NEW JERSEY STATE LIBRARY

CHAPTER 26

DIVISION OF WASTE MANAGEMENT

Authority

N.J.S.A. 13:E-1 et seq., N.J.S.A. 131B-3, N.J.S.A. 13:10-9 and N.J.S.A. 48:13A-1 et seq.

Source and Effective Date

R.1990 d.578, effective October 25, 1990.
See: 22 N.J.R. 2882(a), 22 N.J.R. 3514(a).

Executive Order No. 66(1978) Expiration Date

Chapter 26, Division of Waste Management, expires on October 25, 1996.

Chapter Historical Note

Originally, this chapter was entitled Bureau of Solid Waste Management and was filed and effective prior to September 1, 1969, pursuant to authority delegated at N.J.S.A. 26:2C-1, et seq. and N.J.S.A. 26:2D-1 et seq. On June 28, 1974 revisions were filed pursuant to N.J.S.A. 13:1E-1 et seq. as R.1974 d.172, effective July 1, 1974. See: 5 N.J.R. 369(b), 6 N.J.R. 305(c). Subsequently on July 2, 1984 the chapter was extensively amended by R.1984 d.279 to implement a new licensing program required under N.J.S.A. 13:1E-126 et seq. (the Licensing Act). At that time, the chapter was redesignated, Division of Waste Management, and Subchapter 16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review was adopted as New Rule. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a). This chapter has been substantially amended effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). The rules affected were—Amendments to 7:26-12.11 and 12.12; Repeals to 7:26-2.1—2.6(a)-(d), 2.7, 2.8, 2.11, 2.12, 2.14 and subchapter 5; New Rules to 7:26-2.1—2.14. Subchapters 2A and 2B; and recodification of 7:26-2.6(e) to 7:26-2A.8(*l*), 7:26-2.9 to 7:26-2A.9 and 7:26-2.10 to 7:26-2.12. Pursuant to Executive Order No. 66(1978), Chapter 26 was readopted as R.1990 d.578. See: Source and Effective Date.

By order of Governor Christine Whitman, the "sunset" provision of Executive Order No. 66(1978) was waived, and the expiration date for Chapter 26 was extended from October 25, 1995 to October 25, 1996. See: 27 N.J.R. 4700(a).

See section and subchapter annotations for additional rulemaking.

Research Note

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

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26–1.1 Scope of rules

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

1. The purchase, sale, collection, storage, transport or controlled processing of source separated or commingled source separated recyclable, recycled or secondary non-hazardous materials for reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials recovery facilities designed or operated for the purpose of separating mixed solid waste into useful secondary materials (including fuel and useable energy), or thermal destruction facilities;

2. Container-pickup facilities as herein defined;

3. Garbage to be fed to swine in the State of New Jersey;

4. Recycling centers where individuals or organizations may deposit separated materials such as newsprint, bottles, cans, and so forth, prior to transport to the secondary materials industry;

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

6. Any discharge of a mixture of domestic sewage and other waste that are discharged into a sewer system to a domestic treatment works, as defined in N.J.A.C. 7:14A–1.9, which is authorized in accordance with N.J.A.C. 7:14A–1 and local ordinances; "domestic sewage" means untreated sanitary waste that passes through a sewer system.

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

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

(c) The exemptions set out at (a) above are not applicable to activities associated with hazardous waste.

As amended, R.1981 d.84, effective March 6, 1981.
See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).
(b) added.
As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
(c) added.
As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(a)6 added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Substantially amended.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substantially amended (a).
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Added "hazardous" to the description of waste facilities, replaced "collection and haulage" with "solid waste transportation"; specific listing of the fee schedule elements deleted and replaced with generalized statement.

Case Notes

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

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

7:26–1.2 Construction and severability

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

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

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
Formerly the Department and the Bureau of Solid Waste Management.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Severability clarified that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

7:26–1.3 Practice where rules do not govern

The Commissioner may rescind, amend or expand these rules from time to time, and such rules shall be filed with the Secretary of State as provided by law. In any matter concerning solid waste management that arises not governed by these rules, the Commissioner or Director shall exercise his discretion within the authority of N.J.S.A. 13:1E–1 et seq.

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
Bureau Chief deleted.

7:26–1.4 Definitions

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

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

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

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

"Administration" means the Solid Waste Administration within the Department of Environmental Protection.

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

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

"Asbestos" means actinolite, amosite, anthophyllite, chrysolite, crocidolite, and tremolite.

"Asbestos-containing waste" means any solid waste which contains friable asbestos material or any variety of asbestos which is produced by extracting asbestos from asbestos ore and is generated by a source subject to 40 CFR 61.144, 61.145, 61.148, 61.149, 61.150, and 61.153, as they may be subsequently amended or recodified.

"Authorized facility" means a hazardous waste facility which:

1. Has received a permit to operate from the United States EPA in accordance with the requirements of 40 CFR Part 270 and 124; or

2. Has received a permit to operate from the Department in accordance with the requirements of N.J.A.C. 7:26–1; or

3. Is in full compliance, as determined by the Department, with all requirements set forth in N.J.A.C. 7:26–12.3 governing the operation of existing hazardous waste facilities until final disposition of the permit application is made; or

4. Has received a permit or other permission to operate from a state authorized in accordance with 40 CFR 271; or

5. Is exempt from the New Jersey hazardous waste facility operating and permitting requirements by operation of N.J.A.C. 7:26–12.1(b)7; or

6. Is an industrial waste management facility receiving hazardous waste pursuant to N.J.A.C. 7:14A–4.2(a)5.

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

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

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

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

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

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

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

"Bureau" means the Bureau of Solid Waste Management in the Division.

"Bureau Chief" means the Chief of the Bureau of Solid Waste Management or any person designated to act on the Chief's behalf.

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

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

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

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

"Clay" means a fine grain soil containing sufficient plastic fines (N. 200 sieve), on the order of 20 percent or greater such that the soil acts as a clay and will achieve the required degree of impermeability. The soil should be classified as a CL, or CH (Unified Soil Classification System), with a liquid limit between 30–60, placed above the A-line on the plasticity chart and a minimum plastic index of 15. The soil should have a cation exchange capacity (CEC) greater than 15 meq/100 grams and be in the neutral pH range.

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products.

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

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

"Commercial chemical product" means a material listed in N.J.A.C. 7:26–8.15 which is manufactured or formulated for commercial or manufacturing use, including its off-specification species, container residues, and spill residues. It does not include materials such as process wastes that contain the substances listed in N.J.A.C. 7:26–8.15.

"Commingled recyclable material" means nonputrescible, source separated, recyclable metal, glass, paper and plastic materials which would otherwise become nonhazardous solid waste which are commingled or mixed at the source of waste generation in order to improve the convenience of storage, handling, and transport to a recycling center.

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

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

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

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

"Constituent" or "hazardous waste constituent" means a constituent listed at N.J.A.C. 7:26–8.16.

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

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

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

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

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

"Controlled processing" means the processing of nonhazardous material in a manner which minimizes the potential discharge of any constituents of the material into the environment.

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

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

"Cover material" means soil, earth or other insoluble and nondegradable material approved by the Department which is used to cover compacted solid waste in a sanitary landfill for the purpose of rodent and vector control, to minimize moisture entering the fill, to provide a fire break, and in the case of final cover, to grow vegetation for erosion control. The depth or thickness of cover material to be measured after compaction with at least one pass of a bulldozer or other suitable equipment having a gross weight in excess of 10,000 pounds.

"Daily cover" means cover material that is a minimum of six inches in depth.

"Degree of uncertainty of strength measurement-high" means the soil conditions are complex and available strength data does not provide a consistent, complete or logical picture of the strength characteristics.

"Degree of uncertainty of strength measurement-low" means the soil conditions are uniform and high quality strength test data provides a consistent, complete and logical picture of the strength characteristics.

"Department" means the New Jersey Department of Environmental Protection.

"Designated facility" means a hazardous waste treatment, storage or disposal facility which has received a permit from NJDEP, EPA or a state authorized by EPA (or a facility with existing facility status), or a waste reuse facility under N.J.A.C. 7:26–9.1(c)13, or a recycling facility which is allowed to accept hazardous waste under manifest in accordance with the regulations of the state it is located in, and which has been designated on the manifest by the generator pursuant to N.J.A.C. 7:26–7.4(a)4v.

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

"Director" means the Director of the Division of Waste Management or any person designated to act on the Director's behalf.

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

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

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

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

"Division" means the Division of Waste Management in the Department.

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

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

"Empty tank" means a tank that meets the following criteria:

1. All wastes have been removed that can be removed by direct pumping or drainage; and

2. The quantity of residue remaining in the tank after waste removal is no more than one percent of the volume of the tank.

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

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

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

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

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

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

"EPA" or "USEPA" means the United States Environmental Protection Agency.

"EPA Acknowledgement of Consent" means the cable communication sent to the United States Environmental Protection Agency from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Existing hazardous waste facility" or "Existing facility" means:

1. A hazardous waste facility which was in operation, or for which construction had commenced, on or before November 19, 1980. Construction had commenced if the owner or operator had obtained all necessary Federal permits as well as any permit required by the Division's predecessor, the Solid Waste Administration, and either:

   i. A continuous physical, on-site construction program had begun, or

   ii. The owner or operator had entered into contractual obligations—which could not be cancelled or modified without substantial loss—for the construction of the facility to be completed within a reasonable time; or

2. A facility which becomes subject to regulation as a hazardous waste facility and is required to obtain a hazardous waste facility permit pursuant to N.J.A.C. 7:26–12 solely because of a State statutory or rule amendment effective after the facility initially commenced operation and which has timely filed for existing facility status in accordance with N.J.A.C. 7:26–12.3.

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

"Expansion" means the process of increasing the areal dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

"Final closure" means the closure of all hazardous waste management units at a hazardous waste facility in accordance with all applicable closure requirements so that hazardous waste management activities subject to regulation under N.J.A.C. 7:26–10 and 7:26–11 are no longer conducted at the facility.

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

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

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

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

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

"Friable asbestos material" means any material that contains more than one percent asbestos by weight and that can be crumbled, pulverized or reduced to powder, when dry, by hand pressure.

"Gas cylinder facility" means a facility that meets all of the following criteria:

1. The only hazardous waste it disposes of is hazardous waste residue from gas cylinders; and

2. Is a gas supplier and only accepts gas cylinders which it owns, or which are under its equivalent control, back from its own customers; and

3. Is not a commercial disposal facility.

"Generation" means the act or process of producing solid waste.

"Generator" means any person, by site, whose act or process produces solid waste as defined at N.J.A.C. 7:26–1.6, or whose act first causes solid waste to become subject to regulation.

"Geomembrane" means a prefabricated continuous sheet of flexible polymetric material including synthetic membranes, polymetric membranes, flexible membrane liners and plastic liners.

"Ground water" means that water below ground, the static pressure of which is equal to or greater than prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to

human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26–8.

"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 facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more secure landfills, surface impoundments, resource recovery facility, processing operation, incinerator, transfer station, waste treatment facility or storage facility).

"Hazardous waste facility operator" means any person who operates a hazardous waste facility.

"Hazardous waste incinerator" means any enclosed device burning hazardous waste using controlled flame combustion that neither meets the criteria for classification as an industrial boiler nor is defined as an industrial furnace. It also includes boilers and industrial furnaces which do not conform with the criteria for these devices under N.J.A.C. 7:26–9.1(c)9.

"Hazardous waste landfill" means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

"Hazardous waste management unit" means an area of land on or in which hazardous waste is placed or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes the containers and the land or pad upon which they are placed.

"Hazardous waste transporter" means any person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

"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, trailer roll-offs, 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.

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

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

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

"Incompatible waste" means a solid waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

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

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

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

1. The design and use of the device primarily to accomplish recovery of material products;

2. The use of the device to burn or reduce raw materials to make a material product;

3. The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

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

5. Other factors as appropriate.

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

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

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

"Leaf composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves exclusively and shall also include leaf mulching operations on land deemed actively devoted to agricultural or horticultural use as described in N.J.S.A. 54:4–23.5.

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

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

"Manifest" means the hazardous waste manifest form approved for use by the Department.

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

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

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

"New hazardous waste facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. (See also "existing hazardous waste facility.")

"New hazardous waste incinerator" means a hazardous waste incinerator which began operation, or for which construction commenced, after January 1, 1982. Construction commenced if the owner or operator has obtained all necessary Federal permits as well as any permit required by the Department, the Division or its predecessor, the Solid Waste Administration, and either:

1. A continuous physical, on-site construction program has begun; or

2. The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for the construction of the facility to be completed within a reasonable time.

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

"NJPDES" means the New Jersey Pollutant Discharge Elimination System.

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

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

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion;

3. Control of emission of the gaseous combustion products.

"Pathological waste": See "Infectious waste."

"Partial closure" means the closure of a hazardous waste management unit or units in accordance with the applicable closure requirements of N.J.A.C. 7:26–9.1 through 9.13, 7:26–10, and 7:26–11 at a hazardous waste facility that contains other active hazardous waste management units. For example, partial closure of a hazardous waste facility may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, or other hazardous waste management unit, while other units of the same hazardous waste facility continue to operate.

"PCB hazardous waste" means any hazardous waste as defined at N.J.A.C. 7:26–8.20(b), numbers X750 to X754 inclusive, being any solid waste with concentrations of PCBs of 50 parts per million (ppm) or greater by dry weight.

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

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

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

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

"Polychlorinated biphenyls" or "PCBs" means any chemical substance or combination of substances that is limited to the biphenyl molecule that has been chlorinated to varying degrees. This includes weathered PCBs. The presence and concentration of PCBs shall be determined by Method 8080 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846.

"Precious metals" means gold, silver, platinum, paladium, irridium, osmium, rhodium, ruthenium, or a combination consisting of two or more of these eight metals.

"Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with N.J.A.C. 7:26–7.4(a) which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

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

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

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

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

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

"Recycling" means those processes constituting "use and reuse" and "reclamation" (as applicable to N.J.A.C. 7:26–7 through 12).

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

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

"Regional" means the area encompassing three miles from the perimeter of the solid waste facility.

"Registration": See "Approved registration."

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

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

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

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

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

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

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

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

1. "Class I sanitary landfill" means a solid waste facility which may accept all types of nonhazardous solid waste including ID 10, 13, 23, 25, 27, 72;

2. "Class II sanitary landfill" means a solid waste facility which may accept only ID type 27 or a specific category of ID type 27 of nonhazardous solid waste; and

3. "Class III sanitary landfill" means a solid waste facility which may accept only inert nonputrescible nonhazardous solid waste, ID 13 or 23.

"Scavenging" means the uncontrolled removal of solid waste material.

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

"Scrap metal shredding facility" means an industrial facility which:

1. Receives and stores motor vehicles, appliances, other source separated, non-putrescible ferrous and nonferrous metals;

2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and

3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or reuse.

"Segregation" means the systematic division of solid waste into components.

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

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

"Set back" means those areas between the actual disposal area and the property line including the buffer zone. The area between the actual disposal area and the buffer zone can be utilized for construction of environmental control systems such as run-off diversion ditches, monitoring wells or scales.

"Sewage sludge" means the solid residue consisting of sewage solids combined with water and dissolved materials in varying amount.

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

"Small scale solid waste facility" means a facility which is limited by its SWF permit in capacity to less than 100 tons per day in a six day per week operation.

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

"Solid waste" see N.J.A.C. 7:26–1.6.

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

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

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center.

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

"Solid waste management" means the purposeful, systematic control of the generation, storage, collection, process-

ing, transfer, transportation, separation, recycling, recovery and disposal of solid wastes.

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

"Solid waste trailer" means any non-powered device that normally has a permanently attached receptacle or area for carrying a solid waste payload. A solid waste trailer is usually employed in conjunction with a solid waste cab and includes, but is not limited to, flat bed trailers, box trailers, vans, open top trailers, compactor trailers, dump trailers, tank trailers, vacuum trailers, roll-off trailers, rail cars, and barges.

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

"Source separated" means the process of separating recyclable materials from the solid waste stream at the point of waste generation.

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

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

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"Subgrade" means the foundation of supporting soil layer beneath a constructed liner other than a recompacted in situ clay liner.

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

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

"Surface water" means a body of water whose top surface is exposed to the atmosphere, including a flowing body such as a river, as well as standing body; such as a pond or lake, whose waters may reach any ground waters or classified surface waters of this State, and shall include all waters of this State classified by the Department as FW–1, FW–2, FW–3, TW–1, TW–2, TW–3, CW–1 or CW–2.

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

"Thermal destruction facility" means a nonhazardous solid chemical waste facility which utilizes a thermal device to either burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere. Energy recovery systems may be utilized in conjunction with the thermal device.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

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

"Tolling agreement" or "agreements" means a contractual arrangement between a generator and a recycling or reclamation facility whereby the generator, whether or not ownership of the hazardous waste is retained by the generator, sends the generator's hazardous waste to a recycling or reclamation facility and receives back the recycled or reclaimed portion of the generator's waste steam. Tolling agreements may be conducted by, but not be limited to, the following methods:

1. A recycling or reclamation facility processes a generator's hazardous waste separately without commingling with the waste streams of other generators, known as batch toll processing; or

2. A recycling or reclamation facility processes a generator's hazardous waste by commingling the generator's hazardous waste with the waste streams of other generators and returning to the generator an agreed upon quantity and quality of recycled or reclaimed material, known as continuous toll processing.

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the discharge of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer station" means a facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle for transportation to a solid waste facility.

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

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

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

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

1. Neutralize or otherwise change the pH of such material;

2. Recycle energy or material resources from the material;

3. Render such material non-hazardous, or less hazardous;

4. Render the material safer to transport, store, or dispose of; or

5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

"Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;

2. What pretreatment (if any) is required;

3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characterization and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of N.J.A.C. 7:26–8.2(a)22 and 23 exclusions are liner compatibility, corrosion, other material compatibility studies, and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste and does not involve the placement of hazardous waste on land or open burning of hazardous waste.

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

"Use or reuse" means the procedure whereby a residual is:

1. Employed as an ingredient in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

2. Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

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

"Vegetative waste composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves, either exclusively or in combination with other type ID 23 wastes, as described in N.J.A.C. 7:26–2.13.

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

"Waste oil" means a petroleum based or synthetic oil which, through use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

"Waste reuse facility" means a facility which receives hazardous waste for use or reuse in a manufacturing process, complies with the requirements of N.J.A.C. 7:26–12.1(b)11, has received a waste reuse facility identification number from the Department and which meets the standards and conditions set forth in N.J.A.C. 7:26–9.1(c)13. The following activities are not considered hazardous waste use or reuse for the purposes of these regulations:

1. Applying hazardous waste or products derived from hazardous waste directly to the land;

2. Burning hazardous waste or fuels produced from hazardous waste for energy recovery;

3. Storage of hazardous waste for longer than 90 days;

4. The reuse of any hazardous waste, if the waste was subjected to treatment or processing prior to reuse;

5. Any method, technique or process that allows for any unauthorized release, discharge, or escape of the material reused or to be reused or its by-products into the air, water, or land of the State;

6. Any hazardous waste use or reuse process that is located at commercial hazardous waste treatment, storage, or disposal facility; or

7. The use or reuse of wastes with the following hazardous waste numbers: F020, F021, F022, F023, F026, F028.

"Waste reuse facility identification number" means the identification number issued by the Department to a waste reuse facility. The receipt of the waste reuse identification number allows the operator of the waste reuse facility to accept certain specified types and volumes of hazardous waste(s) via manifest or use or reuse. Identification number shall be issued for a specific site and once issued are not transferable.

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

As amended, R.1978 d.72, effective February 27, 1978.
See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).
As amended, R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
Substantially amended.
As amended, R.1981 d.370, effective October 8, 1981.
See: 12 N.J.R. 5111(a), 13 N.J.R. 706(b).
Substantially amended.
As amended, R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
"Authorized facility" and "Incinerator" amended; "Hazardous waste incinerator" and "New hazardous waste incinerator" defined.
As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
"Container", "Disposal", "Generator", "Hazardous waste", "Hazardous waste landfill", "Leachate", "Opening burning", and "Personnel", amended.
As amended, R.1983 d.25, effective February 7, 1983.
See: 15 N.J.R. 146(a), 15 N.J.R. 333(a).
"Authorized facility": last sentence added.
As amended, R.1983 d.192, effective June 6, 1983.
See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).
"Sanitary landfill" revised.
As amended, R.1983 d.350, effective September 6, 1983.
See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).
"Authorized facility" revised; "Gas cylinder facility" added.
As amended, R.1983 d.570, effective December 5, 1983.
See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).
"Chemical waste" deleted; "Infectious waste" revised.
As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
"Permit" and "Publicly-owned treatment works" added.
As amended, R.1983 d.623, effective January 17, 1984.
See: 14 N.J.R. 1435(a), 16 N.J.R. 132(a).
"Recycling" and "reclamation" defined; "reclamation" added "Recycling facility".
As amended, R.1984 d.198, effective May 21, 1984.
See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).
"Waste pile" added to "Hazardous waste landfill".
As amended, R.1984 d.279 effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
Revised to reflect Division of Waste Management jurisdiction.
Amended by R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).
Added definition "Friable asbestos material"; deleted "Non-friable asbestos-containing waste".
Amended by R.1985, d.620, effective June 17, 1985.
See: 17 N.J.R. 1501(a), 17 N.J.R. 2885(a).
Added definition "empty tank."
Amended by R.1986 d.160, effective May 5, 1986.
See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).
Added definition "tolling agreement".
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
Added definitions "Use or reuse", "waste reuse facility" and "waste reuse facility identification number".
Amended by R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Substantially amended.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
The text deleted from "waste oil" definition was "after sale to a customer".
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Substantially amended.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Changed CFR parts in definition "Authorized facility" from 122 to 270 and 123 to 271.
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988.)
See: 20 N.J.R. 2817(a).
Amended definition "leaf composting facility" by deleting text "or in combination . . ." and adding "and shall also . . ."; added "vegetative waste composting facility".
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substantially amended.
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted without change.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Added definitions "active life", "final closure", "hazardous waste management unit" and "partial closure".
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Deleted definitions for "collection-hauler" and "collection-vehicle"; amended definitions "collection" by adding "or collecting", "transfer station" by referring to solid waste vehicle and "working face" by changing land disposal to sanitary landfill site; and added new definitions for "solid waste cab", "solid waste container", "solid waste single-unit vehicle", "solid waste trailer", "solid waste vehicle", "transportation" or "transporting" and "transporter".
Amended by R.1990 d.228, effective May 7, 1990.
See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).
Added "Treatability study".
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added "PCB hazardous waste" and "Polychlorinated biphenyls".
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Definition of hazardous waste hauler changed to hazardous waste transporter, definitions added for consignee, EPA, EPA acknowledgement of consent, primary exporter, receiving country and transit country.
Amended by R.1992 d.100, effective March 2, 1992.

See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Corrected formula in "impermeable liner".
Amended by R.1993 d.27, effective January 4, 1993.
See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).
Defined "scrap metal shredding facility".
Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, expires March 26, 1996).
See: 28 N.J.R. 1305(a).

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

7:26–1.5 (Reserved)

As amended, R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).
"Repealed or regulations" not readopted.
Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).
Revised "Existing hazardous waste facility".

Case Notes

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

7:26–1.6 Definition of solid waste

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

1. 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; or

2. Recyclable materials that are excluded from regulation pursuant to N.J.A.C. 7:26–1.1(a)1; or

3. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

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

1. Is discarded or intended to be discarded; or

2. Is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of, being discarded;

3. Is burned for energy recovery;

4. Is applied to the land or placed on the land or contained in a product that is applied to or placed on the land in a manner constituting disposal; or

5. Is recycled.

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

(d) Any material recycled or reclaimed by a commercial recycling or reclamation facility pursuant to any tolling agreement or agreements defined pursuant to N.J.A.C. 7:26–1.4 shall be considered a solid waste for the purposes of this chapter.

R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
Amended by R.1986 d.160, effective May 5, 1986.
See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Substantially amended.

Case Notes

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

7:26–1.7 Exemption from SWF permitting

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

(b) The owner or operator of any facility or operation of a class exempted pursuant to N.J.A.C. 7:26–1.7 shall comply with all conditions set forth in its certificate of authority to operate. Noncompliance with a certificate of authority to operate shall subject the holder to penalty pursuant to N.J.S.A. 13:1E–9 and/or suspension or revocation of authority to operate.

1. The owner or operator of a facility for which authority to operate has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., subsequent to the revocation or suspension. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402.

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

(c) General criteria for all exemptions:

1. Any exemption granted to a class of facilities or operations pursuant to N.J.A.C. 7:26–1.7 shall ensure that the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., is satisfied; and

2. No exemption shall be granted to permit an operation which will pose a threat to public health or the environment.

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

1. A temporary certificate of authority to operate which shall be for a fixed period of time, not to exceed one year, may be granted to a sanitary landfill facility which, in the opinion of the Commissioner, meets the following criteria for exemption:

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

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

iii. All preparatory work which must be completed in order to permit safe and environmentally sound operation, can be accomplished prior to the commencement of operations at the site;

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

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

(e) Specific criteria for exempting on-site disposal of construction debris and vegetative waste removed in preparation for new construction are set forth in (e)1 below. Debris and waste resulting from rehabilitative work, partial or minor demolition, and agricultural clearing may be exempted subject to approval by the division as set forth in (e)2 below.

1. The contractor/owner disposing of on-site generated new construction waste, shall be exempt from the registration requirements at N.J.A.C. 7:26–2.2. in accordance with the following:

i. The contractor/owner shall submit to the division for approval prior to disposal:

(1) An engineering design identifying the location(s) for disposal, size and depth of the fill area, amount and type of waste for disposal;

(2) An approval letter from the local Health Department and evidence of other applicable county and municipal government approvals;

(3) Evidence of an approved Soil Erosion and Sediment Control Site Plan, where required, which shall include the location and depth of the fill areas required to be stabilized;

(4) Evidence that the information provided at (e)1i(1) above has been filed with the appropriate municipal and county recording offices;

(5) The schedule for disposal and any anticipated storage; and

(6) Evidence that the applicable district solid waste management plan has been modified to provide for this exemption from registration and that the appropriate county or local health agency has assumed responsibility for enforcing the on-site disposal program pursuant to an intergovernmental agreement with the Department.

ii. The construction waste intended for disposal by the contractor/owner must be only that which is generated on-site and shall be no more than 1000 cubic yards. No other wastes shall be transported to the construction site for on-site disposal.

iii. The construction waste for disposal shall be limited to the categories of solids listed below except as provided at (e)1iv below:

Category I	Category II
stumps and tree parts	rock/gravel
scrap wood	glass
cardboard	masonry material (e.g., brick, cement, and concrete)
paper waste	
non-asbestos insulation	
asphalt	
plaster and wall board	

iv. The department, at its discretion, may permit on-site disposal of additional inert construction debris or vegetative solids other than those listed in (e)1iii above as identified in the engineering design submitted pursuant to (e)i(1) above.

v. The on-site generated construction waste for disposal listed in Category I above shall be placed so as to remain a minimum of three feet above the seasonal high groundwater table. The on-site generated construction waste for disposal listed in Category II above is exempted from the minimum restriction to seasonal high groundwater table.

vi. There shall be no disposal of any kind in areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA). Pursuant to authority of the State Flood Hazard Area Control Act, N.J.S.A. 58:16A–50 et seq., there shall be no disposal of any kind within the encroachment lines of an undelineated stream or within the floodway of a delineated stream. Prior to commencing disposal operations in the 100–year floodplain outside the encroachment lines of an undelineated stream or within the flood fringe area of a delineated stream, a stream encroachment permit shall be obtained.

vii. All fill areas for the disposal of on-site generated construction waste shall be a minimum of 25 feet from any foundation, utility line, or roadway and a minimum of 10 feet from any septic system.

viii. As the on-site generated construction waste is placed in a trench for disposal, it shall be properly compacted and layers of soil placed on and around the waste to minimize voids.

ix. Upon closure of a trench utilized for the disposal of on-site generated construction waste, the exposed top surface of the waste shall be covered to grade with at least two feet of clean soil. The surface of the filled area must be seeded or otherwise stabilized in accordance with the "Standards for Soil Erosion and Sediment Controls", adopted at N.J.A.C. 2:90–1 pursuant to N.J.S.A. 4:24–39 et seq., within one working day.

x. The contractor/owner shall store all on-site generated construction waste prior to disposal in an area with proper drainage and in a manner that will minimize the scattering of debris. No such waste shall be stored in an area considered a floodway, stream encroachment area, coastal wetlands, or freshwater wetlands pursuant to applicable State or Federal law, regulation or policy.

xi. The procedure for the disposal of on-site generated construction waste, including trench opening and closing, shall be completed within one working day.

xii. The contractor/owner shall maintain the on-site area for a period of one year after the closure of the trench as set forth in (e)1vii above. The on-site disposal area shall be regarded and stabilized, as needed, to compensate for any initial settlement.

xiii. Any unauthorized waste, stored for disposal or within the disposal trench, other than that as approved for disposal as set forth in (e)1iii above, such as paint cans, oils, tars, resins, or off-site waste, shall result in both the revocation of the certificate of authority to

operate and the exhumation of the existing on-site fill by the contractor/owner at his own cost and may result in the denial of future approvals of the certificate of authority to operator for on-site disposal.

2. The contractor/owner disposal of on-site generated debris and waste resulting from rehabilitative work, partial or minor demolition, and agricultural clearing, may be exempted from the registration requirements at N.J.A.C. 7:26–2.2 by the division at its discretion. The individual exemptions shall be approved or denied by the division on a case by case basis.

i. The division shall consider the environmental impacts of disposal of waste from rehabilitative work, partial or minor demolition, and agricultural clearing including, but not limited to, the following:

(1) The likelihood of the waste materials contaminating the soil based upon the composition of the waste material; and

(2) The likelihood of the waste materials contaminating the soil based upon the nature and degree of any contamination of the waste material.

ii. If the division approves the disposal of waste from rehabilitative work, partial or minor demolition or agricultural clearing, the owner/operator shall comply with the provisions set forth in (e)1 above.

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

1. A temporary certificate of authority to operate (TCAO) which shall be for a fixed period of time, not to exceed one year, may be granted to a transfer station facility which, in the opinion of the Commissioner, meets the following criteria for exemption:

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

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

iii. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the TCAO; and

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

2. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the application requirements for a TCAO for transfer stations:

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

ii. An emergency environmental impact statement pursuant to N.J.A.C. 7:26–1.7(f)3; and

iii. An engineering design which specifies the following:

(1) Site plan map including layout of the facility buildings or structures, profile and elevation views and interior floor plan;

(2) Access roads;

(3) Fencing;

(4) Scales, if required pursuant to N.J.S.A. 13:1E–117;

(5) On site queing;

(6) Facility and equipment design sufficient to handle specified capacity;

(7) Facility construction plans;

(8) Washdown and control of wastewater;

(9) On-site drainage controls;

(10) Design and surfacing of on-site roadways;

(11) Operational safety and environmental monitoring procedures; and

(12) Housekeeping procedures such as litter, odor, dust and vector control.

3. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the requirements for an emergency environmental impact statement for a transfer station meeting the exemption criteria in N.J.A.C. 7:26–1.7(f)1. An emergency environmental impact statement shall be in narrative form and must be approved prior to or concurrent with issuance of a transfer station TCAO. An emergency environmental impact statement shall contain, at a minimum, the following:

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

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

(1) Noise;

(2) Air quality;

(3) Traffic;

(4) Stormwater and washdown drainage; and

(5) Any other concerns described in the solid waste disposal regulations, N.J.A.C. 7:26 which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

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

(g) This subsection sets forth the specific criteria for exempting vegetative waste composting facilities which accept greater than 20,000 cubic yards of leaves annually or vegetative waste composting facilities that, regardless of volume, accept in addition to leaves other non-crop residues such as grass clippings, tree branches, shrubbery and garden wastes.

1. Notwithstanding the provisions of N.J.A.C. 7:26–1.11 and 2.4, a temporary certificate of authority to operate (TCAO) which shall be for a fixed period of time, not to exceed one year, may be granted to a vegetative waste composting facility which in the opinion of the Commissioner meets the following criteria for exemption:

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

ii. Use of the facility prior to the time that a Solid Waste Facility Permit (SWF permit) can be issued pursuant to N.J.A.C. 7:26–2 is essential in order to avoid a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act;

iii. The facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

iv. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the TCAO and this subsection; and

v. A schedule has been established and incorporated into the TCAO for compliance with all the requirements of N.J.A.C. 7:26–2 for a SWF permit for this facility or for an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more SWF permit requirements after commencement of facility operation.

2. Vegetative waste composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A–1, 13:8A–20, 13:8A–35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the application for a TCAO pursuant to (g)4 below.

3. Vegetative waste composting facilities shall also not be eligible for an exemption under this section if they are located on lands which are county or municipally owned

parks, wildlife sanctuaries, recreational facilities or other similar open public spaces;

4. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the application requirements for a TCAO for vegetative waste composting facilities:

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

ii. An emergency environmental impact statement pursuant to (g)5 below;

iii. An engineering design or site plan which specifies the following:

(1) Boundaries of the composting area showing windrow locations and the property boundary lines;

(2) Access roads;

(3) Site access controls;

(4) Location of scales, if required pursuant to N.J.S.A. 13:1E–117;

(5) Location of equipment and all machinery sufficient to handle specified capacity;

(6) Contours of the land;

(7) On-site drainage controls; and

(8) On-site roadway designs sufficient to handle anticipated vehicular traffic;

iv. An emergency operational narrative which specifies the following:

(1) The maximum design capacity of the facility by weight and volume;

(2) A description of types of vegetative wastes to be handled at the facility and anticipated quantity of each by weight and volume;

(3) A description of the proposed level of technology to be employed at the facility, for example, low-level, intermediate level, high-level, and the term of the composting process from the time of windrow formation to the time of final product;

(4) A description of the additives, where applicable, to be employed to maintain the proper moisture content or carbon to nitrogen ratios;

(5) Operational safety and environmental monitoring procedures; and

(6) Housekeeping procedures such as litter, odor, dust and vector control; and

v. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (g)2 above.

5. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the requirements for an emergency environmental impact statement for a vegetative waste composting facility meeting the exemption criteria in (g)1 above. An emergency environmental impact statement shall be in narrative form and must be approved by the Department prior to or concurrent with issuance of a TCAO for a vegetative waste composting facility. An emergency environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the existing land use of the proposed site and of the area within a one-quarter mile radius of the proposed facility, including identification of properties used or occupied by humans;

ii. A description of possible environmental impacts associated with the composting operation on-site and within one-quarter mile radius of the facility and a description of the facility design elements or other measures that will address these impacts. This description shall address, at a minimum, the following environmental concerns:

(1) The impact that the proposed facility will have on:

(A) All existing wetlands;

(B) Applicable Federal, State or local land uses including the Pinelands area and agricultural development areas;

(C) Diversion of dedicated recreational or open space areas; and

(D) Endangered or threatened wildlife and vegetation.

(2) Soil erosion and sediment control;

(3) Noise;

(4) Air quality including odor control mechanisms;

(5) Traffic;

(6) Stormwater run-off and drainage controls;

(7) Ground water and surface water quality; and

(8) Any other concerns described in the solid waste disposal rules, N.J.A.C. 7:26, which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

6. All TCAO applicants for vegetative waste composting facilities shall file copies of their applications, except for the disclosure statement, in the offices of the municipality and county in which the facility is proposed to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days after filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require a public comment period. The dates of the public comment period and the address at which the Department will receive public comments shall be included in the public notice, if applicable.

7. The completed TCAO application shall be submitted to the following address:

Department of Environmental Protection
Division of Solid Waste Management
Bureau of Resource Recovery
428 East State Street
CN 414
Trenton, New Jersey 08625

8. When approved by the Department, the TCAO applicant shall be issued a temporary certificate of authority to operate, receipt of which is necessary prior to beginning construction.

9. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

Amended by R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
Amended by R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).
"Variance" not readopted.
R.1984 d.174, effective April 25, 1984.
See: 16 N.J.R. 1100(a).
Filed as an emergency rule to expire June 24, 1984. Also proposed concurrently.
R.1984 d.399, effective August 17, 1984.
See: 16 N.J.R. 1100(a), 16 N.J.R. 1627(a), 16 N.J.R. 2367(a).
Readopted without change, Emergency R.1984 d.174.
Amended by R.1985 d.666, effective January 6, 1986.
See: 17 N.J.R. 1040(a), 18 N.J.R. 99(a).
(e) added.
Emergency Amendment and Concurrent Proposal, R.1987 d.231, effective April 30, 1987 (expires June 29, 1987).
See: 19 N.J.R. 886(a).
Subsection (f) added.
Readoption of Concurrent Proposal, R.1987 d.311, effective June 29, 1987.
See: 19 N.J.R. 1452(a).
Correction: "May" substituted for "shall" in (a) and (d)1; added text to (d) "This subsection sets forth the".
See: 20 N.J.R. 2817(a).
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Added (g).
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted with a change in (g)4iv: added "emergency".
Administrative change in (b)1.
See: 23 N.J.R. 3325(b).

Case Notes

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

7:26–1.8 Exemption from registration—land application

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E–4 and N.J.A.C. 7:26–2.2:

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

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

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

New Rule, R.1986 d.162, effective May 5, 1986.
See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).
Old rule recodified to 7:26–1.9.

7:26–1.9 Public access to information and requirements for Department determination of confidentiality

Any confidential information obtained or used in the administration of the State hazardous waste program, as provided in Section 3006 of "The Resource Conservation and Recovery Act of 1976", 42 U.S.C. 3251 et seq., and amendments thereto, shall be treated in accordance with N.J.A.C. 7:26–17.

R.1982 d.97, effective April 5, 1982.
See: 13 N.J.R. 724(a), 14 N.J.R. 338(a).
Recodified by R.1986 d.162, effective May 5, 1986.
See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).
Recodified from 7:26–1.8.
Amended by R.1988 d.57, effective February 1, 1988.
See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).
Changed reference from 7:14A–11 to 7:26–17.
Administrative Correction.
See: 25 N.J.R. 4595(b).

7:26–1.10 Transfer station facility master performance permits

(a) This section shall govern transfer station facilities meeting the criteria in (b) below and shall implement the permitting and exemption authority vested in the Department under all of its enabling statutes.

(b) The Commissioner may issue a master performance permit to those transfer station facilities satisfying the following criteria:

1. The transfer station facility is consistent with the approved district solid waste management plan of the solid waste management district in which the facility is to be located;

2. The Commissioner has determined that development of the transfer station facility must commence forthwith in order to avert a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., or which would imperil public health, safety or the environment;

3. The proposed owners or operators of the facility are determined by the Commissioner, pursuant to N.J.S.A. 13:1E–135, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient reliability, expertise and competence to operate a transfer station facility in compliance with the statutes administered by the Department and with the conditions of the master performance permit; and

4. The facility will be designed, constructed and operated in a manner consistent with the protection of the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the master performance permit.

(c) The master performance permit authorizes the immediate development of a transfer station facility. The master performance permit shall include, at a minimum, the following:

1. The identity of the owners and/or operators and a procedure for providing the names of key employees of the transfer station facility;

2. The location of the facility;

3. Those waste types that may be accepted for transfer at the facility and those waste types that are prohibited for transfer at the facility;

4. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to the initiation of construction activities at the facility;

5. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to commencement of operation of the facility;

6. Operating standards for the facility that must be complied with by the owners and/or operators, including, but not limited to, performance standards for facility staffing and training, facility housekeeping, on-site traffic control, schedules for waste delivery vehicle flow, wastewater collection, stormwater collection, emergency preparedness, vector control, odor control, noise control and notice and enforcement of traffic flow plans for the waste delivery vehicles;

7. A requirement of a facility development schedule detailing milestones for timely facility development. Upon a failure to comply with the development schedule or any other provision of the permit, the master performance permit may be revoked at the discretion of the Department;

8. Conditions ensuring that the development of any land in a designated flood hazard area is consistent with the public safety, health and general welfare and the protection of the environment;

9. A condition for the registration and/or permitting of any underground storage tank in place or to be installed at the facility site consistent with P.L. 1986 c.102 (N.J.S.A. 58:10A–21 et seq.) and any applicable Federal requirements prior to actual facility operation;

10. A condition requiring the submission by the owner and/or operator and approval by the Department prior to actual facility operation of a report under the signature and seal of a licensed professional engineer that the discharge into a publicly owned sewage treatment works, if any, will be consistent with local pretreatment standards;

11. A timetable for the submission of an application for any air pollution control equipment or apparatus necessary for the facility. Upon receipt and review of the permit application, the Commissioner may issue a temporary operating certificate pursuant to N.J.S.A. 26:2C–1 et seq.;

12. A schedule, if appropriate, for replacement of the master performance permit or any part thereof with those approvals defined elsewhere in Title 7 of the New Jersey Administrative Code.

13. A provision prescribing the duration of the master performance permit and providing for automatic expiration by its terms on the specified expiration date; and

14. Any other terms or conditions deemed necessary by the Commissioner.

(d) Except as specifically provided in a master performance permit as described in (c) above, the facility shall be exempt from:

1. Obtaining a New Jersey Pollutant Discharge Elimination System permit, if the discharge from the facility falls within any of the categories enumerated in N.J.S.A. 58:10A–6(d);

2. Any approval required by N.J.S.A. 58:16A–50 et seq.; and

3. The requirement for a registration statement, engineering design approval and other regulatory requirements incidental thereto as contained in N.J.S.A. 13:1E–1 et seq.

As amended, R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).
"Penalties" not readopted.
Emergency New Rule, R.1987 d.301, effective June 23, 1987 (expires August 22, 1987).
See: 19 N.J.R. 1242(a).
Adoption of concurrent proposal as R.1987 d.372, effective August 21, 1987.
See: 19 N.J.R. 1242(a), 19 N.J.R. 1730(a).
Provisions of emergency new rule R.1987 d.301 readopted without change.

Case Notes

No public hearing required prior to issuance of master performance permit. Mount Olive Tp. v. Department of Environmental Protection, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Department of Environmental Protection not estopped from denying public hearing before issuing master performance permit. Mount Olive Tp. v. Department of Environmental Protection, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Performance permit was properly issued although though permit differed from district solid waste management plan. Mount Olive Tp. v. Department of Environmental Protection, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Master performance permit was properly issued to solid waste transfer station. Mount Olive Tp. v. Department of Environmental Protection, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

7:26–1.11 Exemption from SWF permitting—leaf composting facilities (leaves only)

(a) This section applies only to and sets forth the requirements for an exemption from SWF permitting for leaf composting facilities with a capacity not in excess of 20,000 cubic yards annually which compost only leaves.

(b) Notwithstanding N.J.A.C. 7:26–1.7(g) and 7:26–2.4(c), a leaf composting facility which composts only leaves not in excess of 20,000 cubic yards annually shall be exempt from SWF permitting if the requirements set forth in this section are met.

(c) Leaf composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A–1, 13:8A–20, 13:8A–35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the "Filing Package for Exemption for SWF permitting—Leaf Composting Facility (leaves only)" pursuant to (e) below.

(d) Leaf composting facilities are not eligible for an exemption under this section if they are located on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities, or other similar open public spaces. Such facilities must comply with the SWF permitting requirements set forth at N.J.A.C. 7:26–2.4.

(e) Prior to beginning construction, the owner or operator shall submit required information as a "Filing Package for Exemption from SWF permitting—Leaf Composting Facility (leaves only)" to the Department and on the same day to the host municipal recycling coordinator and the host county solid waste coordinator, which shall include, but not be limited to, the following:

1. Documentation establishing that the facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

2. For informational and filing purposes, a completed Standard Application Form (CP# 1) and a Solid Waste Supplement Form, which are available from the Department;

3. A key map plotted on a seven and one-half minute United States Geological Survey Quadrangle Map that shows the boundary of the proposed facility site and which delineates public access roads to the facility, streams or ponds, and other details such as hospitals, schools, playgrounds, and homes located on-site and within a one-half mile radius from the site;

4. A site plan prepared by a New Jersey Licensed Professional Engineer which shall be signed, sealed, and dated and which shall identify the following:

i. Composting area boundaries showing acreage available for composting;

ii. Available utilities, location of all buildings, and other pertinent data related to the operation of the proposed facility;

iii. Location of composting windrows, which terminate no closer than 50 feet from the facility property line and 150 feet from any area of human use or occupancy;

iv. Drainage characteristics, specifically the direction of stormwater flow both on-site and off-site, ditches, swales and any runoff controls that now exist or will exist; and

v. Location and volumetric capacity of the staging and final product storage areas.

5. A New Jersey Licensed Professional Engineer's certificate which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined and am familiar with the site plan submitted in the Filing Package for Exemption from Solid Waste Facility permitting—Leaf Composting Facility. I certify that the information is true, accurate and complete. I further certify that the facility's design and operation, as set forth in the site plan, is capable of complying with the terms and conditions set forth in N.J.A.C. 7:26–1.11 if operated properly. I am also aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6. The Filing Package shall include the following owner or operator Certification:

"I certify that the leaf composting facility site will be properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and in accordance with N.J.A.C. 7:26–1.11."

7. The certification required in (e)6 above shall be signed as follows:

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

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

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

8. A cover sheet which the owner or operator shall entitle "Filing Package for Exemption from SWF permitting—Leaf Composting Facility (leaves only)" and which shall be submitted to:

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

9. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (c) above.

(f) The construction and operation of the composting facility shall be performed in accordance with the site plan and specifications required pursuant to (e) above, prepared by a New Jersey Licensed Professional Engineer and in accordance with the following performance standards:

1. Only leaves may be accepted for processing at leaf composting facilities exempted by this section;

2. No more than 3,500 cubic yards of leaves per acre shall be composted in the composting area delineated on the site plan submitted in accordance with (e)4 above;

3. Prior to operation the composting area, related leaf staging and finished compost storage areas and access roads shall be graded in a manner that prevents the accumulation of surface water on site without resulting in a discharge of leachate off site or an adverse impact to natural drainage conditions of surrounding properties. Once original grading is completed in the manner which satisfies the local soil conservation office, the four areas of the site referenced above shall be maintained throughout the life of the facility. Any disturbance of the natural environmental setting caused by any necessary land clearing and grading shall be held to a minimum;

4. The perimeter of the composting activity area shall be separated from any and all adjacent residential and/or commercial land uses through the establishment of an effective vegetative visual screen buffer;

5. The access road shall be fenced or otherwise secured to prevent unauthorized access to the site;

6. Leaves shall be received only during times when the site operator or owner is present;

7. A sign shall be posted at the entrance of the facility which identifies the hours of operation;

8. An adequate water supply and fire-fighting equipment shall be readily available to extinguish any fires. The telephone number of the local fire department shall be posted at the entrance to the facility;

9. The operation of the facility shall follow the approved method of windrow composting set forth at (f)10 through 18 below, or other composting method approved by the Department, on a case-by-case basis, which results in the aerobic biodegradation of the leaves received;

10. All leaves delivered to the facility for processing shall be removed from bags, boxes or similar containers prior to windrow formation, except that leaves brought to the facility in biodegradable paper bags and natural fiber biodegradable burlap bags need not be removed from these specified containers. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in the staging area of the facility for removal to an off-site disposal facility in accordance with N.J.A.C. 7:26–6;

11. Prior to windrow formation, dry leaves shall be moistened to saturation without producing excess runoff;

12. To facilitate drainage and to reduce surface water ponding, each windrow shall be constructed and positioned in such a manner so that it is perpendicular to the contours of the ground surface;

13. Windrows shall be constructed and reconstructed after each turning to a maximum height of six feet with a corresponding base not to exceed a maximum of 14 feet in width;

14. A minimum separation of 16 feet measured from the pile base of the windrow to the next adjacent pile base shall be provided along at least one side of the longest dimension of each windrow pile to provide ample working space;

15. Windrows shall be turned and reconstructed, at a minimum, once no later than the end of the first two months of the composting cycle. The composting cycle begins on the day that the leaves are placed in windrows. Windrows shall be turned and reconstructed again, at a minimum, four to six months into the composting cycle, and finally again at the tenth month of the composting cycle. More frequent windrow turning and reconstruction may occur at the discretion of the owner or operator;

16. No composting activities shall be conducted in an area within 50 feet from all property lines;

17. Upon completion of the 12 to 18 month composting cycle, the end product mulch shall be aerated and any uncomposted material present shall be removed and recomposted;

18. The composting cycle shall be extended beyond the 12 to 18 month period, but not beyond 24 months, if the leaves do not show evidence of an acceptable level of biodegradation. Similarly, the composting cycle can be shortened provided that suitable accelerated biodegradation has occurred and a finished compost has been produced;

19. The operation of this facility shall not result in odors associated with the composting process being detected off-site by the sense of smell in any area of human use or occupancy;

20. The noise generated by the use of equipment at the facility shall not exceed the applicable noise standard established by N.J.A.C. 7:29–1.2 at any surrounding residential and/or commercial property line;

21. To provide ample vehicular support, to prevent the tracking of soil onto public roads and to prevent the generation of dust, those areas of the facility subject to vehicular usage shall be suitably compacted and, where necessary, surfaced;

22. Traffic associated with the operation of the facility shall not result in a degradation of the level of service of any major intersection or public roadway within a one-half mile radius of the composting facility; and

23. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

(g) Construction or operation may not occur until receipt of a letter from the Department notifying the owner or operator that the submittals are complete and in accordance with (e) above.

(h) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance or non-compliance with the act or this section. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility at any time. Inspection includes, but is not limited to:

1. Sampling any materials on site;

2. Photographing any portion or portions of the facility;

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

4. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and

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

(i) The following annual updates shall be submitted by May 1 of each calendar year to the address listed in (e)8 above:

1. An annual operational statement which is available from the address listed in (e)8 above.

2. An updated New Jersey Licensed Professional Engineer's certification which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined the site and that I have reviewed the site plan submitted in the Filing Package for Exemption from SWF permitting—Leaf Composting Facility. I certify that the site's construction is in accordance with the site plan submitted."

3. An updated owner or operator certification which shall contain the following statement and which shall be signed in accordance with (e)8 above:

"I certify that the leaf composting site has been and is now properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and the rules and regulations under which authority to operate was granted by the New Jersey Department of Environmental Protection."

(j) A request for expansion or modification of any leaf composting facility authorized under this section shall be accompanied by a new filing package in accordance with (e) above. Any expansion shall not allow operations to exceed 20,000 cubic yards annually.

(k) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits or approvals required by Federal, State, county and local statute, rule and ordinance;

2. The owner or operator fails to comply with this section; or

3. The Department determines that the facility poses a threat to the public health, safety or the environment.

R.1977 d.257, effective July 20, 1977.
See: 9 N.J.R. 261(b), 9 N.J.R. 361(b).
As amended, R.1977 d.311, effective August 22, 1977.
See: 9 N.J.R. 421(a).
As amended, R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).
"Planning designation of solid waste districts" not readopted.
Emergency new rule, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted with changes in (e): deleted "municipality" and "in which the facility is located": added "municipal recycling coordinator", "host", and "solid waste coordinator".

Case Notes

Jurisdiction of counties and the D.E.P. In re Combustion Equipment Assoc's., 169 N.J.Super. 305 (App.Div.1979) Essex Cty. Freeholder Bd. v. O'Hern, 161 N.J.Super. 274, 391 A.2d 585 (Law Div.1978).

7:26–1.12 Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)

(a) Notwithstanding the provisions of N.J.A.C. 7:26–2.4(c), a leaf mulching operation shall be exempt from SWF permitting if the requirements set forth in this section are met.

(b) The leaf mulching operation shall be included in or consistent with the solid waste management plan of the solid waste management district within which the operation is to be located.

(c) Standards for leaf mulching include the following:

1. Leaves shall be delivered unbagged to land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, N.J.S.A. 54:4–23.5.

2. Within seven days of delivery, the leaves shall be spread onto the field in a thin layer no higher than six inches.

3. No later than the next tillage season, the layered leaves shall be incorporated into the soil.

4. At no time shall leaves delivered to the leaf mulching operation be stockpiled on-site for more than seven days.

(d) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance or non-compliance with the act or this rule. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

1. Sampling any materials on site;

2. Photographing any portion or portions of the facility;

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

4. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and

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

(e) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits or approvals required by Federal, State, county and local statute, rule and ordinance;

2. The owner or operator fails to comply with this section; or

3. The Department determines that the facility poses a threat to the public health, safety or the environment.

Emergency new rule, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted with a change in (e)1: added "or approvals".

7:26–1.13 Burden of proof

(a) In an enforcement action, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.

(b) In an enforcement action, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste and that there is a legal disposition for the material.

(c) In an enforcement action, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law which renders the material conditionally exempt from N.J.A.C. 7:26 and that there is a legal disposition for the material.

(d) In an enforcement action, an owner or operator claiming that they are actually recycling hazardous waste shall demonstrate and appropriately document that the facility meets the definition of a recycling facility at N.J.A.C. 7:26–1.4.

New Rule by R.1990 d.65, effective February 5, 1990.
See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).

SUBCHAPTER 2. DISPOSAL

7:26–2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26–2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26–1.1, 1.7, 1.8, 1.11 or 1.12.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26–1, 7, 8, 9, 10, 11, 12 and 13. However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to that Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.

(c) This subchapter does not apply to the disposal of family wastes on the premises of one or two family dwellings where the family resides. This subsection shall not be interpreted as permitting the disposal of domestic sewage in any manner other than that prescribed by law.

New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Original rule was "Dumps prohibited".
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added text in (b) "However hazardous waste . . ."
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Added sections 1.11 or 1.12 to (a).
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted without change.

Case Notes

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

7:26–2.2 Construction

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

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
New (c) added, former (c)-(g) made (d)-(h). In (g), "the information supplied on its" was "status as listed on his". In (h), "June" was "July" and "or to declare it expired" added. (i) added.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Rule was "Registration".

7:26–2.3 Purpose

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

1. To establish the procedure for obtaining and maintaining a solid waste facility permit;

2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;

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

4. To establish the general operational requirements for solid waste facilities.

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

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

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

1. A site location map plotted on a USGS topographic map;

2. A written description of the type of facility;

3. A written estimate of the proposed design capacity of the facility;

4. A written description of the type of waste to be handled;

5. A written plan establishing the tentative construction schedules;

6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;

(b) All applications for a SWF permit shall be accompanied by the following:

1. All fees, required by N.J.A.C. 7:26–4, paid in full;

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

3. The disclosure statement described in N.J.A.C. 7:26–16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26–16.3(d);

4. For sanitary landfills, a closure plan submitted in accordance with N.J.A.C. 7:26–2A.9; and

5. All applications for a SWF permit shall be submitted to:

Assistant Director for Environmental and
Engineering Design Review
Division of Solid Waste Management
CN–414
Trenton, N.J. 08625

(c) All applications for a SWF permit shall include a completed registration statement meeting the requirements of N.J.A.C. 7:26–2.8, an EHIS meeting the requirements of N.J.A.C. 7:26–2.9 and an engineering design meeting the requirements of N.J.A.C. 7:26–2.10, except for applications for the types of facilities identified in (c)1, 2, 3 or 4 below, which shall include only the material required to be submitted for that particular type of facility.

1. Unless otherwise exempted by N.J.A.C. 7:26–1.7(g), 1.11 or 1.12 an application for a vegetative waste composting facility shall include the following:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for composting consists of leaves, either exclusive or in combination with other type ID 23 wastes as classified in N.J.A.C. 7:26–2.13; and

(2) The operating and maintenance program proposed will ensure achieving the conditions necessary to permit efficient and effective composting activity;

ii. A registration statement on forms provided by the Department; and

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26–2.9(d)1.

2. An application for a small-scale incinerator or thermal destruction facility shall include the following:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for incineration or thermal destruction is nonhazardous;

(2) The waste is generated at the site of the incinerator or thermal destruction operation or at other associated intracompany plants located within the State of New Jersey;

(3) The small-scale incinerator or thermal destruction unit has a design capacity of less than 800 lbs. per hour (9.6 tons per day);

(4) The thermal destruction unit will be permitted, constructed and operated in accordance with the requirements of N.J.A.C. 7:27–8; and

(5) The incinerator or thermal destruction unit will be operated in compliance with N.J.A.C. 7:26–2.11 and all other applicable Departmental regulations.

ii. A registration statement on forms provided by the Department; and

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

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

3. An application for a small-scale materials recovery facility or transfer station shall include the following:

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

ii. A registration statement on forms provided by the Department;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26–2.9(d)3; and

iv. An engineering design sufficient to meet the general engineering design requirements set forth at N.J.A.C. 7:26–2.10.

4. An application for a small-scale Class III sanitary landfill shall include the following:

i. Documentation sufficient to demonstrate to the satisfaction of the Department, that the total capacity of the facility is less than 300,000 cubic yards or the annual capacity is less than 50,000 cubic yards;

ii. A registration statement on forms provided by the Department;

iii. An EHIS sufficient to meet only the requirements of N.J.A.C. 7:26–2.9(d)4; and

iv. An engineering design sufficient to meet the requirements set forth at N.J.A.C. 7:26–2.10.

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

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

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

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

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

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

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

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

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

iii. The written authorization is submitted to the Department.

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

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

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

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

1. The Department shall not begin the processing of an application until the applicant has fully complied with the submission requirements of this subchapter and the signature and certification requirements of (e) above. However, the Department may begin reviewing material in preparation for the pre-application conference described in (a) above or in preparation for the application submission.

2. Upon receipt of a SWF permit application, the Department shall review the application for a determination of completeness. After reviewing the SWF permit application, the Department shall, within 60 days of receipt of the application, notify the applicant, in writing, whether the application is administratively complete or incomplete.

i. For the purposes of this section, "administratively complete" means that all information required by N.J.A.C. 7:26–2.8, 2.9 and 2.10, to begin technical review of the application has been submitted by the applicant.

3. If the application is deemed administratively or technically incomplete, the Department shall provide the applicant with a written list of the deficiencies and additional information required to make the application complete. Failure to correct the deficiencies shall constitute cause for denial of the permit without prejudice. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (g)2 above and 11 below.

4. Within 14 days after receiving a notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the incomplete permit application or supply the information requested to make the application complete and proceed with the application process. The Department shall establish a reasonable schedule for the submission of additional information. The requested additional information shall be submitted to the Department as an "Addendum to the Application for a Solid Waste Facility Permit" ("Addendum").

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

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

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

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

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

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

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

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

iii. Any other governmental agencies that the Department deems appropriate, such as Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs, Board of Public Utilities; and other affected states.

8. Once the Department certifies that an application is administratively complete, the application may be reviewed by an interested person at the Department's offices during normal working hours by making an appointment, at the address specified at N.J.A.C. 7:26–2.4(b), with the records custodian of the Division of Solid Waste Management's Bureau of Registration, Permits and Administration. Copies may be obtained from the Department upon payment of the duplication fee prescribed by law.

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

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

i. The applicant's name;

ii. The agency application number;

iii. The type of facility proposed by the applicant;

iv. The location of the proposed facility; and

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

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

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

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

13. Not later than 45 days after the granting of a tentative approval of an application for a SWF permit, the Department shall conduct a public hearing on the proposed facility and operator in accordance with the procedures set forth in N.J.A.C. 7:26–2.5. In the case of an application for a nonhazardous solid waste facility described in N.J.A.C. 7:26–2.4(c), an application for a permit renewal pursuant to N.J.A.C. 7:26–2.7(b) or an application to transfer a permit pursuant to N.J.A.C. 7:26–2.7(d), the Department shall provide public notice, in accordance with (g)14 below, of the opportunity for a public hearing on the proposed agency action. Upon the written request of any interested party which, in the opinion of the Department, raises issues of fact relevant to the proposed agency action within 30 days of the newspaper publication of a notice of opportunity for a hearing, a public hearing on the proposed agency action shall be held in accordance with N.J.A.C. 7:26–2.5.

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

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

(1) The applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. A description of the proposed facility;

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

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

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

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

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

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

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

v. A public comment period longer than 15 days following the public hearing may be necessary, in certain cases, to give interested persons an opportunity to comply with the requirements of (g)17iv above. Any interested person who reasonably requires additional time within which to supplement the administrative

record should request, in writing, an extension of the public comment period, and the Department shall exercise reasonable discretion in setting the closing date for public comment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vi. The tentative approval and final permit documents; and

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

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

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

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

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

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

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

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

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

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

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

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

New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(c).
Rule was "Submission of engineering designs".
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
(c)1 added text "Unless otherwise exempted by N.J.A.C. 7:26–1.7(g)1.11 or 1.12" and "vegetative waste".
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted without change.
Administrative change in (f)22iii.-v.
See: 23 N.J.R. 3325(b).

Case Notes

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

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

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

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

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

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

7:26–2.5 Public hearing procedures

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

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

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

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

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

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

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

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

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

3. Testimony on irrelevant matters shall be excluded; and

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

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

(i) (Reserved)

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

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

As amended, R.1974 d.234, effective August 21, 1984.
See: 6 N.J.R. 343(c).
As amended, R.1975 d.190, effective June 27, 1975.
See: 7 N.J.R. 360(b).
As amended, R.1976 d.303, effective November 1, 1976.
See: 8 N.J.R. 374(d), 8 N.J.R. 590(a).
As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(v): Copies of analyses formerly forwarded to the Bureau.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(e).
Repealed Sanitary landfill operational requirements (General).

Case Notes

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

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

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

(a) When the Department receives any information concerning a solid waste facility, it may determine whether or not one or more of the causes listed below for modification, or revocation and reissuance, or both exist.

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

2. If a cause does not exist under this subsection or subsection (c) below, the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in (d) below for minor modifications, the permit may be modified without issuance of a tentative approval or public comment thereon. Otherwise, a tentative approval shall be prepared and the procedures in N.J.A.C. 7:26–2.4(b)5 followed.

3. The following may be causes for modification at the discretion of the Department. The following may also be causes for revocation and reissuance, in place of modification, when the permittee requests and the Department agrees.

i. There are material and significant alterations or additions to the permitted facility or operation which occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit;

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

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

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

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed a Department regulation or guideline, if the remand and stay concerned that portion of the regulation or guideline on which the permit condition was based and a request is filed by the permittee within 90 days of judicial remand.

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of god, strike, flood or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

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

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

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

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

i. Noncompliance with any condition of the permit;

ii. The permittee's failure in the application, during the permit issuance process or at any subsequent time to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

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

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

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

2. The Department shall follow the applicable procedures in (e) below in terminating any permit under this section.

(d) Upon the request of the permittee, or for good cause, the Department may make certain minor modifications to a permit without issuing a tentative approval, providing public notice thereof or holding a public hearing thereon.

