26A-3.8(c)	Failure of a tire, tree stump, tree part or wood waste recycling center to have an approved fire control plan.	\$5,000
7:26A-3.9(a)	Failure of recycling center to ensure the temporary storage of Class B recyclable material does not exceed the amount indicated in the general or limited approval to operate.	\$2,000
7:26A-3.9(b)	Failure of recycling center to ensure that unprocessed Class B recyclable material is not stored in excess of one year from the date of receipt.	\$2,000
7:26A-3.10	Failure of recycling center to comply with modification requirements.	\$2,000
7:26A-3.15(a)	Failure to ensure a general or limited approval to operate a recycling center is not transferred without prior approval of the Department.	\$5,000
7:26A-3.15(c)	Failure to provide one copy of written request to transfer approval to the recycling coordinator and one copy to the applicable municipal planning board.	\$2,000
7:26A-3.17(a)	Failure of recycling center to comply with recordkeeping and annual reporting requirements.	\$3,000
7:26A-4.1(a)1i	Failure of recycling center to ensure that recyclable material is separated at the point of generation from other waste material.	\$3,000
7:26A-4.1(a)1ii	Failure of recycling center to ensure only Class A, Class B or Class C materials are received, stored, processed or transferred at the center.	\$3,000
7:26A-4.1(a)1iii	Failure of recycling center to comply with commingling requirements.	\$2,000
7:26A-4.1(a)2	Failure of recycling center to ensure residue is not stored on-site in excess of six months.	\$2,000
7:26A-4.1(a)4	Failure of recycling center to store residue separately from recyclable material and in a manner which prevents run-off, leakage or seepage from the residue storage area into, on or around the soil of the residue storage area.	\$2,000

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty</u>	<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty</u>
7:26A-4.1(a)5	Failure of recycling center to ensure hazardous wastes are not stored, processed or transferred at any recycling center.	\$5,000	7:26A-4.5(b)1	Failure of Class C material operator to ensure traffic associated with the center does not result in a degradation of a level of service of any major intersection or public roadway within a half-mile radius.	\$2,000
7:26A-4.1(a)6	Failure of recycling center to ensure electronic components which contain polychlorinated biphenyls (PCBs) and which are attached to or detached from appliances or other scrap metal, are not shredded, sheared or baled.	\$5,000	7:26A-4.5(b)2	Failure of Class C material operator to ensure center has sufficient capacity to handle incoming volumes.	\$2,000
7:26A-4.1(a)8	Failure to operate a recycling center in such a manner that the recycling center property is maintained free of litter and debris and such that tracking of mud into nearby streets is prevented.	\$2,000	7:26A-4.5(b)3	Failure of Class C material operator to ensure center has effective visual screen buffer.	\$2,000
7:26A-4.4(a)	Failure by the owner or operator of a recycling center to provide a recycling tonnage report by February 1 of each year.	\$1,000	7:26A-4.5(b)4	Failure of Class C material operator to ensure unauthorized access to center is controlled.	\$2,000
7:26A-4.4(b)	Failure by a transporter of recyclable materials to provide a recycling tonnage report by February 1 of each year.	\$1,000	7:26A-4.5(b)5	Failure of Class C material operator to prevent vehicular tracking of soil, generation of dust, by compaction or paving.	\$2,000
7:26A-4.4(c)	Failure of exempt person to submit required tonnage reports by February 1 of each year.	\$1,000	7:26A-4.5(b)6	Failure of Class C material operator to comply with composting structure requirements, no ponding, leachate control.	\$2,000
7:26A-4.5(a)2	Failure of Class C yard trimming operator to ensure traffic associated with the center does not result in a degradation of a level of service of any major intersection or public roadway within a half-mile radius.	\$2,000	7:26A-4.5(b)7	Failure of Class C material operator to maintain fully enclosed operation.	\$2,000
7:26A-4.5(a)3	Failure of Class C yard trimming operator to ensure center has sufficient capacity to handle incoming volumes.	\$2,000	7:26A-4.5(b)9	Failure of Class C material operator to have adequate water supply, fire-fighting equipment, local fire department phone numbers posted.	\$5,000
7:26A-4.5(a)4	Failure of Class C yard trimming operator to ensure center has effective visual screen buffer.	\$2,000	7:26A-4.5(b)10	Failure of Class C material operator to comply with O&M manual requirements.	\$3,000
7:26A-4.5(a)5	Failure of Class C yard trimming operator to ensure unauthorized access to center is controlled.	\$2,000	7:26A-4.5(b)12, 13	Failure of Class C material operator to comply with employee training requirements.	\$2,000
7:26A-4.5(a)6	Failure of Class C yard trimming operator to prevent vehicular tracking of soil, generation of dust, by compaction or paving.	\$2,000	7:26A-4.5(b)14	Failure of Class C material operator to have properly trained individual supervising operation.	\$2,000
7:26A-4.5(a)7	Failure of Class C yard trimming operator to maintain improved active composting surface, no ponding or runoff.	\$2,000	7:26A-4.5(b)16	Failure of Class C material operator to comply with incoming organics processing timeframes and requirements.	\$2,000
7:26A-4.5(a)8	Failure of Class C yard trimming operator to post entrance sign identifying operating hours.	\$100	7:26A-4.5(b)17	Failure of Class C material operator to ensure incoming, unprocessed material is not mixed with finished compost.	\$2,000
7:26A-4.5(a)9	Failure of Class C yard trimming operator to have adequate water supply, fire-fighting equipment, local fire department phone numbers posted.	\$5,000	7:26A-4.5(b)18, 19	Failure of Class C material operator to meet PFRB criteria and requirements.	\$2,000
7:26A-4.5(a)10	Failure of Class C yard trimming operator to have properly trained individual supervising operation, access to facility prohibited when center is closed.	\$2,000	7:26A-4.5(b)21	Failure of Class C material operator to comply with 15 month finished compost storage requirement.	\$1,000
7:26A-4.5(a)11	Failure of Class C yard trimming compost operators to attend, within one year of start up, approved composting courses.	\$2,000	7:26A-4.5(b)23-26	Failure of Class C material operator to comply with monitoring and sampling requirements.	\$3,000
7:26A-4.5(a)12	Failure of Class C yard trimming operator to ensure yard trimmings are only received during times when operator is present.	\$2,000	7:26A-4.5(b)27, 28	Failure of Class C material operator to comply with additional recordkeeping requirements.	\$2,000
7:26A-4.5(a)13	Failure of Class C yard trimming operator to ensure all trimmings received are removed from bags, boxes.	\$2,000	7:26A-4.5(c)1	Failure of Class C operator to comply with labeling requirements.	\$2,000
7:26A-4.5(a)14	Failure of Class C yard trimming operator to initiate processing of incoming materials containing grass, within the working day.	\$2,000	7:26A-4.5(c)2	Failure of Class C operator to comply with compost utilization requirements.	\$2,000
7:26A-4.5(a)15i	Failure of Class C yard trimming operator to moisten, without excess runoff, dry yard trimmings prior to windrow formation.	\$2,000	7:26A-5.1(a)	Failure to ensure no shearing, shredding, baling or other actions which could cause release of refrigerant fluid to take place, occurs prior to recovery of such fluid.	\$5,000
7:26A-4.5(a)15ii	Failure of Class C yard trimming operator to position windrows perpendicular to ground surface contours.	\$2,000	7:26A-5.1(b)	Failure to recover refrigerant fluid in a manner such that no venting of refrigerant fluid occurs.	\$5,000
7:26A-4.5(a)15iii	Failure of Class C yard trimming operator to install windsock.	\$1,000	7:26A-5.1(c)	Failure to deliver recovered refrigerant fluid to a facility which has agreed to reprocess the fluid or, if such arrangements cannot be made, failure to store or dispose of the recovered fluid in accordance with applicable rules and regulations.	\$5,000
7:26A-4.5(a)15iv	Failure of Class C yard trimming operator to comply with windrow composting requirements.	\$2,000	7:26A-6.4(d)2	Failure of generator to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000
7:26A-4.5(a)15v	Failure of Class C yard trimming operator to comply with material staging and processing buffer distance requirements.	\$2,000	7:26A-6.4(d)3	Failure of generator to ensure used oil storage units are in good condition and not leaking.	\$3,000
7:26A-4.5(a)15vi	Failure of Class C yard trimming operator to comply with 15 month finished compost storage requirement.	\$1,000	7:26A-6.4(d)4	Failure of generator to comply with used oil labeling requirements.	\$2,000
7:26A-4.5(a)15vii	Failure of Class C yard trimming operator to comply with finished compost testing requirements.	\$2,000	7:26A-6.4(f)	Failure of generator to comply with used oil off-site shipment requirements.	\$2,000
7:26A-4.5(a)15x	Failure of Class C yard trimming operator to comply with additional recordkeeping requirements.	\$3,000	7:26A-6.6(c)	Failure of a used oil transporter to have EPA identification number.	\$2,000
			7:26A-6.6(d)1	Failure of a used oil transporter to comply with deliveries requirements.	\$2,000
			7:26A-6.6(f)3	Failure of used oil transfer facility to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000
			7:26A-6.6(f)4	Failure of used oil transfer facility to ensure used oil storage units are in good condition and not leaking.	\$3,000
			7:26A-6.6(f)5	Failure of used oil transfer facility to comply with "secondary containment for containers" requirements.	\$3,000

