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CHAPTER 26G

HAZARDOUS WASTE

Authority

N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:1E-1 et seq., 13:1E-49 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11 et seq., and 58:10A-1 et seq.

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Chapter 26G, Hazardous Waste, expires on October 21, 2001.

Law Review and Journal Commentaries

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26G-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 which govern the registration, operation, closure and post-closure maintenance of hazardous waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of hazardous waste transporting operations and facilities in the State of New Jersey; and a fee schedule for services provided by the Department to hazardous waste facilities, generators and transporters.

(b) The definitions, exemptions, exclusions and discussions of solid and hazardous waste found in this chapter are for the purposes of classifying and regulating hazardous waste and do not provide any exemptions from the definition or regulation of solid waste found at N.J.A.C. 7:26.

(c) Hazardous waste facilities are exempt from district solid waste planning and waste flow requirements of N.J.A.C. 7:26-6, Interdistrict and intradistrict solid waste flow, the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., and the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq., and those provisions of the Solid Waste Management Act, N.J.S.A. 13:1E, which relate to district solid waste planning.

(d) In addition to the rules in this chapter, all hazardous waste facilities are required to obtain other necessary approvals.

7:26G-1.2 Construction and severability

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

(b) If this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion thereof, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, in any judicial proceeding, such judgment shall be confined in its operation to this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion or application thereof, 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.

7:26G-1.3 Practice where rules do not govern

The Department may rescind, amend or expand these rules from time to time, and such rules shall be filed with the Office of Administrative Law as provided by law. In any matter concerning hazardous waste management that arises not governed by these rules, the Department shall exercise its discretion within the authority of N.J.S.A. 13:1E-1 et seq., 58:10-23.11, 58:10A-1 et seq., 47:1A-2, 13:1D-9 and 18 and all other legislatively conferred powers.

7:26G-1.4 Incorporation by reference of the Code of Federal Regulations

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (C.F.R.) is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.

(b) Prospective incorporation by reference means the ongoing process, beginning January 19, 1999, whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by USEPA in the Federal Register, shall be paralleled by a similar change to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart. Similarly, to maintain consistency, all new Federal regulations are also adopted into this Chapter by this automatic process.

(d) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (c) above by the amount obtained by multiplying the base penalty dollar amount by 1.0 percent for each day that the fee is past due.

7:26G-2.9 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter include as an additional civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, or any Part A permit application filed, pursuant to the Act. If the total economic benefit was derived from more than one violation, the total economic benefit may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

SUBCHAPTER 3. HAZARDOUS WASTE FEES

7:26G-3.1 General provisions

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-6, 13:1E-18, 13:1E-42.2 and 13:1E-60d, there is hereby established a fee schedule for hazardous waste generators, transporters, and treatment, storage, or disposal facilities. Notwithstanding provisions in N.J.A.C. 7:26-4, this subchapter constitutes the rules of the Department for hazardous waste fees. 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.

7:26G-3.2 Payment of fees

(a) Fees for activities related to hazardous waste generators, transporters, and treatment, storage, or disposal facilities shall be paid by certified check or money order payable to: Treasurer, State of New Jersey. Payment shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
PO Box 417
Trenton, New Jersey 08625-0417

(b) All fees shall be paid within 30 days of the date on the bill issued by the Department unless otherwise specified

herein. A person who fails to pay a fee within the time due shall be subject to penalties pursuant to N.J.A.C. 7:26G-2.8.

7:26G-3.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) Hazardous waste generator biennial reporting fees are as follows. Biennial reporting fees shall be based on manifest information for the calendar year preceding the year in which the bill is issued:

1. Hazardous waste generators manifesting less than 13.2 tons of hazardous waste per year: \$67.00.
2. Hazardous waste generators manifesting equal to or greater than 13.2 tons but less than 10 tons of hazardous waste per year: \$134.00.
3. Hazardous waste generators manifesting equal to or greater than 10 tons but less than 100 tons of hazardous waste per year: \$248.00.
4. Hazardous waste generators manifesting equal to or greater than 100 tons but less than 150 tons of hazardous waste per year: \$501.00.
5. Hazardous waste generators manifesting equal to or greater than 150 tons of hazardous waste per year: \$801.00.

(b) The manifest processing fee for generators and hazardous waste facilities is as follows:

1. Generators located in the State of New Jersey: \$9.00 per manifest.
2. Hazardous waste facilities: \$9.00 per manifest for waste received from generators located outside of the State of New Jersey unless exempt under N.J.A.C. 7:26G-3.4(c). A hazardous waste facility will not be assessed a manifest processing fee for waste received from New Jersey generators.

(c) Fees for conducting inspections and compliance reviews for generators and facilities are as follows:

1. Inspection fee for a major commercial hazardous waste facility, as defined at N.J.S.A. 13:1E-42.1, shall be determined on an annual basis by the following formula:

$$F = \text{Fee}$$

$$T = \text{Inspection time (expressed as a percentage of the Department's total annual time for all major facilities)}$$

$$W = \text{Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)}$$

$$I = \text{Total annual cost for inspecting major commercial hazardous waste facilities}$$

$$F = (T + W)/2xI$$

2. Inspection fee for a commercial hazardous waste facility, other than a major hazardous waste facility as defined at N.J.S.A. 13:1E-42.1, per inspection: \$930.00;

3. Inspection fee for a non-commercial hazardous waste facility: \$1,639;

4. Inspection fee for a generator:

i. Large quantity generator: \$2,180; and

ii. Small quantity generator: \$517.00

5. Inspection fee for compliance inspection: \$829.00

6. Inspection fee for compliance reviews: \$454.00

(d) Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee shall be assessed for each separate waste classification requested. Fees for each step in the delisting process shall be submitted prior to the commencement of review/action by the Department:

1. Fee for the classification of wastes where the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: \$431.00;

2. Fee for the classification of wastes where the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: \$216.00;

3. Fee for the review of sampling plans submitted in support of waste classification requests, for each plan submitted: \$249.00;

4. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26G-4 (40 C.F.R. 260.22) shall be paid upon submission of the document, or in the case of the New Jersey Register notices, prior to the preparation of the notice, and are as follows:

i. Review of delisting petition: \$38,143;

ii. Development, monitoring, and review of sampling plan: \$1,244;

iii. Development and publication of public notice in the New Jersey Register: \$12,438;

(e) Fees for permitting/review activities are as follows:

1. Fees for review of a permit application for a new hazardous waste facility, expansion of 50 percent or more at a major hazardous waste facility, as defined at N.J.S.A. 13:1E-51, and expansion of any facility that includes a new type of hazardous waste management unit among those listed below shall be paid at time of application submission and are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$62,377.

ii. Storage and/or treatment including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$33,862, subject to any rebate available under (e)13 below

iii. Incineration (including boilers and industrial furnaces) with trial burn: \$142,576

iv. Incineration (including boilers and industrial furnaces) without trial burn: \$124,754