1. Minor modifications to the permit shall be made to accomplish only the following:

i. Correct typographical errors;

ii. Require more frequent monitoring or reporting by the permittee;

iii. Change an interim compliance date in a schedule of compliance, provided the new data does not interfere with attainment of the final compliance date requirement;

iv. Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;

v. Delete type of solid waste being accepted for handling, processing or storage at the facility or include types which are similar in nature to those included in the permit at the time of issuance without increasing the design capacity of the facility;

vi. Change the testing methods or procedures in the permit as a result of changes to standardized methods or procedures;

vii. Revisions as necessary to conform to a decision by the Department rendered after an adjudicatory hearing or any settlement of the issues for which an adjudicatory hearing has been requested, pursuant to N.J.A.C. 7:26–2.4(g);

(1) After settlement of the issues for which an adjudicatory hearing had been requested, those persons who commented on the tentative approval shall receive notice of any revised permit conditions; or

viii. Changes in the design of the facility which, in the best engineering judgment of the Department, will upgrade the environmental performance or reduce adverse environmental or human health impacts without increasing the design capacity of the facility.

(e) Permits may be modified, revoked and reissued, or terminated either upon written request containing the relevant factors and rationale supporting the request, submitted by the permittee or upon the Department's initiative.

1. If the Department decides to modify or revoke and reissue a permit under (b) above it shall:

i. Prepare a tentative approval incorporating the proposed change pursuant to N.J.A.C. 7:26–2.4. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.

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

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

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

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

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

As amended, R.1975 d.66, effective March 14, 1975.
See: 7 N.J.R. 149(b).

As amended, R.1975 d.271, effective September 15, 1975.
See: 7 N.J.R. 463(b).
As amended, R.1978 d.72, effective February 27, 1978.
See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).
As amended, R.1983 d.570, effective December 5, 1983.
See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).
(e) deleted.
Amended by R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(c).
(e) added.
Amended by R.1986 d.388, effective September 22, 1986.
See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).
(e)2i and ii deleted; new (e)2i through vi added and new (e)5 added.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed subsection (a)–(d) of "Sanitary landfill operational requirements (Specified)" and recodified subsection (e) to 7:26–2A.8(*l*).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

i. An updated registration statement on forms provided by the Department;

ii. An updated engineering design for the facility;

iii. An updated Operations and Maintenance Manual for the facility; and

iv. An amendment to the disclosure statement as required pursuant to N.J.A.C. 7:26–16.6; and

v. An updated environmental and health impact statement, including a complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

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

4. The Department shall review the application for completeness in accordance with procedures set forth at N.J.A.C. 7:26–2.4(a)1,2,3,4 and 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1986 d.388, effective September 22, 1986.
See: 17 N.J.R. 2719(a), 18 N.J.R. 1932(a).
(f) added.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed disrupted landfill requirement.
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Required fees to be submitted at time of permit renewal application and referenced, at (b)2.v., updated environmental and health impact statement.

7:26–2.8 Registration and general prohibitions

(a) The registration statement shall be executed, in accordance with the requirements of N.J.A.C. 7:26–2.4(e), on forms furnished by the Department, and shall state such information necessary and proper for the enforcement of this subchapter as the Department may require.

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

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

(d) The failure to submit an updated registration statement and to submit all applicable fees, required by N.J.A.C. 7:27–4, on or before July 1 of each calendar year shall be sufficient cause for the Department to revoke the permit or take such other enforcement action as is appropriate.

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26–1.1, 1.7, 1.8, 1.11 or 1.12 in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

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

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26–1.1, 1.7, 1.8, 1.11, or 1.12.

(g) No person shall continue to operate a solid waste facility, unless exempt pursuant to N.J.A.C. 7:26–1.1, 1.7, 1.8, 1.11 or 1.12, without obtaining a SWF Permit. All

existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved SWF Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

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

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26–2.11, unless specifically exempted by N.J.A.C. 7:26–1.1, 1.7, 1.8, 1.11 or 1.12.

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

(k) No permit condition shall be modified, revised or otherwise changed without prior written approval of the Department.

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

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

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

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

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

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

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

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

New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed "Smoking, smoldering or burning landfill".
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Added sections 1.11 or 1.12.
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted without change.

7:26–2.9 Environmental and Health Impact Statement requirements

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

(b) The magnitude and detail of the environmental inventory, the environmental assessment, the health impact assessment and the overall EHIS shall be relative to the nature, scale and location of the proposed facility. In areas where the information is supplied in the engineering designs or reports, reference to such designs or reports may be considered a suitable response provided the appropriate section and page number of the design or report is cross referenced and indexed;

(c) The EHIS for all solid waste facilities other than solid waste facilities for which specific requirements are set forth in (d) below, shall contain the following:

1. An executive summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts;

2. A detailed written description of the municipal and neighborhood setting of the proposed facility, including a certification that the facility is identified in the district solid waste management plan. The site location shall also be identified by the following:

i. An 8½ inch x 11 inch copy of the key map prepared in accordance with N.J.A.C. 7:26–2.10(b)4 and submitted as part of the engineering design; and

ii. An 8½ inch x 11 inch copy of the vicinity map prepared in accordance with N.J.A.C. 7:26–2.10(b)5 and submitted as part of the engineering design.

3. An environmental inventory, prepared in detail for the site specific conditions and, unless otherwise specified herein, a general description for a minimum area of one mile from the perimeter of the proposed facility's property lines, described existing conditions for each of the following categories:

i. Category I, the physical/chemical category, requires the following parameter descriptions:

(1) Describe the physical geology by identifying major characteristics of the formations present, including, but not limited to, thickness, lithology, structural features, degree of weathering and amount of overburden. The description of the site specific geology shall include, but not be limited to, the general engineering properties and indexes and, where applicable, the quality of the subsurface soils. Provide a copy of the geologic map prepared in accordance with N.J.A.C. 7:26–2.10(b)7ii;

(2) Describe the soils by identifying major soil types and their characteristics including, but not limited to, drainage, erosion potential and sedimentation potential. Information shall be based on U.S. Soil Conservation Service Surveys. The description of the site specific soils shall include, but not be limited to, the texture and thickness of each horizon, observed mottling, taxonomic classification and, where applicable, the quality of the surface soils. Provide a copy of the soils map prepared in accordance with N.J.A.C. 7:26–2.10(b)7i;

(3) Describe the subsurface hydrology by presenting groundwater quantity and quality data for the aquifers located beneath the site, including, but not limited to, depth to groundwater during seasonal high and low flow, flow direction, existing uses and future supply capabilities;

(4) For water bodies which directly abut the site, exist on the site, or drain directly onto or off the site, provide detailed water quantity and quality data. Such data shall include, but not be limited to, flow rates, current uses and supply capabilities, dissolved oxygen (D.O.), biochemical oxygen demand (B.O.D.), total organic carbon, (T.O.C.) total suspended solids (T.S.S.) and general temperature regime. Identify also all existing water classifications, designated uses and limitations of the surface water bodies in accordance with N.J.A.C. 7:9–4;

(5) For upstream tributaries of bodies of water which flow onto the site, and downstream tributaries of bodies which flow from the site, identify all existing water classifications, designated uses and limitations of the surface water bodies, in accordance with N.J.A.C. 7:9–4. Provide also a narrative description of the factors influencing the water quality in such bodies, including but not limited to major permitted discharges, tributaries or confluences with other bodies, etc. Information required by this subsection shall be provided for a distance of one mile from the site boundary;

(6) For all water bodies not named in (4) and (5) above, identify all existing water classifications, designated uses and limitations of the surface water, in accordance with N.J.A.C. 7:9–4;

(7) Provide documentation that the proposed facility will not be inconsistent with any facility or area wide water quality management plan developed pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A–1 et seq.;

(8) Describe the topography by presenting contour data, drainage patterns and 100 year floodway and flood hazard areas delineations pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A–50 et seq., or areas identified pursuant to and based upon the most current Federal Flood Emergency Management Act (F.E.M.A.) maps and data;

(9) Describe the climate by presenting site specific data for wind direction, velocity and frequency, average annual and monthly precipitation and temperature. Unless specifically required to be otherwise obtained by the Department, meteorological data may be obtained from the nearest National Oceanographic and Atmospheric Administration (N.O.A.A.) sanctioned station;

(10) Describe the ambient air quality by presenting data for existing concentrations of the National Ambient Air Quality Standard pollutants as identified in 42 USC 7401 et seq., and provide a demonstration that the proposed facility will be consistent with the New Jersey State Implementation Plan and related air quality requirements established by the Division of Environmental Quality. Unless specifically required to be otherwise obtained by the Department, ambient air quality data may be obtained from the nearest State operated monitoring station.

(11) Describe the ambient acoustical conditions by providing day and night noise levels measured at the boundaries of the proposed site. Identify sources of impulsive and continuous noise.

ii. Category II, the biological/ecological category, requires the following parameter descriptions:

(1) Characterize the site and an area within one mile radius from the site boundary, with respect to major plant association (for example, mixed hardwood forest, old field successional, etc.). Delineate different associations present in a mapped format. Identify major dominant and minor species present in each plant association present. Provide estimates of the proportions of each;

(2) For game and non-game mammals, and for an area which includes the site and area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(3) For game and non-game birds, and for an area which includes the site and an area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(4) For reptiles and amphibians, for those water bodies listed in (c)3i(4) and (5) above, and for an area within one-quarter mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(5) For fish, for all water bodies listed in (c)3i(4) and (5) above, and all water bodies within one-quarter mile of the site boundary, describe utilization by identifying species and estimating populations utilizing the site for year-round, breeding, wintering and migratory purposes;

(6) Describe the plant or animal species on the Federal and State endangered, threatened or rare plant or animal species lists and identify, in a mapped format, the extent of utilization by such species, if present. Quantify the amount of habitat at the site for each such species and the corresponding carrying capacity for each species. Evaluate applicable breeding, wintering and migratory patterns when identifying species utilization;

(7) Identify by mapping any unique, critical or unusual habitat including, but not limited to, wetlands, prime agricultural lands, steep slopes of greater than 15 percent, riparian lands, coastal zones or other areas as may be specified by the Department;

(8) Present a description of site visits actually undertaken to evaluate the site ecosystem. The description should include the date, duration of the visit, weather conditions, individuals present to conduct the study, parameters being studied and a copy of studies prepared in connection with preparation of the environmental inventory; and

(9) Describe the methodologies utilized to evaluate the biotic community and present a bibliography of all research materials utilized in the preparation of the environmental inventory. The description of the methodologies utilized shall be sufficient to permit an independent expert to form an opinion as to the scientific justification and integrity of the selected methodology.

iii. Category III, the cultural category, requires the following parameter descriptions:

(1) Describe recreational activities by identifying areas known to be used for such activities as hunting, fishing, trapping, boating, swimming, tourism, camping, nature photography and bird watching. Identify designated parks, forests and wildlife management areas, natural areas and other publicly or privately owned lands designated for open space or recreational activities;

(2) Describe the aesthetics by identifying surrounding architecture, open space areas and scenic areas; and

(3) Describe the areas of historical or archeological importance.

iv. Category IV, the socioeconomic category, requires the following parameter descriptions:

(1) Describe the transportation facilities by identifying the network which will service the proposed facility, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service and average daily number of trips. Identify any proposed local, county, or State Department of Transportation traffic engineering plans for the network identified;

(2) Describe the sewage facilities by identifying the type of treatment system available, its existing treatment capacity, collection system capacity, average and peak flow data, and current committed capacity for treatment and collection system;

(3) Describe the stormwater management system by identifying the type of collection and treatment system available, and current collection and treatment capacity and utilization;

(4) Describe the water supply by identifying the water supply system, water sources, level and type of existing pre-treatment, capacity of the distribution system, current commitment of capacity, availability of additional supply, and peak and average demands;

(5) Describe the energy supply system on-site or immediately available to the site by identifying existing power lines or pipelines, current commitment of capacity, their capability of supplying energy to the proposed facility and conveying, if applicable, any energy products generated by the proposed facility from the site;

(6) Describe the demography of the area by providing existing population totals and describing present and projected future population and trends for the district within which the facility will be located and all districts which will utilize the proposed facility. State, county or local government sources may be used for all demographic data;

(7) Describe property values within the immediate neighborhood with respect to median sales prices and recent (1–2 year) trends and provide a general description of the property values of the municipality within which the proposed facility will be located and all municipalities within one half mile of the proposed facility. The descriptions shall include such factors as zoning changes, development patterns, development approvals, etc. which can affect property values. The description of property values in the immediate area of the facility shall be sufficiently detailed to allow assessment of the effect construction and operation of the facility may have on such values;

(8) Describe public services available by identifying current local law enforcement, fire protection and health protection capabilities of the municipality in which the proposed facility will be located; and

(9) Describe the type and map the location of community and residential dwellings such as hospitals, nursing homes, food processing centers, playgrounds, parks, schools and residences.

4. A description of the proposed facility operations, which shall include, but not be limited to the following:

i. An identification of the project sponsor including name, address, and telephone number where the project sponsor can be contacted during normal working hours. Indicate if the project sponsor is presently, or was previously, associated with any other waste disposal or collection project or operation and, if applicable, identify the project or operation. Describe the responsibilities assumed during this association;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the products or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;

iii. An identification of existing or potential markets for each of the products to be recovered from the solid waste disposal operation, if applicable. Identify the types, qualities and daily quantities of products to be recovered. Set forth the elements of a quality control plan for the recovered products. Provide a copy of any long-term contracts for the sale of the recovered products, if available. In the case where long term contracts have not been finalized upon submittal of the EHIS, a detailed letter of intent, describing areas of agreement and disagreement, shall be submitted. The end use of the recovered products, by the purchaser, shall be defined;

iv. An economic analysis for the proposed facility which projects and approximates capital, operating and maintenance expenditures, as well as any revenues to be realized from the anticipated sale of recovered products, if applicable. The analysis shall project the maximum and minimum charges to be assessed for the various waste ID types to be handled, including an estimate of the initial tipping charges to be levied;

v. An identification of the waste streams which the proposed facility will accept, and copies of any agreements which guarantee a steady flow of this waste to the facility;

vi. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

vii. A narrative statement of the type of disposal processes to be used, including control measures and monitoring instrumentation. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily and hourly handling capacity of the overall facility in tons of refuse received per day and the anticipated operating time in hours per day and days per week; and

viii. A description of the quantity and physical/chemical characteristics of process residues and side-stream wastes resulting from the operation, if applicable. A detailed discussion of appropriate methods of disposal for all such materials such as, through contracts or inclusion in the appropriate district solid waste management plan, including, if available, the identification of primary and alternate disposal sites and methods of storage and handling and methods of reuse or recycling, if applicable.

5. A discussion of the relationship of the proposed action to Federal, State, county, and local land-use plans, policies and controls and environmental regulations. The discussion shall include the following:

i. A description of present land use for the site of the proposed facility and the area within two miles of the perimeter of the facility property line. Include a map or maps illustrating zoning designations and a chart setting forth use restrictions. If the site, any portion of the site or any areas adjacent to the site was previously used for waste landfilling, information relating to depth and area of deposition, type of material landfilled, gas concentration and migration, settling and other factors which may potentially affect construction and operation shall be provided;

ii. A description of how the project will conform or conflict with the objectives of any applicable Federal, State or local land use and environmental requirements including, but not limited to, those affecting the following:

(1) The floodway and flood fringe areas of the flood hazard areas as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A 58:16A–50 et seq., or areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA);

(2) Areas designated as wild, scenic, recreational or developed recreational rivers pursuant to the Natural Wild and Scenic Rivers Act, 16 USCA 1271 or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8–45;

(3) Critical habitat of endangered or threatened species of plants, fish or wildlife as defined by the Federal Endangered Species Act of 1973, P.L. 93–205, or the New Jersey Endangered and Non–Game Species Conservation Act, N.J.S.A. 23:2A–1 et seq.

(4) Wetlands, tidelands and coastal zone areas as identified by the Department pursuant to the Wetlands and Coastal Resource and Development Policies, N.J.A.C. 7:7E and as identified on the U.S. Fish and Wildlife Services National Wetlands Inventory Maps;

(5) The Preservation and Protection Areas as established by N.J.S.A. 13:18A–11 of the Pinelands Protection Act, N.J.S.A. 13:18A–1 et seq.;

(6) Nonattainment areas as defined in N.J.A.C. 7:27–18;

(7) Areas subject to the prevention of significant deterioration criteria as defined in 40 CFR 52.21;

(8) Areas which may impact the acoustical quality of residential and commercial properties pursuant to N.J.A.C. 7:29;

(9) Areas which may significantly impact water quality pursuant to N.J.A.C. 7:15;

(10) Lands that have been duly certified by the State Agriculture Development Committee as agricultural development areas pursuant to the Agricultural Retention and Development Act, N.J.S.A. 4:1C–11 et seq.;

(11) Watershed areas for water classified by the Department as FW–1 waters or FW–2 Trout Production Waters pursuant to the Surface Water Quality Standards, N.J.S.A. 7:9–4;

(12) Areas over a sole source aquifer designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93–523;

(13) Areas within the critical supply areas as defined by the Water Supply Management Act, N.J.S.A. 58:1A–1 et seq.;

(14) Areas which will encroach upon, damage or destroy any area, site, structure or object included in the National or State Register of Historic Places established by N.J.S.A. 13:1B–15.128;

(15) Areas within 10,000 feet of any airport runway which is equal to or greater than 3000 feet in length, within 5000 feet of any airport runway which is less than 3000 feet in length; and

(16) Areas dedicated to recreational or open space use including, but not limited to, national parks, national recreation areas, national forests, national wildlife refuges, state wildlife management areas, state parks, state forests, state designated natural areas and county or local parks, wildlife sanctuaries and recreational facilities.

(17) Areas subject to cleanup pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K–6 et seq.;

iii. Where the potential for a land use or environmental conflict exists, the applicant shall describe the mitigation efforts to be undertaken to meet the intent of the applicable land use or environmental requirement.

6. A comprehensive description of the district solid waste and, if applicable, sludge management plans for the districts wherein the proposed facility is to be located, from which solid waste is to be received, or to which process residues are to be sent for disposal. The description shall include the following:

i. An identification of all affected municipalities and districts and a description of the strategy of each plan as it pertains to the proposed facility; including inter-district waste flow agreements and intra-district waste flow patterns, plan duration, recycling and waste reduction goals, implementation schedules and plan implementing agencies. A description of how the proposed facility will conform with the content and strategy of each plan shall also be included; and

ii. A discussion of the elements of the plan which indicate a need for the facility, its relation to current solid waste disposal capacities and the mechanisms established that will guarantee the necessary waste flows to the proposed facility.

7. A list and status report on all Federal, State, county and local licenses, permits and certifications necessary for the proposed facility;

8. An environmental assessment, which shall provide a detailed evaluation of the potential impacts of the proposed facility on the environment including, but not limited to, all parameters identified in the environmental inventory in (c)3 above. The assessment shall include, but not be limited to, the following:

i. An evaluation of both positive and negative, as well as, primary (direct or immediate) and secondary (indirect or long range) impacts on each parameter under conditions of maximum usage or output and a correlation of such impacts with various stages of the site preparation, facility construction, operation, closure and post closure phases;

ii. An identification and description of the modeling techniques used to predict impacts on the various parameters identified in (c)3 above. Where applicable, a calibrated and verified model shall be used and a copy of the model in the appropriate format shall be transmitted to the Department. Where an accepted modeling technique is not available best professional judgment may be used. A detailed description of the logical reasoning and assumptions made in the exercise of best professional judgment shall be incorporated to permit independent review;

iii. Isopleths, grid maps or other maps to depict potential zones of contaminant migration surrounding any and all sources of emission or discharge. Identify the type and location of each source;

iv. A quantification of impacts whenever possible (for example, lost habitat in acres) for all potential environmental impacts identified, where such quantification is not included, an explanation of the reason for such omission shall be provided;

v. A qualitative discussion of all potential environmental impacts identified; and

vi. A detailed description of the mitigative techniques proposed to address any potential environmental impact associated with the proposed facility.

9. A health impact assessment for Class II and III sanitary landfills and thermal destruction facilities, which shall provide a detailed evaluation of the potential impacts of the proposed facility on human health resulting from ground or surface water discharges and air emissions, including, but not limited to the following:

i. A description and discussion of the health risk assessment methodology to be employed, including detailed descriptions of the logical reasoning and assumptions employed in the method. A bibliography of reference material utilized in the preparation of the assessment shall be provided. Applicants shall contact the Department prior to the initiation of the assessment to obtain the current guidelines for such activities;

ii. A discussion of the level of uncertainty involved in the overall assessment. This discussion shall address the uncertainty involved in the estimation of individual parameters such as emissions or discharge and decay rates, levels of exposure and health effects, as well as the implications of complex uncertainties;

iii. A listing of all potential contaminants which may reasonably be expected to be released from the facility, and the amounts, concentrations and pathways of each;

iv. A listing of contaminants which will be utilized to assess health risks. All known carcinogens listed in (c)9iii above shall be included; additional contaminants shall be included, based on professional judgment. This list, together with a description of the rationale employed in choosing those materials included on the list, shall be submitted to the Department for review and approval prior to the initiation of the toxicity profile and health impact assessment;

v. For each of the contaminants listed in (c)9iv above, a toxicity profile shall be developed. This profile shall include data on the physical and chemical nature of the contaminant, as well as a description and discussion of data available regarding the environmental fate, acute effects (LD_{50}, irritation), chronic effects (mutagenicity, teratogenicity, carcinogenicity) and epidemiology of the material. This profile shall include a listing of available toxicological, epidemiological or other acute or chronic health effects studies used or otherwise available on the material in question. Applicants should contact the Department prior to the initiation of development of these profiles, to obtain the current guidelines for such activities;

vi. A quantification of the potential health impacts, where possible. If such quantification is not included, an explanation of the reason for such omission shall be provided; and

vii. A detailed description of the mitigation techniques proposed to address any potential health impacts associated with the proposed facility.

10. A summary discussion of any potential adverse impacts identified in the environmental and health assessment in (c)8 and 9 above that cannot be avoided should the proposed facility be implemented. For those impacts which cannot be avoided, their implications and the reasons why the proposed facility should be permitted shall be described. Where mitigation measures are proposed to reduce these potentially adverse impacts, the projected effectiveness and costs of the mitigative measures shall be discussed.

11. A comparison of reasonable design alternatives to the proposed facility. The comparison shall be sufficiently detailed to permit independent and comparative evaluation of the benefits, costs and environmental impacts of the design of the proposed facility and each reasonable design alternative. The comparison shall include the following:

i. Discussion of the alternative of no action or no project, and addressing the major foreseeable consequences of such a choice;

ii. Discussion of the feasibility of various alternative design or process changes, including those which could reduce or avoid some or all of the adverse impacts identified above;

iii. Preparation of economic analyses for both the chosen design and the identified design alternatives. Techniques such as cost-effectiveness analysis, cost-revenue analysis or other techniques approved by the Department may be employed;

iv. Identification of any significant differences in environmental impact which would result from use of the design/process changes identified in ii above, as compared to those resulting from the chosen alternative;

v. Comparison, in matrix or other appropriate format, of the degree of feasibility and economic and environmental impacts of both the chosen alternative and the set of feasible alternatives identified in (c)11ii above; and

vi. A discussion of the reasons why the proposed action was selected over the alternatives.

12. A discussion of the relationship between local, short term uses of the environment and the effect of the proposed facility on available options for subsequent future uses. Short term refers to the construction phase of the proposed facility. A description of the following shall be included:

i. Those cumulative and long-term effects of the proposed facility which either negatively impact or enhance the environment for the future;

ii. The extent to which the proposed facility prohibits future options;

iii. Plans which provide for the protection and maintenance of the environment during construction of the proposed facility, which shall include, but not be limited to, the following:

(1) Procedures to be used during construction if archeological resources are uncovered;

(2) Erosion and sediment control plans; and

(3) Controls for dust, odors, noise, traffic, and soil tracking.

iv. Plans which provide for the protection and maintenance of the environment after termination of the facility operation.

13. A discussion of irreversible and irretrievable commitments of resources resulting from the construction and operation of the proposed facility. The discussion shall include an analysis of the use of renewable and nonrenewable resources during construction and throughout continued operation, including an assessment of energy consumption. Where applicable, alternative energy sources shall be discussed and compared to the type selected and the rationale for the selection shall be stated.

(d) The minimum EHIS requirements for other types of solid waste disposal operations are as follows:

1. The EHIS for leaf composting facilities, described in N.J.A.C. 7:26–2.4(c)i, shall be based on the operational plan and shall contain a description of the following:

i. Describe the consistency of the proposed facility with the solid waste management plan of the district within which the proposed facility is to be located; and

ii. Include a detailed narrative description of the following prepared in accordance with the Department's guidelines:

(1) Facility design and operations including volumes and types of vegetative wastes to be handled, processing equipment, methods of processing and handling, facility layout, and use of end product;

(2) The site location of the proposed facility, including a copy of a tax map showing the lot and block number of the site upon which the facility is located; and

(3) The impact that the proposed facility will have on existing transportation patterns, ambient acoustical conditions drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands area and agricultural development areas, dedicated recreational or open space areas, floodways and endangered or threatened wildlife and vegetation.

2. The EHIS for small scale thermal destruction facilities or incinerators, described in N.J.A.C. 7:26–2.4(c)2, shall be based on the engineering designs submitted to the Division of Environmental Quality and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and residue disposal;

ii. The site location of the proposed facility including a copy of the vicinity map and the site plan map;

iii. The impact that the proposed facility will have on local transportation patterns, drainage characteristics, surface and ground water quality, endangered and/or threatened wildlife and vegetation, storm water and wastewater collection/treatment capability, water supply capability, air quality and ambient acoustical conditions; and

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility.

3. The EHIS for small-scale materials recovery facilities, whose prime mode of operation relies upon the utilization of non-mechanical processing features, and solid waste transfer stations shall be based on engineering designs prepared in accordance with the requirements of N.J.A.C. 7:26–2.10, and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and use of end product;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design and identified in N.J.A.C. 7:26–2.10(b)5 and 6 shall be included;

iii. The impact that the proposed facility will have on local transportation patterns, drainage and soil characteristics, surface and ground water quality, endangered or threatened wildlife and vegetation, storm water and wastewater collection/treatment capability, water supply capability, ambient acoustical conditions and air quality;

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility; and

v. A description of how the facility will conform or conflict with the objectives of any applicable Federal, State, or local land use and environmental requirement set forth at N.J.A.C. 7:26–2.9(c)5ii.

4. The EHIS for other types of small scale solid waste disposal operations not identified in this section shall be prepared in accordance with requirements established by Department for the operation, based upon the potential for adverse environmental and health impacts caused by such operations;

5. In addition to the EHIS requirements enumerated in this section, the Department retains the right to request additional EHIS information from the applicant.

(e) Compliance with the EHIS requirements set forth in this section shall not preclude the necessity for the applicant to conform with any environmental analysis requirements of other agencies which may have jurisdiction by law.

(f) A preliminary EHIS may be submitted to the Department prior to the submission of a complete permit application package for review and approval in accordance with the procedures set forth in (g) below and shall include but not be limited to the following:

1. An executive summary prepared in accordance with (c)1 above;

2. A site description prepared in accordance with (c)2 above;

3. An environmental inventory of the proposed facility prepared in accordance with (c)3 above;

4. An environmental assessment of the proposed facility, based on conceptual or preliminary engineering designs shall be performed and analysed at maximum possible discharge or emission levels and on the parameter listed in the environmental inventory performed as required by (c)3 above;

5. A discussion of the relationship of the proposed facility to any Federal, State, county and local land-use or environmental plans, policies, controls or regulations. The discussion shall include the following:

i. A description of how the proposed facility will conform or conflict with the objectives of any of the Federal, State, county or local land-use or environmental requirements set forth in (c)5ii above.

ii. A description of the Federal, State, county or local land-use or environmental requirements which may restrict the construction and operation of the proposed facility; and

iii. A detailed description of the mitigative techniques proposed to address any potential land use or environmental impact associated with the proposed facility.

6. A discussion of any potential adverse impact identified in the environmental assessment in (f)4 and 5 above that cannot be avoided;

7. A comparison of alternatives to the proposed facility design, which shall be sufficiently detailed to permit evaluation of the benefits, costs and environmental impacts of the proposed facility design and reasonable design alternatives;

8. A discussion of the relationship between local, short-term uses of the environment and long-term future uses; and

9. An identification of irreversible and irretrievable commitments of resources that would be affected by the proposed facility.

(g) The following are the procedures for preliminary EHIS review and approval and the effect of the preliminary EHIS approval:

1. An applicant may, at its own option, submit a preliminary EHIS to the Department prior to the submission of a complete application for a SWF permit;

2. The preliminary EHIS shall contain all information required pursuant to (f) above and such other information as the Department deems necessary during a pre-application conference for preliminary EHIS review;

i. The applicant shall provide the Department with documentation demonstrating that the proposed facility is consistent with the adopted and approved objectives

and strategies set forth in the applicable district solid waste management plan, and that the proposed facility can be acquired, constructed or operated pursuant to the standards set forth in this chapter.

3. The preparation of a preliminary EHIS is not a precondition to the preparation and submittal of a complete application for a solid waste facility permit;

4. After submission of a preliminary EHIS, the Department shall review the preliminary EHIS and take one of the following actions:

i. Request, in writing, additional information required by the Department to conclude a review of the preliminary EHIS. Such request shall specify any additional information such as modeling, environmental or health assessments or project alternatives necessary to sufficiently evaluate the preliminary EHIS. The applicant shall respond within 14 days of the receipt of the written request and specify its intent to proceed with the submission of the information requested or terminate the preliminary EHIS review;

ii. Recommend a reconsideration of project alternatives based upon a review of the facts and proposed impacts of the proposed facility;

iii. Approve the preliminary EHIS; or

iv. Disapprove the preliminary EHIS.

5. Preliminary EHIS review and approval shall not preclude the necessity for an applicant to prepare and submit a final EHIS to the Department as part of a complete permit application pursuant to N.J.A.C. 7:26–2.4(d);

6. Pursuant to N.J.S.A. 13:1E–26 and N.J.S.A. 13:1E–29, an applicant receiving preliminary EHIS approval may:

i. Acquire real property intended for use in connection with the proposed facility; or

ii. Issue bonds or other obligations necessary to ensure available financing for the proposed facility's planning, development and implementation.

7. An applicant's decision to acquire property, issue bonds or take any other actions after receiving a preliminary EHIS approval will be solely at the applicant's risk. Any acquisition action taken or expenditures made in reliance on the preliminary EHIS approval are entirely at the applicant's own risk and the Department shall not be liable therefor; and

8. The issuance of any preliminary EHIS approval pursuant to this section shall not be binding on the Department in its review of any subsequent submissions by an applicant for a SWF permit.

As amended, R.1983 d.192, effective June 6, 1983.
See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).
Section was "Termination or change of ownership of a landfill"; replaced with new text.
Amended by R.1986 d.305, effective July 21, 1986.
See: 18 N.J.R. 1036(a), 18 N.J.R. 1462(a).
Substantially amended.
Amended by R.1987 d.117, effective February 17, 1987.
See: 18 N.J.R. 2170(b), 19 N.J.R. 356(a).
(f)4, (g)19 and 21 substantially amended.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed "Closure and post-closure care of sanitary landfills".