Rule	Rule Summary	Base Penalty	Rule	Rule Summary	Base Penalty
7:26A-6.6(f)6	Failure of used oil transfer facility to comply with "secondary containment for existing aboveground tanks" requirements.	\$3,000	7:26A-7.2(d)	Failure of small quantity handler of universal waste to comply with waste management requirements.	\$2,000
7:26A-6.6(f)7	Failure of used oil transfer facility to comply with "secondary containment for new aboveground tanks" requirements.	\$3,000	7:26A-7.2(e)	Failure of small quantity handler of universal waste to comply with labeling/marketing requirements.	\$2,000
7:26A-6.6(f)8	Failure of used oil transfer facility to comply with used oil labeling requirements.	\$3,000	7:26A-7.2(f)	Failure of small quantity handler of universal waste to comply with accumulation time limits.	\$2,000
7:26A-6.6(g)	Failure of used oil transfer facility/transporter to comply with tracking requirements.	\$2,000	7:26A-7.2(g)	Failure of small quantity handler of universal waste to comply with employee training requirements.	\$3,000
7:26A-6.7(b)	Failure of used oil processor/re-refiner to comply with notification requirements.	\$2,000	7:26A-7.2(i)	Failure of small quantity handler of universal waste to comply with off-site shipment requirements.	\$2,000
7:26A-6.7(c)1	Failure of used oil processor/re-refiner to comply with preparedness and prevention requirements.	\$5,000	7:26A-7.2(k)	Failure of small quantity handler of universal waste to comply with exporting requirements.	\$2,000
7:26A-6.7(c)2i-v	Failure of used oil processor/re-refiner to comply with contingency plan requirements.	\$5,000	7:26A-7.3(c)	Failure of large quantity handler of universal waste to comply with notification requirements.	\$4,000
7:26A-6.7(e)2	Failure of used oil processor/re-refiner to ensure used oil is stored only in tanks, containers, or units subject to N.J.A.C. 7:26G.	\$3,000	7:26A-7.3(d)	Failure of large quantity handler of universal waste to comply with waste management requirements.	\$4,000
7:26A-6.7(e)3	Failure of used oil processor/re-refiner to ensure used oil storage units are in good condition and not leaking.	\$3,000	7:26A-7.3(e)	Failure of large quantity handler of universal waste to comply with labeling/marketing requirements.	\$4,000
7:26A-6.7(e)4	Failure of used oil processor/re-refiner to comply with "secondary containment for containers" requirements.	\$3,000	7:26A-7.3(f)	Failure of large quantity handler of universal waste to comply with accumulation time limits.	\$4,000
7:26A-6.7(e)5	Failure of used oil processor/re-refiner to comply with "secondary containment for existing aboveground tanks" requirements.	\$3,000	7:26A-7.3(g)	Failure of large quantity handler of universal waste to comply with employee training requirements.	\$4,000
7:26A-6.7(e)6	Failure of used oil processor/re-refiner to comply with "secondary containment for new aboveground tanks" requirements.	\$3,000	7:26A-7.3(i)	Failure of large quantity handler of universal waste to comply with off-site shipment requirements.	\$4,000
7:26A-6.7(e)7	Failure of used oil processor/re-refiner to comply with used oil labeling requirements.	\$3,000	7:26A-7.3(j)	Failure of large quantity handler of universal waste to comply with waste tracking requirements.	\$4,000
7:26A-6.7(f)	Failure of used oil processor/re-refiner to comply with analysis plan requirements.	\$5,000	7:26A-7.3(k)	Failure of large quantity handler of universal waste to comply with exporting requirements.	\$4,000
7:26A-6.7(g)	Failure of used oil processor/re-refiner to comply with tracking requirements.	\$2,000	7:26A-7.4(c)	Failure of universal waste transporter to comply with waste management requirements.	\$3,000
7:26A-6.7(h)	Failure of used oil processor/re-refiner to comply with operating record and reporting requirements.	\$3,000	7:26A-7.4(d)	Failure of universal waste transporter to comply with storage time limits.	\$3,000
7:26A-6.7(i)	Failure of used oil processor/re-refiner to use oil transporter with EPA identification number.	\$3,000	7:26A-7.4(f)	Failure of universal waste transporter to comply with off-site shipment requirements.	\$3,000
7:26A-6.8(b)	Failure of used oil burner facility to comply with burning restrictions.	\$3,000	7:26A-7.4(g)	Failure of universal waste transporter to comply with exporting requirements.	\$3,000
7:26A-6.8(c)	Failure of a used oil burner facility to comply with notification requirements.	\$2,000	7:26A-7.5(b)	Failure of universal waste destination facility to comply with off-site shipment requirements.	\$4,000
7:26A-6.8(e)2	Failure of used oil burner facility to ensure used oil is stored only in tanks, containers, or unit subject to N.J.A.C. 7:26G.	\$3,000	7:26A-7.5(c)	Failure of universal waste destination facility to comply with universal waste tracking requirements.	\$4,000
7:26A-6.8(e)3	Failure of used oil burner facility to ensure used oil storage units are in good condition and not leaking.	\$3,000			
7:26A-6.8(e)4	Failure of used oil burner facility to comply with "secondary containment for containers" requirements.	\$3,000		Administrative Correction in (g)7. See: 23 N.J.R. 3138(a). Amended by R.1993 d.5, effective January 4, 1993. See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a)), 25 N.J.R. 98(a). Reflects amendments to N.J.A.C. 7:26-7.6 and 9.4. 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 (f)1 and (f)2, amended N.J.A.C. references; in (f)4, amended EXAMPLE; in (g), amended N.J.A.C. references; and added (g)1 through (g) 8. Amended by R.2001 d.86, effective March 5, 2001. See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a). In (g)2 table, deleted 7:26-2.13(c)2 and recodified 7:26-2.13(c)3 as 7:26-2.13(c)1; in (g)5 table, added 7:26-3.5(g)2.	
7:26A-6.8(e)5	Failure of used oil burner facility to comply with "secondary containment for existing aboveground tanks" requirements.	\$3,000			
7:26A-6.8(e)6	Failure of used oil burner facility to comply with "secondary containment for new aboveground tanks" requirements.	\$3,000			
7:26A-6.8(e)7	Failure of used oil burner facility to comply with used oil labeling requirements.	\$3,000			
7:26A-6.8(f)	Failure of used oil burner facility to comply with tracking requirements.	\$2,000			
7:26A-6.8(g)	Failure of used oil burner facility to comply with notice requirements.	\$2,000			
7:26A-6.9(b)	Failure of used oil fuel marketer to ensure shipments of off-specification used oil is sent only to used oil burner facilities that have EPA identification numbers and burns the used oil in a device as identified in N.J.A.C. 7:26A-6.8(b)1.	\$4,000			
7:26A-6.9(c)	Failure of used oil fuel marketer to comply with on-specification used oil fuel requirements.	\$2,000			
7:26A-6.9(d)	Failure of a used oil fuel marketer to comply with notification requirements.	\$2,000			
7:26A-6.9(e)	Failure of used oil marketer to comply with tracking requirements.	\$2,000			
7:26A-6.9(f)	Failure of used oil marketer to comply with notice requirements.	\$2,000			

Case Notes

Summary proceedings to enforce agency orders, action brought for alleged violations of Pesticide Control Act. State, Dept. of Environmental Protection v. Larchmont Farms, Inc., 266 N.J.Super. 16, 628 A.2d 761 (A.D.1993), certification denied 135 N.J. 302, 639 A.2d 301.