2. Fees for review of permit renewal application shall be paid at time of renewal application submission and are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$33,862

ii. Non-commercial storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$24,951

iii. Commercial storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$46,337

iv. Incineration (including boilers and industrial furnaces) with trial burn: \$98,021

v. Incineration (including boilers and industrial furnaces) without trial burn: \$80,199

3. Fees for permit issuance/denial for a facility with "existing facility status" prior to February 3, 1992 shall be paid by June 2, 1992 or at the time of public notice of the draft permit/denial, whichever is earliest. Fees for permit issuance/denial for a facility with "existing facility status" after February 3, 1992 shall be paid at the time of public notice of the draft permit/denial. These fees are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$62,377

ii. Storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$33,862, subject to any rebate available under (e)13 below

- iii. Incineration (including boilers and industrial furnaces) with trial burn: \$142,576
 - iv. Incineration (including boilers and industrial furnaces) without trial burn: \$124,754
4. Fees for the issuance of a closure plan approval shall be paid at time of submission of the application for closure and are as follows:
- i. Closure with soil sampling plan: \$11,139
 - ii. Closure without soil sampling plan: \$6,683
5. The fee for the approval/denial of existing facility changes pursuant to N.J.A.C. 7:26G-12 (40 C.F.R. 270.72) shall be paid at time of submission of request for change and is: \$891.00.
6. The fee for the approval/denial of ownership or operational control changes shall be paid at the time of submission of the request and is: \$1,337.
7. The fee for permit modifications shall be paid at time of modification request and are as follows:
- i. Class 1 modifications: \$1,248.
 - ii. Class 2 modifications: \$5,168.
 - iii. Class 3 modifications: \$20,941.
8. The fee for a RD&D permit (as described at 40 C.F.R. 270.65) shall be paid at time of application for permit and is: \$33,862, subject to any rebate under (e)13 below.
9. The fee for issuance of an emergency permit is: \$5,703.
10. The fee for treatability study annual report shall be paid at time of submission of report and is: \$178.00.
11. The fee for permit exemption qualification determinations shall be paid at time of submission of request and is: \$1,069.
12. The fee for review of Environmental Health and Impact Statements shall be paid at time of submission and is: \$17,822.
13. A non-commercial hazardous waste facility which has paid a fee under (e)1ii, (e)3ii, or (e)8 above may request a rebate of part of the fee. The request shall be in writing and delivered to the Department after the final permit for the facility is issued, but no later than 20 days after the final permit is issued. If the Department's timekeeping records show that the actual cost to the Department to issue the final permit is more than 10 percent less than the fee provided in (e)1ii, (e)3ii, or (e)8 above, the Department shall rebate the difference between the fee provided in (e)1ii, (e)3ii, or (e)8 above and the actual cost. Facilities requesting a rebate of part of the fee under (e)15 below shall make the request in writing and deliver it to the Department after the Department action on the activity, but no later than 20 days after

the action is completed. If the Department's timekeeping records show that the actual cost to the Department is more than 10 percent less than the estimated fee, the Department shall rebate the difference between the estimated fee and the actual cost.

14. All costs associated with public participation in the permit process (including, but not limited to, public hearing costs such as stenographer fees and public hearing notice, and costs for public notices of draft permits and closure plans where no public hearing is scheduled, etc.) shall be paid by the permit applicant. The applicant will be billed by the Department prior to permit issuance.

15. If the Department determines that the activity is of a type listed in (e)1 through 12 above, the amount of the fee shall be equal to the amount listed in (e)1 through 12 above. If the Department determines that such activity is not of a type listed in (e)1 through 12 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 \$89.11, subject to any rebate available under (e)13 above.

(f) The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.

(g) The fee schedule for hazardous waste transporters is as follows:

1. All hazardous waste transporters shall pay an annual registration fee. A State of New Jersey hazardous waste transporter registration decal will be issued for each hazardous waste cab and transport unit (as defined at N.J.A.C. 7:26G-4.2) for which a fee is paid. The fee registration year shall extend from October 1 through the following September 30. The fee shall accompany the submission of the annual registration application. All vehicles registered with the Department must be owned or leased by the applicant. If the vehicle is leased, a copy of the lease must be submitted with the registration application. The registration of a hazardous waste transporter is non-transferable and fees are not refundable. The annual registration fees are as follows:

- i. Each hazardous waste cab: \$21.00;
- ii. Each hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab, having a capacity less than or equal to one ton (one ton = one cubic yard = 200 gallons): \$85.00;
- iii. Each hazardous waste transport unit without a hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): \$191.00; and
- iv. Each hazardous waste transport cab with permanently attached hazardous waste transport unit with a capacity greater than one ton (one ton = one cubic yard = 200 gallons): \$212.00.

Case Notes

Hazardous waste transporter fees authorized under Solid Waste Management Act were not a form of hidden tax revenue production. *American Trucking Associations, Inc. v. State*, 324 N.J.Super. 1, 734 A.2d 314 (N.J.Super.A.D. 1999).

7:26G-3.4 Exemption from fee payment

(a) Conditionally exempt small quantity generators meeting the requirements of N.J.A.C. 7:26G-5 are exempt from the manifest processing fee.

(b) Transporters acting as the generator on the manifest when picking up waste from a conditionally exempt small quantity generator are exempt from the manifest processing fee.

(c) Hazardous waste facilities which accept waste from out-of-State conditionally exempt small quantity generators are exempt from the manifest processing fee for those manifested shipments only.

7:26G-3.5 Adjustment of fees

(a) The Department shall adjust the fees for each activity described in N.J.A.C. 7:26G-3.3 with the exception of the fees referenced at N.J.A.C. 7:26G-3.3(c)1, as necessary, based upon the following formula:

$$\text{Fee} = (\text{hours required}) \times (\text{hourly rate})$$

where "hours required" and "hourly rate" are as set forth in the Hazardous Waste Fee Schedule Report as provided in (c) below.

(b) The Department shall adjust the transporter registration fee described in N.J.A.C. 7:26G-3.3(g), as necessary, based upon the following formula:

$$\text{Total Revenue Needed to Carry Out Program} = (\text{Total Hours}$$

$$\text{Required to Carry Out Program}) \times (\text{Hourly Rate})$$

Where Total Hours Required and the Hourly Rate are as set forth in the Hazardous Waste Fee Schedule Report as provided in (c) below; and where Total Revenue Needed to Carry Out Program is then apportioned among the four types of vehicles required to be registered under this subchapter in the manner noted in the Hazardous Waste Fee Schedule Report resulting in the adjusted fees for the four vehicle types.