Case Notes

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

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

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

Taxpayer's expert in assessment appeal for landfill did not consider costs of closure and postclosure maintenance; closed landfill not worthless as value possible if combined with contiguous lot in satisfaction of zoning ordinance coverage requirement. Inmar Associates, Inc. v. Edison Twp., 2 N.J. Tax 59 (Tax Ct.1980).

Municipality was not entitled to stay of approval for construction and operation of sludge dewatering facility at site of existing sewage treatment facility. In Matter of Bergen County Utilities Authority Treatment Works, 92 N.J.A.R.2d (EPE) 27.

7:26–2.10 General engineering design submission requirements

(a) The engineering design submittal requirements set forth in this section are general requirements for all solid waste facilities unless exempted in N.J.A.C. 7:26–2.4(c). Additional engineering design submittal requirements for sanitary landfills shall be prepared in accordance with the requirements of N.J.A.C. 7:26–2A.6 except for those facilities exempted as specified in N.J.A.C. 7:26–2.4(c). Additional engineering design submittal requirements for thermal destruction facilities, solid waste transfer stations, materials recover facilities, and composting or co-composting facilities shall be prepared in accordance with the requirements of N.J.A.C. 7:26–2B.2, 3 and 4 except for those facilities as specified in N.J.A.C. 7:26–2.4(c).

(b) The general requirements for the preparation and submittal of engineering designs for all proposed solid waste facilities, except those types of facilities specified in N.J.A.C. 7:26–2.4(c), are as follows:

1. Prior to developing the required engineering designs, all applicants shall have a pre-application conference with the Department for the purpose of discussing the scope of work for the proposed facility. During this conference the Department will specify the minimum number of complete sets of drawings the applicant shall be required to submit for each design. The exact number of sets necessary for each submission shall be based upon the type, scale, location and potential impact of the proposed facility.

2. Individual engineering drawing sheets shall not be larger than 30 inches by 42 inches or smaller than 24 inches by 36 inches in size.

3. Each drawing sheet shall bear the date of preparation and the raised seal of the New Jersey licensed professional engineer responsible for the preparation of the design.

4. A key map of the engineering drawings, delineating the general location of the proposed facility, shall be prepared and submitted as part of the engineering design. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of three miles from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted. The key map shall depict the following:

i. All surface waters, coastal zone areas as defined in N.J.S.A. 13:19–1 et seq.; wetlands as defined in N.J.S.A. 13:9A–1 et seq.; water supply wells and reservoirs; FW–1 and FW–2 Trout Production waters as defined in N.J.A.C. 7:9–4; wild, scenic, recreational or developed recreational rivers designated pursuant to the Natural Wild and Scenic River Act 16 USCA 1271 et seq. or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8–45 et seq., and all 100 year floodway and flood hazard areas as delineated in N.J.A.C. 7:13;

ii. General zoning designations within one mile of the perimeter of the proposed facility's boundary:

iii. All main service corridors, transportation routes and main access roads that will be used as routes of traffic flow; and

iv. All airports and runways.

5. A vicinity map prepared in accordance with (b)2 above shall be prepared and submitted as part of the engineering design. The vicinity map shall have a minimum scale of one inch equals 400 feet (1″ = 400′) with contour intervals shown at 20 foot intervals. The vicinity map shall delineate an area of one mile from the perimeter of the property line of the proposed facility. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum 1929 (Mean Sea Level Datam 1929) and keyed into the New Jersey Plane Coordinate Datum 1927. One or more vicinity maps may be utilized to ensure clarity of the information submitted. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photograph. The vicinity map shall depict the following:

i. All buildings and structures including the layout of the buildings which will comprise the proposed facility;

ii. The boundaries of the proposed facility;

iii. The limits of the actual disposal operations within the boundaries of the proposed facility;

iv. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

v. The specific local zoning designation within 1,000 feet of the perimeter of the proposed facility's boundary; and

vi. The location of all existing and proposed utility lines, pipelines or other utility structures which will be connected to the facility.

6. A site plan map, delineating the existing and final as-built contours of the site of the proposed facility, shall be prepared in accordance with (b)2 above and be submitted as part of the engineering design. The site plan map shall be prepared in accordance with the "Classification, Standards of Accuracy and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980 and the New Jersey Map Filing Law, N.J.S.A. 46:23–9, at a minimum scale of one inch equals 200 feet (1″ = 200′) with contour intervals shown at two foot intervals. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plane Coordinate Datum 1927. The site plan map shall depict the following:

i. The legal boundaries of the facility as determined by a survey performed by a licensed New Jersey Land Surveyor. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points, in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. A copy of the deed of record or other document proving ownership shall accompany the site map. If the property is leased by the applicant, a copy of the lease shall accompany the site map. In those cases where the applicant is scheduled to take title to the property or sign a lease for the property at a later date, submit a timetable for same;

ii. The total acreage of the facility property and the total acreage of the actual disposal operations;

iii. The boundaries of the area to be used for disposal operations; and

iv. The layout of all buildings, access roads, internal routes of traffic flow and environmental controls, as they will appear at the site.

7. A geotechnical and soils report shall be prepared and submitted as part of the engineering design. The report shall include the following:

i. A soils map, published by the United States Department of Agriculture, Soil Conservation Service, depicting the site of the proposed facility and the area within one half mile from the perimeter of the facility;

ii. A geologic map, based on published or unpublished material and mapping available from the United States Geological Survey and New Jersey State Geologic Survey or unpublished mapping acceptable to the New Jersey Geologic Survey depicting the area within one mile from the perimeter of the facility; and

iii. A soil borings report, prepared by a qualified geologist, or geotechnical engineer which describes that portion of the property designated for actual disposal operations. This requirement is dependent on the type of proposed facility. The Department will specify the need for and scope of the soil boring requirements during the pre-application conference. The Department reserves the right to require further soil borings or testing, if necessary. Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation.

8. An engineering report shall be prepared and submitted as part of the engineering design. The engineering report shall include the following:

i. A descriptive statement and detailed specifications of all proposed waste disposal system processes;

ii. A description of the installation methods and procedures and the scheduling of events for construction of the facility;

iii. A description of the rated and proposed design capacity of the facility in terms of tons and cubic yards per day and tons per hour to be disposed of at the facility;

iv. A description of the daily number and types of vehicles which will transport solid waste to the facility and, if applicable, the reclaimed material and waste from the facility;

v. A presentation of the results and calculations, clearly noted, of all required design testing; and

vi. A projection of the life expectancy of the facility.

9. A preliminary operations and maintenance (O and M) manual shall be prepared and submitted as part of the engineering design. The preliminary O and M manual shall include the following:

i. A description of the proposed methods of facility operation, including, but not limited to, the following:

(1) Hours of operation;

(2) Types of equipment (indicate capacity and number of units);

(3) Implementation schedule for the solid waste facility;

(4) Monitoring;

(5) Security; and

(6) Methods to be employed to meet the operational requirements of N.J.A.C. 7:26–2.11.

ii. An inspection plan, which shall include a schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of this subchapter and N.J.A.C. 7:26–2A or 2B, as applicable. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. Areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs, shall be inspected daily, when in use. The plan shall include a schedule for inspecting monitoring, safety, and emergency equipment; security devices and process operating and structural equipment. The plan shall identify the types of problems which are to be looked for during the inspection and the frequency of inspection;

iii. A maintenance plan, which shall include an analysis of all applicable major aspects of the facility operation based on applicable industry established rates of potential equipment deterioration or malfunction if available, an analysis of spare parts inventory needs, schedules for anticipated repairs and maintenance contracts with local equipment dealers to supply standby or emergency equipment;

iv. A safety plan which shall include a description of the proposed measures to protect facility and other personnel from injury during operation;

v. A description of the proposed measures to handle unusual peak loadings which may exceed designed facility capacity;

vi. A description of the proposed measures to handle incoming waste flow during periods of short term facility shutdown for normal equipment repairs and also for periods of longer term facility shutdown for more extensive repairs; and

10. The Department will review the preliminary O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a final O and M manual. The final O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but within 60 days of initiating full scale operations. Full scale facility operations shall not be initiated before formal Departmental approval of the final O and M manual.

11. A landscaping plan delineating the existing site vegetation to be retained, and discussing the methods to be employed in order to ensure protection during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted, shall be submitted as part of the engineering design. Information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan. Facility exterior grounds shall be landscaped in a manner which enhances the visual appearance of the property.

12. Foundation sources and basis documents supporting all factual information submitted and all conclusions drawn, shall be identified.

New Rule, R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
This section was recodified without change to 2.12.

7:26–2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities. Additional requirements for sanitary landfills are set forth in N.J.A.C. 7:26–2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26–2B.8. Additional requirements for transfer stations and materials recovery facilities are set forth in N.J.A.C. 7:26–2B.9.

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1. Within each 24 hour period the operator shall clean each area where waste has been deposited or stored, except for those storage areas at thermal destruction facilities which are designed for multiple day storage capability and as exempted by 10 below; for sanitary landfill all areas where waste has been deposited shall be covered with the appropriate cover material except as permitted by (b)10 below;

2. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

3. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented at all facilities;

4. Methods of effectively controlling dust shall be implemented at all facilities in order to prevent offsite migration;

5. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

6. The operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

7. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures as delineated in the approved O and M manual, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

8. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

9. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26–3, with the Division of Solid Waste Management, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26–3.3, and displaying the appropriate registration number shall be admitted for loading or unloading of any solid waste at the facility. Solid waste vehicles exempt from registration shall not be admitted to the tipping area when registered, commercial type solid waste vehicles including, but not limited to, compactor trucks, trailers or any solid waste vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

10. The operator shall designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles which are exempt from the registration requirement of N.J.A.C. 7:26–3.3. Bulky items and recyclable materials may be provided for in this manner. The facility operator shall be responsible for the sanitary condition and orderly operation of the designated area. It shall be the operator's responsibility to remove the bulky items, recyclable materials or other waste from the designated area at a frequency so as not to exceed the storage capacity of the area. Scavenging is prohibited;

11. The operator shall at all times comply with the conditions of the SWF permit, as well as all other permits or certificates required and issued by the Department or any other governmental agency. The operator shall not receive, store, handle, process or dispose of waste types not specifically identified in that facility's SWF permit or other permit or certificate issued by the Department;

12. The operator shall designate a secure area under the facility's control, located a safe distance from the active disposal area, where solid waste, including suspected hazardous waste, which the facility is not permitted to receive shall be deposited until the operator receives instruction from the Department as to the proper disposal of the unpermitted waste;

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26–2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the Department. Transfer stations and materials recovery facilities shall use the formula in N.J.A.C. 7:26–2B.

14. Departmental inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

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

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

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

15. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit certificate. The designed processing and disposal capacity approved within any solid waste facility permit, other permit certificate or approval conditions as a ton per day operational maximum shall be inclusive of all solid waste received at the facility as well as all tonnages of source separated recyclables received;

16. The facility shall be operated in a manner that employs the use of the equipment and those techniques for the receipt, storage, handling, processing or disposal of incoming waste and process residues that are specifically authorized by the facility's SWF permit;

17. The operator shall provide a means of removing mud, solid waste or other debris from the tires of all vehicles. Vehicle tires shall be cleaned prior to the vehicle's departure from the facility's boundaries; and

18. The approved final O and M manual shall be maintained at the facility. A written description of any proposed changes to the approved, final O and M manual shall be submitted to the Department for review. These proposed changes shall not be implemented at the facility until the Department approves the changes.

19. No operator shall transfer or allow to be transferred or otherwise alter, Type 13C waste destined for out-of-State disposal by adding or subtracting other waste types to the load once a transporter weighs the load of Type 13C waste at the designated district facility and receives a certified O and D form.

(c) The operator of a designated district disposal facility shall ensure that all weighing and inspection procedures carried out pursuant to N.J.A.C. 7:26–2.13(c)6 are conducted in a manner that facilitates proper operation and minimizes system interruptions. Changes in the design of the facility required in order to install equipment and to otherwise comply with the requirements of this subsection shall be submitted in accordance with N.J.A.C. 7:26–2.6.

Amended by R.1974 d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c).
Amended by R.1978 d.72, effective February 27, 1978.
See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).
Amended by R.1983 d.570, effective December 5, 1983.
See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).
(p) deleted.
New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed rule was general operational requirements for incinerators, transfer stations, processing facility and resource recovery facilities.
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Required that vehicles be registered as "solid waste vehicles" in (b)9, at (b)10, operator's designation of area for exempt solid waste vehicles made mandatory.
Amended by R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).
Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, expires March 26, 1996).
See: 28 N.J.R. 1305(a).

Case Notes

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

7:26–2.12 Generator requirements for disposal of asbestos and asbestos-containing waste

(a) A generator of asbestos or asbestos-containing waste shall submit a written notification of intent, in accordance with (b), and (c) below, to dispose of such wastes at least 10 days prior to disposal.

(b) The written notification required by (a) above shall include:

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

2. Quantity and nature of waste to be disposed;

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

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

5. Date and time of disposal; and

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

(c) The written notification required by (a) above shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid Waste Management
Enforcement Element
428 E. State Street, CN 414
Trenton, New Jersey 08625

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

New Rule, R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Repealed rule was "Guidelines and criteria for the preparation of engineering designs".
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
At (b)3., "collector-hauler" replaced by "transporter"; at 4. "landfill" replaced by "sanitary landfill", CFR cite corrected and address changed at (c).

Case Notes

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

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

7:26–2.13 Solid waste facilities; records

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

1. Identification of the solid waste facility by name and facility identification number;

2. Identification of the transporter by the Department of Environmental Protection registration number assigned;

3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of four categories of wastes as follows:

i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);

ii. Solids: Waste ID 13C weighed or weighed and inspected prior to transportation out–of–State;

iii. Septage and liquid sewage sludges: Waste ID 73 and 74 received (in gallons);

iv. Bulk liquid and semiliquids: Waste ID 72 received (in gallons);

4. Date and time of delivery to the facility;

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

6. The place of origin of the waste identified by municipality, county and State or in the case of the waste from a transfer station or materials recovery facility, the facility ID number of the transfer station shall also be listed.

7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste shall:

i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

(1) Date and time of delivery;

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

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

(4) Name and address of the generator; and

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

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

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

8. In addition to the information required in (a)1 through 7 above, transfer stations and materials recovery facilities which are not specifically provided with waste flow to their facility pursuant to N.J.A.C. 7:26–6, and which accept solid waste from districts or states other than where the facility is located, shall maintain the following additional information in the daily record:

i. The tonnages and types of solid waste received by municipality and by district or by out-of-State source. This amount shall be the total received prior to removal of materials for recycling. The types shall be listed by each ID type;

ii. The tonnages and types of solid waste returned to the state or county (including municipality) of origin. The transfer station and materials recovery facility is not considered the origin of the solid waste it receives;

iii. The tonnages and types of source separated recyclable materials and recyclable materials separated from the solid waste received by origin (by county and municipality); and

iv. The tonnages, types and destinations of recyclable materials which leave the transfer station or materials recovery facility to end markets, manufacturers or recycling centers for further processing pursuant to the following:

(1) Recyclable materials may only be transported to the above noted destinations, pursuant to the requirements of N.J.A.C. 7:26A;

(2) End markets, manufacturers and recycling centers shall mean the same as the definitions found at N.J.A.C. 7:26A–1.3;

(3) Destinations for recyclable material shall be listed by specific location and name of each end-market, manufacturer or recycling center; and

(4) Class B recyclable materials transported to an in-state recycling center for further processing shall be transported only to those recycling centers approved by the Department pursuant to N.J.A.C. 7:26A.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of same, or on systems acceptable to the Department, shall be kept for five years, and shall be available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A–2 for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/ disposal (O and D) form (or duplication of same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a designated district facility pursuant to N.J.A.C. 7:26–6, the waste remaining after processing shall be designated within the O and D form and daily record as the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility. Further, at no time may ID 27 solid waste be subjected to mechanized processing, such as grinding, shredding or baling, at transfer stations or materials recovery facilities, such that the physical appearance or the material is altered prior to disposal at a designated district facility.

1. An approved O and D form shall be provided by the department to each registered transporter. The transporter shall thereafter duplicate the form for use with each load of solid waste.

2. Prior to disposing of the solid waste, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information provided; and

3. The facility operator shall verify that the form has been completed by a registered transporter, that the waste as identified by the transporter may be disposed of at the facility in compliance with the waste flow rules at N.J.A.C. 7:26–6.5 and the facility's registration, and, where applicable, the facility's computer recording of scale data is in conformance with the information supplied, and sign the completed form.

4. The facility operator shall retain all O and D forms for a minimum of one year and shall make them available for inspection by representatives of the department or the local health department at any time during normal working hours.

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

6. For each load of Type 13C waste weighed pursuant to N.J.A.C. 7:26–6.3(a)9ii, the designated district facility operator shall verify and return to each registered transporter of Type 13C waste, the completed O and D form which must accompany the Type 13C waste during transit. The O and D form shall contain the following information:

i. The registered name and telephone number of the owner/operator of each registered unit of a solid waste vehicle;

ii. The transporter vehicle plate number(s);

iii. The N.J.D.E.P. registration number for each registered unit of the solid waste vehicle;

iv. The gross vehicle weight as recorded by the facility scale;

v. The date the vehicle was weighed;

vi. Identification of the designated district weighing facility by name and facility identification number; and

vii. The signature of the facility weighmaster certifying that the form has been completed by the transporter and that the gross weight figure is true and accurate for loads going out–of–State.

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

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

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

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

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

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

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of Solid and Hazardous Waste, the district within which the facility is located and any solid waste authority operating within the district within which the facility is located on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month.

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

i. The tonnages and types of solid waste received by origin from each county (including municipality) and out-of-State source;

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

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

iv. The identification of end-markets, manufacturers or recycling centers by specific name and location used for the materials designated as recyclable materials and the amount of materials sent to each specific end-market, manufacturer or recycling center. The requirements for transportation to, and identification of, end-markets, manufacturers and recycling centers shall be the same as N.J.A.C. 7:26–2.13(a)8iv above;

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

vi. Payments made to a designated district facility in lieu of disposing of solid waste pursuant to N.J.A.C. 7:26–2B.9(a)iii. The summary shall include the name of the district to which the payment was made, the amount of solid waste not delivered and the amount of the payment;

vii. The tonnage and types of solid waste sent to the designated facility in the district in which the transfer station or materials recovery facility is located where an in-lieu of payment has been made;

viii. The tonnage and origin of Type 13C waste that is weighed or weighed and inspected from each county and municipality prior to transportation out-of-State; and

2. Discrepancies between the amount and/or type of solid waste received at a transfer station or materials recovery facility and the amount and/or type of solid waste returned to the district designated facility or transported out-of-State which are not substantiated in the monthly summary pursuant to (e)1 above shall be deemed a violation of N.J.S.A. 13:1E–1 et seq., N.J.S.A. 48:13A–1 et seq., this chapter and in violation of the registration to operate a solid waste facility issued pursuant thereto and shall subject the facility to the provisions and penalties of N.J.S.A. 13:1E–9 and 48:13A–12 and all other applicable laws. Any discrepancy listed in (e)2i or ii below is a violation of N.J.S.A. 13:1E–1 et seq., N.J.S.A. 48:13A–1 et seq., this chapter, and the registration to operate a solid waste facility issued pursuant thereto, and shall subject the facility to penalties under N.J.S.A. 13:1E–9, 48:13A–12, and all other applicable laws and regulations:

i. A discrepancy between the following amounts:

(1) The amount or type of source-separated recyclables received at the facility for the month plus the amount or type of recyclables removed from solid waste received by the facility for the month as reported under (e)1iii above; and

(2) The change since the preceding month in the amount of each type of recyclable materials stored at the facility as reported under (e)1v above plus the amount or type of recyclable materials sent to end-markets at the end of the month as reported under N.J.A.C. 7:26–2.13(e)1iv.

ii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for the month as reported under (e)1i above; and

(2) The amount and type of solid waste returned to the county or state of origin as reported under (e)1ii above plus the amount and type of solid waste for which in-lieu payments have been made as reported under (e)1vi above.

iii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for which in-lieu payments have been made as reported under (e)1vi above; and

(2) The amount and type of solid waste sent to the designated facility in the county in which the transfer station or materials recovery facility is located as reported under (e)1vii above.

iv. A discrepancy between any of the amounts listed in (e)2i through iii above, and the corresponding amounts reported in the monthly summary under (e)1 above.

(f) Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A–2 or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 14:3–10.15(b)4.

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

1. Solid wastes; waste ID number and definitions:

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

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

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

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

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

vi. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries, including animal manure when intended for disposal and not reuse. Also included are dead animals. Animal manure, when intended for reuse or composting, is to be managed in accordance with the criteria and standards developed by the Department of Agriculture as set forth at N.J.S.A. 4:9–38.

vii. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26–8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, asbestos and asbestos containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26–2A.8(1), and residue from the operations of a scrap metal shredding facility.

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

1. Liquid wastes; waste ID number and definitions:

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

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

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

(i) The following waste types have been consolidated under other categories:

1. 11 Institutional (see 10, Municipal);

2. 14 Construction and demolition (see 13, Bulky Waste);

3. 5 Pesticides: (see 27, Dry industrial waste and N.J.A.C. 7:26–8);

4. 16 Hazardous waste containers (see N.J.A.C. 7:26–8);

5. 17 Dry hazardous waste (see N.J.A.C. 7:26–8);

6. 18 Dry nonhazardous chemical waste (see 27, Dry industrial waste);

7. 19 Junked autos (see 13, Bulky waste);

8. 20 Tires (see 13, Bulky waste);

9. 21 Dead animals (see 25, Animal and food processing waste);

10. 22 Leaves and chopped tree wastes (see 23, Vegetative waste);

11. 24 Tree stumps (see 13, Bulky waste);

12. 26 Oil spill cleanup wastes (see 27, Dry industrial waste and N.J.A.C. 7:26–8);

13. 28 Infectious waste (see N.J.A.C. 7:26–1.4 and the requirements established by the New Jersey Department of Health);

14. 70 Waste oil and sludges (see N.J.A.C. 7:26–8);

15. 71 Semisolid waste oils and sludge (see N.J.A.C. 7:26–8);

16. 75 Pesticide liquids (see 72, Bulk liquid and semiliquids and N.J.A.C. 7:26–8);

17. 76 Liquid hazardous waste (see N.J.A.C. 7:26–8)

18. 77 Liquid chemical waste (see N.J.A.C. 7:26–8).

(j) Solid waste shall be identified at the point of generation. For waste received at a transfer station or materials recovery facility, the transfer station is not the point of generation. Solid waste which is received by a transfer station or materials recovery facility shall retain the ID type identified in the O and D form. The type of solid waste shall not change due to the removal of recyclable materials or the processing of solid waste.

R.1976 d.303, effective November 1, 1976.
See: 8 N.J.R. 374(d), 8 N.J.R. 509(a).
Amended by R.1978 d.72, effective February 27, 1978.
See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).
Amended by R.1983 d.192, effective June 6, 1983.
See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).
(a)5 and new (c) added; existing (c)–(e) recodified (d)–(f).
Amended by R.1983 d.570, effective December 5, 1983.
See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).
(d)–(f) Substantially amended.
Emergency Amendment, R.1984 d.148, effective April 2, 1984.
See: 16 N.J.R. 930(a).
(a)6 and new (c) and (d) added, existing (c)–(f) redesigned (e)–(h); inspection by local health department added to (b), monthly summary submittal deleted.
Adopted concurrent proposal, R.1984 d.231, filed June 4, 1984.
See: 16 N.J.R. 930(a), 16 N.J.R. 1497(a).
Provisions of emergency amendment R.1984 d.148 readopted with technical and substantive changes, requiring solid waste transporters to provide landfill operators with documentation of origin and contents of waste load.
Amended by R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).
(a)7 added.
Correction: Added text in (a) "resource recovery facilities and transfer stations".
See: 18 N.J.R. 983(a).
Amended by R.1988 d.73, effective February 16, 1988.
See: 19 N.J.R. 171(a), 20 N.J.R. 393(a).
Section title was Sanitary landfills, resource recovery facilities and transfer stations; records.
In (a), the above was repealed and "Each solid waste facility permittee" was substituted.
Correction: Added text to (g)1vi "oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous".
See: 20 N.J.R. 1958(b).
Emergency amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Added text to (g)1 in "Also included are . . .".
Adopted concurrent proposal, R.1989 d.55, effective December 23, 1988.
See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
Provisions of emergency amendment R.1988 d.547, readopted without change.
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Added tonnage as an available description for the capacity of a solid waste vehicle; replaced vehicles with solid waste vehicle and changed 15th to 20th day of month for submitting daily records; changed address.
Public Notice: Notice of receipt of petition for rulemaking.
See: 23 N.J.R. 2187(c).
Action on Petition for Rulemaking: Amend Type 27 waste and amend certain classes of waste from interdistrict and intradistrict waste flow orders.
See: 23 N.J.R. 2428(b).
Amended by R.1993 d.27, effective January 4, 1993.
See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).
Revised the description of dry industrial waste, ID 27, to specifically state that the residue from the operations of a scrap metal shredding facility is included within this class of solid waste.
Amended by R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).
Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, expires March 26, 1996).
See: 28 N.J.R. 1305(a).

Law Review and Journal Commentaries

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

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

Case Notes

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

7:26–2.14 (Reserved)

R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
Repealed by R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
This section was applicability.

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

7:26–2A.1 Scope and applicability

(a) This subchapter shall constitute the rules and regulations of the Department governing the design, construction, operation, maintenance, closure and post-closure of sanitary landfills.

(b) The requirements of this subchapter are in addition to the general engineering design submission requirements in N.J.A.C. 7:26–2.10 and the general operational requirements in N.J.A.C. 7:26–2.11.

(c) This subchapter shall apply to the following facilities:

1. All newly proposed sanitary landfills and all existing sanitary landfills proposing to expand their existing operations onto previously unfilled permitted areas; and

2. Any existing sanitary landfills operating as an open dump or in an environmentally unsound manner which the Department determines needs to be environmentally upgraded.

(d) This subchapter does not apply to hazardous waste landfills. See N.J.A.C. 7:26–9, 7:26–10.8, 7:26–11.4 and 7:26–12.

(e) The provision of this subchapter and N.J.A.C. 7:26–2 shall not be interpreted as permitting the disposal of domestic sewage, sewage sludge, or septage in any manner other than that prescribed by law.

7:26–2A.2 Construction

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

Case Notes

Solid Waste Management Act and regulations preempt municipal zoning ordinance with respect to construction of sanitary landfill access road; construction approval by Department proper. Chester Twp. v. Dept. of Environmental Protection, 181 N.J.Super. 445, 438 A.2d 334 (App.Div.1981).

7:26–2A.3 Purpose

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

1. To establish additional engineering design submission requirements for sanitary landfills;

2. To establish requirements and standards for the design and construction of sanitary landfills to insure that adverse impacts are minimized and controlled and that pollution of the environment is prevented; and

3. To establish additional requirements for the operation, maintenance, inspection and monitoring of sanitary landfills to ensure the proper operation of the sanitary landfill so as to minimize and control adverse impacts and prevent pollution of the environment.

7:26–2A.4 General prohibitions and requirements

(a) Open dumps are declared to be a nuisance, hazardous to human health and are prohibited.

(b) The owner or operator of any landfill which is determined to be an open dump, in accordance with the U.S.E.P.A. Criteria for Classification of Solid Waste Disposal Facilities and Practices, 40 CFR 257 or demonstrated to be environmentally unsound shall:

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

2. Within 90 days of approval by the Department of the submitted design, begin construction of the environmental upgrading; and

3. Within one year of design approval by the Department, complete construction of the environmental upgrading.

(c) A one time extension of the compliance schedule established by (b) above may be granted by the Department provided a good faith effort has been made by the facility owner or operator to meet the schedule.

(d) Should the environmental upgrading required pursuant to (b) above not be completed, or should the continued operations result in classification of the landfill as an open dump or as environmentally unsound, the landfill shall temporarily or permanently cease operations and close, in conformance with the closure requirements set forth in N.J.A.C. 7:26–2A.9, or enter into receivership, as provided for in N.J.S.A. 13:1E–9, for that period of time necessary to rectify the unsatisfactory or environmentally unsound conditions as determined by the Department's enforcement action.

(e) No new sanitary landfill shall be constructed or any existing landfill continue to operate where solid waste is or would be in contact with the surface or ground waters. This provision shall not apply to cleanfill.

(f) Leachate from any sanitary landfill shall not be allowed to drain or discharge into the surface water or groundwater except as permitted pursuant to the NJPDES regulations, N.J.A.C. 7:14A.

(g) No sanitary landfill shall be operated in a manner that would result in the impairment of the quality of the surface or groundwaters to a degree that would degrade the quality of either the surface or ground waters beyond the classification established by the Department in the Surface Water Quality Standards, N.J.A.C. 7:9–4, or the Ground Water Quality Standards, N.J.A.C. 7:9–6.

(h) No sanitary landfill shall be operated in a manner that would result in the degradation of the ambient air quality beyond the standards established by the Department pursuant to N.J.A.C. 7:27.

(i) No sanitary landfill shall be operated in a manner that would result in soil erosion and sedimentation beyond the standards established by the Department of Agriculture pursuant to N.J.A.C. 2:90.

(j) No new sanitary landfill shall begin construction or operation without first obtaining a NJPDES permit pursuant to N.J.A.C. 7:14A and approval of its Soil Erosion and Sediment Control Plan pursuant to N.J.A.C. 2:90.

(k) No existing sanitary landfill shall continue to operate without obtaining a NJPDES permit, and approval of its Soil Erosion and Sediment Control plan in accordance with N.J.A.C. 2:90.

(*l*) No new sanitary landfill shall begin construction or operation if located within the following distances of an airport, as measured from the nearest runway to the nearest property line without the design and implementation of an effective bird deterrent plan approved by this Department and the New Jersey Department of Transportation.

1. Within 10,000 feet of any airport runway which is equal to or greater than 3,000 feet in length and that services turbo-engine planes; or

2. Within 5,000 feet of any airport runway which is less than 3,000 feet in length and that services prop-engine planes.

(m) No existing sanitary landfill shall continue to operate, within the restricted zone of an airport as set forth in N.J.A.C. 7:26–2A.6(g)11, when it is determined by the Department and the Bureau of Aviation of the Department of Transportation to present a real or potential attraction for birds, until an effective deterrent plan is implemented.

(n) No person shall engage in the disposal of solid waste at a facility that does not meet the operational and maintenance requirements of this subchapter and N.J.A.C. 7:26–2. In addition, each permittee shall comply with any condition, limitation, or discharge requirement which may be specified in the SWF permit for that facility;

(*o*) The owner or operator of an existing sanitary landfill shall be required to design in accordance with N.J.A.C. 7:26–2A.7(f)3 or 4, and after Departmental approval of the design, construct, operate and maintain, a gas collection, venting and monitoring system when gas is detected at the points set forth at N.J.A.C. 7:26–2A.7(f)3 or 4;

(p) The owner or operator of an existing sanitary landfill shall install a groundwater monitoring system in accordance with the requirements of N.J.A.C. 7:14A–6.

(q) The owner or operator of an existing sanitary landfill shall be required to design and after Departmental approval of the design, construct, operate and maintain a leachate control collection and treatment system when leachate is determined to be impacting the quality of the surface and groundwaters of the area.

(r) The owner or operator of any existing sanitary landfill shall be required to design and after Department approval of the design, construct, operate and maintain a surface drainage system when it is determined that soil erosion and sedimentation will result in substantial soil losses and negative impacts upon the quality of the surface and groundwater of the area.