Administrative hearings concerning collection of penalties were not provided for in Solid Waste Management Act; violator is entitled to collection hearing in Superior Court on due process basis, though not to a preliminary Departmental administrative hearing. Bordentown

Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Hazardous waste generator's failure to respond to discovery request supported dismissal of generator's appeal from penalty assessment. New Jersey Department of Environmental Protection v. Oil Transfer Company, 96 N.J.A.R.2d (EPE) 360.

Failure to remove hazardous waste from manufacturing site within time allowed by Solid Waste Management Law mandates penalty even if violation was unintentional. DEPE v. Plasti-Glas Molded Products, Inc., 96 N.J.A.R.2d (EPE) 135.

Corporate successor to hazardous waste facility was strictly liable for failing to test holding tanks. Department of Environmental Protection v. Warner, 95 N.J.A.R.2d (EPE) 245.

Each shipment of hazardous waste constituted separate violation of regulations governing manifesting and disposing of hazardous waste. Department of Environmental Protection v. Rollins Environmental Services, Inc., 92 N.J.A.R.2d (EPE) 13.

7:26-5.5 Civil administrative penalty determination

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26-5.4 when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26-5.4 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26-5.4.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

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

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$40,000- \$50,000	\$30,000- \$40,000	\$15,000- \$25,000
	Moderate	\$30,000- \$40,000	\$10,000- \$20,000	\$3,000- \$6,000
	Minor	\$15,000- \$25,000	\$3,000- \$6,000	\$1,000- \$2,500

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

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

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

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

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

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

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

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

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

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

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

iii. Each load of chemically treated wood or scrap tires is accompanied by the waste origin/waste disposal form satisfying the requirements of N.J.A.C. 7:26-2.13(c); and

iv. The chemically treated wood or scrap tires are delivered to one or both of the following:

(1) An out-of-State power generating incinerator authorized or permitted by the receiving state to accept such materials for utilization as fuel; or

(2) An in-State power generating incinerator, including a resource recovery facility, that is approved by the Department to accept such materials for utilization as fuel subject to a review of the facility's operating permit, incoming materials specifications and written narrative explanation of operation. An in-state resource recovery facility that accepts chemically treated wood or scrap tires shall obtain an approved tariff for the receipt of these materials pursuant to N.J.A.C. 7:26H-5 and modify its solid waste facility permit pursuant to N.J.A.C. 7:26-2.6. Each approved in-state power generating facility, with the exception of an in-state resource recovery facility which must report such activity in its facility monthly volume report pursuant to N.J.A.C. 7:26-2.13, shall submit a tonnage report specifying the total amount of chemically treated wood or scrap tires received, in tons, from New Jersey sources, to the Department at the address specified at (a)8v below by March 1 of each year for the prior calendar year.

v. Applications for approval and annual tonnage reports shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
PO Box 414
Trenton, N.J. 08625-0414

Public Notice: Notice of receipt of petition for rulemaking.
See: 23 N.J.R. 2187(c).

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

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

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

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

If certain conditions are met, exempts the residue from the operation of scrap metal shredding facilities from the waste flow rules.

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

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

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

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

Added (a)8 and 9.

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)5ii and (a)7, amended N.J.A.C. references; in (a)6, inserted reference to Class C and Class D materials; and added (a) 8.

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

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

Deleted (a)9. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

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).

7:26-6.4 Informational requirements

Any person registered with the Department for the collection, transportation, and/or disposal of solid wastes affected by this subchapter shall, upon request by the Department, submit, in such form as the Department may deem appropriate, information concerning the sources of wastes collected, and his/her transportation and disposal patterns.

7:26-6.5 (Reserved)

As amended, R.1984, d.4, effective January 17, 1984.

See: 15 N.J.R. 1914(a), 16 N.J.R. 134(a).

(k) substantially amended; (o)11 revised; (p)9-13 added; (v) substantially amended.

As amended, R.1984 d.41, effective February 21, 1984.

See: 15 N.J.R. 1417(a), 16 N.J.R. 367(c).

(m)liii and iv revised.

As amended R.1984 d.474, effective October 15, 1984.

See: 16 N.J.R. 1000(a), 16 N.J.R. 2806(a).

(c)13 deleted; previous (c)14 redesignated (c)111 (l)1 substantially revised.

As amended, R.1984 d.475, effective October 15, 1984.

See: 16 N.J.R. 1149(a), 16 N.J.R. 2808(a).

Substantially amended.

Amended by R.1985 d.317, effective June 17, 1985.

See: 17 N.J.R. 517(b), 17 N.J.R. 1560(a).

(a)8iii added.

Amended by R.1985 d.503, effective October 7, 1985.

See: 15 N.J.R. 517(a), 17 N.J.R. 2388(a).

(k)3 added. This amendment was adopted jointly with the Board of Public Utilities.

Amended by R.1986 d.159, effective May 5, 1986.

See: 17 N.J.R. 2590(a), 18 N.J.R. 983(b).

(p)5i and (p)6i-ii added.

Amended by R.1986 d.164, effective May 5, 1986.

See: 17 N.J.R. 2591(a), 18 N.J.R. 983(c).

Deleted old (d)3 through (d)8 and inserted new (d)3-5.

Amended by R.1987 d.71, effective January 20, 1987.

See: 18 N.J.R. 2171(a), 19 N.J.R. 202(a).

(c) substantially amended.

Amended by R.1987 d.72, effective January 20, 1987.

See: 18 N.J.R. 1773(a), 19 N.J.R. 202(b).

(d) substantially amended.

Amended by R.1988 d.357, effective August 1, 1988.

See: 19 N.J.R. 1142(a), 20 N.J.R. 1910(a).

The amendments to this section were jointly adopted with Public Utilities. The section was substantially amended.

Amended by R.1989 d.308, effective June 5, 1989.

See: 20 N.J.R. 1048(a), 21 N.J.R. 1558(a).

The amendments were jointly adopted with the Board of Public Utilities. Essex County solid waste redirected from HMDC 1-C landfill to 3 transfer stations for processing and transfer to out-of-state facilities.

Amended by R.1990 d.324, effective July 2, 1990.

See: 21 N.J.R. 1486(a), 22 N.J.R. 2005(b).

All Bergen County solid waste, except type 10, directed to facility 0239E1SP01.

Amended by R.1991 d.113, effective March 4, 1991.

See: 22 N.J.R. 284(a), 23 N.J.R. 719(a).

The amendments to this section were jointly adopted with the Board of Public Utilities.

Gloucester City added to waste flow list in (d)1. Designated out-of-state facility deleted by name in (d)1, new (d)4i and (d)5. Added new (d)3, redesignated existing (d)3 as (d)4. Recodified (d)4 as (d)5. Replaced (d)5 and (d)6. Added (d)7. Added (g)6. Repealed (h)1-5 and added new (h)1. Recodified and amended (h)6 to (h)2; (h)6i repealed and added new (h)3. Deleted (t)1 through 8. Recodified (t)9 as (t)1. Added (t)1ii. Deleted (t)10 through 14. Added (t)2. Amended by R.1993 d.109, effective March 1, 1993.

See: 24 N.J.R. 3291(a), 25 N.J.R. 991(a).

Waste flows updated and simplified for all counties; amendments adopted solely by DEPE, in accordance with Executive Order No. 38(1991) Reorganization Plan 002(1991).

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 "District waste flow planning requirements and disposal facility designations".

7:26-6.6 (Reserved)

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 (b); in (c), inserted reference to plan amendment, deleted (d), relating to submission of recommendations; and recodified former (e) as (d).