(c) The Department shall prepare a Hazardous Waste Fee Schedule Report. This report shall include the following:

1. The Department's estimate of the number of hours which will be required to perform each type of activity for which fees are assessed under N.J.A.C. 7:26G-3.3(a) through (f) and an estimate of the total hours required to carry out the transporter regulatory program to be paid for by the fees assessed under N.J.A.C. 7:26G-3.3(g). In formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records and/or workplan projections for a period of at least nine months, ending no more than six months before the completion of the report;

ii. The Department's timekeeping records and/or workplan projections from previous years, if the Department determines that it does not have sufficient data to reliably determine the number of hours required to perform the activity;

iii. Any other factors relevant to the estimate, provided that the report explains any such other factors, and explains how such factors support the estimate;

iv. If the Department determines that the creation of additional classifications of regulated entities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications, and shall report them in the Hazardous Waste Fee Schedule Report. The Department's determination shall be in its reasonable discretion, based upon its review of the data upon which the report is based. In the report, the Department shall set forth the hours required to perform an activity for such additional classes. This subparagraph provides only for the creation of additional classification of types of facilities or activities for which fees are assessed under the Department's rules, and shall not be construed to provide for the assessment of fees for types of facilities or activities not already contained in the Department's rules; and

v. If the Department reports a decrease in the number of hours spent performing an activity, compared with the expected level of activity, and such decrease is due solely or in part to a lack of Department staff sufficient to perform the activity, the Department may set the fee at the level necessary to defray the cost of sufficient staff to perform the expected activity; and

2. A statement of the hourly rate for calculating fees. The hourly rate for an activity is the average cost of one hour of the Department's hazardous waste program's staff time needed to perform the activity, calculated according to the following formula:

$$\frac{(\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{BH}}$$

where:

i. AS equals the average salary of a full-time Department employee working in the Department's hazardous waste program assigned to the activity. In calculating the average salary of a Department employee, the salaries for Direct support and Division overhead positions shall be included along with the salaries for employees assigned to the activity;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's hazardous waste program assigned to the activity, calculated as a percentage of the average salary. The percentage is set by the New Jersey Department of the Treasury, and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a full time Department employee working in the Department's hazardous waste program assigned to the activity, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the sum of AS and FB;

iv. OE equals operating expenses (including without limitation: postage, telephone, travel, supplies, clerical support, other support staff and data system management) attributable to a full-time Department employee working in the Department's hazardous waste program assigned to the activity;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's hazardous waste activities, divided by the total number of billable Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's hazardous waste program spends annually performing activities for which fees are imposed under N.J.A.C. 7:26G-3.3.

(d) Promptly after completing the report described in (c) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26-3.3 within the one-year period covered by the report.

(e) Promptly after making the adjustment to the fees pursuant to the report described in (c) above, the Department shall publish a notice of administrative change in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees, in N.J.A.C. 7:26G-3.3 and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report and to submit comments within 45 days of the date of publication of the notice. The Department shall provide a copy of the

report to each person requesting a copy. The Department will evaluate the comments submitted and publish its responses in the New Jersey Register prior to the operative date of the adjusted fees.

SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7:26G-4.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 260, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 260 are not incorporated by reference: 260.1(b)(1), 260.2, the following definitions at 260.10: "Act or RCRA," "Administrator," and "Regional Administrator"; and 260.20(b) through (e).

(c) The following provisions of 40 C.F.R. Part 260 are incorporated by reference with the specified changes:

1. 260.1(a), after "chapter" add "and N.J.A.C. 7:26G";

2. 260.1(b)(3), after "chapter" add "and N.J.A.C. 7:26G";

3. 260.1(b)(4), after "chapter" add "and/or N.J.A.C. 7:26G"; and

4. 260.10 Definitions:

i. "Existing tank system or existing component," after "for which installation has commenced on or prior to July 14, 1986." add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

ii. "Manifest," after "Manifest" add "or State Manifest"; after "EPA form 8700-22" add "as modified by the State"; after "EPA form 8700-22A," add "or a form approved by the Department"; replace "part 262" with "N.J.A.C. 7:26G-6";

iii. "New tank system or new tank component," at the end of the paragraph add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or

component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

5. 260.20(a), after “parts 260 through 266” delete “and 268” and replace with “, 268 and N.J.A.C. 7:26A-7.”; after “of this chapter” add “or N.J.A.C. 7:26G.”; after “testing or analytical method to part 261, 264, or 265” add “of this chapter.”; after “Section 260.22 sets forth additional requirements for petitions to exclude a waste” add “or waste-derived material.”; after “the lists of hazardous wastes in subpart D of part 261” add “of this chapter. N.J.A.C. 7:26G-4.2 sets forth additional requirements for petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes for categories of hazardous waste as universal waste. All petitions for rulemaking will be subject to N.J.A.C. 1:30, Rules for Rulemaking. All petitions for rulemaking are governed by N.J.A.C. 1:30-3.6 and 7:1D-1.1.”;

6. 260.21(b), delete “§ 260.20(b)” and replace with “N.J.A.C. 7:1D-1.1 and 1:30-3.6”;

7. 260.21(d), after “will be incorporated in” add “and will be in addition to”;

8. 260.33(a), delete “in the region where the recycler is located”;

9. 260.33(b), delete “this decision may not be appealed to the Administrator.” and replace with “a hearing may be requested in accordance with the provisions of the Administrative Procedure Act.”;

10. 260.40(a), replace “261.6(a)(2)(iv)” with “261.6(a)(2)(iii)”;

11. 260.41, replace “261.6(a)(2)(iv)” with “261.6(a)(2)(iii)”;

12. Appendix I to Part 260 first paragraph, after “of the regulations they should comply.” add “Appendix I contains guidance, not regulations. If any part of the appendix is inconsistent with the regulations, the regulations are controlling.”;

13. Appendix I to Part 260 last paragraph, after “encouraged to write to EPA” add “and the Department”; after “(513) 684-5362” add “and New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Hazardous Waste Regulation, PO Box 414, 120 South Stockton Street, Trenton, NJ 08625-0414, (609)292-7081.”

(d) When used in the term “EPA form,” the definition of “Manifest,” “Federal Agency” and “Person” at 40 C.F.R. 260.10, in the Appendix I to 40 C.F.R. Part 260, and 40 C.F.R. 260.11(a), the term “Agency” or “EPA” means the United States Environmental Protection Agency.

(e) When used in the definition for “hazardous waste constituent” at 40 C.F.R. 260.10, the term “Administrator” means the Administrator of the United States Environmental Protection Agency or his or her designee.

(f) When used in the following Federal citation, the terms “EPA” and “Environmental Protection Agency” shall not be replaced with a State term, but shall retain its meaning: 40 C.F.R. 260.11(a).

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Amended (c)5.

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (d), added C.F.R. reference; and added (f).

Administrative change.

See: 32 N.J.R. 1796(a).

7:26G-4.2 State definitions

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

“Administrator” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee, except where specifically noted, then it means the Administrator of the United States Environmental Protection Agency or his or her designee.

“Agency” or “EPA” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the New Jersey Department of Environmental Protection, except when specifically noted, then it means the United States Environmental Protection Agency.

“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. 7:26G-7, 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 hazardous waste treatment, storage, or disposal facility or transporter issued by the Department after review and approval of the registration statement.

“Battery” means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

“Commercial hazardous waste facility” means any hazardous waste facility which accepts hazardous waste from more than one inter-company generator for treatment, storage or disposal at a site other than where the hazardous waste was generated.