(s) The following waste types as defined in N.J.A.C. 7:26–2.13(d) shall not be disposed of in sanitary landfills:

1. Hazardous waste as defined by N.J.A.C. 7:26–8;

2. Septic tank clean-out wastes, waste ID number 73;

3. Liquid sewage sludge, waste ID number 74; and

4. Radioactive materials regulated by the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.

7:26–2A.5 Additional engineering design submittal requirements for sanitary landfills

(a) In addition to the requirements of N.J.A.C. 7:26–2.10, the engineering design submission requirements for sanitary landfills shall include the following:

1. A regional map prepared and submitted in accordance with N.J.A.C. 7:26–2.10(b)4 which shall include, but not be limited to, the following additional information:

i. Location of all public community water supply wells and all wells permitted to pump over 100,000 gallons per day or 70 gallons per minute within one and one-half miles of the property line of the landfill. The service areas, if any, of the public community water systems, as defined in N.J.A.C. 7:10–1.3, within one and one-half miles of the property line of the sanitary landfill; and

ii. Location of all water wells within one-half mile of the property line of the sanitary landfill;

2. A site plan map delineating the existing contours of the proposed sanitary landfill area prepared and submitted in accordance with N.J.A.C. 7:26–2.10(b)6 which shall include, but not be limited to, the following additional information:

i. Delineation of the area-wide modular development of the sanitary landfill's construction and operations and, where applicable, the lateral limits of previously filled areas;

ii. Delineation of the vertical and horizontal control monuments and property corner markers. The elevations, in relation to the National Geodetic Vertical Datum of 1929 (Mean Sea Level 1929) of the control monuments, shall be indicated and keyed into the New Jersey Plane Coordinate Datum 1927;

iii. Location of all monitoring devices including, but not limited to, all groundwater monitoring wells, lysimeters, gas monitoring wells, gas vents, piezometers, inclinometers and bore hole extensometers. Elevations of the monitoring wells and piezometers shall be determined to the top of the outercasing and for the adjacent ground surface. The horizontal and vertical location shall be represented as required by N.J.A.C. 7:26–2.10(b)6i. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot; and

iv. Location of all borings, excavations and test pits. The horizontal and vertical location of all borings shall be represented as required by N.J.A.C. 7:26–2.10(b)6i. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot;

3. Additional site plan maps which delineate in plan view and in detailed cross-sectional view the following:

i. The initial elevations of the proposed sanitary landfill showing all grades of the liner and, where applicable, the subgrade;

ii. The final elevations of any excavation showing all grades of the excavation and, where applicable, all grades of the subgrade;

iii. The leachate collection system showing all grades of the collection pipe, pipe envelope drainage layer, filter manhole/clean-out risers and sumps;

iv. All berms, dikes, ditches, swales or other protection devices as needed to divert or collect surface water run-on or run-off;

v. The system utilized for venting and monitoring the gases generated within the sanitary landfill and, if applicable, from beneath the liner;

vi. The final elevations and grades of the capping system including the subgrade for the impervious cap, the drainage and vegetative layers, the drainage pipes and drainage envelope;

vii. All grades of leachate treatment and disposal systems including the leachate removal pipes, the equalization pond, treatment or pre-treatment ponds or storage facilities; and

viii. All proposed landscaping and screening techniques to be utilized to minimize the visual impact of the sanitary landfill.

4. Additional engineering drawings, designs or maps which describe, in sufficient detail, the construction specifications of the systems utilized in the sanitary landfill. These maps or drawings may be combined with those required by N.J.A.C. 7:26–2A.5(a)3 so long as the required details are clearly distinguishable and identifiable. They shall include, but not be limited to, the following:

i. Subgrade;

ii. Liner/cut-off wall;

iii. Drainage layer and filter;

iv. Collection pipe and drain envelope;

v. Inlet/outlet structures;

vi. Manholes, sumps, pumps, and pump station;

vii. Leachate storage tanks;

viii. Leachate treatment impoundments or tanks;

ix. Leachate disposal systems;

x. Gas vents, manifolds and pump station;

xi. Monitoring wells/devices;

xii. Surface drainage and erosion controls; and

xiii. Cap.

5. An engineering report which includes but is not limited to the following additional information:

i. A description of the general installation methods and procedures for construction of the facility including materials required, equipment utilized, and scheduling of construction events and phases. To insure that the construction requirements of this subchapter are properly implemented the description,[1] but not be limited to, the following:

(1) Site preparation;

(2) Subgrade;

(3) Liner/cut-off wall;

(4) Drainage layer and filter;

(5) Collection pipes and drain envelope;

(6) Inlet/outlet structures;

(7) Manholes, sumps, pumps, and pump station;

(8) Leachate storage tanks;

(9) Leachate treatment impoundments or tanks;

(10) Leachate disposal;

(11) Gas vents, manifolds and pump stations;

(12) Monitoring wells;

(13) Surface drainage and erosion controls; and

(14) Caps.

ii. A description of the construction contingency plan for the construction phase which shall describe procedures for responding to construction deficiencies resulting from circumstances including, but not limited to, inclement weather, defective materials or construction inconsistent with specifications as demonstrated by quality control testing. The plan shall provide a description of the criteria to be utilized in evaluating deficiencies, selecting corrective action methodology and implementing corrective action;

iii. A description of the estimated solid waste capacity of the site in tons and cubic yards. Projection shall be made to determine the life expectancy of the site based on current and anticipated loading;

iv. The results with sufficient, clearly noted, calculations to verify the results, of the material testing required by this subchapter including, but not limited to, where applicable, the following:

(1) N.J.A.C. 7:26–2A.5(a)6vi(9) and (10);

(2) N.J.A.C. 7:26–2A.7(b)3;

(3) N.J.A.C. 7:26–2A.7(c)2i, vii, and ix;

(4) N.J.A.C. 7:26–2A.7(c)3i, ii, and x;

(5) N.J.A.C. 7:26–2A.7(c)4i, iv(1) and (2), and ix;

(6) N.J.A.C. 7:26–2A.7(c)5i, iv, vii and viii;

(7) N.J.A.C. 7:26–2A.7(c)6i and iv;

(8) N.J.A.C. 7:26–2A.7(c)7i, ii and v;

(9) N.J.A.C. 7:26–2A.7(c)8ii and v;

(10) N.J.A.C. 7:26–2A.7(c)9i and iv;

(11) N.J.A.C. 7:26–2A.7(c)10i, ii, iii and iv;

(12) N.J.A.C. 7:26–2A.7(d)2ii;

(13) N.J.A.C. 7:26–2A.7(d)3i, iii, ix and xvii;

(14) N.J.A.C. 7:26–2A.7(f)6, 12 and 14ii;

(15) N.J.A.C. 7:26–2A.7(g)4 and 8;

(16) N.J.A.C. 7:26–2A.7(i)3;

(17) N.J.A.C. 7:26–2A.7(i)9iv; and

(18) N.J.A.C. 7:26–2A.7(i)10i.

v. A description of how the sanitary landfill will meet the environmental performance standards required by N.J.A.C. 7:26–2A.6 and the design standards and construction requirements in N.J.A.C. 7:26–2A.7. The description shall provide sufficient, clearly notated design calculations to verify the results, including, but not limited to, the following:

(1) Foundation and slope stability analysis;

(2) Liner/cut-off wall efficiency and performance;

(3) Leachate collection system's capacity, performance, and structural stability;

(4) Three-dimensional mass transport modeling for the sanitary landfill performance;

(5) Pumping system's performance;

(6) Leachate treatment and disposal system's capacity and performance;

(7) Run-on/run-off system's capacity and performance;

(8) Gas venting and/or collection system's performance;

(9) Monitoring system's efficiency;

(10) Capping system's efficiency and performance; and

(11) Cover material quantity analysis.

vi. A delineation of the environmentally sensitive areas listed in N.J.A.C. 7:26–2A.6(g) that are impacted by the sanitary landfill and a description of the additional design and construction measures that will be implemented at the sanitary landfill to increase performance of the environmental control systems of the sanitary landfill that will be utilized to minimize and control the potential adverse impacts and prevent pollution in accordance with N.J.A.C. 7:26–2A.6(h).

6. A geotechnical report prepared by a qualified geologist, or geotechnical engineer which includes but is not limited to, the following requirements or items:

i. A narrative section which contains:

(1) A general description of the major characteristics of the geological formations of the region where the proposed sanitary landfill will be located including thickness, lithology, structural features, degree of weathering and amount of overburden; and

(2) A site specific description, based on the data collected pursuant to vi below, of the soils, rocks, water levels and flows. Soils test data and evaluations of the soils or rocks underlying the sanitary landfill shall be submitted, including any recommendations for site design which may be appropriate, to minimize any adverse impacts from the construction of the sanitary landfill;

ii. A soils map shall be provided for the area including the sanitary landfill and vicinity. The soils map provided shall be a copy of the map published by the United States Department of Agriculture, Soil Conservation Service or by the State soils or geologic agencies;

iii. A generalized geologic map and geologic cross sections, based on published or unpublished material and mapping available from the United States Geologi-

cal Survey and New Jersey Geological Survey or unpublished mapping acceptable to the New Jersey Geological Survey, shall be provided for the area including the sanitary landfill and region, and should include, but not be limited to, the following information:

(1) Bedrock outcrop;

(2) Dip and strike of sedimentary formations and foliation trend and dip angles of igneous and metamorphic rocks;

(3) Faults and prominent shear zone trends;

(4) Joint or fracture trends in bedrock including dip angles;

(5) Trend direction of solution channels in carbonate rocks and sink holes; and

(6) Location of any active or abandoned mine workings.

iv. A generalized potentiometric map shall be provided for the area, including the sanitary landfill and the region, based upon available data including, but not limited to, existing topography, surface drainage and existing well data;

v. A well report describing the use, depth, and yield of all wells located on the regional map required by 1i and ii above and the diversion allocation for all public community water supply wells and wells yielding 100,000 gallons per day or greater;

vi. In preparing the site specific report, required by (a)6i(2) above and the site specific geological maps and detail cross sections required by (a)6vii and viii below, sufficient borings shall be made of the proposed landfill site to characterize and verify the geology and groundwater conditions beneath the site with respect to the types of material, uniformity, hydraulic conductivity, porosity and depth to groundwater. Borings of the proposed sanitary landfill site shall be provided at a minimum, in accordance with Table I below:

TABLE I
BORINGS

Acreage	Total Number of Borings	Number of Deep Borings Required
Less than 10	4	1
10–49	8	2
50–99	14	4
100–200	20	5
More than 200	24 + 1 boring/each additional 10 acres	6 + 1 boring/each additional 40 acres

(1) The Department reserves the right to require additional borings in areas in which the number of borings required by Table I above is not sufficient to describe the geologic formations and groundwater flow patterns below the proposed sanitary landfill in regard to potential contaminant migration paths;

(2) In highly uniform geologic formations, the number of borings may be reduced, as approved by the Department, if other techniques are employed, as recommended in (a)6vi(6) below, to correlate data collected from these methods to the boring data;

(3) The borings should employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the sanitary landfill in order to sufficiently define the geology. It is recommended that the soil borings be performed in a phased approach and that the number of borings in the proposed active landfilling area be minimized;

(4) Subsurface data obtained by borings shall be collected by standard undisturbed soil sampling techniques for engineering properties, and split spoon sampling or standard penetration tests for engineering indexes and classification. Diamond bit coring shall be used for rock boring. Samples shall not be composited. The sampling interval for the boring required by Table I above shall be determined by the geologist or geotechnical engineer and be approved by the Department. It is recommended that sampling be performed on a continuous basis for the first 20 feet below the lowest elevation of the sanitary landfill and collected at five foot intervals thereafter;

(5) All borings shall be a minimum depth of 20 feet below the lowest elevation of the sanitary landfill. The Department reserves the right to require a deeper minimum depth in areas in which 20 feet is not sufficient to describe the geological formation and groundwater flow patterns below the proposed sanitary landfill in regard to potential contaminant migration paths;

(6) The depth of deep borings shall be determined on a case by case basis. The depth should be, at a minimum, equal to or greater than the design height of the sanitary landfill;

(7) Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation;

(8) Field and final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include a soil or rock description in accordance with the Unified Soil Classification System or the Rock Qualification Description System, the method of sampling, the depth of soil or rock, the water levels encountered, the blow counts, the soil tests and date. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum;

(9) In addition to the sampling and testing requirements for foundation analysis set forth in N.J.A.C. 7:26–2A.7(b), at a minimum three separate soil samples for each significant soil/rock class encountered shall be analyzed for unit weight, porosity, laboratory classification, cation exchange capacity, and hydraulic conductivity. The soil samples shall be taken from three separate borings;

(10) It is recommended that a sufficient number of samples, as determined by the geologist or geotechnical engineer, be analyzed for the index properties to verify the uniformity or nonuniformity of the geological formation encountered and to correlate the soils engineering properties. A soil profile for the index properties should be developed at intervals determined on-site;

(11) At a minimum, four of the borings shall be converted to water level observations wells or well nests. The total number of wells or well nests shall be determined on a case-by-case basis as approved by the Department based on the complexity of the geology of the site;

(12) The groundwater shall be sampled and analyzed for each distinct aquifer encountered below the site in accordance with the NJPDES requirements, N.J.A.C. 7:14A–10.12(e)2ix. It is recommended that the groundwater be sampled and analyzed in accordance with N.J.A.C. 7:14A–10.12(e)2ix, for one year prior to operation of the sanitary landfill; and

(13) All borings, not to be utilized as permanent monitoring wells, and wells within the active disposal area shall be sealed in accordance with N.J.A.C. 7:9–9, Sealing of Abandoned Wells, and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration.

vii. Geologic maps of the proposed sanitary landfill area, based on the site specific geologic investigation required by (a)6vi above or literature review, prepared at a scale of one inch equals 200 feet (1″=200′) and with contour intervals which sufficiently define the ground surface contours, and various geologic formations and aquifers beneath the proposed landfill;

viii. Detailed site specific cross sections which shall sufficiently describe the geologic formations identified by the geologic maps prepared in accordance with (a)6vii above prepared at a scale which clearly defines the geologic formations; and

ix. Potentiometric maps prepared at a scale of one inch equals 200 feet (1″=200′) with contour intervals which sufficiently define the groundwater conditions in all aquifers encountered below the proposed sanitary landfill area based upon stabilized groundwater elevations developed as part of the site specific geologic investigation required by (a)6vi above. It is recommended that two seasonal contour maps based on stabilized water levels in the wells be developed, one representing the yearly low flow condition and the other representing yearly high flow condition.

7. A quality assurance (QA) and quality control (QC) plan for the construction phase meeting the requirements set forth at N.J.A.C. 7:26–2A.7(a)7 through 24, shall be submitted. It shall include, but not be limited to, the following information:

i. A delineation of the QA and QC management structures, including the chain of command of the QA and QC inspectors and describing the quality control and corrective action implementation responsibilities of the QA and QC inspectors and the contractors;

ii. A description of the required level of experience for the contractor and his crew for every major phase of construction which shall be sufficient to insure that the installation methods and procedures as required in (a)5i above are properly implemented;

iii. A description of the required level of experience of the QA and QC inspectors for every major phase of construction to insure that the QA and QC testing as required by (a)7vi below is properly implemented;

iv. A description of the required level of training, if necessary, to be provided for the contractor's personnel and the inspectors, to insure that the installation methods and procedures and the contingency methods, as required by (a)5i and ii above, are properly implemented and that corrective action will be properly employed, when necessary;

v. A description of the QA and QC testing and inspections for every major phase of construction, which shall include but not be limited to the following:

(1) The frequency of inspections;

(2) The frequency of field testing;

(3) The frequency of sampling for laboratory testing;

(4) The sampling and field testing procedures to be utilized;

(5) The sampling and field testing equipment to be utilized;

(6) The calibration of field testing equipment;

(7) The frequency of system or performance audits;

(8) The sampling size;

(9) The soils or geotechnical laboratory to be used;

(10) The laboratory procedures to be utilized; and

(11) The calibration of laboratory equipment and QA/QC of laboratory procedures.

vi. The QC testing and inspections shall include, but not be limited to, the following:

(1) N.J.A.C. 7:26–2A.7(b)4viii and x;

(2) N.J.A.C. 7:26–2A.7(c)2v, vii, x and xi;

(3) N.J.A.C. 7:26–2A.7(c)5vi;

(4) N.J.A.C. 7:26–2A.7(c)6v;

(5) N.J.A.C. 7:26–2A.7(c)7vi;

(6) N.J.A.C. 7:26–2A.7(c)9vii and viii;

(7) N.J.A.C. 7:26–2A.7(c)10x, xi, xii, and xvii;

(8) N.J.A.C. 7:26–2A.7(d)2vii and viii;

(9) N.J.A.C. 7:26–2A.7(d)3viii and xxi;

(10) N.J.A.C. 7:26–2A.7(g)6 and 7; and

(11) N.J.A.C. 7:26–2A.7(i)9iv and 10i.

8. The preliminary O and M manual for the sanitary landfill shall include the following, in addition to the preliminary O and M requirements set forth in the general engineering requirements, N.J.A.C. 7:26–2.10(a)9:

i. A description of how the operations and maintenance of the sanitary landfill will meet the requirements set forth in N.J.A.C. 7:26–2A.8;

ii. An occupational health and safety plan established in conformance with the safety and health standards of the Federal Department of Labor, Occupational Safety and Health Administration pursuant to 29 CFR 1926 and 1910 Safety and Health Standards and Industrial Standards;

iii. A community relations plan for facilities with a design capacity of 500 tons per day or greater, identifying the steps that the owner will take to transfer information and solicit input from the community in which the facility is located. The community relations plan shall contain the following:

(1) A minimum of two open meetings with the community or its representatives prior to and during facility construction. The purpose of such meetings will be to inform the community of the operations of such a facility, including the progress of construction and projected initial tipping fees;

(2) Annual open meetings with the community or its representatives subsequent to the initial startup of operations. The purpose of these meetings is to allow community input and to provide a forum for exchanging ideas; and

(3) A notification procedure, whereby the community is provided a report of findings in the case of an emergency incident at the facility.

9. The final O and M manual for the sanitary landfill shall include the following, in addition to the final O and M requirements set forth in the general engineering requirements, N.J.A.C. 7:26–2.10(a)10.

i. A facility staffing plan containing the following:

(1) The job title for each position at the facility;

(2) A written job description for each position, including duties and performance standards. The description shall include the requisite skills, education, and other qualifications deemed necessary for employees assigned to each position;

(3) An explanation of the criteria and reasons used in selecting the required number and types of positions, as well as the qualifications for each position; and

(4) A statement of the staffing provided for each operating shift, including the job titles and number of employees for each title, and for each shift.

ii. A written training plan which shall include the type and amount of both the initial and annual follow-up training to be provided to facility personnel;

iii. An emergency contingency plan which delineates procedures for responding to fire, explosions or any unplanned sudden or non-sudden releases of harmful constituents to the air, soil, or surface water. The emergency contingency plan shall be submitted to the local police and fire departments, and to the local and county health departments or other offices of emergency management. The emergency contingency plan shall contain:

(1) A description of the actions facility personnel shall take in the event of various emergency situations;

(2) A description of arrangements made with the Department and local police and fire departments which allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and

(3) A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

[1] So in original.

7:26–2A.6 Sanitary landfill environmental performance standards

(a) Any sanitary landfill subject to regulation pursuant to N.J.A.C. 7:26–2A.1(c) shall contain a leachate containment system, leachate collection system, leachate treatment/disposal system, gas venting system, surface drainage control system, monitoring system, a final capping system and any other system or environmental control measure required by the Department, and shall be designed and constructed in accordance with the performance standards set forth in this section.

(b) In the design and construction of a sanitary landfill subject to regulation pursuant to N.J.A.C. 7:26–2A.1(c), consideration shall be given to ground and surface water conditions, geology, soils, topographic features, solid waste types and quantities, social, geographic and economic factors, and esthetic and environmental impacts in order to protect the environment and to minimize and control adverse impacts.

(c) The following are the performance standards for sanitary landfills:

1. The sanitary landfill shall not cause or result in any decrease in the quality of the ground or surface water at the property line of the sanitary landfill, within the aquifers located below or surface water adjacent to the sanitary landfill, beyond that allowed by N.J.A.C. 7:9–6, Ground Water Quality Standards or N.J.A.C. 7:9–4, Surface Water Quality Standards, as applicable; and

2. The sanitary landfill shall not cause or result in any significant decrease in the quality of water taken from any potable water well existing at the time of design and construction of the proposed sanitary landfill. In order to compare the quality, the applicant shall use the Student's t-test at the 0.01 level of significance or an equivalent statistical method, as approved by the Department to determine statistically a significant decrease in water quality.

(d) For a sanitary landfill located in a stable low permeable defined geologic formation having a hydraulic conductivity of less than $1x10^{-6}$ cm/sec., the standard for the design for the containment and leachate collection systems shall consist, at a minimum, of the following:

1. An impervious liner consisting of three feet of clay having a hydraulic conductivity equal to or less than $1x10^{-7}$ cm/sec. designed and constructed in accordance with N.J.A.C. 7:26–2A.7(c); and

2. A leachate collection system consisting of a one foot sand drainage layer having a hydraulic conductivity equal to or greater than $1x10^{-2}$ cm/sec. The collection pipe spacing and liner slope shall be designed to ensure that the leachate head on the liner does not exceed one foot at any time based on actual flows from the area of drainage at real time events. The leachate collection system shall be constructed as specified in N.J.A.C. 7:26–2A.7(d);

3. An applicant may submit an alternate design for the containment and leachate collection system. The Department will only approve such alternate design if the applicant is able to demonstrate, to the satisfaction of the Department, that the alternate system design is an equivalent system in terms of structural integrity as (d)1 and 2 above, meets or exceeds the performance and efficiency requirements of (d)1 and 2 above and meets the performance standard established in (c) above.

(e) A sanitary landfill that is not located in stable low permeable geologic formations of sufficient thickness, having a hydraulic conductivity of less than $1x10^{-6}$ cm/sec., shall increase the performance and efficiency of the containment and leachate collection systems over that of the standard design required by (d)1 and 2 above. The design and performance of the sanitary landfill shall insure an environmentally sound operation with consideration given to the geology, groundwater quality and groundwater usage of the area. Such design shall, at a minimum, also conform to the following:

1. A sanitary landfill located in stable low permeable defined geologic formation having a hydraulic conductivity equal to or less than $1x10^{-5}$ cm/sec. may, if approved by the Department, decrease the liner hydraulic conductivity or increase the liner thickness required by (d)1 above, so as to meet the performance standard established in (c) above;

2. Except where the applicant makes the demonstration permitted by (e)3 below, a sanitary landfill located in any geologic area other than that defined in (e)1 above, shall, at a minimum, have a containment system consisting of a double composite liner system. The primary and secondary geomembrane liners in the double composite liner system shall be in compressive contact with a clay or admixture liner below the geomembrane liner. A leak detection/collection system shall be located between the primary composite liner and the secondary composite liner;

3. Except for sanitary landfills located in geologic areas in which the bedrock is at or near the surface which serves as a direct source of public community water system, an applicant may submit an alternative design for the containment and leachate collection system which shall, at a minimum, consist of a double geomembrane liner system with an additional leak detection/collection system between the primary (top) liner and secondary (bottom) liner or a single composite liner system, provided the applicant demonstrates to the satisfaction of the Department that the alternate system design meets or exceeds the performance and efficiency requirements of 2 above and meets the performance standards required by (c) above.

(f) The evaluation of the performance of the sanitary landfill in the geologic formation within which it is located shall be analyzed with a three-dimensional mass transport model. A two-dimensional mass transport model may be utilized, if approved by the Department, after the applicant demonstrates that the configuration of the site specific geology of vertical versus horizontal extent allows for an evaluation equal to an evaluation resulting from a three-dimensional mass transport model. The mass transport model shall have the capacity to represent the real world situation in accordance with the requirements set forth at Appendix A;

(g) All sanitary landfills regulated pursuant to N.J.A.C. 7:26–2A.1(c) shall be designed and constructed, in accordance with (h) below, to protect environmentally sensitive areas including, but not limited to, the following:

1. The flood fringe areas of the flood hazard area as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A. 58:16A–50 et seq.;

2. Wetland buffer areas as identified by the Department pursuant to the Wetlands Coastal Resource and Development Policies, N.J.A.C. 7:7E;

3. Lands in municipally approved farmland preservation programs, farmland preservation programs or lands which have been dedicated to agricultural use by the purchase of their development easements pursuant to the provisions of the Agriculture Retention and Development Act, N.J.S.A. 4:1C–11 et seq., or equivalent independent county/municipal programs;

4. The watershed area for waters classified by the Department as FW–1 waters or FW–2 Trout Protection Water pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9–4;

5. Areas within 1000 feet of any lake or pond and 500 feet of any river or stream;

6. Areas within a critical water supply area as determined by the Water Supply Management Act Rules, N.J.A.C. 7:19–6, or a sole source aquifer pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93–523;

7. The Pinelands Area as established by N.J.S.A. 13:18A–11a of the Pinelands Protection Act, N.J.S.A. 13:18A–1 et seq.;

8. Areas within one mile of a water supply well or well field producing over 100,000 gallons per day, or surface water reservoir used as a potable water source and areas within 600 feet of any potable water well;

9. Areas directly underlain by cavernous limestone, dolomite, or marble;

10. Areas directly overlying past or present subsurface mining activities;

11. Areas within three miles from either end of the nearest runway of any public-use airport owned by a public agency or designated by the Federal Aviation Administration as a reliever airport as determined by the Division of Aeronautics of the New Jersey Department of Transportation;

12. Areas which will encroach upon, damage or destroy any area, site, structure, or object included in the Register of Historic Places established by N.J.S.A. 13:1B–15.128 et seq.;

13. Within the buffer zone area of specimen trees as determined and defined by the Division of Parks and Forestry;

14. Areas with slopes exceeding 15 percent;

15. Areas where fractured bedrock is or will be within 20 feet from the bottom of the liner; and

16. Areas where groundwater is or will be within 10 feet from the bottom of the liner.

(h) In order to protect the environmentally sensitive areas identified in (g) above, the Department shall require the design, construction and operation of additional control systems or increased performance of the required systems to minimize and control adverse impacts and prevent pollution. The Department will consider documentation, submitted by the applicant, demonstrating that the topographical and geological conditions, in conjunction with the design, construction, operation and maintenance of the sanitary landfill in accordance with this subchapter, will adequately prevent pollution of the environmentally sensitive area.

1. The additional environmental control systems or increased performance of the systems required to protect the environmentally sensitive areas identified in (g) above shall at a minimum include the following for the particular identified area:

Environmentally Sensitive Area Impacted	Type of System Upgrading Required
i. Flood fringe areas of flood hazard area, N.J.A.C. 7:26–2A.5(g)1;	Upgrading of the surface drainage system. Increase in the design storm size;
ii. Wetlands buffer areas, N.J.A.C. 7:26–2A.5(g)2;	Upgrading of the surface drainage system. Increase in the design storm size; Upgrading the liner/leachate collection systems to increase their performance and efficiency;
iii. Lands in farmland preservation programs or municipally approved farmland preservation programs, N.J.A.C. 7:26–2A.5(g)3;	Site configuration restrictions; Upgrading the liner/leachate collection systems to increase their performance and efficiency; Operational restrictions;
iv. Watershed areas of FW–1 water or FW–2 Trout Production Waters, N.J.A.C. 7:26–2A.5(g)4;	Upgrading of the surface drainage system. Increase in the design storm size;

	Environmentally Sensitive Area Impacted	Type of System Upgrading Required
		Upgrading the liner/leachate collection systems to increase their performance and efficiency;
v.	1000 feet of lakes or ponds and 500 feet of rivers or streams, N.J.A.C. 7:26–2A.5(g)5;	Upgrading of the surface drainage system. Increase in the design storm size; Upgrading the liner/leachate collection systems to increase their performance and efficiency;
vi.	Critical water supply areas or sole source aquifer, N.J.A.C. 7:26–2A.5(g)6;	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
vii.	Pinelands Protection Area, N.J.A.C. 7:26–2A.5(g)7;	Upgrading of the surface drainage system. Increase in the design storm size; Upgrading the liner/leachate collection systems to increase their performance and efficiency;
viii.	One mile to a water supply well or surface water reservoir or 600 feet to a potable water well, N.J.A.C. 7:26–2A.5(g)8;	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
ix.	Cavernous limestone, dolomite and marble, N.J.A.C. 7:26–2A.5(g)9;	Site configuration restrictions; Upgrading of the subgrade support; Upgrading of the surface drainage system;
x.	Subsurface mining, N.J.A.C. 7:26–2A.5(g)10;	Site configuration restrictions; Upgrading of the subgrade support;
xi.	Three miles to public use airport, N.J.A.C. 7:26–2A.5(g)11;	Operational restrictions;
xii.	Historic site preservation, N.J.A.C. 7:26–2A.5(g)12;	Site configuration restrictions;
xiii.	Buffer zones of specimen trees, N.J.A.C. 7:26–2A.5(g)13;	Site configuration restrictions;
xiv.	Slopes exceeding 15 percent, N.J.A.C. 7:26–2A(g)14;	Site configuration restrictions; Upgrading of the surface drainage system. Increase in the designed storm size;
xv.	20 feet to fractured bedrock, N.J.A.C. 7:26–2A.5(g)15;	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
xvi.	10 feet to groundwater, N.J.A.C. 7:26–2A.5(g)16.	Upgrading the liner/leachate collection systems to increase their performance and efficiency.

(i) Sanitary landfill setback areas and buffer zones shall be designed and constructed in accordance with the following:

1. In areas in which the groundwater flow velocity, in the geologic formation in which the proposed sanitary landfill will be located, is equal to or greater than one foot per day, the minimum setback area shall be 300 feet from the toe of the slope of the landfill to the property boundary line.

2. In areas in which the groundwater flow velocity, in the geologic formation in which the proposed sanitary landfill will be located, is less than one foot per day, the setback may be reduced based on the geology and topography of the area, the groundwater quality and usage, and the performance standards set forth in (c) above and as determined in accordance with (f) above, but in no case shall the setback area be less than 150 feet.

3. A greater separation than that required by (i)1 or 2 above may be required based on the geology and topography of the area, the groundwater quality, usage, and proximity of potable water wells and the performance standards set forth at (c) above and as determined in accordance with (f) above to prevent pollution within the aquifers.