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 "Procedure for modification of waste flows pursuant to an amendment to a District Solid Waste Management Plan".

7:26-6.7 (Reserved)

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

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(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 "Procedure for emergency direction or redirection of solid waste flow".

7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A-1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and non-ferrous metal remaining after the shredding process; and

2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

New Rule, R.1993 d.27, effective January 4, 1993.

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

7:26-6.9 (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 "Transporting solid waste between solid waste districts and out-of-State".

7:26-6.10 Modifications to district solid waste management plans; plan amendments

(a) Each plan amendment to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a plan amendment means a modification to the district solid waste management plan, which, if implemented, would have a significant impact on the environment, property rights, public and private funds or the overall solid waste management system. A plan amendment includes, but is not limited to, the following:

1. An interdistrict agreement between two or more districts for the purpose of managing solid waste and/or recyclables on a regional basis;

2. The designation of an in-district weighing facility(ies), if a district chooses. If a district chooses to impose a weighing requirement in order to collect any fees or charges for ensuring the payment of outstanding debt and other fee obligations, the district shall submit, within 180 days, an alternative means of collecting such fees or charges which does not rely on in-district weighing. Following submission of said plan, districts may continue to collect any fees or charges through in-district weighing pending the Department's review of the alternative method of collecting fees or charges.

3. A solid waste disposal contract entered into by the district or authority;

4. The deletion of a solid waste facility other than those listed at N.J.A.C. 7:26-6.11(b)7;

5. The identification of new or a change in the identity of existing designated plan implementation agency or agencies;

6. The method of financing solid waste management in the district, including any mechanism to be instituted by the district for ensuring the payment of outstanding debt and other financial obligations;

7. The inclusion of new facilities, including landfills, resource recovery facilities, transfer stations, materials recovery facilities, solid waste and co-composting facilities, recycling facilities for Class B (except those described at N.J.A.C. 7:26A-1.4(a) or 3.7(a)), Class C (except those identified at N.J.A.C. 7:26A-1.4(a)14) and Class D materials, permanent household hazardous waste collection sites, and new regulated medical waste treatment, processing and disposal facilities;

8. An increase in the amount of material received during a 24 hour period at an existing permitted solid waste facility greater than 100 tons per day.

9. A modification to any district solid waste and recycling policy and/or program, including, but not limited to, short and long-term disposal strategies, methods for achieving designated recycling goals and blanket facility inclusion policies; and

10. Any modification to the solid waste management plan as may be identified by the Department.

(c) Upon the development of a solid waste plan amendment, a board of chosen freeholders or the Hackensack Meadowlands Development Commission shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment.

1. The designated plan implementation agency shall publish notice of a public hearing concerning the plan amendment in a newspaper of general circulation in the county or district once each week for two consecutive weeks, the second publication date being not less than 10 calendar days prior to the public hearing date. For the purposes of determining weekly publication, Sunday is considered the first day of the week, in conformance with N.J.S.A. 13:1E-23.

2. The notice of the public hearing concerning the plan amendment shall provide a detailed description of the plan amendment and, at a minimum, contain the following information:

- i. The date, time and place of the public hearing;
- ii. The name and address of the district solid waste coordinator;
- iii. When and where the plan amendment can be reviewed; and
- iv. In the case of a facility, a description and the site location, by municipality, street address, lot and block number, the proposed or expanded capacity and the waste types which will be received.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission shall submit to the Department a complete plan amendment which shall include the following:

1. One copy of the adopting ordinance or resolution;
2. Twenty copies of the plan amendment;

3. One copy of the public hearing transcript;

4. One copy of the public notice accompanied by an affidavit of publication issued by the publishing newspaper; and

5. For any plan amendment which proposes to incorporate a facility site, 20 copies of an 8½ inch x 11 inch tax map identifying the location of the site, the street address, and the lot and block numbers.

(e) The plan amendment in (d) above shall be submitted to:

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

(f) Upon receipt of a plan amendment submitted pursuant to (d) and (e) above, the Department shall review the plan amendment for completeness. Within 10 working days of receipt of the plan amendment, the Department shall notify, in writing, the entity that submitted the plan amendment whether the plan amendment is complete or incomplete.

(g) The Department shall submit a copy of a complete plan amendment to the Advisory Council on Solid Waste Management in the department, and to the agencies, bureaus and divisions in the Department identified at N.J.S.A. 13:1E-23 for review and recommendations.

(h) Upon review of the plan amendment and upon receipt of recommendations provided pursuant to (g) above, the Department shall approve, modify, or reject a plan amendment within 150 calendar days of receipt of a complete plan amendment and shall certify such determination to the board of chosen freeholders or to the Hackensack Meadowlands Commission. If the Department takes no action on a complete plan amendment within 150 calendar days, the plan amendment shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Emergency Amendment, by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Rewrote (b)2; and in (b)6, inserted reference to mechanism for ensuring payment of obligations.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.

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

Administrative change.

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

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

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

Rewrote (b)7; in (h), substituted "(g)" for "(f)" and inserted "calendar" following "150" throughout.

7:26-6.11 Administrative actions concerning a district solid waste management plan

(a) Each administrative action taken relative to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a solid waste management plan administrative action includes, but is not limited to, the following:

1. The use of Resource Recovery Investment Tax (RRIT) grant moneys and/or the development of the associated disbursement schedules;

2. The designation of or change to prior approved truck routes to or from solid waste facilities;

3. The inclusion of new recycling facilities for processing Class A or Class C recyclable materials (as identified at N.J.A.C. 7:26A-1.4(a)14), or replacement units at existing regulated medical waste facilities;

i. The inclusion and/or expansion of recycling and compost facilities shall be, at the discretion of the district, subject to any previous blanket inclusion policies approved by the Department and shall be undertaken by the district in accordance with the approved district solid waste management plan. This paragraph is intended to supplement and not replace any previously approved blanket inclusion policy for a district.

ii. Any blanket inclusion amendment approved by the Department shall contain a provision requiring, among other things, notification to the public as to the location for the receipt of written comments and the starting and ending dates for the written comment period.

4. The expansion of capacity of any size, other than that specified at N.J.A.C. 7:26-6.10(a)8, for any regulated solid waste facility;

5. The modification of an existing facility including acceptance of additional waste types, on-site operational changes and expansions of facility buffer zones or expansions into buffer zones for ancillary operational activities;

6. The modification of a recycling program, including the designation of additional materials for recycling, procurement strategies, market strategies, public education, private incentive programs, waste audit strategies, yard waste programs, per container programs, and enforcement strategies;

7. The deletion of any facility which is included in the plan for more than two years but for which a complete permit application has not been made, or the deletion of any facility which is included in the plan but has not been in operation for more than two years;

8. Unless specifically noted by the Department within a plan certification document, any information collected and/or submitted by the district plan implementation agency, including, but not limited to, solid waste studies, reports, data collection, compost inventories, and weekly waste averaging (when the daily rate has already been included in the plan);

9. The reaffirmation of an existing district solid waste disposal strategy subsequent to the final disposition of the *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, Civil Action No. 93-cv-02669 (D.N.J. May 1, 1997) case, provided that the plan implementation agency has held a public hearing on such reaffirmation for the purpose of receiving comments from persons interested in or affected by the amendment. Notice of such hearing shall be published in newspapers of general circulation in the district not less than 10 calendar days prior to the hearing and shall include the information set forth in N.J.A.C. 7:26-6.10(c)2;

10. The operation of a solid waste intermodal container facility;

11. The operation of a commercial collection facility for medical waste;

12. The operation of a RD & D project pursuant to N.J.A.C. 7:26-1.7;

13. Any other administrative action as may be identified by the Department.

(c) Nothing contained in this section shall be construed to subrogate the district solid waste management planning process. The board of chosen freeholders or the Hackensack Meadowlands Development Commission, in its discretion, may hold a public hearing prior to the adoption of any administrative district solid waste plan action.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission or the designated implementation agency of the affected district shall submit to the Department a letter that describes in detail the administrative action to be taken relative to the district solid waste management program.