“Commingling” means the transferring, bulking, or mixing of hazardous waste from one or more hazardous waste packages, containers, transport units or transport vehicles into another.

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

“Compliance inspection” is a site inspection performed by a representative of the Department’s hazardous waste enforcement program of a generator, transporter, or facility to verify compliance with previously cited violations.

“Compliance review” is an analysis conducted by a representative of the hazardous waste enforcement program at one of the Department’s enforcement field offices to verify compliance with cited violations where the generator, transporter or facility has submitted written material for review. An example is where a contingency plan or personnel training plan has been submitted in response to violations discovered during a previously conducted initial inspection.

“Consignment state” means the state in which the designated facility is located.

“Consolidation” means the movement of closed containers of hazardous waste from one hazardous waste transport unit or transport vehicle to another.

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

“Department of Transportation” or “DOT” means the “U.S. Department of Transportation”.

“Destination facility” means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in N.J.A.C. 7:26A-7.2(d)1 and (d)3 and 7.3(d)1 and (d)3. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

“Director” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his designee, except when specifically noted.

“Environmental and Health Impact Statement” means a statement as to the realistically identifiable, probable impact of the proposed hazardous 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; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

“Exempt transporter” shall, for purposes of N.J.A.C. 7:26G-7.2, 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).

“Generator inspection” is an inspection of a generator as defined at 40 C.F.R. 260.10 who generates 100 kilograms or more, but less than 1,000 kilograms of non-acutely toxic hazardous waste per month and less than one kilogram of acute hazardous waste per month; and those who generate less than 100 kilograms per month non-acutely toxic hazardous waste, less than one kilogram of acute hazardous waste, but accumulate greater than 1,000 kilograms and less than 6,000 kilograms of non-acutely toxic hazardous waste at any one period of time. A generator’s category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

“Hazardous waste cab” means any powered device to which a hazardous waste transport unit can be attached for transporting hazardous waste off-site or to a hazardous waste facility by road.

“Hazardous waste transport unit” means any portable non-powered device that is used to contain and transport hazardous waste off-site or to a hazardous waste facility by road, rail, water, or air and that is not normally disposed of with the waste. Hazardous waste transport unit includes, but is not limited to, roll-off containers, hoppers/dumpsters, rail cars, barges, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs.

“Hazardous waste vehicle” means any self-propelled device that is used to move hazardous waste off-site or to a hazardous waste facility by road. Hazardous waste vehicle is any combination of hazardous waste cab and transport unit, whether detachable or permanently attached, and includes, but is not limited to, straight boxes/vans, straight dumps, straight tanks, straight vacs, straight roll-offs, and pick-up trucks.

“HSWA” means the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

“Large quantity generator inspection” is an inspection of a generator who generates 1,000 kilograms or more of non-acutely toxic hazardous waste per month, or one kilogram of acutely hazardous waste per month; and those who generate less than these amounts but accumulate greater than 6,000 kilograms of non-acutely toxic hazardous waste at any

one period of time. A generator's category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

"Licensee" shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"Major commercial hazardous waste facility" is defined at N.J.S.A. 13:1E-42.1 and 51 as "any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department, except that any facility which would otherwise be considered a major hazardous waste facility pursuant to this section solely as the result of the recycling or re-refining of any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper shall not be considered a major hazardous waste facility for the purposes of this Act."

"Non-major commercial hazardous waste facility" is a commercial hazardous waste facility which does not have a total capacity to treat, store or dispose of less than or equal to 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department.

"Non-commercial hazardous waste facility" means any area, plan or other facility for the treatment, storage or disposal of hazardous waste which is not a commercial hazardous waste facility.

"Permit" means the approval issued by the Department to construct and/or operate a hazardous waste facility and shall mean the approved registration statement and engineering design approval described in the Solid Waste Management Act.

"Permittee" shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. Is a new animal drug under FFDCA section 201(w); or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or
3. Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph 1 or 2 of this definition.

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

"Resource Conservation and Recovery Act," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C," "Subtitle C" or "the Act" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, when referring to either an operating permit or to the Federal hazardous waste program as a whole (that is, not a specific provision of RCRA), mean the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. or any other comparable provision of New Jersey's statutes and implementing regulations, except when specifically noted, then it means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq. When the Federal language incorporated by reference refers to a specific provision of RCRA (except after references to RCRA section 3008 and 3008(h)) add the phrase "or any comparable provisions of New Jersey's statutes and implementing regulations". After references to RCRA sections 3008 and 3008(h) add the phrase "or N.J.S.A. 13:1E-9 or any other comparable provisions of New Jersey's statutes and implementing regulations."

"Registrant" means an applicant who has obtained an approved registration statement and who has registered hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable).

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

"Regional Administrator" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his or her designee, except when specifically noted, then it means the Regional Administrator for the EPA Region in which the facility is located or his or her designee.

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

"State CAA Director" as used in the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

“State Director” or “State RCRA Director” as used in the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

“Subcontractor” means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of hazardous 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 N.J.A.C. 7:26G-7.2, of hazardous waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter shall not, for purposes of N.J.A.C. 7:26G-7.2, be considered a subcontract.

“Thermostat” means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of N.J.A.C. 7:26A-7.2(d)3ii or 7.3(d)3ii.

“Universal waste” means any of the following hazardous wastes that are managed under the universal waste requirements of N.J.A.C. 7:26A-7:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

“Universal waste handler” means a generator (as defined in 40 C.F.R. § 260.10) of universal waste or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of N.J.A.C. 7:26A-7.2(d) or 7.3(d)), disposes of, or recycles universal waste or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

“Universal waste transporter” means a person engaged in the off-site transportation of universal waste by air, rail, highway or water.

Amended by R.1996 d.577, effective December 16, 1996.
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Added definitions “battery”, “destination facility”, “pesticide”, “thermostat”, “universal waste”, “universal waste handler”, and “universal waste transporter”.

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Inserted “State CAA Director”; and changed “State Director” definition to “State Director” or “State RCRA Director”.

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”; and rewrote “Subcontractor”.

7:26G-4.3 Petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of N.J.A.C. 7:26A-7 may petition for a regulatory amendment under this section, 40 C.F.R. 260.20 as incorporated by reference herein, and N.J.A.C. 7:26A-7.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Department that regulation under the universal waste regulations of N.J.A.C. 7:26A-7 is appropriate (in accord with the reasons for establishing the universal waste system as set forth in 60 F.R. 25492, May 11, 1995) for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by 40 C.F.R. 260.20(b) as incorporated by reference herein. The petition should also address as many of the factors listed in N.J.A.C. 7:26A-7.7(b) as apply to the waste or category of waste addressed in the petition.

(c) The Department shall grant or deny a petition using the factors listed in N.J.A.C. 7:26A-7.7(b). The decision will be based on the weight of evidence showing that regulation under N.J.A.C. 7:26A-7 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Department may request additional information needed to evaluate the merits of the petition.

