

CHAPTER 26H

SOLID WASTE UTILITY REGULATIONS

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

Subchapter 1, General Requirements, was originally adopted as N.J.A.C. 14:3-10, Solid Waste Collection and Solid Waste Disposal, by R.1971 d.109, effective July 8, 1971. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

Subchapter 5, Solid Waste Collection Regulatory Reform, was originally adopted as N.J.A.C. 14:3-11, Solid Waste Collection Regulatory Reform, by R.1993 d.83, effective February 16, 1993. See: 24 N.J.R. 1459(a), 25 N.J.R. 692(a).

Subchapter 1, General Requirements, and Subchapter 5, Solid Waste Collection Regulatory Reform, were recodified from N.J.A.C. 14:3-10 and 14:3-11, effective June 3, 1996, and Subchapter 2, Rules of Practice, Subchapter 3, Transactional Filings, Subchapter 4, Solid Waste Uniform Tariff, Subchapter 6, Uniform Bid Specifications for Municipal Solid Waste Collection Contracts, and Appendix A, Wording of the Uniform Bid Specifications, were adopted as new rules, effective June 3, 1996 by R.1996 d.253. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

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

The Executive Order No. 66(1978) expiration date for Chapter 26H, Solid Waste Utility Regulations, was extended by gubernatorial directive from May 6, 2001 to June 3, 2002. See: 33 N.J.R. 1915(a).

Chapter 26H, Solid Waste Utility Regulations, was readopted as R.2002 d.356, effective October 11, 2002. As part of R.2002 d.356, Subchapter 7, Host Community Benefits, was adopted as new rules. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL REQUIREMENTS

- 7:26H-1.1 Scope
- 7:26H-1.2 Construction and severability
- 7:26H-1.3 Practice where these rules do not govern
- 7:26H-1.4 Definitions
- 7:26H-1.5 Offices and hours
- 7:26H-1.6 Certificate of public convenience and necessity
- 7:26H-1.7 (Reserved)
- 7:26H-1.8 Application for a certificate
- 7:26H-1.9 Issuance of certificate
- 7:26H-1.10 Application form
- 7:26H-1.11 Revocation or suspension of certificate
- 7:26H-1.12 Rates
- 7:26H-1.13 Tariffs for collection and disposal utilities
- 7:26H-1.14 Service requirements; failure to render service
- 7:26H-1.15 Agreements to limit bidding or territorial withdrawal
- 7:26H-1.16 Sale or transfer of assets; securities; debt issuances
- 7:26H-1.17 Approval of consolidations, mergers or dissolutions
- 7:26H-1.18 Approval of management agreements
- 7:26H-1.19 Filing of annual reports
- 7:26H-1.20 Records
- 7:26H-1.21 Evidence of insurance
- 7:26H-1.22 Proceedings
- 7:26H-1.23 Certificates for solid waste disposal and collection
- 7:26H-1.24 Property, equipment and facilities
- 7:26H-1.25 (Reserved)

SUBCHAPTER 2. RULES OF PRACTICE

- 7:26H-2.1 Scope
- 7:26H-2.2 Construction
- 7:26H-2.3 Pleadings
- 7:26H-2.4 Petitions
- 7:26H-2.5 Procedures for Department review
- 7:26H-2.6 Answers and replies
- 7:26H-2.7 Motions
- 7:26H-2.8 Compliance with orders and decisions

SUBCHAPTER 3. TRANSACTIONAL FILINGS

- 7:26H-3.1 Scope and applicability
- 7:26H-3.2 Petitions for the approval of the sale or lease of property
- 7:26H-3.3 Petitions for authority to transfer capital stock
- 7:26H-3.4 Petitions for approval of a merger or consolidation
- 7:26H-3.5 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages
- 7:26H-3.6 Petitions for approval of management agreements
- 7:26H-3.7 Petitions for authority to change depreciation rates
- 7:26H-3.8 Petitions for authority to exercise power of eminent domain
- 7:26H-3.9 Petitions for permission to keep books and records outside the State of New Jersey
- 7:26H-3.10 Tariff filings which do not propose increases in charges to customers above the peak rate; solid waste disposal utilities
- 7:26H-3.11 Tariff filings or petitions which propose increases in charges to customers above the peak rate; solid waste disposal utilities

SUBCHAPTER 4. SOLID WASTE TARIFFS

- 7:26H-4.1 Scope
- 7:26H-4.2 General
- 7:26H-4.3 Collector and disposal facility tariffs
- 7:26H-4.4 Solid waste collection tariff terms and conditions
- 7:26H-4.5 through 7:26H-4.6 (Reserved)
- 7:26H-4.7 Solid waste disposal tariff provisions
- 7:26H-4.8 through 7:26H-4.11 (Reserved)