1. The letter concerning the administrative action shall be submitted to the address at N.J.A.C. 7:26-6.10(e).

(e) Upon receipt of a letter describing the administrative action, submitted pursuant to (d) above, the Department shall review the information provided. Within 10 working days of receipt of the letter, the Department shall notify, in writing, the entity that submitted the letter concerning the administrative action of its receipt of such letter.

(f) The Department shall approve, modify or reject an administrative action within 30 working days of receipt of the letter describing the administrative action pursuant to (d) above, unless it determines that the described action is subject to the requirements for a solid waste management plan amendment pursuant to N.J.A.C. 7:26-6.10. In the event the Department fails to respond to a letter concerning an administrative action within the 30 day period, the administrative action shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).
 See: 29 N.J.R. 4170(a).
 Inserted new (b)9 and recodified former (b)9 as (b)10.
 Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.
 See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
 Rewrote section.

7:26-6.12 Compliance with district solid waste management plan

(a) Any contract or renewed contract for solid waste collection and/or disposal which is inconsistent with an amendment or approved administrative action to the applicable solid waste management plan, and which was executed prior to the approval of such amendment or approved administrative action and subsequent to December 16, 1996, and which is for a term in excess of one year, shall be renegotiated in order to bring such contract into conformance with the provisions of the amended solid waste management plan and this chapter.

1. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract or a renewed contract as described in this subsection shall be deemed to be in violation of the Act and this chapter and of the district solid waste management plan if such renegotiation is not completed within 90 calendar days of the effective date of this amendment or approved administrative action, unless such solid waste collection operation or disposal facility applies to the Department, and obtains, for good cause shown, an extension of time to complete such renegotiation.

(b) All solid waste facility operators and transporters registered with the Department shall operate in compliance with the applicable district solid waste management plan as well as any amendments to and/or approved administrative actions concerning such plan. Any facility operator or transporter who fails to comply with the applicable solid waste management plan as well as any amendment to or approved administrative actions concerning such plan shall be deemed to be in violation of the Act and this chapter and shall be subject to the applicable penalties provided under the Act and this chapter, and any other applicable law or regulation.

New Rule, R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
 In (a), substituted "December 16, 1996" for "the effective date of this chapter"; in (a)1, inserted "calendar" following "90".

SUBCHAPTERS 7 THROUGH 14. (RESERVED)

SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

7:26-14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. Additionally P.L. 1985, c.335 appropriated to the Resource Recovery and Solid Waste Disposal Facility Fund \$50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction and operation of resource recovery facilities and environmentally sound sanitary landfill facilities or other approved solid waste facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985 c.330, c.331 and c.335 after June 20, 1988, shall be in accordance with this subchapter.

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

Loan usage amended to include operation of specified facilities; and deleted provision relating to conforming specified loan agreements to N.J.A.C. rule.

7:26-14A.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:26-14A.3 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;

2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing and operating resource recovery facilities and environmentally sound sanitary landfill facilities and other approved solid waste facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;

3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

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

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

(a)2 amended to include operation of specified facilities.

7:26-14A.4 Definitions

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

“1980 Act” means the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

“1985 Act” means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335.

“Approved solid waste facility” means and includes the plants and structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any local government unit, including materials recovery facilities, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal and/or recovery of solid waste.

“Commissioner” means the Commissioner of the Department of Environmental Protection or the Commissioner’s designee;

“Construct” and “construction” means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof.

“Department” means the Department of Environmental Protection.

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

“Environmentally sound sanitary landfill facility” means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

“Escrow account” means the account established with the escrow bank or the Department for receipt, investment and disbursement of the Fund loan monies.

“Escrow agent” means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

“Escrow bank” means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

“Full scale operation” means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

“Fund” means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

“Loan project officer” means, with respect to the local government unit or the State, the person designated to communicate, negotiate and receive all notices and communications relating to the loan agreement or the project.

“Local government unit” means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

“Project” means any work relating to the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility or an approved solid waste facility by a local government unit.

“Project cost” means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;
2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;

3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;

4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;

5. The issuance of bonds, or any interest or discount thereon;

6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary land-fill facility services;

5. Submission of false or misleading information to the Department or EDA.

(b) In the event that a loan or loan guarantee is terminated the monies shall be returned to the Recycling Business Loan Fund.

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 7:26-15.14.

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.

“Exempt transporter” shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

“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” shall be defined as set forth in N.J.S.A. 13:1E-127i.

“Permittee” shall be defined as set forth in N.J.S.A. 13:1E-127i.

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”.

Amended by R.2000 d.75, effective February 22, 2000.

See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Inserted “Exempt transporter”; rewrote “Licensee”; and added “Permittee”.

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 Facili-

ties 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
PO Box 414
Trenton, New Jersey 08625-0414

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;

2. Any person whose application or license is solely for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste generated by that person; provided, however, that this exemption shall not apply where the waste generated is from a facility requiring a license and not itself exempted under this subsection.

i. Example—a corporation that operates a hazardous waste treatment facility organizes a hauling subsidiary to transport its "own" waste from the facility. If the facility must file a disclosure statement, the hauling subsidiary must do so as well;

3. Any person whose application or license is for the operation of a hazardous waste facility, if at least 75 percent of the total design capacity of that facility is utilized to treat, store or dispose of hazardous waste generated by that person;

4. Any person whose application or license is for the operation of a hazardous waste facility which is considered as such solely as the result of the recycling or refining of hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, irridium, rhodium, ruthenium, or copper;

5. Any person whose application or license is solely for the collection, transportation, treatment, storage or disposal of granular activated carbon used in the absorption of hazardous waste.

(e) Where an applicant or licensee owns or operates more than one facility or operation requiring a license, or is one of two or more business concerns requiring licenses which are under common ownership or management, the business concerns may file disclosure statements concurrently as a group. In the case of such a group filing:

1. Disclosure statements covering all members of the group must be filed in a single submission;

2. A cover letter must be supplied indicating the intent to file disclosure statements as a group and identifying the members of the group and their relationships;

3. A single set of Personal History Disclosure Forms for any individual identified in any of the group's disclosure statements will be accepted, even though the name appears on more than one statement;

4. The Department in its discretion may authorize departures from the disclosure statement forms so as to minimize duplicate reporting of information;

5. For the purposes of fee calculation under N.J.A.C. 7:26-16.13, the group shall be treated as a single applicant or licensee; and

6. A group filing may be made even if one or more members of the group have previously filed disclosure statements separately. However, those members will not be regarded as part of the group filing and no refund of

fees or credit for fees paid shall be allowed on account of the earlier separate filings.

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

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

(a): Address changed.

(b): Substantially amended and (b)3 added.

Amended by R.1989 d.54, effective January 17, 1989.

See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Address changed.

Notice of Action on Petition.

See: 22 N.J.R. 2364(b).

Notice of Receipt of Petition for Rulemaking.

See: 22 N.J.R. 2606(b).

7:26-16.4 Content of disclosure statement

(a) The disclosure statement shall be filed on forms supplied by the Department, and shall include the following information:

1. The full name, business address, home address, date of birth, social security number and/or Federal Employer Identification Number of the applicant, or, if the applicant is a business concern, of any officers, directors, partners, or key employees thereof and all persons or business concerns holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

2. The full name, business address, home address, date of birth and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the applicant holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any state or federal authority, in the 10 years immediately preceding the filing of the application,

which are pending or have resulted in a finding or a settlement of a violation of any law or regulation relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by the applicant, or if the applicant is a business concern, by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or Federal statute or local ordinance, against the applicant, or, if the applicant is a business concern, against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes (N.J.S.A.) or comparable motor vehicle offenses in jurisdictions other than New Jersey;

7. A listing of all labor unions and trade and business associations in which the applicant was a member or with which the applicant had a collective bargaining agreement;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant in connection with its collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

9. A listing of all persons employed by the applicant in its solid or hazardous waste operations in New Jersey and not otherwise required to be listed, and as to each, the full name, home address, date of birth and social security number;

10. As to every person required to be listed in the disclosure statement (other than holder of debt liability or non-supervisory employee required to be listed under N.J.A.C. 7:26-16.4(a)9), a completed Personal History Disclosure Form on forms supplied by the Department, including information about family, education and employment history;

11. Any other information the Attorney General or the Department may require that relates to the competency, reliability or good character of the applicant.