New Rule, R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

SUBCHAPTER 5. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

7:26G-5.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 261, Federal Regulations on Identification and Listing of Hazardous Waste, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 261 are not incorporated by reference: 40 C.F.R. Part 261 Appendix IX.

(c) The following provisions of 40 C.F.R. Part 261 are incorporated by reference with the specified changes:

1. Operative dates of regulations first promulgated by EPA are determined as follows:

i. Operative dates of rules originally promulgated by USEPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and incorporated by reference on October 21, 1996, shall not be altered, because these rules are operative in all states at the time of adoption.

ii. Operative dates of rules incorporated by reference on October 21, 1996, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with October 21, 1996, because these rules are not operative in authorized states until state adoption of the rules.

iii. Operative dates of rules incorporated by reference after October 21, 1996, but prior to August 1, 1998, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with January 19, 1999, because these rules are not operative in authorized states until state adoption of the rules.

iv. Operative dates of rules incorporated through prospective incorporation by reference shall become operative in accordance with N.J.A.C. 7:26G-1.4(k) and (l).

v. See 40 C.F.R. 271.1 Table 1, which lists all HSWA regulations. Other regulations are promulgated under RCRA.

2. The phrase "in the Region where the sample is collected" shall be omitted from 40 C.F.R. 261.4(e)(3)(iii).

3. 40 C.F.R. 261.5(c)(4), replace "40 C.F.R. Part 279" with "N.J.A.C. 7:26A-6";

4. 40 C.F.R. 261.5(c)(6), replace "40 C.F.R. Part 273" with "N.J.A.C. 7:26A-7";

5. 40 C.F.R. 261.5(f)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

6. 40 C.F.R. 261.5(g)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

7. 40 C.F.R. 261.5(j), replace "part 279 of this chapter" with "N.J.A.C. 7:26A-6";

8. 40 C.F.R. 261.6(a)(5), replace "State requirements analogous to 40 C.F.R. Part 273." with "N.J.A.C. 7:26A-7";

9. 40 C.F.R. 261.9, replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7" and replace "under 40 C.F.R. part 273:" with "at N.J.A.C. 7:26A-7:";

10. 40 C.F.R. 261.9(a), replace "40 C.F.R. 273.2" with "N.J.A.C. 7:26A-7.1(b)";

11. 40 C.F.R. 261.9(b), replace "40 C.F.R. 273.3;" with "N.J.A.C. 7:26A-7.1(c)";

12. 40 C.F.R. 261.9(c), replace "40 C.F.R. 273.4." with "N.J.A.C. 7:26A-7.1(d).";

13. 40 C.F.R. 261.38(c)(1)(i), after "State RCRA and CAA Directors," remove "in Authorized States or Regional RCRA and CAA Directors in Unauthorized States";

14. 40 C.F.R. 261.38(c)(1)(i)(A), after "The generator must submit a one-time notice to the," remove "Regional or";

15. 40 C.F.R. 261.38(c)(1)(ii)(E), after "Name and mailing address of the," remove "Regional or State Directors" and insert "State Director."

(d) When used in the following Federal citations, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 261.10 and 11.

(e) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 261.3(a)(2)(v), 261.6(a)(3)(i)(A), 261.6(a)(3)(i)(B), 261.22(a)(1) and (2), 261.22(b), 261.24(a), 261.24(b), 261.38 footnotes to Table 1, and 261.38(c)(1)(i)(C)(2).

(f) When used in the following Federal citation, the term "Regional Administrator" shall not be substituted by a state term, but shall retain its meaning: 40 C.F.R. 261.4(f)(1).

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (b).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote the section.

7:26G-5.2 (Reserved)

New Rule, R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Repealed by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Section was "Additional special requirements for hazardous waste generated by conditionally exempt small quantity generators".

7:26G-5.3 (Reserved)

New Rule, R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Repealed by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Section was "Requirements for universal waste".

7:26G-5.4 Swine food

Pursuant to the Solid Waste Management Act, the definition of solid waste shall not include solid animal or vegetable wastes collected by swine producers, licensed by the State Department of Agriculture, who collect, prepare and feed such wastes to swine on their own farms.

SUBCHAPTER 6. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**7:26G-6.1 Incorporation by reference**

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 262, Federal regulations on the standards appli-

cable to generators of hazardous waste, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 262 are not incorporated by reference: Appendix to Part 262—Uniform hazardous waste manifest and instructions for EPA Form 8700-22 only.

(c) The following provisions of 40 C.F.R. Part 262 are incorporated by reference with the specified changes:

1. 40 C.F.R. 262.10(g), after “penalties prescribed in section 3008 of the Act” add “, and N.J.S.A. 13:1E-9 and N.J.A.C. 7:26G-2”;

2. 40 C.F.R. 262.11, delete the language at paragraph “(d)” and replace it with the following: “If the waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste.”;

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

SUBCHAPTER 7. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

7:26G-7.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 263 Federal regulations on the standards applicable to transporters of hazardous waste, as amended and supplemented, except as provided in (b) and (c) below:

(b) The following provisions of 40 C.F.R. Part 263 will not be incorporated: 40 C.F.R. 263.12.

(c) The following provisions of 40 C.F.R. 263 are incorporated by reference with the specific changes:

1. 40 C.F.R. 263.10(c)2, replace "of different DOT shipping descriptions by placing them into a single container" with "and has the shipment of hazardous waste rejected by the designated facility. The transporter shall comply with the requirements at N.J.A.C. 7:26G-6.3(b)-(c) and will not be subject to the provisions at § 262.34."

2. 40 C.F.R. 263.30(a), after "local authorities" add "[including the Department at 609-292-7172 (if this number is inoperable, notify the New Jersey State Police at 609-882-2000)]".

3. 40 C.F.R. 263.10(d), replace "State requirements analogous to 40 C.F.R. Part 273" with "N.J.A.C. 7:26A-7."

(d) When used in the following citations, the term "Administrator" means the Administrator of the Environmental Protection Agency or his designee: 40 C.F.R. 263.11.

(e) When used in the following citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 263.11, 263.20(a), 263.20(c), 263.20(e)(2) and 263.20(f)(2).

(f) When used in EPA acknowledgment of consent, the term "EPA" means the United States Environmental Protection Agency.

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (c), added 3; and added (f).

7:26G-7.2 Registration statement and registration requirements

(a) Registration statement approval, renewal, and revocation requirements are as follows:

1. Prior to operation, a hazardous waste transporter shall obtain an approved registration statement from the Department.