4. A minimum of 50 feet of buffer zone within the setback area shall be maintained at all landfills.

(j) Reductions in the performance of the sanitary landfill set forth in (d) and (e) above and the design standards and construction requirements set forth in N.J.A.C. 7:26–2A.7 for Class II and III sanitary landfills shall be permitted by the Department based upon the following:

1. The performance required of Class II sanitary landfills shall be based upon the waste type to be disposed of at the sanitary landfill and shall be in accordance with the following analyses:

i. Historical data of the waste type proposed to be disposed of at the sanitary landfill demonstrating the degradation and immobilization of the waste within the soil matrix under similar conditions; or

ii. An analysis, by a New Jersey certified laboratory, of a composite sample of the waste, which shall include, but not be limited to, the following:

(1) A total analysis of metals listed in N.J.A.C. 7:26–8.12, performed in accordance with the most current version of the American Water Works Association, AWWA Standard Method, Part 300;

(2) Extraction procedures for the metals listed in N.J.A.C. 7:26–8.12 using an extractant at a pH of 5 and with site water shall be performed in accordance with the most current version of the USEPA "Test Methods for Evaluating Solid Waste," SW 846 USEPA, Section 2 and USEPA "Solid Waste Leaching Procedure SW 924;"

(3) Steam distillation of any suspected organic shall be performed in accordance with the most current version of the USEPA "Test Methods for Evaluating Solid Waste SW 846;" Section 4.

iii. Background analysis shall be performed on soils taken from the proposed site in accordance with (j)ii(1) and (2) above.

iv. Split sampling shall be performed concurrently with the Department at a time and place to be agreed upon by the applicant and the Department; and

v. A mass transport model meeting the requirements of (f) above shall be used to analyze the extent of any possible potential contaminant migration based

on the site geology and groundwater flow at a maximum discharge rate.

vi. A certified copy of the bill for the Department's analysis of the waste and soils performed in accordance with ii and iii above, shall be forwarded to the applicant, who shall pay the bill within 30 days thereafter. Payment of the bill in full shall be a condition of the final permit approval; and

2. The design standards and construction requirements set forth at N.J.A.C. 7:26–2A.7 may be reduced as approved by the Department for Class II sanitary landfills, as determined based on the waste analysis performed in accordance with (j)1 above and the following:

i. Site access control and security;

ii. Length and scale of the operation; and

iii. Location of the proposed sanitary landfill in regards to the following:

(1) Geologic location in accordance with (d) and (e) above;

(2) Impacts on environmentally sensitive areas in accordance with (g) and (h) above;

(3) Groundwater flow velocity in accordance with (i)1 and 2 above; and

(4) The geologic and groundwater impacts and the geotechnical analysis needed for the two-dimensional model shall be determined based on a preliminary investigation performed in accordance with N.J.A.C. 7:26–2A.4(b)6.

3. The performance required for Class III sanitary landfills may be reduced and Class III sanitary landfills may be exempted from one or more of the design standards or construction requirements of N.J.A.C. 7:26–2A.7 based on the following:

i. Site access control and security;

ii. Length and scale of the disposal operation; and

iii. Location of the landfill in regards to the following:

(1) Geologic location in accordance with (d) and (e) above;

(2) Impacts on environmentally sensitive areas in accordance with (g) and (h) above; and

(3) Groundwater flow velocity in accordance with (i)1 and 2 above.

Amended by R.1990 d.578, effective November 19, 1990.
See: 22 N.J.R. 2882(a), 22 N.J.R. 3514(a).
Design requirement changed from 200 feet to 20 feet at (g)15.

7:26–2A.7 Sanitary landfill engineering design standards and construction requirements

(a) The following are the general sanitary landfill engineering design standards and construction requirements:

1. All sanitary landfills regulated by N.J.A.C. 7:26–2A.1(c) shall be designed and constructed with a leachate containment system, leachate collection system, leachate treatment/disposal system, monitoring system, a surface drainage control system, gas venting system, a final capping system and any other systems or control measures required pursuant to the design standards and construction requirements set forth in this subchapter, unless exempted by N.J.A.C. 7:26–2A.6(j)3;

2. An on-site baseline consisting of two vertical and horizontal control monuments shall be constructed and installed in accordance with the New Jersey Map Filing Law, N.J.S.A. 46:23–9, and Department specifications, as listed in "Guidelines for Establishing Vertical and Horizontal Control Monuments on a Sanitary Landfill".

i. The control monuments shall be installed with, at a minimum, Second Order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce 1980. The control monuments shall be tied into the national or state geodetic survey network and keyed into the New Jersey Plane Coordinate Datum 1927.

ii. Sanitary landfills equal to or greater than 50 acres may be required to construct and install secondary control points in accordance with the Department's specifications listed in "Guidelines for Establishing Vertical and Horizontal Control Monuments on a Sanitary Landfill".

3. The sanitary landfill shall be constructed with a modular design. Each section of the modular design shall be hydraulically isolated from the adjoining section.

4. The degree of hydraulic isolation shall be determined based on the location of the landfill, and shall at a minimum include the following:

i. Sanitary landfills located in areas described in N.J.A.C. 7:26–2A.6(d) and (e), shall, at a minimum, include a temporary berm capable of isolating run-on from adjoining areas and run-off from the active landfill area and contain leachate generated within the sanitary landfill section.

ii. Sanitary landfills located in areas described in N.J.A.C. 7:26–2A.6(e)2 and 3 which require, at a minimum, a double liner or composite liner system and a leak detection system shall be designed so that each section drains, at a minimum, to separate sumps capable of isolating any potential leaks from that section.

5. The construction and operation of the modular sanitary landfill design should be initiated in the section which is most down gradient in relation to groundwater flow. Alternative designs to meet this requirement are acceptable in areas where the topography, such as steep surrounding slopes, make this requirement environmentally unsound.

6. The size of each section shall be designated to minimize the exposed active areas. It is recommended that no section be designated to be operated for longer than two years.

7. A quality assurance inspector, independent of the quality control inspector, approved by the Department and reporting directly to the Department, shall be at the site at all times during the initial construction phase of the containment and leachate collection systems to observe and perform all required systems audits of the quality control inspections, as set forth at (a)8, 9 and 10 below, to insure proper implementation of the design and permit requirements.

8. A meeting shall be held between the quality assurance inspectors and the Department to establish reporting procedures and frequency, in accordance with the construction scheduling.

9. Quality control inspectors shall be at the site during all phases of construction to ensure and verify that the design and permit requirements are properly implemented. The quality control inspectors shall, at a minimum, be at the site at all times during the construction of the containment and leachate collection systems.

10. The quality control measures and tests required by this subchapter and described in the QA and QC plan submitted in accordance with N.J.A.C. 7:26–2A.5(a)7 shall be employed to insure that the construction requirements are properly implemented and that the design and performance standards are achieved.

11. The quality control inspector shall inspect those aspects of the subgrade preparation including, but not limited to, the following:

i. Site preparation, clearing, and grubbing;

ii. Excavation of subgrade to required elevations;

iii. Subgrade preparation to eliminate incompatibilities with the liner system;

iv. Proper application of vegetation suppressant;

v. Compaction of subgrade to design density at proper moisture content to achieve required strength and stability to support the liner;

vi. Moisture content density and field strength tests performed as required;

vii. Compacted lift thickness;

viii. Compaction equipment, weight, speed, and number of passes;

ix. Method of moisture addition;

x. Proof-rolling of subgrade;

xi. Fine finishing of the subgrade to required grades; and

xii. Final inspection of the subgrade for acceptability of area to be lined.

12. The quality control inspector shall inspect those aspects of the containment systems including but not limited to the following:

i. Liner material to ensure that the material being used meets specifications;

ii. Liner material stockpiling, storage, and handling to prevent damage;

iii. Inlet/outlet structure or penetration through the liner to ensure compatibility with the liner system;

iv. Final grades of liner to ensure that they are within acceptable tolerances;

v. Final inspection of liner for acceptability prior to backfill placement;

vi. Backfill placement;

vii. Geotextile placement;

viii. Compacted liners with respect to the following:

(1) Compaction of liner to design density at the proper moisture content to achieve the required hydraulic conductivity and maintain strength and stability;

(2) Uniformity of compactive effort;

(3) Compacted lift thickness;

(4) Compacted liner thickness;

(5) Compaction equipment weight, speed, and number of passes;

(6) Moisture content, density, hydraulic conductivity and field infiltration tests to ensure that they are performed as required;

(7) Mixing and blending of liner material to ensure that the activity is being performed as required; and

(8) Repairs and corrective or remedial action performed as required.

ix. Geomembranes with respect to the following:

(1) Liner panel placement is in accordance with required configuration;

(2) Permanent and temporary anchoring procedures are followed;

(3) The overlap and seam width are in accordance with the design;

(4) The area of seaming is clean and supported;

(5) The uniformity and continuity of seams or welds;

(6) Cap strips are installed on all seams;

(7) Qualitative and quantitative field seaming tests are performed as required;

(8) Imperfections in seams, wrinkles at seams and fishmouth are repaired as required;

(9) Corrective or remedial action taken.

13. The quality control inspector shall inspect those aspects of the leachate collection system including, but not limited to, the following:

i. Material stockpiling, storage, and handling to prevent damage;

ii. Drainage layer placement;

iii. Thickness of the drainage layer;

iv. Grain size analysis and relative density or compaction tests are performed as required;

v. Uniformity of the soil;

vi. Filter placement;

vii. Grades and alignments within acceptable tolerances;

viii. Envelope placement;

ix. Proper implementation of action taken to protect the collection pipe and liner from the loads and stresses due to the traffic of backfilling equipment;

x. Sump construction;

xi. Sump water tightness tests; and

xii. Pump placements.

14. Daily QC reports shall be prepared by the quality control inspector or quality assurance inspectors and maintained in a bound log book which shall be available at the job site at all times for inspection by the Department. All lab reports and field testing results shall be signed and dated by the inspector, and shall be attached to the log book reports. The log book reports shall include, but not be limited to, the following:

i. Identification of project name, location and date;

ii. Weather conditions including:

(1) Temperature (daily high and low);

(2) Barometric pressure;

(3) Wind direction and speed;

(4) Last precipitation event; and

(5) Amount of precipitation.

iii. Description and location of construction currently underway;

iv. Equipment and personnel at work at each unit;

v. Description and location of areas being tested or observed;

vi. Off-site material received and quality verification documentation;

vii. Calibration of test equipment;

viii. Description and location of remedial action taken; and

ix. Decisions and comments including conversations, directives and directions for the following:

(1) Acceptance or failure of inspection or tests;

(2) Acceptance or failure of daily work unit performance;

(3) Problems encountered and corrective action taken;

(4) On-going corrective action;

(5) In-field modifications; and

(6) Assessment of overall project quality.

15. The scheduled frequency of inspections by the independent quality assurance inspectors may be reduced or discontinued if approved by the Department. The reductions or discontinuance shall be based on the results of the initial construction tests and the precision and consistency of the quality control test results.

16. At such time as the independent quality assurance inspector is discontinued, as approved by the Department, the activities performed by the quality insurance inspector shall be carried out by the permittee's quality control inspectors in accordance with the approved Quality Assurance and Quality Control plan.

17. The Department may reinstate the independent quality assurance inspection at the site if the results of the construction tests and the precision and consistency of the quality control testing warrant such reinstatement.

18. Best available engineering construction practices shall be employed for all phases of the facility construction.

19. The Department shall be notified within 24 hours at the Department hotline at (609) 292–7172, should failure of a major phase of construction occur or should an unforeseen event occur that could potentially result in failure of a major phase of construction.

20. A New Jersey licensed professional civil or geotechnical engineer shall certify, in writing, to the Department that he has inspected the construction of each major phase of the sanitary landfill's construction. He shall further certify that each phase has been prepared and constructed in accordance with the engineering design approved by the Department, prior to operations. The certification shall include a final documentation report which shall summarize the daily quality control of construction activities as required by (a)14 above, and should include as-built drawings.

21. A New Jersey licensed professional civil or geotechnical engineer shall certify that the materials utilized in the containment system and leachate collection system are in conformance with and meet the specifications of the approved engineering design.

22. There shall be no deviation made from the approved engineering design specification without the prior written approval of the design engineer and, at a minimum, prior verbal approval by the Department.

23. All certifications shall bear the raised seal of the New Jersey licensed professional engineer, his signature, and the date of certification.

24. The certification required in (a)20 and 21 above shall include the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(b) The sanitary landfill shall be designed and constructed on an appropriate foundation meeting the following minimum requirements:

1. The foundation of the proposed sanitary landfill area shall provide firm, relatively unyielding, planar surfaces to support the liner.

2. The foundation shall be capable of providing support to the liner and resistance to the pressure gradient above and below the liner resulting from settlement, compression or uplift.

3. A foundation analysis shall be performed prior to construction, to determine the structural integrity of the foundation to support the loads and stresses imposed by the height and weight of the sanitary landfill and the design loading rate of the facility. These loads and loading rates shall not result or give cause to failure of the containment or leachate collection systems. The foundation analysis shall include the following:

i. The strength of the foundation shall be determined for all appropriate conditions, utilizing appropriate American Society of Testing and Materials (hereinafter ASTM), American Association of State Highway and Transportation Officials (hereinafter AASHTO) or equivalent methods, for both field testing and laboratory testing. The stability of the foundation shall be determined for long-term, short-term or end-of-construction conditions, as appropriate, within the minimum factors of safety set forth in Table II below:

TABLE II

Degree of Uncertainty of Strength Measurement
Factor of Safety

	Low	High
Static conditions	1.5	2.0
Seismic conditions	1.3	1.7

ii. The total settlement or swell of the foundation resulting from the initial, consolidation and compression settlement shall be determined utilizing appropriate ASTM, AASHTO or equivalent methods. The total settlement or percent consolidation shall not result or give cause to failure of the containment or leachate collection systems;

iii. The ultimate bearing capacity of the foundation shall be determined and the actual loads and stresses imposed by the surface impoundment dikes, storage tanks, manholes, clean-out risers, and sumps shall not result or give cause to failure with a factor of safety of 3 or greater;

iv. The compaction curves or relative density of the foundation shall be determined by the appropriate method in accordance with ASTM, AASHTO, or equivalent methods; and

v. Sampling shall be performed in accordance with the following schedule:

(1) In uniform geological formations, the sampling shall, at a minimum, be performed to give three replicate results per site. Sampling locations shall be in the areas of expected maximum loads and at the toe of the proposed slope. The sampling locations should be delineated in the scope of work submitted in accordance with N.J.A.C. 7:26–2.4(a); and

(2) In non-uniform complex geological formations the number and depth of samples shall be determined on a case-by-case basis. The sampling locations should be delineated in the scope of work submitted in accordance with N.J.A.C. 7:26–2.4(a).

4. The foundation shall be prepared in the following manner prior to placement of the liner:

i. All trees, brush, stumps, logs, tree roots, boulders, and debris shall be removed;

ii. All surface dissimilarities (for example, fractured rock, cobble, angular gravel, organic soils, top soils,

etc.) that would result in a potential degradation or failure of the liner systems shall either be stabilized, removed, or covered with a minimum of six inches of sand classified as a SP in the Unified Soils Classification System or equivalent;

iii. If a soil sterilant is to be utilized to inhibit any potential vegetative growth, it shall be an approved United States Environmental Protection Agency product and shall be applied in accordance with label specifications and the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

iv. The subgrade shall be compacted by modification of the compactive effort utilizing stage compaction to the design density, at the proper moisture content if applicable, based on laboratory analysis to achieve the required strength;

v. All depressions within the subgrade shall be filled with a suitable soil approved by the quality control inspector, and shall be compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

vi. Any soil fill utilized shall be spread in horizontal layers not exceeding the effective depth of the compaction equipment utilized, and shall be compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

vii. Placement of soil fill into frozen ground or placement of soil fill which is in a frozen state is prohibited;

viii. The subgrade shall be proof-rolled with a rubber-tired roller. Any weaving of the subgrade shall be an indication of failure which shall be over-excavated and filled with a suitable soils approved by the quality control inspector, compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

ix. Construction of the liner on a saturated subgrade is prohibited. After a rainfall event, the subgrade shall be given sufficient time to dry or drain to the design moisture content;

x. Prior to the construction of the liner system, the subgrade shall be tested for density and moisture content, where applicable, at 50 foot intervals on a grid pattern across the subgrade;

xi. In any area where the foundation is excavated, the side slope to the excavation prior to placement or construction of the liner shall not exceed a vertical rise of one foot for each horizontal distance of three feet; and

xii. Depth to groundwater from the top elevation of the foundation or bottom elevation of the liner shall be as follows:

(1) For sanitary landfills located in a stable low permeable formation having a hydraulic conductivity of less than $1x10^{-6}$ cm/sec., the depth, within the potentiometric surface, may be determined on a case-by-case basis as approved by the Department. This determination shall be based on the flow characteristics and attenuation capabilities of the geologic formation. There shall be, at a minimum, five feet of soil with a hydraulic of $1x10^{-6}$ cm/sec. or less between the bottom of the liner system and the aquifer. The depth to or within a perched water table may be less than five feet if this level can be cut-off by passive means, such as a cut-off wall or trench; and

(2) For all other sanitary landfills, depth to the seasonally high groundwater from the top elevation of the foundation shall be, at a minimum, five feet.

(c) The following are the design standards and construction requirements for containment systems:

1. The sanitary landfill containment system shall be designed and constructed in such a manner as to provide a closed system for the leachate generated therein during the operational, closure and post closure periods. The design and construction shall include the use of a liner consisting of recompacted or in-situ clay, an admixture material, geomembrance or composite material, or a cut-off wall consisting of clay or an admixture material.

2. A liner shall be provided to restrict the migration of leachate and to prevent pollution of the underlying aquifers. The minimum requirements for liner construction shall include the following:

i. The liner shall be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeological forces), physical contact with the waste and leachate, climatic conditions, the stresses of installation, and the stresses of daily operations;

ii. The final grades of the liner shall result in a relatively smooth surface through either fine finishing of the subgrade with use of a scraper/roller or smooth drum rolling of the compacted liner;

iii. The minimum slopes of the liner shall be two percent on controlling slopes and 0.5 percent on remaining slopes;

iv. The final grades of the liner shall be true to line and deviation of the controlling slopes of the liner shall not result in excessive ponding on the liner or decreased efficiency of the leachate drainage system. It is recommended that the deviation be less than 0.2 feet measured across any 10 foot section and less than 10 percent on the overall slope based on design elevations;

v. Survey stakes shall be placed in such a manner as to insure that the final grades meet the design specifications within the allowed tolerance;

vi. For penetrations through the liner (i.e. collection pipe to pump station), indicating devices, such as survey laths or stakes, shall be utilized at the area of penetration. The landfill should be designed to minimize the construction of penetrations through the liner;

vii. A soil backfill meeting the leachate drainage system requirements set forth in N.J.A.C. 7:26–2A.7(d) shall be placed on top of the liner to provide protection for the liner and leachate collection piping system in accordance with the following:

(1) Backfill soils should be placed on top of the liner immediately following completion of construction and testing procedures set forth in x. below. If backfilling operations are to be delayed, procedures as delineated in the approved construction contingency plan required by N.J.A.C. 7:26–2A.5(a)5ii shall be implemented to minimize degradation to the liner system;

(2) The depth of the soil backfill shall be of sufficient thickness to insure that no damaging load is transmitted to the leachate collection pipe;

(3) The depth of the soil backfill shall be of sufficient thickness to insure that no damaging load causes the leachate collection pipes to penetrate through the liner;

(4) When placed above a compacted liner the thickness of the soil backfill shall be, at a minimum, 12 inches;

(5) When placed above a geomembrane the thickness of the soil backfill shall be, at a minimum 18 inches;

(6) The soil backfill shall be stable, compatible with the liner system and relatively free of organic matter;

(7) Equipment utilized to place the soil backfill over the liner shall consist of tracked or bulbous tired vehicles or equivalent equipment with relatively low weight transfer ratios; and

(8) Use of the backfill placement equipment shall not result in any damage to the liner system or the final grades. In cases utilizing geomembranes, the use of backfill placement equipment directly on the liner is prohibited and shall be permitted only over a minimum of 18 inches of soil backfill.

viii. All inlet/outlet structures installed through the liner shall be compatible with the liner system and shall be installed in such a manner as to minimize leaking through the penetration in accordance with the following:

(1) The subgrade around the penetration shall be properly compacted to the design density and at the proper moisture content, where applicable, to achieve the required strength;

(2) For compacted liners, the liner material around the penetration shall be hand compacted to the design density, at the proper moisture content to achieve the required hydraulic conductivity and maintain the strength and stability of the liner; and

(3) For geomembranes, a pipe shroud shall be utilized around the penetration. The leg of the pipe shroud shall be of a size equal to the diameter of the pipe. A flange shall be fastened to the leg by factory seaming, and shall overlap the opening in the liner material on all sides by a minimum distance equal to the diameter of the pipe. The pipe shroud leg shall be attached to the inlet-outlet structure by a three-quarter inch stainless steel band.

ix. The liner material shall have a demonstrated hydraulic conductivity or chemical and physical resistance not adversely affected by waste emplacement or leachate generated by the sanitary landfill. Absent historical test results acceptable to the Department, this shall be demonstrated by testing which shall include, but not be limited to, the following:

(1) For compacted liners, E.P.A. Test Method 9100 shall be performed utilizing a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is unavailable). Initially a baseline hydraulic conductivity of the material shall be established. It is recommended that a modified triaxial device equipped to apply back pressure throughout the entire test be used and that the hydraulic gradient be within the laminar flow range. If changes in the leachate conductivity occur, a minimum of two pore volumes of the leachate shall be exchanged and the changes in conductivity, versus the pore volumes passed, shall be analysed. Any significant increase in leachate conductivity shall be considered to be an indication of incompatibility and will require a redesign of the containment system; and

(2) For geomembranes, E.P.A. Test Method 9090 shall be performed utilizing a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is unavailable). The specified physical parameter shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility and will require a redesign of the containment system.

x. The following quality control testing shall be performed on the as-built compacted liner system on an ongoing basis during the construction phase:

(1) Each lift or course of the liner shall be tested for moisture content and density at 50 foot intervals on a grid pattern across the surface. Two tests shall be performed in the immediate area around all inlet/outlet structures;

(2) Measurements shall be made periodically throughout the day during construction of the liner to insure that the lift or course thickness is within the allowable limits and in accordance with the design;

(3) Hydraulic conductivity testing shall be performed on undisturbed core samples of the final graded liner. Initially, such samples shall be taken at 200 foot (61 meter) intervals on a grid pattern across the surface. As the construction progresses, the number of samples may be reduced, as approved by the Department, based on the precision and consistency of the results of the initial sampling program, but at a minimum, one sample per every three acres shall be taken provided the material sources remain constant;

(4) Whenever a sample fails to meet the minimum hydraulic conductivity, the area of failure shall be localized, reconstructed and retested in accordance with the requirements set forth in this subsection;

(5) All core sample holes shall be backfilled and recompacted by hand tamping at the proper moisture content to achieve the minimum liner hydraulic conductivity;

(6) It is recommended that a modified triaxial device, equipped to apply backpressure throughout the entire test, be used to measure the hydraulic conductivity after primary consolidation ends. Backpressure should be sufficient to dissolve all air in the specimen and the confining or chamber pressure should not exceed anticipated landfill design pressure. Deaired tap water or 0.010 $CaSO_4$ should be used as the permeant and the hydraulic gradient should be within the laminar flow range. The material should be prepared in accordance with the procedures outlined by A.W. Bishop and D.J. Henkel in the most current edition of "The Triaxial Test." 1964; or the most recent version of the engineering manual "Laboratory Soils Testing," EM 1110–2–1906, published by the U.S. Army Corps of Engineers; and

(7) Field infiltration tests, utilizing a double ring infiltrometer or permeameter, shall be performed on the final graded liner. Such tests shall be performed initially at a minimum of one per every 10 acres and each time the source material changes. It is recommended that a modified air-entry permeameter be used to measure the field hydraulic conductivity of the soils and that the test be run on pre-construction sections. As the construction progresses the number of samples may be reduced, as approved by the Department, based on the precision and accuracy of the results of the initial sampling program, but, at a minimum, one sample per section shall be taken provided the material source remains constant.

xi. The following quality control testing shall be performed on the as-built geomembrane liner system on an ongoing basis during the construction phase:

(1) All field seams shall be quality tested after they have been allowed to develop to full strength. Such testing shall be carried out through the use of an air lance with 50 pounds per square inch of air directed through a 3/16–inch nozzle or equivalent device. The lance shall be held no more than six inches from the seam edge and shall be utilized to detect any imperfections, tunnels or fishmouths. Any such imperfections in a seam shall be repaired and quality tested until a proper seam is achieved;

(2) Seams shall be tested for peel and shear strength, a minimum of three times per day at the beginning, middle and end of each work day, on either specially prepared sample seams constructed under the same conditions as the actual seaming process used that day or on a sample cut from the inplace liner; and

(3) During the construction phase, the geomembrane shall be continuously inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots, or foreign materials). Immediately after installation, the liner shall be inspected to ensure tight seams and joints. Additionally, the liner shall be inspected to ensure the absence of tears, punctures, or blisters. Any imperfections shall be immediately repaired and reinspected.

3. The minimum requirements and testing for clay material utilized as a sanitary landfill liner shall include the following:

i. The following tests shall be performed on the clay material proposed for use, and all data shall be submitted to the Department. These tests shall be performed in accordance with current ASTM, AASHTO or equivalent methods.The number of samples taken and tests performed shall be adequate to define the material. At a minimum, three analyses shall be performed on three separate samples for each source of clay material:

(1) Classification;

(2) Compaction;

(3) Specific gravity;

(4) Hydraulic conductivity (coefficient of permeability);

(5) Porosity;

(6) pH;

(7) Cation exchange capacity (total and inorganic);

(8) Pinhole test (required only for clay liner construction over a coarse grain subgrade); and

(9) Mineralogy (recommended, not required).

ii. The following tests shall be performed on the in-situ clay material or the clay mined from the borrow site for construction of a recompacted liner. A minimum of one analysis shall be performed on each 16,000 inplace cubic yards of clay:

(1) Grain size analysis;

(2) Compaction; and

(3) Hydraulic conductivity (Index properties and grain size analysis may be used to determine the hydraulic conductivity provided the clay has been calibrated to these tests).

iii. The clay liner shall have a hydraulic conductivity equal to or less than $1x10^{-7}$ cm/sec. It is recommended that a modified triaxial device, equipped to apply back pressure throughout the entire test, be used to measure the hydraulic conductivity after primary consolidation ends. Deaired tap water or 0.01N $CaSO_4$ should be used as the permanent and the hydraulic gradient should be within the laminar flow range. A range of confining pressures, water content, densities and degree of saturation shall be analysed to determine the optimal design parameters of the clay. The material should be prepared in accordance with the procedures outlined by A.W. Bishop and D.J. Henkel in the most current edition of "The Triaxial Test," 1964, or the most recent version of the engineering manual "Laboratory Soils Testing", EM 1110–2–1906 published by the U.S. Army Corps of Engineers;

iv. The thickness of the clay liner for a Class I sanitary landfill required in N.J.A.C. 7:26–2A.6(d)1 and 2, may be modified to be less than three feet but not less than two feet so long as the performance required in N.J.A.C. 7:26–2A.6(d)1 and 2 and the performance standards required in N.J.A.C. 7:26–2A.6(c)1 and 2 are met. For Class II sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of, and the geologic siting of the landfill, but in no case shall the thickness of the liner be less than one foot;

v. The clay liner shall be applied and compacted in separate lifts, not to exceed the effective depth of the equipment utilized. The first lift should be no greater than six compacted inches. Subsequent lifts should be less than 2/3 of the length of the tamping feet or its equivalent;

vi. Prior to compaction the clay shall be mixed by disc-harrowing or an equivalent method to a homogeneous consistency and each lift of the liner shall be compacted, by modification of the compactive effort, to the design density, and at the proper moisture content, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the clay;

vii. The liner shall be constructed in such a manner as to ensure that bonding between lifts is promoted;

viii. Placement of the clay liner on frozen ground or placement of clay material in a frozen state shall be prohibited;

ix. In-situ clay utilized in the design and construction of a liner system, unless exempted by x. below, shall be excavated, mixed by disc-harrowing or an equivalent method to a homogeneous consistency, and recompacted to the density at the proper moisture content, based on laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner; and

x. In-situ clay liner designs shall be left in the undisturbed state only if it can be fully demonstrated through the use of excavations, test pits, borings, undisturbed permeability testing, or field infiltration/permeability testing that the undisturbed clay will possess a hydraulic conductivity no greater than $1x10^{-7}$ cm/sec. and will meet all the requirements and standards of this subchapter.

4. The minimum construction and testing requirements for geomembranes utilized as a sanitary landfill liner shall include the following:

i. The material properties of the geomembrane proposed for use shall meet the minimum requirements as outlined in the most recent version of the National Sanitation Foundation's publication, "Standard Number 54 Flexible Membrane Liners";

ii. The geomembrane shall be compounded from first quality virgin materials. No regrinded or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the geomembrane;

iii. The minimum thickness for geomembranes shall be 30 mils;

iv. Single geomembrane liner systems are prohibited. Liner systems utilizing geomembranes shall be either a composite or double liner system constructed in accordance with the following:

(1) A composite liner system may be used only if the clay or admixture material is demonstrated to achieve sufficient strength and stability to insure the integrity of the geomembrane;

(2) If excessive settlement of the foundation is evident, as determined in accordance with N.J.A.C. 7:26–2A.8(b)4, the compressive and tensile strength of the clay or admixture material in the composite system shall be determined. An analysis of the clay or admixture liner strength, in conjunction with the subgrade settlement analysis, shall demonstrate that the design will not result or give cause to failure of the geomembrane. The analysis shall include a factor of safety equal to or greater than 1.5;

(3) The clay or admixture liner within the composite liner system shall be constructed in accordance with the requirements and standards of this subsection;

(4) The thickness of the clay or admixture liner within the composite liner system shall be approved by the Department when the applicant demonstrates that it meets the standards set forth at N.J.A.C. 7:26–2A.6;

(5) In double geomembrane systems or double composite systems a leachate collection system to detect and collect leachate, shall be designed and constructed between the primary (top) and secondary (bottom) liner in accordance with N.J.A.C. 7:26–2A.5(d);

(6) The geomembrane liner shall be scrim reinforced or possess an equivalent demonstrated strength to insure proper installation. The scrim reinforcement material shall be a hydrophobic material to prevent wicking. The scrim shall be of a density that insures bonding of the laminated sheets.

v. The liner shall be installed by a company having a documented minimum qualification of two million square feet of previous landfill or comparative geomembrane systems installation experience. This experience shall be available, at a minimum, at the field crew foreman level;

vi. The liner shall be installed in a smooth but relaxed manner. The practice of inserting folds into the liner to compensate for future settlement is not an acceptable practice to prevent failure;

vii. All field seams within the area of an excavated slope shall be made perpendicular to the toe of slope;

viii. Parallel field seams made at the bottom of an excavated slope shall be made no closer than 24 inches in from the toe of slope;

ix. The adhesive system of the field seaming to be employed shall be defined;

x. The peel and shear strength data of the field seams shall be submitted; and

xi. The following field seaming requirements shall be employed, unless manufacturer's recommended procedures demonstrate equivalent or better systems:

(1) Field seams made by employing solvent or bodied solvent adhesive shall have a minimum of six inches of overlap and a seam width of four inches from the edge of the top geomembrane; and

(2) Field seams made by employing heat extrusion or welding shall have a minimum of three inches of overlap and a seam width of one inch from the edge of the top geomembrane;

(3) All field seams, after quality control testing and repairs, shall incorporate a cap-strip of unreinforced material a minimum of four inches in width centered over the seam. The cap-strip shall be field seamed in accordance with (c)4ix(1) and (2) above, and quality control tested as required by N.J.A.C. 7:26–2A.7(c)2xi;

xii. Field seaming procedures are prohibited when the ambient air temperature is less than 40°F (4.5°C), during storm events, or when winds are in the excess of 20 miles per hour (32 km/hr); and

xiii. The geomembrane shall be anchored a minimum of 24 inches horizontally back from the edge of the top of the slope. The liner shall be anchored by cutting a trench 12 to 16 inches in depth, laying the liner across three sides of the trench, backfilling the trench, and compacting the backfill material.