(b) The disclosure statement shall be sworn to or affirmed and subscribed and dated by the applicant or the author before a person legally competent to take an oath or affirmation, who shall himself subscribe and date the signature of the affiant and indicate the basis of his authority to take oaths and affirmations. Personal History Disclosure Forms shall be sworn to or affirmed and subscribed in the same manner, by the individual and the oath-taker. The following statement shall immediately precede the signature of the affiant: "I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

(c) Disclosure statements shall be signed by each of the following:

1. If of a corporation, by its president, its chairman of the board, any other chief executive officer thereof, its secretary and its treasurer.

2. If of a partnership, by each of its partners; if of a limited partnership, only by each of its general partners.

3. If of any other business concern, by its chief executive officer, its secretary and its treasurer.

4. If of a natural person, by the person himself or herself.

(d) Personal History Disclosure Forms shall be signed by the individual described thereon.

(e) All signatures shall be signed in ink and dated on original papers, but may be photocopied, typed, stamped or printed on copies. The name and address of the signatory shall be typed, stamped or printed beneath each signature.

7:26-16.5 Investigative Report by Attorney General

(a) The Department shall not issue any license to an applicant until it has received and reviewed an investigative report from the Attorney General.

(b) The departmental review of the application shall include a review of the disclosure statement and investigative report.

(c) In its discretion, the Department may issue a temporary registration for not more than six months at a time to an applicant if such issuance is necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body; or the issuance of a temporary registration otherwise serves some interest of the general public. The issuance of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

(d) In its discretion, the Department may renew a temporary registration for incremental periods of six months at a time prior to its receipt and review of an investigative report from the Attorney General if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary registration otherwise serves some interest of the general public. The renewal of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

Amended by R.1989 d.586, effective November 20, 1989.

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.

(i) When a permittee or licensee leases 10 or more solid waste vehicles and operators from a single lessor which is not a permittee or licensee, or when such leased vehicles represent at least 20 percent of the permittee's or licensee's fleet of solid waste vehicles, the permittee or licensee shall, within 30 days of entering into the lease, file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional infor-

mation from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(j) Permittees and licensees which lease 20 or more solid waste operators from a single lessor which is not also a permittee or licensee, shall file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor, within 30 days of entering into the lease. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

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".

Amended by R.2000 d.75, effective February 22, 2000.

See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Added (i) and (j).

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.

(d) No license shall be approved by the Department if the Attorney General determines that there is a reasonable suspicion to believe that a 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, does not possess a reputation for good character, honesty and integrity, and that person or the applicant fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity.

(e) No license shall be approved by the Department with respect to the approval of an initial license, if there are current prosecutions or pending charges in any jurisdiction against 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 equity interest or debt liability by the investigation, for any of the offenses enumerated in (b) above, provided, however, that at the request of the applicant or the person charged, the department shall defer decision upon such application during the pendency of such charge.

(f) 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 pursued economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, where such pursuit creates a reasonable belief that the participation of that person in any activity required to be licensed under this chapter would be inimical to the policies of N.J.S.A. 13:1E-126 et seq. For purposes of this section, "occupational manner or context" means the systematic planning, administration, management, or execution of an activity for financial gain.

(g) No license shall be approved by the Department if the applicant refuses to comply with inquiries as required under N.J.A.C. 7:26-16.7.

(h) No license shall be approved by the Department if the applicant in its application, disclosure statement or any other materials supplied to the Department or the Attorney General shall supply information which is untrue or misleading as to a material fact pertaining to the disqualification criteria.

Case Notes

Failure to demonstrate rehabilitation after conviction for disqualifying crime justifies denial of solid waste transporter license. *Bolus v. Solid Waste Management Division*, DEPE, 96 N.J.A.R.2d (EPE) 4.

Failure to disclose criminal indictment for involvement in solid waste disposal conspiracy warranted denial of application for solid waste licensure. *PJV Transport v. Division of Solid Waste Management*, 95 N.J.A.R.2d (EPE) 50.

Application for license to collect solid and hazardous waste; insufficient showing of integrity, reliability, expertise and competence. *Sasso's Sea-Gull Disposal, Inc. v. DEPE*, 94 N.J.A.R.2d (EPE) 67.

7:26-16.9 Cause for License Revocation

(a) In addition to any other cause set forth in this Chapter, any license may be revoked by the Department for any of the following causes:

1. Any cause which would require disqualification, pursuant to N.J.S.A. 7:26-16.8, from receiving a license upon original application;
2. Fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;
3. Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1E-126 et seq., or of any other law relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste, or of any rule or regulation adopted pursuant thereto;
4. Coercion of a customer by violence or economic reprisal or the threat thereof to utilize the services of any licensee;
5. Preventing, without authorization of the Department any licensee from disposing of solid waste or hazardous waste at a licensed treatment, storage or disposal facility.

Case Notes

Commissioner of Department of Environmental Protection was obliged to impose civil administrative penalties against generator and transporter. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Each truckload of hazardous waste, which was not accompanied by written manifest was separate offense; penalty against generator was warranted despite generator's claim that it was victim of transporter's fraud and the department's negligence in enforcing its regulations. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Hazardous waste generator or transporter is strictly liable for violation of regulations governing transportation and disposal of hazardous waste. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Penalty for each truckload of hazardous waste that transporter accepted from generator was warranted. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D. 1993).

Flagrant and repeated violations warranted revocation of solid waste disposal licenses and denial of permit applications. *DEPE v. Pucillo & Sons*, 96 N.J.A.R.2d (EPE) 87.

Oil trading company not corporation in good standing; no basis to oppose proposed revocation and denial of application for hazardous waste license. *Department of Environmental Protection v. N.O.C. Enterprises, Inc.* 93 N.J.A.R.2d (EPE) 227.

Dumping of hazardous wastes; mislabeled manifests; penalties. *Department of Environmental Protection v. Rollins Environmental Services, Inc.* 92 N.J.A.R.2d (EPE) 67.

7:26-16.10 Administrative hearing; requests

(a) Any applicant who is denied an initial license pursuant to this subchapter shall, upon a written request transmitted to the Department within 30 days of that denial, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the "Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq.

(b) Any licensee who receives a notice of intent to revoke or refuse to renew a license shall have 15 days from receipt of the notice to transmit to the Department a request for a hearing.

(c) Requests for hearings shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

Administrative correction heading and change in (c).
See: 23 N.J.R. 3325(b).

7:26-16.11 Severance of disqualifying individuals

(a) Notwithstanding the disqualification of any applicant or licensee pursuant to N.J.A.C. 7:26-16.8 or 16.9, the department may issue or renew a license if the applicant or licensee severs the interest of or affiliation with the person who would otherwise cause that disqualification.

(b) Where the disqualifying individual is the owner of an equity interest or interest in the debt liability of the licensee or applicant, he must completely divest himself of that interest. Where immediate sale of the interest would work an economic hardship on the individual, the licensee or applicant, the Department may, in its discretion, allow for divestiture over a period of time not to exceed one year.

(c) Arrangements such as blind trusts will be acceptable only as part of a divestiture arrangement under which the trustee is obliged to sell the disqualifying individual's interest within a period not to exceed two years.

(d) Before the Department will issue or renew a license to an applicant or licensee which has severed a disqualifying individual, the applicant or licensee must submit to the Department an affidavit, sworn to by the chief executive officer, attesting to the severance of the disqualifying individual and describing the terms, circumstances and conditions of that severance. Any instruments pertaining to that severance (such as a trust agreement) shall be submitted with the affidavit.

7:26-16.12 License revocation; Ineligibility for reapplication

(a) The Department will not issue a license to any person who has had an application denied, or a license revoked, for any of the reasons set forth in N.J.A.C. 7:26-16.8 or 16.9, for a period of 5 years following such denial or revocation.

(b) A person that is a business concern shall be considered as the same person if the management structure of the concern includes the person or persons that were the cause of the original disqualification.

7:26-16.13 Fees charged by the Attorney General and the Department

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E-128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E-18.