2. The application for an approved registration statement shall be executed on forms provided by the Department, and shall state such information as required below, as well as any additional information that the Department may require from a specific applicant. This information includes the following:

i. Proof of compliance with the minimum financial responsibility requirements covering public liabilities, property damage and environmental restoration set out at 49 C.F.R. Part 387;

ii. Disclosure of any conviction for any criminal offense during the 10 year period prior to application for a license under state or Federal law for acts involving the illegal storage, transportation or disposal of hazardous waste against any owner, officer, or employee of the firm seeking a license;

iii. Vehicle identification numbers and license plate numbers;

iv. For any leased hazardous waste vehicles (hazardous waste cab and transport unit individually if detachable), a copy of the Motor Vehicle Registration card, a copy of the lease which meets the requirements of (a)11 through 13 below; and

v. For those transporters intending to operate a hazardous waste transfer facility pursuant to N.J.A.C. 7:26G-7.4, the address of each such facilities and an indication whether each property, where the transfer facility is to be located, is owned or leased by the transporter. For any leased property, a copy of the written lease.

3. Any person who files an application for an approved registration statement shall also submit 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).

4. Any applicant who claims to be exempted under N.J.A.C. 7:26-16.3(d) from the requirement of a disclosure statement shall submit an affidavit stating the basis for the claim. The applicant claiming the exemption shall also file an alternative information statement on forms supplied by the Department, containing the following information:

i. The names and addresses of all officers, director or partners of any business concern seeking a license and all persons or business concerns holding more than 10 percent of the equity in or more than 10 percent of the liability of the business concern seeking a license;

ii. The names and addresses of all officers, directors, or partners of any business concern disclosed pursuant to (a)4i above and all persons holding more than 10 percent equity share in or more than 10 percent of the debt liability of any business concern disclosed pursuant to (a)4i above;

iii. The name and address of any company in the field of hazardous waste management in which the business concern seeking a license or officers, directors, or partners of the business concern hold an equity interest;

iv. A description of the experience, credentials, and licenses in the field of hazardous waste management possessed by the key employees, officers, directors, or partners of the business concern seeking a license;

v. A listing and explanation of any notices, administrative orders or license revocations issued by any state or Federal authority citing a violation of any administrative rule relating to hazardous waste management against the business concern seeking a license or against any key employee, officer, director, or partner of the business concern;

vi. A listing and explanation of any judgement of liability or conviction under State or Federal statute or local ordinance concerning hazardous waste management against the business concern seeking a license or against any key employee, officer, director, or partner of the business concern; and

vii. Any other information the Department may require that relates to the competency or reliability of the applicant.

5. Every hazardous waste approved registration statement issued by the Department shall indicate on its face an annual renewal/expiration date, which, unless otherwise established by the Department, shall be September 30. The approved registration statement shall expire on the renewal date unless renewed pursuant to this paragraph. Prior to October 1 in each calendar year or such other date as the Department may establish, each registrant shall submit to the Department a registration statement updating the information contained in the previous registration statement. Such information shall be submitted on forms supplied by the Department. Transporters who are also the owner or operator of one or more hazardous waste transfer facilities shall include on the registration statement renewal the addresses of all such facilities and an indication whether each property, where the transfer facility is to be located, is owned or leased by the transporter. For any leased property, a copy of the written lease. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration statement was granted.

6. The failure to submit updated registration statement and all applicable fees (see N.J.A.C. 7:26G-3) on or before October 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 or the failure to comply with a final order of the Department shall be sufficient cause for the Department to revoke the approved registration or to declare it expired. Any registrant who receives a notice of intent to revoke or to declare an approved registration expired, shall have 15 days from receipt of the notice to submit to the Department a request for a hearing pursuant to N.J.A.C. 7:26G-2.3.

7. Except for information regarding the operation of hazardous waste transfer facilities, a registrant shall notify the Department in writing within 30 days of change of information supplied on the current registration statement, or on any leases submitted for registered hazardous waste vehicles (hazardous waste cab and transport unit individually if detachable), or on any documentation of leased operators of equipment submitted pursuant to (a) 13 below. Written notifications regarding transfer facilities shall occur prior to operations and include the following information: the address of each such facilities and an indication whether each property, where the transfer facility is to be located, is owned or leased by the transporter. For any leased property, a copy of the written lease shall be submitted.

8. No person shall be issued a hazardous waste approved registration statement nor shall any hazardous waste approved registration statement be renewed, if the applicant has failed to provide the accurate and complete information required on the application for issuance or the updating hazardous waste transporter registration statement for renewal.

9. No person shall be issued a hazardous waste approved registration statement if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

10. 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 approved registration statement of a hazardous waste transporter for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9:

i. Failure to maintain the financial responsibility requirements as required above;

ii. Violation of any applicable provision of the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), this chapter, any administrative order issued by the Department or any environmental protection statute or implementing regulations of this State;

iii. A pattern of violations of the environmental protection statutes or regulations of this or any other State, or the Federal government; or

iv. Failure to submit updated information for the registration statement renewal or to submit the appropriate fee.

11. A permittee, licensee or exempt transporter who files a lease in connection with the registration statement for a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable) 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:

i. 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;

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

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

iv. 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; and

v. A provision that the lease shall not be assigned to any person.

12. 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 shall exercise exclusive use, possession and control over each piece of hazardous waste equipment which is included in this application for a registration statement while such equipment is used to transport hazardous waste.

4. I further swear (or certify) that my company and I understand that it shall 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 hazardous 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."

13. In addition to the requirements of (a)12 above, when a permittee, licensee, or exempt transporter files a lease in connection with an application for a registration statement for a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable), 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 hazardous waste activities for the permittee, licensee, or exempt transporter. This paragraph is in no way intended to affect whether the operator or operators of hazardous 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.

14. No person shall act as a prime contractor or subcontractor for the transportation of hazardous waste in this State without first obtaining an approved registration statement from the Department. A lease, pursuant to this subchapter, of hazardous waste vehicle operators and equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

15. A person who has not obtained an approved registration statement shall not, through a subcontractor or any other means, engage or contract to engage in the transportation, storage, collection, processing, transfer, treatment, or disposal of hazardous waste in this State through the use, control or possession of any hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable) registered to any other person, or through any other means. The leasing of hazardous waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchap-

ter, shall not be deemed engaging or contracting to engage in said hazardous waste activities.

16. A person is not required to obtain an approved registration from the Department solely because that person is transporting hazardous waste through New Jersey, if roadways or highways in New Jersey constitute a segment of such person's route, the hazardous waste being transported through New Jersey is not discharged from the hazardous waste vehicle, and hazardous waste from the person's hazardous waste vehicle is not collected, treated, processed, transferred, consolidated, commingled, or disposed of in New Jersey. Provided that these requirements are satisfied, the exemption from registration is not affected if the person's hazardous waste vehicle stops in New Jersey for any of the following reasons:

- i. The vehicle suffers a mechanical breakdown which makes repair necessary;
- ii. The operator of the hazardous waste vehicle must stop for a mandatory rest or break; or
- iii. The operator of the hazardous waste vehicle temporarily stores hazardous waste at a hazardous waste transfer facility for 10 days or less in compliance with N.J.A.C. 7:26G-7.4.

(b) Hazardous waste vehicle registration requirements are as follows:

1. Any device used for the transportation of hazardous waste shall be registered with the Department as a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable).

2. A permittee, licensee, or exempt transporter 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 permittee, licensee, or exempt transporter, or unless such use is in accordance with a lease of vehicle operators pursuant to this subchapter.