5. The minimum requirements and testing for hydraulic asphalt concrete utilized as a sanitary landfill liner material shall include the following:

i. The following tests shall be performed on the hydraulic asphalt cement proposed for use, and all data shall be submitted to the Department. All tests shall be performed in accordance with ASTM, AASHTO or equivalent methods.

(1) Grain size analysis of the mineral aggregate;

(2) Density of the mineral aggregate and the asphalt mix;

(3) Percent void in the compacted mix;

(4) Swell test;

(5) Penetration test;

(6) Stability-triaxial compression test; and

(7) Hydraulic conductivity of the mix.

ii. The hydraulic asphalt concrete liner for Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26–2A.6(c)1 and 2. In no case shall the hydraulic asphalt concrete liner for Class I sanitary landfills be less than six inches thick. For Class II sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than four inches;

iii. To insure that complete mixing of the hydraulic asphalt concrete is accomplished, a central mixing plant shall be used. The plant shall include a means for accurately proportioning the material, as determined by laboratory analysis, either by weighing or by volumetric measurement, to ensure that the mixture shall meet the designed hydraulic conductivity;

iv. The plant shall be capable of producing a uniform mixture within permissible variation from the mix formula and should include a continuous mixer of a twin pub mill type;

v. Tanks for storage of the asphalt within the central mixing plant shall be equipped to heat the entire contents uniformly to the temperature required for the mixture;

vi. The following quality control testing shall be performed at the central mixing plant to ensure uniformity of the mix. The testing shall be performed at a minimum of once per every 300 cubic yards, except for temperature which shall be monitored continuously:

(1) Temperature of the mix;

(2) Grain size analysis; and

(3) Percent asphalt.

vii. The design mix of the hydraulic asphalt concrete shall result in a final product of dense-graded asphalt concrete with a maximum penetration grade of 60–70;

viii. The asphalt content of the mix shall be of sufficient quantity to insure that the mixture meets the required design hydraulic conductivity based on laboratory analysis. It is recommended that at a minimum, the asphalt content be 9.5 percent by volume;

ix. Placement of the asphalt concrete liner is prohibited when the ambient air temperature is below 40°F (4.5°C) or during storm events;

x. The mix shall have a high degree of workability while hot, be stable enough to support its own weight on side slopes, and shall have a smooth finished surface;

xi. The liner shall be applied in courses with a maximum depth of two inches per course;

xii. The liner shall be applied utilizing a staggered joint construction technique and placement of the course shall, to all practical extent, be a continuous operation;

xiii. The hydraulic asphalt should be compacted to at least 98 percent of laboratory density and should have a maximum void ratio not to exceed two percent. The compacted percentage shall be measured by utilizing the Marshall Test Method;

xiv. When applying the finished product on side slopes, the material shall initially be deposited at the toe of the slope, and then pushed up the grade of the slope;

xv. After the hydraulic asphalt concrete has been compacted and allowed to cure for sufficient time to obtain its maximum strength, a sealant coating shall be applied to the surface.

6. The minimum requirements and testing for soil cement utilized as a sanitary landfill liner material include the following:

i. The following tests, performed in accordance with appropriate ASTM, AASHTO or equivalent methods shall be performed on the soil cement mixture proposed for use, and all data shall be submitted to the Department.

(1) Grain size analysis of aggregate;

(2) Soil cement content;

(3) Wetting and drying;

(4) Freezing and thawing;

(5) Compressive strength;

(6) Compaction; and

(7) Hydraulic conductivity.

ii. The soil cement liner for Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26–2A.6(c)1 and 2. In no case shall the soil cement liner for Class I sanitary landfills be less than two feet thick. For Class II sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than one foot;

iii. To ensure that complete mixing is accomplished, a central mixing plant shall be used. The plant shall include the means for accurately proportioning the material as determined by laboratory analysis, either by weighing or by volumetric measurement, in order that the mixture shall meet the designed hydraulic conductivity requirement;

iv. The plant shall be capable of producing a uniform mixture, within permissible variation, from the mix formula and shall include a continuous mixer of a twin pub mill type;

v. The following quality control testing shall be performed at the control mixing plant at a minimum of once per every 300 cubic yards of mixture to ensure uniformity of the mix:

(1) Grain size analysis of the aggregate; and

(2) Percent cement.

vi. Placement of soil cement liner is prohibited when the ambient air temperature is below 40°F (4.5°C) or during storm events;

vii. The transportation time from the central mixing plant to the construction site shall not exceed 30 minutes;

viii. No more than 60 minutes shall elapse between the start of mixing and the start of compaction. The compaction process shall be started within 30 minutes after the material is applied. The compaction process shall be completed within 1 1/2 hours after the mixing process is completed;

ix. It is recommended that the mixture be applied by a mechanical spreader in nine-inch loose lifts, and then compacted to six-inch layers. The soil cement should be compacted initially with a sheep foot roller, and then followed by a smooth wheeled vibrating roller;

x. The soil cement should be compacted to the design density, at the proper moisture content, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner;

xi. No later than 24 hours after compaction is completed, a bituminous or asphaltic emulsion seal (MC–20 or equivalent) shall be applied to the completed surface; and

xii. The addition of additives to the mix are prohibited except with the approval of the Department.

7. Minimum requirements and testing for bentonite utilized as a sanitary landfill liner material include the following:

i. The following tests, shall be performed on the bentonite proposed for use, and all data shall be submitted to the Department. All tests shall be performed in accordance with appropriate ASTM, AASHTO or equivalent methods:

(1) Swelling index;

(2) Layer permeability;

(3) Colloidal yield; and

(4) Cation exchange capacity.

ii. The following tests shall be performed on the bentonite/soil mixture proposed for use, mixed under field conditions with site water proposed for use, in accordance with ASTM, AASHTO or equivalent methods:

(1) Grain size analysis of aggregate;

(2) Bentonite content;

(3) Compaction; and

(4) Hydraulic conductivity.

iii. The bentonite liner or Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26–2A.6(c)1 and 2. In no case shall the bentonite liner for Class I sanitary landfills be less than two feet thick. For Class II sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than one foot;

iv. To ensure that complete mixing is accomplished, a central mixing plant shall be used. The plant shall include the means for accurately proportioning the material, as determined by laboratory analysis, either by weighing or by volumetric measurement, in order that the mixture shall meet the required design hydraulic conductivity;

v. The plant shall be capable of producing a uniform mixture within permissible variation from the mix formula and should include a continuous mixer of a twin pub mill type;

vi. The following quality control testing shall be performed at the central mixing plant at a minimum of one test per every 300 cubic yards of mixture to ensure uniformity of the mix:

(1) Grain size analysis of the soil; and

(2) Percent bentonite.

vii. Placement of the bentonite liner in a frozen state or on frozen ground is prohibited;

viii. The bentonite/soil mixture should be applied by a mechanical spreader in a maximum of nine-inch loose lifts and compacted with a smooth drum vibratory compactor or rubber-tired compactor;

ix. The bentonite/soil mixture should be compacted to the design density at the proper moisture content range, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner.

8. A cut-off wall shall be constructed in those areas, where needed, to restrict the lateral migration of leachate, provide for a closed containment system, and prevent pollution of the underlying aquifer. The minimum requirements for cut-off wall construction include the following:

i. Borings shall be taken at 200 foot intervals along the proposed route of the cut-off wall. These borings shall extend to a depth at least three feet into the confining layer. In clay cut-off wall constructions, the boring interval may be increased, but shall be no greater than 500 feet, provided the excavation is continuously logged and inspected for conformance with the boring data by a qualified geologist or geotechnical engineer;

ii. Hydraulic conductivity tests of the confining layer shall be performed on undisturbed core samples at every other boring location;

iii. The cut-off wall shall extend a minimum of three feet into the confining layer. A lesser distance may be acceptable, if approved by the Department, provided the wall extends to competent rock;

iv. The cut-off wall shall be stable under all conditions, including long term and end of construction conditions, and shall not be susceptible to displacement or erosion under stress or hydraulic gradient;

v. Prior to construction the cut-off wall material shall be tested in accordance with (c)2ix above, to ensure that the material has a conductivity or chemical and physical resistance which will not be adversely affected by waste emplacement or the leachate generated by the sanitary landfill.

9. In addition to the requirements of (c)8 above, the minimum requirements and testing for clay utilized for cut-off wall construction include the following:

i. The tests performed, as specified in (c)3i and ii above, shall be performed on the clay material proposed for use in the cut-off wall.

ii. The cut face of the excavation shall be stable for all conditions that will be encountered during the excavation, including appropriate factors of safety for the material encountered;

iii. The clay cut-off wall shall be constructed to a minimum thickness of three feet;

iv. The clay cut-off wall shall have a hydraulic conductivity equal to or less than $1x10^{-7}$ cm/sec.;

v. The clay cut-off wall shall be constructed in separate lifts not exceeding the effective depth of the equipment utilized and in a manner which will ensure that bonding between lifts is promoted;

vi. Each lift of the clay cut-off wall shall be compacted to the design density, at the proper moisture content, to achieve the required hydraulic conductivity and maintain the strength and stability of the cut-off wall;

vii. Each lift shall be tested for moisture content and density at 50–foot intervals along the length of the construction; and

viii. Hydraulic conductivity testing shall be performed on undisturbed core samples of the constructed, compacted clay cut-off wall at 200–foot intervals along the route of the wall in order to verify in-field permeability of the constructed wall. Whenever a sample fails to meet the minimum permeability standard of $1x10^{-7}$ cm/sec. or less, the section of the wall which fails to meet the standard shall be localized and reconstructed in accordance with the procedures outlined in v and vi above. All core sample holes shall be backfilled and recompacted by hand tamping at the proper moisture content, to achieve the minimum requirement hydraulic conductivity. It is recommended that the modified triaxial device procedures, as set forth in (c)2x(3) above, be utilized to measure the hydraulic conductivity;

10. In addition to the requirements of (c)8 above, the minimum requirements and testing for soil and bentonite or cement utilized for slurry cut-off wall construction include the following:

i. The tests specified in (c)7i above, shall be performed on the bentonite proposed for use;

ii. The following tests shall be performed on the bentonite slurry proposed for use, mixed under field conditions with site water proposed for use in construction of the slurry wall, and all data shall be submitted to the Department:

(1) Bentonite content and cement content, where applicable;

(2) Marsh Cone viscosity;

(3) Marsh Cone gelation;

(4) Gel strength, initial and 10 minute strength;

(5) pH;

(6) Filtration loss;

(7) Filter cake—thickness and strength; and

(8) Sand content.

iii. The following tests shall be performed on the backfill proposed for use, mixed under field conditions, and all data shall be submitted to the Department:

(1) Grain size analysis;

(2) Slump;

(3) Blowout tests, if the design or existing gradient is greater than 30; and

(4) Cement content, where applicable.

iv. The water utilized in the slurry mix and the backfill shall be analyzed for the following parameters:

(1) pH;

(2) Chloride;

(3) Total dissolved solids;

(4) Hardness; and

(5) Total volatile organics.

v. The water utilized in the slurry mix and the backfill shall be free of oil and organic matter, be relatively free of impurities and be in the neutral pH range;

vi. When the depth to the confining layer is less than 100 feet, the thickness of the wall shall be 0.6 feet per 10 feet of hydrostatic head on the wall and shall, at a minimum, be three feet;

vii. When the depth to the confining layer is greater than 100 feet, slurry wall thickness shall be determined on a case by case basis. This determination shall be

based on a comprehensive engineering analysis of the ability of a given wall thickness to resist failure;

viii. There shall be a sufficient percent of fines in the backfill material to achieve a hydraulic conductivity equal to or less than $1x10^{-7}$ cm/sec.;

ix. The backfill material shall be completely mixed in such a manner as to insure a consistent quality of the material;

x. A slump test and gradation analysis shall be performed at a minimum of one sample for every 300 cubic yards of backfill mixture;

xi. A viscosity and density analysis of the slurry shall be performed at a minimum of twice daily;

xii. The backfill mixture shall not be put in place until the trench has been inspected, measured, approved, and certified by a New Jersey licensed professional engineer, or his agent who shall be a qualified geologist or geotechnical inspector, to ensure that the trench has penetrated a sufficient depth into the aquiclude;

xiii. A minimum of three feet of slurry head shall be maintained in the excavation above the maximum anticipated groundwater level and the slurry head should not fall below one foot of the ground surface elevation;

xiv. The backfilling of the slurry cut-off wall shall be performed by one of the two following methods. In either case, free dropping of the backfill into the trench through the slurry is prohibited;

(1) Backfill shall be placed by use of a tremie process; or

(2) Backfill shall be placed into a pre-cut trench in which a minimum backfill slope of six horizontal to one vertical (6:1) has been established.

xv. The backfill process shall continue until sufficient material has been placed in the slurry trench to permit the backfill material to become exposed at the top of the trench;

xvi. A three-foot thick layer of clay core soil backfill shall be placed on top of the complete portion of the cut-off wall after it has reached its intended level and before it is allowed to dry out;

xvii. Upon the completion and stabilization of the backfilling process of the cut-off wall, hydraulic conductivity testing of undisturbed core samples of the backfilled trench shall be performed at 200 foot intervals to verify the hydraulic conductivity of the wall. Whenever a sample fails to meet the minimum hydraulic conductivity of $1x10^{-7}$ cm/sec. or less, the section of the wall which fails to meet the standard shall be localized and reconstructed in accordance with the procedures set forth in xii through xv above. All core sampling holes shall be refilled and recompacted to meet the minimum hydraulic conductivity; and

xviii. In the event that a failure of the slurry trench or construction platform should occur, the trench and backfill material shall be excavated and reconstructed, at a minimum, for a length of 100 feet from the outside point of failure in each direction. The hydraulic conductivity of the reconstructed portion of the wall shall be verified through hydraulic conductivity testing of undisturbed core samples in accordance with xvii above.

(d) The following are the design standards and construction requirements for leachate collection systems:

1. The leachate collection system shall consist of a leachate drainage system and a leachate removal system;

2. A leachate drainage system shall be designed and constructed to provide for effective drainage of the leachate generated within the proposed sanitary landfill in accordance with the following:

i. The slope, hydraulic conductivity and porosity of the drainage layer and the spacing of the collection pipes of the leachate drainage system shall be designed in such a manner as to ensure that the performance and efficiency requirements of N.J.A.C. 7:26–2A.6(d)1 and 2 are met during the operational life of the facility;

ii. The following tests shall be performed on the soil proposed for use in the drainage layer and all data shall be submitted to the Department. These tests shall be performed in accordance with current ASTM, AASHTO or equivalent methods. The number of samples taken and tests performed shall be adequate to define the material. At a minimum, three analyses shall be performed on three separate samples for each source of drainage material.

(1) Classification;

(2) Porosity;

(3) Relative density or compaction;

(4) Specific gravity; and

(5) Hydraulic conductivity.

iii. The leachate drainage system shall be designed utilizing two different modeling techniques approved by the Department, and the more conservative of the results from two methods shall be employed for the design of the leachate collection system.

iv. Data from the nearest meteorological station to the site with a minimum data base of five years, shall be utilized to design the leachate drainage system. Unless real time meteorological data is utilized, the moisture input variable of the design model required by iii above shall be based on 100 percent of the infiltration rate to the area at an effective frequency to represent the average time between precipitation events greater than 0.1 inches resulting from precipitation;

v. The hydraulic conductivity required by N.J.A.C. 7:26–2A.6(d)2 for the drainage layer may be less than $1x10^{-2}$ cm/sec provided the performance and efficiency required by N.J.A.C. 7:26–2A.6(d)1 and 2 and the performance standard in N.J.A.C. 7:26–2A.6(c) are met. The hydraulic conductivity of the drainage layer shall be equal to or greater than $1x10^{-3}$ cm/sec after compaction. It is recommended that a granular filter or geotextile be designed and constructed above the drainage layer to minimize the intrusion of fines into the drainage layer;

vi. The drainage layer shall be designed and constructed in such a manner as to maintain laminar flow throughout the system to prevent scouring of the liner;

vii. The following quality control tests shall be performed on the soil utilized within the drainage layer of the leachate collection system:

(1) Hydraulic conductivity;

(2) Relative density or compaction;

(3) Grain size analysis; and

(4) Drainage layer thickness.

viii. The tests required in vii above shall be performed in accordance with ASTM, AASHTO or equivalent methods and in accordance with the following schedule:

(1) Hydraulic conductivity and grain size analysis shall be performed once per every 3,000 cubic yards of in-place fill material. The hydraulic conductivity may be determined from the grain size analysis, provided the hydraulic conductivity is calibrated to the particular grain size distribution of the soil used;

(2) Relative density or compaction tests shall be performed on the complete drainage layer at 50 foot intervals on a grid pattern across the surface; and

(3) Drainage layer thickness shall be measured periodically throughout the day during construction to ensure that the thickness is within allowable limits and in accordance with the design.

ix. The drainage layer shall have the appropriate minimum thickness specified in (c)2vii above. Furthermore, based on the design permitted by i above, the drainage layer shall be constructed with a minimum depth equal to, or greater than, the maximum anticipated leachate head generated within the landfill during the operational life of the landfill.

3. A leachate removal system shall be designed and constructed to provide for removal of the leachate within the drainage system to a central collection point for treatment and disposal in accordance with the following:

i. The following tests shall be performed in accordance with ASTM methods, or an equivalent determination shall be performed on the material proposed to be utilized in the leachate collection piping system:

(1) For rigid pipes, a three-edge bearing test shall be performed under 0.1 inch crack loading and ultimate loading conditions;

(2) For flexible pipe, a parallel plate deflection test shall be performed under five percent deflection and buckling capacity loading conditions;

ii. The piping material utilized within the leachate removal system shall possess an adequate structural strength to support the maximum anticipated static and dynamic loads and stresses that will be imposed on the pipe by the drainage layer, gravel pack, overlying wastes, and any equipment used at the sanitary landfill. The supporting strength of the pipe shall be equal to, or greater than, the loads and stresses imposed on the pipe with, at a minimum, a factor of safety of 1.5;

iii. The material utilized for the piping system shall have demonstrated chemical resistance to the wastes to be disposed of in the landfill and the leachate expected to be produced within the proposed sanitary landfill. The requirement for demonstrated chemical resistance shall be satisfied either by the use of ASTM approved chemically resistant piping material or by testing the piping material in accordance with the requirements of (c)2ix(2) above;

iv. The piping system shall have a slope that will provide a self-cleaning velocity within the pipe based on actual maximum flows from the area of drainage. The minimum flow velocity should not be below two feet per second as designed based on full flow or half flow capacity;

v. Laterals within the piping network shall have, at a minimum, an inside diameter of four inches and shall be capable of handling peak flows;

vi. Mains within the piping network shall have, at a minimum, an inside diameter of eight inches and shall be capable of handling peak flows;

vii. The piping system shall employ flexible joints to allow for at least 0.5 degree movement between the pipe sections;

viii. The final grades of the piping system should be true to line and the departure from grade and alignment of the piping system shall not result in excess ponding on the liner or reduced efficiency of the leachate collection system. The maximum allowable departure from grade should not exceed 10 percent of the inside diameter of the collection pipe;

ix. The collection pipes shall be designed to function without clogging throughout the operational phase of the proposed sanitary landfill. The collection pipes shall be constructed within a coarse gravel envelope inside a geotextile fabric. The material utilized in the

coarse gravel envelope shall meet the specifications, or equivalent, of the cumulative grain size distribution curves calculated in accordance with (d)3ix(1) through (5) below, where "D" equals the effective size or diameter of the soil particles:

(1) The envelope aggregate shall be compatible with the material with which it is placed in contact;

(2) $\frac{D_{15}\text{ (envelope)}}{5}$ $< D_{85}$ (backfill);

(3) $\frac{D_{15}\text{ (envelope)}}{5}$ $\leq D_{15}$ (backfill);

(4) for slotted pipes:
$\frac{D_{85}\text{ (envelope)}}{\text{Slot width}}$ $\geq$ 1.2;

(5) for circular holes:
$\frac{D_{85}\text{ (envelope)}}{\text{hole diameter}}$ $\geq$ 1.0; and

(6) The envelope thickness should be a minimum of 10 cm. around the pipe and should be related to the D_{50} of the envelope/drainage layer ratio in accordance with Table III below:

TABLE III

Envelope/drainage layer D_{50} ratio	Envelope thickness (cm)
≤24	10
24–28	15
28–40	23
40–50	30

x. When the requirements of (d)3ix above cannot be satisfied by a one-layer envelope, a zoned envelope or equivalent shall be constructed that satisfies the specifications in ix. above;

xi. The collection pipe shall be installed within a depression constructed within the liner or liner and subgrade, and shall meet the following minimum specifications:

(1) A minimum of three inches of bedding material shall be placed at the bottom of the trench; and

(2) The depth of the depression should, at a minimum, be equal to the outside diameter of the pipe plus the bedding material.

xii. The collection piping system shall, at a minimum, extend completely around the perimeter of the proposed sanitary landfill. An interior grid herring bone or offset herring bone system shall be employed, when needed, to ensure that the maximum leachate head exerted on the liner does not exceed the design head and that it controls the leachate head at the perimeter of the proposed sanitary landfill;

xiii. The drainage distance between the collection pipes shall not exceed 300 feet;

xiv. Construction and earth-moving equipment shall be prohibited from operating over the piping system, and sanitary landfill equipment shall be prohibited from operating over the piping system until a minimum of five feet of refuse has been mounded over and around the pipe;

xv. Manholes or cleanout risers shall be located along the perimeter of the leachate removal system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the leachate removal system by water jet flushing or an equivalent method;

xvi. A rubber gasket or an equivalent seal to ensure a tight joint shall be installed between the sump or manhole inlet and the collection pipe. A flexible pipe joint shall be connected to the manhole and a second flexible pipe joint shall be installed within the piping system within three feet of the first flexible pipe joint;

xvii. Material used for the construction of the manhole or cleanout riser shall have a demonstrated chemical resistance to the leachate expected to be produced within the sanitary landfill;

xviii. The leachate collection system shall be designed to drain by gravity to a sump system. In double lined systems, the leachate collection piping systems shall be designed to drain to separate independent sumps;

xix. The sumps, pumps, and pumping station capacity shall be designed based on an evaluation of percolation, resulting from precipitation and infiltration into the system through the side or bottom of the liner or cut-off wall;

xx. The sump shall be a prefabricated structure coated inside and outside with a minimum of two coats of waterproofing sealant. The joints between the sump section shall be sealed with a rubber gasket or equivalent seal and grouted to ensure a watertight seal;

xxi. All sumps shall be tested for watertightness prior to the startup of landfilling operations in accordance with the following:

(1) The sumps shall be filled with water and covered;

(2) The depth of water elevation shall be measured daily for a period of five days;

(3) Any significant decrease in the depth of water within the sump shall be an indication of failure. The sump which fails the test shall be recoated with waterproofing sealant and the joints regrouted. The sump shall be retested for watertightness in accordance with this subparagraph. If failure of the retest should occur the sump shall be reconstructed.

xxii. Should the sumps be located outside of the lined area, an unsaturated zone monitoring lysimeter shall be installed beneath the sump;

xxiii. The pump station shall be housed in a suitable structure capable of protecting the pumps, motors and electrical equipment in accordance with, but not be limited to, the following:

(1) Explosion-proof equipment for the pump motors and electrical equipment shall be utilized and shall be constructed in accordance with the most current version of the National Electrical Code, "Special Occupancy, Hazardous Location", Volume 6 of the National Fire Code published by the National Fire Prevention Association;

(2) Adequate lighting and ventilation, where necessary, shall be provided. The ventilation system of the pump station shall be constructed in accordance with the most current version of the National Fire Code, "Explosion Venting" Volume 14, published by the National Fire Prevention Association;

(3) Two separate and independent sources of electric power shall be provided from either two separate utility substations or from a single substation and an on site generator;

(4) Automatic sound alarms, operating independently of the pump station power, shall be installed to give warning of high water, power failure, or breakdown. The alarm system shall be wired to the location where assistance will be available to respond to the emergency;

(5) The total number of operating pumps as determined in accordance with (6) below, shall be designed to handle the maximum expected leachate production for the area of drainage based on the average peak monthly flow;

(6) A minimum of two pumps shall be provided in the leachate pump station. The number of pumps should be designed based on the requirements of Table IV below:

TABLE IV

Total Flow to Pump Station	Number of Pumps in the Pump Station
500 gpm	2 pumps (1 standby);
500–1500 gpm	3 pumps (2 operating, 1 standby); and
1500–3000 gpm	4 pumps (3 operating, 1 standby);

(7) If more than two pumps are provided, their capacity shall be such that upon failure of the largest pump the remaining pumps shall be capable of handling the maximum expected leachate production for the area of drainage based on the average peak monthly flow.

(e) A leachate treatment and disposal system shall be designed and constructed in accordance with the following:

1. All leachate treatment and disposal systems shall be required to obtain a NJPDES permit in accordance with the NJPDES regulations, N.J.A.C. 7:14A;

2. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

i. Complete treatment on-site with direct discharge to surface or groundwater;

ii. Pretreatment on-site, if required, with discharge to an off-site treatment works for final treatment; or

iii. Storage on-site with discharge to an off-site treatment works for complete treatment.

3. Leachate recirculation within the sanitary landfill shall not be permitted as a disposal option;

4. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with (e)13 below;

5. Storage of leachate for a period exceeding one month shall be prohibited except as set forth at (e)10iii below during start-up operations;

6. The following requirements shall be met prior to start-up of sanitary landfilling operations:

i. The leachate treatment and disposal system shall be on line and fully operational;

ii. An agreement with a treatment works facility to accept the leachate shall be in place if either option (e)2ii or iii above was elected for use with the sanitary landfill; and

iii. All necessary Federal, State and local permits for the treatment and disposal system shall have been obtained.

7. All leachate treatment and disposal systems shall be designed and constructed to prevent anaerobic conditions from developing;

8. All leachate treatment and disposal systems shall be designed and constructed to control odors pursuant to N.J.A.C. 7:27;

9. For all leachate discharges planned for publicly owned treatment works (P.O.T.W.), the owner or operator shall determine the acceptability of such discharges on the operations of the P.O.T.W. in accordance with the guidelines entitled, "Requirements for Treatability Study of Landfill Leachate Discharged to P.O.T.W.," available at the Office of Industrial Waste Management, Division of Water Resources, CN 029, Trenton, NJ 08625;

10. In addition to complying with the requirements of the NJPDES regulations, N.J.A.C. 7:14A, the Rules and Regulations for the Preparation of Plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9–1, and the Pretreatment Standards for Sewerage, N.J.S.A. 58:11–49.1 et seq., on-site complete treatment or pretreat-

ment facilities shall be designed and constructed in accordance with the following:

i. The on-site treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot scale plant or written information documenting the performance of an equivalent leachate treatment system;

ii. On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment facility to account for variability of the leachate quality and quantity; and

iii. The use of mobile or temporary treatment units may be permitted prior to the construction of a permanent facility satisfying the requirements of 6 above, provided that in all cases a permanent leachate treatment and disposal system shall be on-line within 12 months.

11. The residuals from any treatment facility shall be analyzed in accordance with the requirements of the Sludge Quality Assurance Regulation, N.J.A.C. 7:14–4, and disposal of in accordance with the following:

i. The analysis shall be submitted to the Bureau of Hazardous Waste Planning of the Division of Hazardous Waste Management for classification;

ii. Should the sludge be classified as a non-hazardous waste, the sludge shall be disposed of at a solid waste facility permitted to accept the waste type ID classification; and

iii. Should the sludge be classified as a hazardous waste, the material shall be disposed of in accordance with N.J.A.C. 7:26–7 through 12.

12. In addition to complying with the requirements of N.J.A.C. 7:14A–10.7, the Dam Safety Standards, N.J.A.C. 7:20, and the Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90, surface impoundments utilized as on-site treatment units shall be designed and constructed in accordance with the following:

i. Surface impoundments shall include a liner system that is designed to meet or exceed the performance standards set forth in N.J.A.C. 7:26–2A.6(d)1 and 2 under the maximum anticipated hydrostatic head and the liner shall be constructed in accordance with (b) and (c) above;

ii. Surface impoundments shall be designed and constructed to contain the expected flow with sufficient reserve capacity to contain accumulated precipitation from previous rainfall events and sediment and sludge accumulation;

iii. The stability of the surface impoundment dikes shall be determined, as appropriate, for long term, short term or rapid drawdown conditions by modeling techniques and the factor of safety shall be within the minimum values set forth in Table II in (e)3i above;

iv. The inner and outer slopes of all dikes of the surface impoundment shall not exceed a 3:1 slope;

v. The inflow to the surface impoundment shall be designed and constructed so that any flow of waste into the impoundment can be immediately shut-off; and

vi. Upon closure of the surface impoundment, unless the surface impoundment is within the containment and leachate collection systems of the landfill area, the surface impoundment shall be removed and disposed of in accordance with (e)11 above and NJPDES regulations, N.J.A.C. 7:14A.

13. The minimum standards for the design and construction of leachate storage tanks include the following:

i. The tank shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate expected to be produced within the landfill and contained within the tank;

ii. The storage tank area shall have a liner system consisting of a minimum of 18 inches of clay or a single 30 mil geomembrane and a leachate collection system. The liner system and leachate collection system shall be capable of containing and collecting any spills or leaks, and shall be designed and constructed in accordance with (b), (c) and (d) above;

iii. The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or American Concrete Institute (ACI) standards or an equivalent standard depending on the material used, such as metal, fiberglass reinforced plastic, or concrete, and the minimum shell thickness shall be equivalent to a 3/16th of an inch metal tank;

iv. All storage tanks shall be equipped with a venting and odor control system. The venting system shall be Low–Pressure Storage Tank or an equivalent design and permitted in accordance with N.J.A.C. 7:27–8;

v. Control of emissions and odors from the storage tank shall be in compliance with the rules and regulations of the Bureau of Air Pollution Control, N.J.A.C. 7:27;

vi. All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency; and

vii. All storage tanks shall be constructed and maintained in accordance with applicable provisions of the NJPDES regulations including, but not limited to, N.J.A.C. 7:14A–10.7.

14. Spray irrigation of treated effluent systems shall be designed and constructed in accordance with the NJPDES regulations, specifically N.J.A.C. 7:14A–10.9.

i. The spray irrigation system shall not result in increased hydraulic head on the liner system in excess of the design head.

(f) The following are the design standards and construction requirements for sanitary landfill gas collection and venting systems:

1. Sanitary landfill gas collection and venting systems shall be designed and constructed to prevent and control the migration of sanitary landfill gases off-site and shall consist of a perimeter collection system or an interior collection system or both which shall:

i. Prevent and control the accumulation of any methane concentrations in any structure;

ii. Prevent and control damage to vegetation beyond the perimeter of the property on which the sanitary landfill is located; and

iii. Contain malodorous gaseous emissions on-site.