(a) Every business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) shall submit, upon initial filing and annually thereafter, a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements, contracting with the Attorney General for post-licensing compliance checks, including special investigations, conducting investigations to verify claims of exemption from A-901, securing confidential documents, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.). The fee for the Attorney General shall be \$100.00 per each individual and the fee for the Department shall be \$500.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest), in addition to a per-company fee to be calculated as follows:

1. Business concerns with one individual required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$635.00;
2. Business concerns with two or three individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$1,775;
3. Business concerns with four to seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$5,150; and
4. Business concerns with more than seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$15,650.

(b) The applicant shall calculate the amount of each fee due and submit to the Department a check for the total fee amount, made payable to "New Jersey Department of Environmental Protection". The Department shall forward the Attorney General's fee to the Attorney General. An application or disclosure statement will not be accepted as complete for filing unless accompanied by the appropriate fee payment.

(c) If on the basis of investigation the Department or the Attorney General determines that a person not listed on the disclosure statement should have been listed thereon, the Department and Attorney General may require the payment of additional separate fees along with the submission of additional information pertaining to that person. The applicant shall pay such additional separate fees promptly upon demand. Nothing in this subsection shall be construed as limiting the power of the Department to deny or revoke a license if the Department finds the omission of a person from the disclosure statement was intended to mislead or conceal information from the Department.

(d) If a business concern subject to P.L. 1983 c.392 (N.J.S.A. 13:1E-126 et seq.) files a change of information

pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the business concern shall pay additional separate fees of \$100.00 to the Attorney General and \$500.00 to the Department per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9). Individuals disclosed pursuant to N.J.A.C. 7:26-16.6 shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.

(e) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26-16.4(a) 1 and 2 as holding any equity in or debt liability of the original business concern filing the disclosure statement shall be considered to be additions to the original business concern filing the disclosure statement for the purpose of calculating the per-company portion of the fee. The original business concern filing the disclosure statement shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals or business concerns bring the total number of disclosed individuals and business concerns to a level requiring a higher fee pursuant to (a) above.

(f) Where business concerns file disclosure statements concurrently as a group pursuant to N.J.A.C. 7:26-16.3(e), for the purposes of fee calculation under this section the group shall be treated as a single applicant or licensee, and fees shall be calculated on the basis of the total number of individuals required to be listed in all of the disclosure statements filed by members of the group. Individuals whose names appear on more than one disclosure statement shall be counted only once for purposes of fee calculation.

As amended R.1984 d.541, effective December 3, 1984.
See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).

(b) substantially amended.

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

Required fee of \$100 for Attorney General and \$500 fee for the Department.

Amended by R.1989 d.586, effective November 20, 1989.

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

Additional per-company fee established.

Notice of Receipt of Petition for Rulemaking concerning fees.

See: 22 N.J.R. 2364(a).

Notice of Action on Petition concerning fees.

See: 22 N.J.R. 3403(c).

7:26-16.14 Confidential information

(a) As used in this section, the following terms shall mean:

1. "Authorized personnel" means any employee of the Department or the Attorney General authorized to act in the enforcement of P.L. 1983, c.392, N.J.S.A. 13:1E-126 et seq.

2. "Confidential information" means

i. Any information required to be furnished to the Department or the Attorney General by an applicant, licensee or an individual required to be listed on a disclosure statement, which pertains to private financial matters of the applicant, licensee or individual which are not otherwise subject to public disclosure by any statute or regulation;

ii. Any information which pertains to the criminal record, family or personal background of an applicant, a licensee or an individual required to be listed on a disclosure statement;

iii. Any information obtained by the Department or the Attorney General pursuant to an interrogatory is-

sued pursuant to N.J.S.A. 13:1E-129 or a subpoena issued pursuant to N.J.S.A. 13:1E-130; and

iv. Any other information which is confidential pursuant to applicable statutory provision, judicial decision or rule of court.

3. "Secure storage facility" means any area, room, furniture, equipment, machinery or other device used for the storage of confidential information, access to which is limited to authorized personnel at all times by locks, alarms, codes or other appropriate security precautions.

(b) Confidential information shall not be released or disclosed to any person except in accordance with the provisions of this section.

(c) Except as otherwise provided in (k) below, access to confidential information within the possession of the Department or the Attorney General shall be restricted to authorized personnel who require such information in the performance of their official duties.

(d) Confidential information not currently being used by authorized personnel shall be stored in secure storage facilities. Every such facility shall be under the direct supervision of a supervisor designated by the Commissioner or Director. The said supervisor shall periodically review for their effectiveness all security measures. Measures determined to be ineffective shall be immediately corrected or improved.

(e) The Commissioner or Director shall designate in writing all Department personnel authorized to have access to confidential information.

(f) Authorized personnel shall not remove confidential information from designated secure storage facilities unless such removal is necessary to the fulfillment of their official duties. Confidential information which is not presently being utilized by authorized personnel shall be promptly returned to its secure storage facility.

(g) A record shall be maintained of all confidential information which is removed from secure storage facilities. This record shall include:

1. The names of the person removing the information;
2. The name of the person for whom the information is being obtained;
3. The date of removal;
4. A description of the information removed or the number of the file which has been removed; and
5. The date the information is returned.

(h) Confidential information shall not be removed from the offices of the Department without the prior approval of an appropriate supervisor. Such approval shall only be

granted where removal of the confidential information is necessary to the performance of the official duties of authorized personnel.

(i) The integrity of confidential information in the possession of authorized personnel shall be preserved at all times. It shall be the personal responsibility of any individual granted temporary custody of confidential information to insure that the information is not shown, released or disclosed to any unauthorized person or to any otherwise authorized person who does not require such information in the performance of their official duties. Confidential information temporarily stored outside designated secure storage facilities shall be maintained in a locked desk or filing cabinet, or protected by other appropriate security precautions.

(j) A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the Department shall only be made where absolutely necessary to the administration of N.J.S.A. 13:1E-126 et seq., or where an authorized release of the confidential information is made pursuant to the provisions of (k) and (l) below.

1. Where confidential information is stored on a computer or magnetic medium to which access is physically restricted to authorized personnel, a record shall be kept of the persons who access the data, including the time and date of the access.

2. If confidential information is stored on a computer system or on magnetic media, access to which is shared with users who are not authorized personnel, access to the confidential information shall be restricted to authorized personnel by means of secure access codes, code names and other appropriate software safeguards. In addition, the computer shall be programmed so as to maintain a list of all requests for display or printout of confidential information, identifying the user who made the request.

(k) Confidential information within the possession of the Department shall not be released or disclosed in whole or in part to any person except:

1. Upon lawful order of a court of competent jurisdiction; or

2. In the course of the necessary administration of N.J.S.A. 13:1E-126 et seq.; or

3. With the approval of the Attorney General, to a duly authorized law enforcement agency; or

4. Upon presentation of proper identification, to the applicant, licensee or individual who furnished the confidential information to the Department or the Attorney General; or

5. Upon presentation of a duly executed and notarized release authorization by the applicant, licensee or individual who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(l) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (k)2 through 5 above, written notice shall be given to any applicant, licensee or individual affected prior to the release or disclosure, whenever possible, unless such notice would otherwise imperil the administration of N.J.S.A. 13:1E-126 et seq. To the extent known, the notice shall include:

1. The name and address of the person to whom the information was released or disclosed;

2. A description of the information released or disclosed; and

3. The date of the release or disclosure.

(m) Any confidential information disclosed in the course of any proceeding in the administration of N.J.S.A. 13:1E-126 et seq., or in the course of a judicial proceeding in which disclosure has been made pursuant to lawful order of the court, shall cease to be confidential information to the extent the record of the proceeding becomes a public record.

(n) Any knowing or willful disclosure of confidential information by personnel of the Department, other than a disclosure authorized under this section, shall be a violation of the Department's code of ethics and shall subject the violator to the penalties proved by N.J.S.A. 52:13D-23(d), following notice and the right to a hearing before the Executive Commission on Ethical Standards. The violator may also be subject to disciplinary action, including suspension or dismissal. Unauthorized disclosure of information obtained pursuant to interrogatory or subpoena may subject the violator to criminal penalties under N.J.S.A. 13:1E-131.