3. The Department shall not issue a registration certificate and hazardous waste decal to any registrant who fails to submit the updated registration statement, the updated disclosure statement and the applicable fees (see N.J.A.C. 7:26G-3) on or before October 1.

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

5. New Jersey Department of Environmental Protection (NJDEP) hazardous waste transporter registration certificates and decals shall be void if altered. Department representatives shall confiscate altered or stolen hazardous waste transporter registration certificate and decals upon discovery.

6. All hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable) used in the transporting of hazardous waste shall properly and conspicuously display, on both sides of the vehicle, a current New Jersey hazardous waste decal and the New Jersey Department of Environmental Protection (NJDEP) registration number. The NJDEP registration number shall be in letters and numbers at least three inches in height. Current hazardous waste decals must be permanently affixed to each hazardous waste vehicle (the hazardous waste cab and transport unit individually if detachable) prior to use on a public roadway or highway and prior to the hazardous waste vehicle (the hazardous waste cab and transport unit individually if detachable) being placed into service or before receiving waste.

i. A copy of any lease filed in connection with the registration of the hazardous waste (the hazardous waste cab and transport unit individually if detachable) shall be carried within the vehicle at all times and available to the Department upon inspection or request.

ii. Only the current year's decals shall be displayed. For hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable) which are owned by the registrant, 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 NJDEP registration certificate to the Department, and remove and destroy the NJDEP registration number and decals on such hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable). In all situations in which the Department issues decals to a permittee, licensee, or exempt transporter for affixation to the hazardous waste vehicle(s) of a lessor from which the permittee, licensee, or exempt transporter is leasing hazardous waste vehicles, the permittee, licensee, or exempt transporter to which the lessor has leased hazardous 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 hazardous 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 hazardous waste transportation purposes, such vehicles may only be used pursuant to the lease, and may be operated only by operators pursuant to the requirements of (a)12 and 13 above.

(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 hazardous 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 (a)12 and 13 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 and hazardous waste vehicles or solid and hazardous waste operators to permittees, licensees, and exempt transporters.

7. Permittees, licensees and exempt transporters shall, for purposes of hazardous 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 operator 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.

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.

7:26G-7.3 Other requirements

(a) All hazardous waste transporters shall comply with the following United States Department of Transportation (USDOT) regulations, with all the modifications that the New Jersey Department of Transportation has made in incorporating them into N.J.A.C. 16:49-2.1, and that the New Jersey State Police has made in incorporating them into N.J.A.C. 13:60-1.1:

1. The Hazardous Materials Regulations at 49 C.F.R. Parts 171 through 180, as amended and supplemented; and

2. The Motor Carrier Safety Regulations at 49 C.F.R. Parts 390 through 397, as amended and supplemented.

(b) The Department shall exercise fully its authority to enter and inspect vehicles transporting or registered to transport hazardous waste, while in operation on the highways of this State or areas incidental thereto, or at the premise or places of business of the owner or lessor of such vehicles.

(c) If the hazardous waste is rejected by the designated facility or if the transporter is unable to deliver the shipment of hazardous waste to the designated facility and no alternate facility is noted on the manifest, the transporter shall comply with all applicable transporter requirements at N.J.A.C. 7:26G-6.3(a).

7:26G-7.4 Requirements for hazardous waste transfer facilities

(a) A hazardous waste transfer facility shall be operated by a licensed hazardous waste transporter, who owns or leases the property upon which the transfer facility is located. If the property is leased, the lease shall be a written agreement between the property owner and the licensed hazardous waste transporter which discloses the hazardous nature of the operation.

(b) Except during emergencies in transportation, hazardous waste storage, consolidation, or commingling may be conducted only at a hazardous waste transfer facility as described in (a) above or an authorized hazardous waste facility, which is designated on the manifest. Storage, consolidation, or commingling of hazardous waste in transit shall not occur except as authorized under this section, and within the time limits established in this section.

(c) The owner or operator of the hazardous waste transfer facility shall notify the Department in writing prior to conducting activities at the transfer facility. The owner or operator of hazardous waste transfer facility shall submit, as part of the initial transporter license application, the annual hazardous waste transporter license renewal at N.J.A.C. 7:26G-7.2(a)5, or written notification to update transporter license information at N.J.A.C. 7:26G-7.2(a)7, the address of the hazardous waste transfer facility and an indication whether the property where the transfer facility is located is owned or leased by the transporter. If the hazardous waste transfer facility is to be operated pursuant to a lease in accordance with (a) above, a copy of the lease shall be submitted as part of the hazardous waste transporter license application, license renewal, or written notification to update license information.

(d) The owner or operator of the hazardous waste transfer facility shall maintain at the transfer facility a written operating log (or logs, as necessary) documenting the movement of hazardous waste into and out of the hazardous waste facility and any hazardous waste transfers occurring at

the facility and documenting compliance with the conditions set forth at (f) and (g) below. At a minimum, the log(s) shall include the following information:

1. The date each hazardous waste arrives at the transfer facility;
2. The decal number of the waste bearing portion of the vehicle;
3. A description (including the USDOT shipping description) and the quantity of each hazardous waste received on a vehicle when it arrives at the transfer facility;
4. The state manifest document number or manifest document number or associated with each hazardous waste load;
5. Location of each hazardous waste within the facility;
6. A notation of any consolidation or commingling performed;
7. The date each hazardous waste departs from the transfer facility;
8. A description (including the USDOT description) and quantity of hazardous waste on the vehicle when it departs from the transfer facility; and
9. Cross references to specific manifest document numbers involved in the consolidation or commingling of hazardous waste loads.

(e) Each transporter utilizing the hazardous waste transfer facility shall enter the necessary information on the log(s) regarding his hazardous waste shipment.

(f) A hazardous waste transporter, who stores or consolidates closed containers of manifested shipments of hazardous waste at a hazardous waste transfer facility for a period of 10 days or less, is not subject to regulations at N.J.A.C. 7:26G-8 through 12 except as noted herein, provided that the following requirements are met:

1. The transporter consolidating the containers of hazardous waste is a licensed hazardous waste transporter in the State of New Jersey;
2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the hazardous waste manifests;
3. The hazardous waste is held in closed containers which meet the applicable U.S. Department of Transportation packaging regulations specified in 49 C.F.R. Parts 171 through 180, as amended;

4. The hazardous waste containers are in good condition (that is, no severe rusting, apparent defects or deterioration) and are not leaking;

5. The storage or consolidation of the containers of hazardous waste complies with the hazardous materials segregation criteria at 49 C.F.R. 177.848 or 174.81, and with the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265;

6. The containers of hazardous waste remain closed, and no waste or other materials shall be removed from or added to the containers except to commingle hazardous wastes with identical USDOT shipping descriptions in accordance with (g) below or as necessary to respond to an emergency situation; and

7. The newly consolidated waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit by the component of the waste load which has been at the transfer facility the longest.