SUBCHAPTER 5. SOLID WASTE COLLECTION
EFFECTIVE COMPETITION MONITORING

- 7:26H-5.1 Purpose
- 7:26H-5.2 Authority
- 7:26H-5.3 Scope
- 7:26H-5.4 Rates
- 7:26H-5.5 Definitions
- 7:26H-5.6 Annual fee
- 7:26H-5.7 (Reserved)
- 7:26H-5.8 Refunds
- 7:26H-5.9 Monitoring effective competition; records
- 7:26H-5.10 Monitoring effective competition; criteria for evaluation
- 7:26H-5.11 Procedures for Department review; supervision of solid waste collection industry
- 7:26H-5.12 Customer bill of rights
- 7:26H-5.13 (Reserved)
- 7:26H-5.14 Refunds
- 7:26H-5.15 Sanctions for non-compliance
- 7:26H-5.16 Procedures for assessment and payment of penalties
- 7:26H-5.17 Administrative hearings; requests
- 7:26H-5.18 Penalties for violation of rules adopted pursuant to the Act
- 7:26H-5.19 Matrix penalty determination
- 7:26H-5.20 Penalty for submitting inaccurate or false information
- 7:26H-5.21 Penalty for failure to allow lawful entry and inspection
- 7:26H-5.22 Vehicles used to transport food not to be used to transport solid waste; exceptions and penalties
- 7:26H-5.23 Grace period applicability; procedures
- 7:26H-5.24 Severability

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

- 7:26H-6.1 Purpose
- 7:26H-6.2 Scope and applicability
- 7:26H-6.3 Definitions
- 7:26H-6.4 General instructions
- 7:26H-6.5 Bidding requirements
- 7:26H-6.6 Conditions and limitations
- 7:26H-6.7 Award and execution of contracts
- 7:26H-6.8 Lowest responsible bidder
- 7:26H-6.9 Performance bonds
- 7:26H-6.10 Vehicle dedication affidavit
- 7:26H-6.11 (Reserved)
- 7:26H-6.12 Work specifications
- 7:26H-6.13 Conditions for curbside and rear yard collection
- 7:26H-6.14 Authorized disposal facility
- 7:26H-6.15 Additional terms and conditions
- 7:26H-6.16 Invoice and payment procedures
- 7:26H-6.17 Insurance requirements
- 7:26H-6.18 Recycling

APPENDIX A WORDING OF THE UNIFORM BID
SPECIFICATIONS

SUBCHAPTER 7. HOST COMMUNITY BENEFITS

- 7:26H-7.1 Purpose
- 7:26H-7.2 Procedural regulations

SUBCHAPTER 1. GENERAL REQUIREMENTS

7:26H-1.1 Scope

Every utility engaged in solid waste collection and/or solid waste disposal shall be subject to the regulations as set forth herein, in addition to the Board's Rules of Practice and

Administrative Orders heretofore promulgated as applicable to all utilities.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Board of Public Utilities has statutory authority to penalize solid waste licensees who commit statute, regulation or order violations; regulations promulgated under statutory authority. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

7:26H-1.2 Construction and severability

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

(b) If any subchapter, section, subsection, provision, clause or portion of this chapter or the application thereof to any person, is adjudged unconstitutional or invalid in any judicial or administrative proceeding, the remainder of this chapter shall not be affected thereby.

7:26H-1.3 Practice where these rules do not govern

The Commissioner may rescind, amend or expand these rules from time to time, and such rules shall be promulgated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In any matter concerning solid waste management that arises not governed by these rules, the Commissioner or Director shall exercise his or her discretion within the authority of N.J.S.A. 48:13-1 et seq. and 48:13A-7.1 et seq.

7:26H-1.4 Definitions

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

"Act" means the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

"Bulky waste" means any type 13 waste, as defined at N.J.A.C. 7:26-2.13(g), including large items of waste material, such as, appliances, furniture, tires, whole trees, branches, tree trunks and stumps generated by residential, commercial, institutional or industrial sources. Also included are waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, improvements and other structures. Specifically excluded for the purpose of Department regulation are discarded automobiles, trucks and trailers and large vehicle parts.

"Commercial solid waste" means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in wholesale, retail or service establishments, including, but not limited to, restaurants, stores, markets, theaters, hotels and warehouses.