Case Notes

Statute disqualifying certain persons from solid and hazardous waste disposal licensure. *Trade Waste Management Assn., Inc. v. Hughey*, 780 F.2d 221 (3rd Cir.1985).

7:26-16.15 through 7:26-16.19 (Reserved)

7:26-16.20 Policies on disqualification

(a) To guide in the exercise of its discretion under N.J.A.C. 7:26-16.8 and 16.9, the Department from time to time shall promulgate policies and publish them as regulations in this subchapter.

(b) Where no published policy applies, the Department shall evaluate applicants and licensees in light of the policies expressed in N.J.S.A. 13:1E-126.

7:26-16.21 Convicted persons generally

(a) No licensee shall knowingly hire as an officer, director or key employee, nor knowingly allow to acquire an equity interest on debt liability interest, any person who has been convicted of any of the crimes enumerated in N.J.A.C. 7:26-16.8(b), without first obtaining the approval of the Department. This provision does not apply to persons who were employed or held their interests before June 11, 1984.

(b) In connection with any such request, the licensee shall file with the Department and the Attorney General an amended disclosure statement, containing the necessary information about the person, including any evidence the licensee wishes to bring forth demonstrating the person's rehabilitation.

(c) The Department shall request a recommendation from the Attorney General as to whether the person has affirmatively demonstrated rehabilitation, and shall consider the factors set forth at N.J.A.C. 7:26-16.8(c) in determining whether to grant permission to the licensee to employ the individual or allow him to acquire an interest in the licensee.

(d) Any licensee that violates (a) above may be subject to having its license revoked, notwithstanding the rehabilitation of the individual in question.

7:26-16.22 Persons convicted of environmental crimes

(a) In the case of persons convicted of violating the criminal provisions of any federal or state environmental protection laws, rules or regulations, including N.J.S.A. 2C:17-2, N.J.S.A. 13:1E-9(e) or (f) and N.J.S.A. 58:10A-10(f), or persons convicted of any crime which involved the violation of such laws, rules or regulations, the Department will not consider such person rehabilitated unless he has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities for which he was convicted, and to make restitution to any victims injured thereby; and

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that such a conviction warrants a finding of "unreliability" under N.J.A.C. 7:26-16.8(a) if the date the conviction became final (including the exhaustion of any appeals) is less than ten years preceding the filing of the application or notice of intent to revoke a license.

(c) Notwithstanding (a) and (b) above, the Department may still deny or revoke a license because of a conviction more than ten years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

7:26-16.23 "Independent contractors" or "consultants"

(a) Applicants and licensees may not avoid the effects of N.J.A.C. 7:26-16.8 and 16.9 by designating an employee as an "independent contractor" or "consultant". The Department will look beyond the form of such contracts, and if it

finds that a person designated as an "independent contractor", "consultant" or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant or licensee, the Department will regard that person as an employee.

(b) The Department may deny or revoke a license if it finds that an applicant or licensee has entered into an "independent contractor" arrangement, "consultant" agreement or similar arrangement for the purpose of avoiding disqualification under N.J.A.C. 7:26-16.8 or 16.9.

7:26-16.24 "Brokerage" by convicted persons

(a) It is the policy of the Department to discourage persons who would be disqualified from obtaining licenses under N.J.A.C. 7:26-16.8(b) from acting as brokers in the solid waste or hazardous waste industries.

(b) The Department may examine an applicant or licensee's relationship with a broker in order to determine whether the broker is or has acted as an employee. In making this determination the Department may consider the following factors:

1. Whether the broker was formerly employed by the licensee or a business concern owned, controlled or under the same ownership as the licensee or applicant.
2. Whether the broker is under retainer to the applicant or licensee, or receives any compensation that is not dependent on producing sales.
3. Whether the commissions paid to the broker are disproportionate to those paid to other brokers similarly situated in the industry.
4. Whether the broker derives the bulk of his income from one licensee, or from licensees under common ownership.
5. Whether the broker performs functions customarily performed by employees, such as signing manifests, supervising the loading of trucks, instructing drivers on routes to follow, etc.
6. Whether the broker has an agreement (written or oral) with a licensee to "steer" business to the licensee rather than to competitors, such that the broker is not exercising independent judgment in his choice of licensed operators.

(c) If the Department finds that a broker who would be disqualified from obtaining a license is or has acted as an employee, it may result in the applicant or licensee being disqualified under N.J.A.C. 7:26-16.8 or 16.9.

(d) The Department may deny or revoke a license if it finds that an applicant or licensee has set up or maintained a relationship with a broker for the purpose of avoiding disqualification under N.J.A.C. 7:26-16.8 or 16.9.

**SUBCHAPTER 16A. SPECIAL RULES FOR
SUBMISSION OF DISCLOSURE
STATEMENTS BY EXISTING LICENSEES
AND APPLICANTS WHOSE APPLICATIONS
WERE PENDING BEFORE THE
DEPARTMENT PRIOR TO JULY 2, 1984**

7:26-16A.1 Scope and applicability; Conflicts

(a) This subchapter implements section 3.a. of L. 1983, c.392, N.J.S.A. 13:1E-128.a., which states that "Every licensee who is not otherwise required to file a disclosure statement within two years of the effective date of this act shall file a disclosure statement with the department and the Attorney General within that period."

(b) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing licensees.

(c) Except where the context would require otherwise, the provisions of N.J.A.C. 7:26-16 are applicable to this subchapter.

(d) In case of any conflict between a provision of this subchapter and any other provision of this chapter, the provision of this subchapter shall govern.

(e) The Commissioner or Director may relax the application of any part of this subchapter if necessary to prevent unreasonable delay in the processing of any application that was pending before the Department prior to July 2, 1984.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).

Deleted text from (b) "so as to . . . two year period."

7:26-16A.2 Schedule for submitting disclosure statements

(a) All persons who had received a license from the Department prior to July 2, 1984 shall submit a disclosure statement to the Department and the Attorney General on or before May 1, 1987. Disclosure statements shall be submitted according to the procedures and requirements set forth in N.J.A.C. 7:26-16.3 and 16.4.

(b) A person shall be deemed to have "received a license" if he had received from the Department final approval to operate a solid or hazardous waste collector-hauler business or treatment, storage or disposal facility, or was actually operating pursuant to any authorization equivalent to an approved registration, such as a temporary operating authorization, judicial order or administrative consent order, or the authorization conferred by "existing facility" status pursuant to N.J.A.C. 7:26-12.3.

(c) The Department may require any applicant or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

(d) Any licensee may voluntarily submit a disclosure statement earlier than demanded.

(e) The applicant or licensee shall have 90 days from the time of receipt of the demand to file a disclosure statement with the Department and the Attorney General. Refusal to file the disclosure statement shall be deemed a refusal to comply under N.J.A.C. 13:1E-128.c. and N.J.S.A. 7:26-16.7.

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).
Substantially amended.

7:26-16A.3 Applications pending on July 2, 1984

(a) Persons with applications pending before the Department on the effective date of these rules (July 2, 1984) shall submit a disclosure statement to the Department and the Attorney General no later than September 30, 1984.

(b) It is the Department's intention that applicants whose applications were pending before the department prior to the proposal date of subchapter 16 (May 7, 1984) shall have the licensing process delayed as little as possible by reason of the new licensing requirements imposed by L. 1983, c.392. When it finds that it is in the public interest to do so, or to prevent unreasonable economic hardship, the Department may conditionally issue a license to an applicant whose application was pending on May 7, 1984 before it has received a full investigative report from the Attorney General, provided that:

1. The disclosure statement has been filed, and a preliminary review by the Department indicates no reason for disqualification;
2. The Attorney General has conducted a check of applicable criminal history information and reported to the Department that such check indicates no reason for disqualification; and
3. The applicant has signed a statement indicating its understanding that its license may be revoked if the full investigative report or subsequent investigation indicate reasons for disqualification.

(c) Applicants who filed their applications after May 7, 1984 may not be issued licenses until completion of the investigative report. However, the Department will attempt to expedite processing of such applications by requesting the Attorney General to accord highest priority to completing investigative reports on applicants whose applications are pending before the Department prior to July 2, 1984. Also, in appropriate cases, the Department will continue technical review of such applications concurrent with the disclosure statement review and investigative report.