(g) A hazardous waste transporter who commingles hazardous waste with identical USDOT shipping descriptions (provided the commingling does not constitute treatment) at a transfer facility for a period of 10 days or less is not subject to regulations at N.J.A.C. 7:26G-8 through 12 except as noted herein, provided the following requirements are met:

1. The transporter commingling the waste is a licensed hazardous waste transporter in the State of New Jersey;
2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the manifests;
3. The hazardous waste is commingled between containers which meet the applicable US Department of Transportation packaging regulations specified in 49 C.F.R. 107, 171 through 180, as amended;
4. The hazardous wastes that are commingled are designated on the generators' hazardous waste manifests for receipt by the same designated hazardous waste facility;
5. The hazardous waste transporter amends the generators' manifests to reflect the commingling of hazardous wastes by the transporter, and to describe accurately the containers and quantities of hazardous wastes shipped after the commingling; and
6. The newly commingled waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit by the component waste which has been at the transfer facility the longest.

(h) The commingling of hazardous wastes of different USDOT shipping descriptions is prohibited.

(i) If a shipment of hazardous waste is rejected by a designated facility after a transporter has commingled hazardous wastes, the transporter must comply with requirements set forth at N.J.A.C. 7:26G-6.3(b) and (c) and any additional requirements set forth at N.J.A.C. 7:26G-7.1(c)1.

(j) Repeated and/or multiple violations at a transfer facility may result in termination of eligibility for these transfer activities and require the cessation of such activities. Notwithstanding a hazardous waste transporter's compliance with all requirements of the hazardous waste transfer facility regulations at (c), (d), (e), (f), (g), (h) and (i) above, the Department may terminate eligibility for these transfer activities and require the cessation of such activities any time the Department determines that a particular hazardous waste transporter or hazardous waste transfer facility poses a threat to the environment or that a transporter cannot be relied upon to operate the transfer facility safely and in conformance with all applicable rules and regulations. Owners or operators of such hazardous waste facilities for which the Department has terminated eligibility for one or more activities or who have had to cease all operations, shall have the right to a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 8. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7:26G-8.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 264, Federal regulations on the standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b), (c) and (d) below.

(b) The following provisions of 40 C.F.R. Part 264 are not incorporated by reference:

1. 40 C.F.R. 264.149 Use of State-required mechanisms;
2. 40 C.F.R. 264.150 State assumption of responsibility;
3. 40 C.F.R. 264.301(l) Design and operating requirements, Alabama landfills;
4. 40 C.F.R. 264 Appendix VI Political Jurisdictions in which compliance with § 264.18(a) must be demonstrated;
5. 40 C.F.R. 264.1030(d);
6. 40 C.F.R. 264.1050(g); and

7. 40 C.F.R. 264.1080(e).

(c) The following provisions of 40 C.F.R. Part 264 are incorporated by reference with the specified changes:

1. The term "New Jersey" shall be substituted for "State(s)," "authorized state," "approved state", and the term "New Jersey's hazardous waste program" for "approved program" in those provisions of 40 C.F.R. Part 264 which are incorporated by reference, except at 40 C.F.R. 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);
2. 40 C.F.R. 264.1(g)(9), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";
3. 40 C.F.R. 264.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";
4. 40 C.F.R. 264.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 609-292-7172 and";
5. 40 C.F.R. 264.71(a)(3), after "one copy of the signed manifest" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";
6. 40 C.F.R. 264.71(b)(3), after "one copy of the manifest or shipping paper (if the manifest has not been received)" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";
7. The term "EPA" as used in 40 C.F.R. 264.75 and 264.76 shall not be replaced with "DEP" when referring to EPA forms;
8. 40 C.F.R. 264.113(e)(7)(v), delete "not subject to administrative appeal" and replace with "subject to appeal in accordance with the provisions of Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.";
9. 40 C.F.R. 264.119(a), substitute "October 9, 1981" for "January 12, 1981";
10. Changes to 40 C.F.R. 264.151:
 - i. 40 C.F.R. 264.151(l), after "Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended" add "or any comparable provisions of N.J.S.A. 13:1E-1 et seq. and implementing regulations", in the form agreements contained in these subparagraphs;
 - ii. 40 C.F.R. 264.151(a), 264.151(m)(1) and 264.151(n)(1), substitute "a Department of the State of New Jersey" for "an Agency of the United States Government";
 - iii. 40 C.F.R. § 264.151(l); in paragraph (3) of the form agreement, under the heading "Governing Provisions" delete "governing State agency (if applicable)

[insert citation]" and insert instead, "State of New Jersey, particularly N.J.A.C. 7:26G-8";

iv. Whenever 40 C.F.R. 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the Department and all Regional Administrators of the United States Environmental Protection Agency of Regions which are affected by the owner or operator's financial assurance mechanisms;

11. 40 C.F.R. 264.191(a) substitute "[within 180 days after the effective date of these regulations] by April 19, 1997" for "by January 12, 1988" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

12. 40 C.F.R. 264.191(c). substitute "[the effective date of these regulations] October 21, 1996" for "July 14, 1986" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

13. 40 C.F.R. 264.193. substitute "[180 days after the effective date of these regulations] April 19, 1997" for "January 12, 1987" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

14. 40 C.F.R. 264.276(b)(1)(ii), in the second line of the table, substitute "0.5" for "1.25";

15. 40 C.F.R. 264.570(a), substitute "October 21, 1996" for "December 6, 1990" unless the regulated drip pads accept F032 waste; and

(d) (Reserved)

(e) The requirements of this subchapter do not apply to universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) handling the wastes listed in (e)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(f) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 264.12(a).

(g) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 264.11, Comment at the end of 40 C.F.R. 264.18(b)(1)(ii)(D), Comment and forms at the end of 40 C.F.R. 264.18(b)(2)(iii), 264.151(f) and 264.151(g).

(h) When used in the following Federal citations, the term "RCRA" or Resource Conservation and Recovery Act" shall retain its meaning and not be replaced by a state analog: 40 C.F.R. 264.251(f), and 264.301(f)(1).

(i) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be substituted by a State term, but shall retain its meaning: 40 C.F.R. 264.12(a)(2) and 264.71(d).

Amended by R.1996 d.577, effective December 16, 1996.
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (e).

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b), added 5 through 7; and added (i).

SUBCHAPTER 9. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7:26G-9.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 265, Federal regulations on the interim status standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 265 are not incorporated by reference: 40 C.F.R. 265.149, 265.150, 265.1030(c), 265.1050(f) and 265.1080(e).

(c) The following provisions of 40 C.F.R. Part 265 are incorporated by reference with the specified changes:

1. 40 C.F.R. 265.1(c)(12), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";

2. 40 C.F.R. 265.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";

3. 40 C.F.R. 265.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 609-292-7172 and";

4. 40 C.F.R. 265.90(a), 265.90(d)(1) and 265.93(a), substitute "By December 6, 1982" for "Within one year after the effective date of these regulations";

5. 40 C.F.R. 265.90(d)(2), substitute "December 6, 1982" for "one year after the effective date of these regulations";