2. All gas venting and collection systems shall be permitted in accordance with the rules and regulations of the Bureau of Air Pollution Control, N.J.A.C. 7:27;

3. The detection of 25 percent of the lower explosive limit of combustible landfill gases, at the perimeter of the sanitary landfill property, or any concentration of any landfill gases within any structures shall trigger the construction of an induced draft or active venting system which shall be designed and constructed in accordance with the following:

i. The perimeter gas collection and venting system shall be designed and constructed to prevent and control landfill gas migration;

ii. Passive gas venting systems may be designed and constructed initially as a preventive measure against sanitary landfill gas migration. In situations where gas migration is detected in amounts greater than or equal to the limits set forth in (f)3 above, passive gas venting systems are prohibited;

iii. The Department may require the construction of an active gas collection system if a significant concentration of gas is detected within the setback area which in the opinion of the Department poses a threat to the health and welfare of the surrounding community;

iv. The number of collection well pipes shall be determined by (f)10 below and be sufficient to prevent any off-site gas migration. It is recommended that vents be installed, at a minimum, at 50 foot intervals along the perimeter of the sanitary landfill area; and

v. The depth of the gas collection wells shall be sufficient to prevent migration of sanitary landfill gases off-site in accordance with the following:

(1) When located within the lined area of the sanitary landfill, the gas collection wells shall not result in or give cause to failure of the liner or leachate collection systems; and

(2) When located outside of the lined area of the sanitary landfill, the gas collection wells shall be constructed, at a minimum, to the bottom of the liner system or to the top of the groundwater table whichever is higher.

4. Malodorous gaseous emissions emanating from the sanitary landfill which result in odors being detected in any area of human use or occupancy shall be cause for requiring the construction of the interior gas collection and venting system which shall be designed and constructed in accordance with the following:

i. The interior gas collection and venting system shall be designed and constructed to control malodorous emissions resulting from gaseous emissions;

ii. The interior collection system shall be an induced draft or active venting system;

iii. The number of collection wells shall be determined by (f)10 below and be sufficient to control malodorous emissions. It is recommended that, at a minimum, three gas vents per acre be installed;

iv. The depth of the collection wells shall not result in or give cause to failure of the liner or leachate collection systems; and

v. A perimeter collection and venting system, designed and constructed in accordance with (f)3 above may be constructed in place of the interior collection system to control malodorous gaseous emissions. The continued detection of odors in areas of human use or occupancy shall be cause for requiring the construction of an interior gas collection and venting system to operate in conjunction with the perimeter collection and venting system.

5. Sanitary landfills in which active gas collection systems are constructed shall develop a gas recovery system in which the gas or converted energy is recovered and utilized;

6. The sanitary landfill gases, prior to the design and construction of the gas collection and venting system in accordance with (f)3 and 4 above, shall be sampled and analyzed to define the quality and quantity of the sanitary landfill gases. The sampling and analysis of sanitary landfill gases shall include, but not be limited to, the following:

i. Prior to combustion, sanitary landfill gases shall be sampled and analyzed for the following:

(1) Volatile organic compounds (VOC);

(2) Total chlorine;

(3) Total sulfur;

(4) Carbon dioxide;

(5) Oxygen;

(6) Moisture content;

(7) Heat valve; and

(8) Flow rate.

ii. After combustion, sanitary landfill gases shall be sampled and analyzed for the following:

(1) Particulates;

(2) Sulfur oxides;

(3) Hydrochloric acid;

(4) Carbon monoxide;

(5) Nitrogen oxides; and

(6) Volatile organic compounds (VOC).

7. The gas collection system shall be designed to control condensate and to drain the condensate into the leachate collection system;

8. Each collection well shall be constructed with a valve to enable control and tuning of the system;

9. The gas collection system within the landfill area shall be designed to compensate for settlement. Collection wells shall be designed with slip joints, telescoping joints or equivalent joints. The valves, condensation traps and manifold connections shall be designed with flexible joints;

10. Subsurface gas flow or transport modeling, approved by the Department, shall be performed to properly size the number of collection wells required by (f)3iv and 4iii above. The collection well diameters, header lengths, pump capacities and recovery systems shall be properly sized, and designed and constructed in accordance with (f)6 above;

11. The pump station shall be a suitable, permanent structure, which affords protection to the pumps, motors, and electrical equipment, and shall include the following:

i. Explosion-proof equipment for the pumps, motors, and electrical equipment in accordance with the most current version of the National Electrical Code "Special Occupancy, Hazardous Location" Volume 6 of the National Fire Code published by the National Fire Prevention Association; and

ii. Adequate lighting and ventilation which shall be in accordance with the most current version of the National Fire Code's "Explosion Venting" Volume 14 published by the National Fire Prevention Association.

12. Materials used in the gas collection and venting systems shall be compatible with the sanitary landfill environment, sanitary landfill gases and condensate, and the material shall meet ASTM standards for chemically resistant materials;

13. Construction of any buildings on top of landfilled areas shall be prohibited during the operational and closure phases. Construction during the post-closure phase, as approved by the Department, shall be in accordance with the following:

i. The building shall be an above-grade structure. Construction of a basement is prohibited;

ii. The building shall be constructed to prevent gas accumulation within the structure in accordance with the requirements of (f)14 below or an equivalent method, which may include an active gas collection and venting system; and

iii. All utility connections shall be designed and constructed with flexible connections.

14. On-site buildings within the sanitary landfill properties should be designed and constructed in accordance with the following, or in accordance with an equivalent design which will prevent gas migration into the building:

i. A geomembrane or equivalent system with high gas impermeability should be installed between the slab and the subgrade or equivalent design;

ii. A permeable layer of open-graded material of clean aggregate, with a minimum thickness of 12 inches, should be installed between the membrane and the subgrade or slab. The material should be in accordance with the following requirements of the grain size distribution curves:

(1) $D_{85} < 4D_{15}$; and

(2) $D_2 > 0.1$ inch;

iii. A geotextile filter should be utilized to prevent the intrusion of fines into the permeable layer;

iv. Perforated venting pipes shall be installed within the permeable blanket and shall be designed to operate without clogging;

v. The venting pipe shall be designed and constructed with the ability to be connected to an induced draft exhaust system;

vi. Automatic methane gas sensors shall be installed within the venting pipe/permeable blanket and inside the building to trigger an audible alarm when methane gas concentrations are detected; and

vii. All buildings shall be constructed in accordance with the National Fire Code's, Life Safety Code Volume 9 as published by the National Fire Prevention Association.

(g) The following are the design standards and construction requirements for surface drainage systems:

1. Sanitary landfills shall be designed and constructed in such a manner as to hydraulically isolate the sanitary landfill from surface water drainage in a controlled manner. The surface drainage system shall be designed and constructed to protect the sanitary landfill from run-on and control run-off, from, at a minimum, the peak discharge of a 24–hour, 25–year storm;

2. Run-on/run-off structures shall be designed utilizing the United States Department of Agriculture, Soil Conservation Service, methods and in accordance with the Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90;

3. Diversion structures shall be designed to minimize ponding behind the structure;

4. Laboratory classification, and compaction or relative density tests shall be performed on the soils to be utilized in the construction of the run-on/run-off structures in accordance with current ASTM, AASHTO or equivalent methods. The number of tests and samples shall be sufficient to define the material;

5. The run-on/run-off structures shall be constructed by modification of the compactive effort utilizing stage compaction, not exceeding the effective depth of the compaction equipment. The compaction shall be performed to the design density and at the proper moisture content where applicable, based on the laboratory analysis performed pursuant to (g)4 above, to achieve the required strength or hydraulic conductivity;

6. The following quality control tests shall be performed on the soils utilized within the run-on/run-off structure construction:

i. Grain size analysis; and

ii. Relative density/compaction.

7. The tests required by (g)6 above shall be performed in accordance with ASTM, AASHTO or equivalent methods in accordance with the following:

i. Grain size analysis shall be performed once per every 3000 cubic yards of in-place fill material; and

ii. Relative density or compaction testing shall be performed on the completed structures at 50 foot intervals on a grid pattern across the surface;

8. The strength of the run-on/run-off structures shall be determined utilizing appropriate ASTM, AASHTO or equivalent methods for both in-situ and laboratory testing for the appropriate conditions. The stability of the structure shall be determined for long term, short term, or rapid drawdown conditions by modeling techniques and the factor of safety shall be within the minimum values set forth in Table II in N.J.A.C. 7:26–2A.7(b)3i;

9. Run-on controls shall meet the following requirements:

i. Diversion structures shall be designed to minimize run-on onto the landfilled areas in accordance with (g)1 above and N.J.A.C. 7:26–2A.6(g) and (h);

ii. Detention basins where required in accordance with the Water Quality Management Planning and Implementation Process regulations, N.J.A.C. 7:15, shall be designed to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment in accordance with the Standards for Soil Erosion and Sediment Control, N.J.A.C. 2:90;

10. Run-off controls shall meet the following requirements:

i. Diversion structures shall be designed to prevent run-off generated within the active landfilled areas during the operational phase from moving off site of the lined areas; and

ii. All diversion structures of the active landfilled areas shall be designed to channel run-off to the leachate treatment and disposal system. Run-off from the final capped areas may be directed to the detention ponds.

(h) The following are the design and construction requirements and standards for monitoring systems:

1. The monitoring system shall be designed and constructed in such a manner as to ensure its ability to observe and record the performance of the sanitary landfill and its various environmental control systems and to detect any potential malfunctions and possible pollutant migration;

2. The monitoring system shall consist of a groundwater monitoring system, hydrostatic pressure gradient monitoring system, gas monitoring system, leachate monitoring system, meteorological monitoring system and slope and settlement monitoring system;

3. All monitoring systems, where appropriate, shall be constructed and operated in accordance with the NJPDES regulations, N.J.A.C. 7:14A;

4. A ground water monitoring system shall be designed and constructed in accordance with the NJPDES regulations, N.J.A.C. 7:14A–6;

5. A hydrostatic pressure gradient monitoring system shall be designed and constructed in accordance with the following:

i. In facilities with cut-off wall designs, a system to measure the hydrostatic pressure across the wall shall be constructed in accordance with the following:

(1) The location of the piezometers shall be directly opposite the groundwater saturated zone wells; and

(2) The depth and location of the piezometers within the sanitary landfill shall not result in damage to the containment system.

ii. A system to define and measure the hydrostatic head on the primary liner shall be constructed consisting of, but not limited to:

(1) Piezometers installed through the sanitary landfill;

(2) Clean out risers with depth gauges; or

(3) Manholes with depth gauges;

iii. The depth and location of piezometers within the sanitary landfill shall not result in damage to the containment system.

6. A gas monitoring system shall be designed and constructed in accordance with the following:

i. The system shall be capable of detecting any possible methane gas migration from the sanitary landfill and shall be located as close to the toe of the slope of the sanitary landfill, depending on the gas flow characteristics of the soils, as is reasonably possible, in order to rapidly detect any possible gas migration;

ii. The methane gas monitoring wells shall be screened in the unsaturated zone to at least five feet below the lowest elevation of the landfill or to the top of the water table;

iii. A periodic gas survey performed in accordance with N.J.A.C. 7:26–2A.10(a)5ix may be substituted for the design and construction of methane gas monitoring wells; and

iv. Where required in accordance with the Permits and Certificates Rules of the Bureau of Air Pollution Control, N.J.A.C. 7:27–8, a gas monitoring system for the gas collection systems, capable of defining the quality and quantity of the landfill gas, shall be designed and constructed.

7. A leachate monitoring system shall be designed and constructed which shall be capable of measuring the flow, and capable of sampling leaching influent and the treatment system effluent;

8. A meteorological monitoring system shall be installed within the landfill properties to measure and continuously record the daily precipitation onto the sanitary landfill; and

9. A slope and settlement monitoring system shall be designed and constructed in accordance with the following:

i. In areas which exhibit a high degree of uncertainty of the strength data, such as meadow mat, peat, or expansive clay soils, a system to measure the settlement of the sanitary landfill and liner systems shall be installed which should include, but not be limited to, borehole settlement devices; and

ii. Sanitary landfills, when required by the Department, based on the final elevation and grades of the capping system and the foundation analysis, shall install slope inclinometers to adequately measure the slope stability and integrity.

7:26–2A.8 Sanitary landfill operational and maintenance requirements

(a) All sanitary landfills shall be opened in accordance with the requirements set forth in N.J.A.C. 7:26–2.8, and the following additional operational, maintenance, inspection and monitoring requirements.

(b) The sanitary landfill shall be operated in accordance with the following additional minimum requirements:

1. The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment, in order that the area of waste material exposed during the operating day is minimized. The width of the working face shall be in accordance with the following:

i. Sanitary landfills receiving 400 or less truck loads of waste per day, shall have a working face no greater than 150 feet;

ii. Sanitary landfills receiving more than 400 truck loads of waste per day may submit a request for a working face greater than 150 feet or another 150 foot working face in a separate location. The size and number of the working faces approved by the Department will be based on the sanitary landfill equipment and cover material available on-site and the on-site traffic flow patterns.

2. All waste shall be thoroughly compacted throughout the operational day to yield the smallest practical volume;

3. Solid waste shall be compacted in shallow layers. The layers should be less than two feet in thickness and should be compacted with a minimum of four passes of the compaction equipment, except over leachate collection pipes where compacting shall be performed in accordance with N.J.A.C. 7:26–2A.7(d)3xiv;

4. The lift height of the daily cell, as measured vertically from the previous day's cover surface, shall not exceed 12 feet;

5. The slope of the working face shall be maintained so as to maximize compaction of the solid waste and minimize infiltration into the solid waste. The slope shall be no steeper than three horizontal to one vertical (3:1).

6. Separate areas designated on the site plan, as approved by the Department, may be used for the storage of demolition waste or recyclable materials in accordance with the following:

i. The stockpiled solid waste or recyclable materials shall not contain putrescible material;

ii. The stockpiled solid waste or recyclable materials shall not cause or result in a public health or environmental nuisance or impose a safety hazard as determined by the Department; and

iii. A schedule or time frame for reuse of the material in a timely fashion, shall be submitted to and approved by the Department.

7. All exposed surfaces of solid waste shall be covered at the close of each operating day with a minimum of six inches of earth cover, unless it meets the following:

i. The uncovered solid waste will not create an environmental or public health nuisance as determined by the Department;

ii. The uncovered solid waste will not create a safety hazard as determined by the Department;

iii. The solid waste is a clean fill; and

iv. The solid waste is an inert material.

8. The daily covering of solid waste shall be a progressive operation so that no greater than 15,000 square feet of solid waste is exposed at any time throughout the operating day for each 150 feet of working face;

9. Intermediate cover, a minimum of 12 inches of earth cover, shall be applied to all surfaces to be exposed for any period exceeding 24 hours;

10. The grade and thickness of the intermediate and final cover material on all surfaces shall be maintained until stabilized. All cracks, erosion swales, rills and uneven areas shall be maintained to prevent extrusion of solid waste and to minimize infiltration and ponded water;

11. All areas with intermediate cover shall be graded so as to facilitate drainage of run-off to the surface drainage system and minimize infiltration and ponded water;

12. Heavy clays and very fine grain materials, such as fly ash, shall not be used as daily and intermediate cover. The daily and intermediate earth cover should be of a quality that is manageable under all weather conditions. A sufficient quantity of earth cover shall be at the site to adequately meet the requirements of (b)7 through 10 above. For landfills without on-site supplies of cover material, a standby supply for cover material equal to 25 percent of the volume of waste received and compacted at the landfill in 10 normal disposal days shall be stored within the boundaries of the landfill property;

13. Final cover constructed in accordance with N.J.A.C. 7:26–2A.7(i) shall be applied to all surfaces where the final approved elevation has been reached and to all surfaces when the landfill operation is terminated;

14. There shall be sufficient types of quantities of equipment for digging, spreading, compacting or covering waste or applying cover material to adequately meet the requirements of (b)7 through 10 above, to ensure a smooth flow of traffic at the working face and to achieve the maximum compaction efficiencies;

15. At sanitary landfills that accept an annual waste flow of greater than 1,000,000 in-truck cubic yards (300,000 tons), the compaction equipment should include the use of steel wheel type compactors with a minimum operational weight of 45,000 pounds;

16. Sanitary landfill equipment shall be equipped with hand-portable fire extinguishers of a multipurpose dry chemical type, an automatic fire suppression system, and rollover protection structures and any other safety equipment required by the Occupational Health and Safety Administration standards;

17. In case of breakdown of the equipment required by (b)14 above, the permittee shall repair the equipment or obtain replacement equipment within 24 hours after breakdown. Unless sufficient types and quantities of replacement equipment meeting the requirements of 14 above are available on-site, written maintenance contracts with a local equipment dealer shall be in force at all times. A copy of the contract shall be submitted with the O and M plan to verify compliance with this requirement;

18. Access to the sanitary landfill for solid waste disposal shall be permitted only during the operating hours set by the Division of Solid Waste of the Board of Public Utilities and shall be restricted to 7:00 A.M. to 7:00 P.M. in areas within 1000 feet of a residential zone;

19. The sanitary landfill shall be adequately secured with a six-foot high chain link fence with an entrance gate, posted with the operating hours, that can be locked to prevent unauthorized entry into the facility. Fencing may be exempted, as approved by the Department, in areas where topographic features restrict vehicular access to the sanitary landfill;

20. A scale house and scales meeting the requirements of N.J.S.A. 13:1E–117 and the guidelines promulgated pursuant thereto, shall be constructed at the sanitary landfill. The location of the scale house and scales shall be situated so as to minimize the queuing-up of trucks onto the public roadway and so as to maintain a smooth and safe flow of traffic to and from the working face and while entering and exiting the landfill;

21. An all weather road shall be provided to the working face;

22. Litter shall be controlled through the use of moveable fences of sufficient height or by an equivalent means. The litter fence shall be policed daily and the litter collected shall be properly disposed of at the working face;

23. Dust control shall be effected by the spraying of water or the spreading of calcium chloride or an equivalent approved by the Department, as needed. Spraying of waste oil is prohibited;

24. Malodorous emissions emanating from the sanitary landfill shall not result in odors being detectable in any area of human use or occupancy beyond the property boundary line. Malodorous emissions shall be controlled by the use of daily cover. In the event that this is not satisfactory, a suitable deodorant shall be used. Odorous solid waste shall be covered immediately after unloading with a minimum of six inches of earthen cover;

25. Mud, soil, and other materials shall not be tracked onto any public road by exiting vehicles. A rumble rack or wheel washing station shall be used to control the off site tracking of mud, soil, and other material;

26. The sanitary landfill shall be operated in a manner which minimizes the propagation and harborage of insects, rodents, and birds;

27. The sanitary landfill shall be operated in a manner which will protect all monitoring devices and environmental systems from damage. Any damage shall be immediately reported to the Division of Solid Waste Management, Enforcement Element at (609) 292–5560;

28. Any monitoring device or environmental control system which is damaged so as to impair the proper operation of the monitoring device or environmental control system shall be reconstructed in accordance with the following:

i. The operator shall repair the monitoring device or environmental system in accordance with the plans and schedule approved by the Department; and

ii. The Department may require immediate remedial action for repair of the damaged monitoring device or environmental control system should such damage endanger human health or the environment.

29. The sanitary landfill shall be operated in a manner which will facilitate the filling of each section to final grade and which will minimize the operational phase of each section;

30. An adequate number of qualified personnel shall be at the sanitary landfill to maintain the smooth flow of traffic at the sanitary landfill and to operate the sanitary landfill in a manner that is in compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., this chapter, and the conditions of the SWF permit;

31. A supervisor shall be at the sanitary landfill during all operating hours to insure proper operation of the sanitary landfill, to evaluate the monitoring data and inspection reports, to determine the performance of the sanitary landfill and to direct and implement all operational decisions to ensure the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., this chapter, and the conditions of the SWF permit;

32. All sanitary landfill personnel who are involved in waste management activities or who operate, service or monitor any facility equipment, machinery or system, shall complete a program of on-the-job training which shall include, at a minimum, the following:

i. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the SWF permit;

ii. The training shall include instruction in the operation and maintenance of the equipment, machinery and systems which facility personnel must operate, service or monitor in the course of their daily job duties. The training shall instruct facility personnel in the performance of their duties in a manner that ensures the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., this chapter, and the conditions of the SWF permit;

iii. The training program shall ensure that the facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise;

iv. The training program shall provide instruction in the use of safety and emergency equipment and the use of communication or alarm systems; and

v. The training program shall provide instruction in the procedures for emergency response for sanitary landfill fires or explosions, gas leaks, leachate treatment system failure or leaks, detention basin breaches or other emergencies and shall include procedures to shut down operations.

33. The sanitary landfill facility personnel shall complete the initial training program required by (b)32 above within six months after the effective date of this subchapter or six months after the date of their employment, whichever is later;

34. The sanitary landfill facility personnel shall take part in an annual update of the initial training program;

35. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the sanitary landfill;

36. The following actions shall be implemented in the case of an emergency:

i. The supervisor or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;

ii. Concurrently, the supervisor or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

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

(1) Immediately notify appropriate local authorities if the assessment indicates that evacuation of local areas may be advisable;

(2) Immediately notify the Department at (609) 292–7172; and

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

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

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

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

vii. The supervisor or emergency coordinator shall notify the Department and appropriate local authorities when operations in the affected area of the facility have returned to normal; and

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

(1) The name, address and telephone number of the facility;

(2) The date, time and description of the incident;

(3) The extent of injuries, if applicable, with names and responsibilities indicated;

(4) An assessment of actual damage to the environment, if applicable;

(5) An assessment of the scope and magnitude of the incident;

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

(7) An implementation schedule for undertaking longer term measures to effect cleanup and avoid recurrence of the incident, if applicable.

37. An on-site baseline consisting of two vertical and horizontal control monuments shall be constructed and installed in accordance with the Map Filing Law, N.J.S.A. 46:23–9.9 et seq., and the Department's specifications in the "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills" available from the Division of Waste Management, Office of Engineering.

38. The control monuments shall be installed with, at a minimum, Second Order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey", published by the U.S. Department of Commerce, 1980;

39. The control monuments shall be tied into the national or state geodetic survey network and keyed into the New Jersey Plane Coordinate Datum, 1927; and

40. Sanitary landfills equal to or greater than 50 acres in size may be required to construct and install secondary control points. The control points shall be installed in accordance with the Department's "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills."

(c) While the sanitary landfill is in operation all environmental control systems shall be maintained in a proper functioning manner and shall be inspected to insure compliance with the operational and construction requirements and the design and performance standards.

(d) The inspections, required by (c) above, shall be performed, unless otherwise stated, on a weekly basis and after storm events to detect evidence of deterioration, malfunction or improper operation.

(e) The owner or operator shall record the results of the inspections in a bound log book which shall be maintained at the sanitary landfill office and be available, at all times, for inspection by the Department. These records shall

include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial action.

(f) If deterioration which would result in failure, malfunction or improper operation is evident during inspection, the operator shall make repairs in accordance with N.J.A.C. 7:26–2A.8(b)28 and as listed in the approved final O and M manual.

(g) The sanitary landfill shall be maintained and inspected by the owner or operator in accordance with the following additional minimum requirements:

1. The buffer zone shall be maintained free from litter. The entire area shall be policed on a daily basis, weather permitting, and the collected litter shall be properly disposed of at the working face;

2. The all weather road shall be maintained as necessary to provide access to the working face;

3. The public roads providing access to the sanitary landfill shall be maintained free of mud, dirt, and litter. The entrance shall be properly policed on a daily basis, weather permitting;

4. The vertical and horizontal control monuments shall be maintained and resurveyed by a licensed New Jersey Land Surveyor and certified for accuracy biennially. The survey shall be, at a minimum, second order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce 1980. The control monuments shall be tied into the national or state geodetic survey network;

5. All emergency equipment shall be maintained in a proper functioning manner. The equipment shall be tested on an annual basis;

6. The cap on the cut-off wall, required by N.J.A.C. 7:26–2A.7(c)10xvi., shall be maintained at a three foot thickness to prevent the erosion of the cut-off wall;

7. The leachate collection pipes shall be maintained to ensure a free flow of leachate. The leachate collection pipes shall be inspected and if blockage and clogging of the system is evident the collection pipes shall be cleared by water jet flushing or an equivalent method. The mains shall be tested annually to insure a free flow of leachate;

8. The structural integrity of the manholes or cleanout risers shall be maintained to insure a free flow of leachate;

9. The structural integrity of the sumps shall be maintained to ensure water tightness of the sump;

10. The structural integrity of the leachate pump station and gas pump station, and the electrical, venting and alarm systems of the leachate pump station and the gas pump station shall be maintained to ensure a free flow of leachate and gas;

11. The leachate pumping system and gas pumping system shall be maintained as necessary. They shall be completely overhauled, at a minimum, on a biennial basis and shall be inspected on a daily basis to ensure a free flow of leachate or gas;

12. The leachate treatment and disposal systems shall be inspected on a daily basis and maintained in a manner which will prevent anaerobic and malodorous conditions from developing;

13. The structural integrity of the storage tanks shall be maintained to ensure containment of leachate. The tanks shall be inspected annually for leaks;

14. The structural integrity and erosion protection shall be maintained on all areas of the surface impoundments to ensure stability of the dike and emergency spillways and containment of the leachate and run-off. The surface impoundment shall be inspected on a daily basis to ensure that the minimum depth of freeboard is maintained;

15. The leachate treatment and disposal system units, storage tanks, surface impoundments, and detention/retention ponds shall be dredged, as necessary, to maintain the design capacity. Dredging shall not result in or cause damage to the containment system;

16. The structural integrity of the vents, manifolds and piping of the gas venting system shall be maintained to insure a free flow of gas;

17. The structural integrity of the gas flaring or recovery/combustion systems shall be inspected on a daily basis and shall be maintained to ensure proper disposal or use of the collected gas;

18. The structural integrity of all monitoring devices shall be maintained to ensure their workability and reliability; and

19. The structural integrity and erosion protection of the surface run-on/run-off structures shall be maintained on all areas of the capping system to ensure the stability of the slope and prevent excess erosion. The top grades shall be maintained at their proper slopes to minimize ponding.

(h) Monitoring shall be performed in accordance with the following parameters and schedules:

1. Sampling and analysis of water from the groundwater monitoring wells and lysimeters shall be performed in accordance with the NJPDES regulations, N.J.A.C. 7:14A–6 and 10.12;

2. Sampling and analysis of surface water taken from the surface water monitoring locations shall be performed in accordance with N.J.A.C. 7:14A–6 and 10.12;

3. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed in accordance with the appropriate section of the NJPDES regulations N.J.A.C. 7:14A–3, N.J.A.C. 7:14A–10.4, 10.5, 10.6, 10.9 and 10.10, N.J.A.C. 7:14A–12, and 13;

4. In addition to the requirement of (h)3 above, samples of leachate effluent and influent shall be analyzed on a daily basis for the following parameters:

i. Flow;

ii. pH;

iii. Temperature;

iv. Chemical oxygen demand (COD);

v. Specific conductance; and

vi. Chlorides;

5. The daily leachate monitoring results shall be compiled on a quarterly basis and submitted along with the quarterly groundwater monitoring results to the Division;

6. Residuals from the treatment and disposal systems shall be sampled and analyzed in accordance with the requirements of the Sludge Quality Assurance Regulations, N.J.A.C. 7:14–4;

7. Residuals from the treatment and disposal systems shall be sampled prior to the planned disposal and the results of the analysis shall be submitted to the Bureau of Hazardous Waste Planning of the Division of Hazardous Waste Management for classification 30 days prior to disposal;

8. The hydrostatic pressure of the cut-off wall and the liner system shall be monitored on a quarterly basis and the results shall be submitted with the groundwater monitoring results to the Division;

9. Sanitary landfill gases shall be sampled and analysed in accordance with the following:

i. A gas quality analysis shall be performed on the gas venting and collection systems as constructed in accordance with N.J.A.C. 7:26–2A.7(g)3 and 4 on an as-needed basis as determined by the Division and the Division of Environmental Quality, Bureau of Air Pollution pursuant to N.J.A.C. 7:27;

ii. A methane gas survey shall be performed on a quarterly basis and the results shall be submitted with the groundwater monitoring results to the Division. If gas is detected within the buffer zone the Department may require more detailed and frequent surveys to be performed;

iii. The methane gas survey shall be performed with a hand-held portable explosimeter or equivalent and the minimum sampling depth shall be three feet below the ground surface or above the water table, whichever is higher; and

iv. The sampling for the methane gas survey shall be performed on a quarterly basis around the perimeters of the buffer zone of active landfill areas and annually around the entire perimeter of the buffer zone of the sanitary landfill. The maximum interval between sampling points shall be 300 feet. Sampling shall be performed around the perimeter of all on-site structures. The maximum interval between sampling points for structures shall be 50 feet; however, there shall be at least one sampling point along each side of the structure;

10. The daily precipitation data from the meteorologic monitoring system shall be compiled and submitted on a quarterly basis with the groundwater monitoring results to the Division; and

11. The settlement and slope data shall be compiled and submitted on a quarterly basis with the groundwater monitoring results to the Division.

(i) All sanitary landfills shall submit an annual topographic survey of all areas of the sanitary landfill. The topographic survey shall be made and submitted, initially, within 90 days of the effective date of this subchapter, and, thereafter, made between January 20 and March 31 of each year and submitted on or before May 1 of each year in accordance with the following:

1. The topographic survey shall be prepared in accordance with the Map Filing Law, N.J.S.A. 46:23–9.9 et seq., and shall be depicted at the same scale and contour intervals as the approved engineering site plan design;

2. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points in accordance with the "Classification, Standards of Accuracy and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Coordinate Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plane Coordinate Datum 1927;

3. The topographic survey shall delineate, at a minimum, the following:

i. The vertical and horizontal control monuments and secondary control points installed in accordance with N.J.A.C. 7:26–2A.7(a)2 or N.J.A.C. 7:26–2A.8(a)1xxxiii, delineating X (east) and Y (north) coordinates and elevations;

ii. All groundwater monitoring wells and piezometers installed in accordance with N.J.A.C. 7:26–2A.5(i)4 and 5 and NJPDES regulations N.J.A.C. 7:14A–6.7 and

10.12, delineating X (east) and Y (north) coordinates and elevations;

iii. The property lines of the sanitary landfill properties;

iv. The boundary lines of the approved landfill areas;

v. The boundary of areas currently being landfilled and which have been landfilled since the last topographic survey was submitted;

vi. The boundary of the areas which have not been landfilled within the approved landfill area;

vii. The boundary of the areas where final cover has been placed; and

viii. The topographic survey shall be prepared by a licensed New Jersey Land Surveyor and the topographic survey report shall be certified by a licensed New Jersey Professional Engineer.

4. A report shall be submitted with the topographic survey which shall describe, with sufficient calculations clearly notated, the following:

i. The solid waste disposed of at the landfill since the last topographic survey. This quantity shall be reported in tons for landfills with scales and in cubic yards for landfills exempted from installing scales.

ii. The number of trucks which disposed of waste since the last topographic survey;

iii. The solid waste disposed of at the landfill since commencement of landfilling operations. This quantity shall be reported in cubic yards;

iv. The volume of daily and intermediate cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

v. The volume of final cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

vi. The in-place compaction achieved since the last topographic survey. This quantity shall be reported in pounds per cubic yard; and

vii. The remaining capacity of the landfill excluding final cover volume. This quantity shall be reported in cubic yards.

(j) Approval of and standards for disruption of landfills shall be in accordance with the following:

1. Written approval shall be obtained from the Department prior to any excavation, disruption, or removal of any deposited material from either an active, terminated, or closed sanitary landfill;

2. All requests for approval shall include an operational plan stating the area involved, the depth of the excavation with final grades, estimated cubic yards of material to be excavated, the site where excavated material is to be redeposited, and the estimated time required for completion of excavation procedures;

3. All excavation shall be confined to an area consistent with the number of pieces of digging equipment or trucks used for haulage. The area of excavation shall be kept to the smallest practical area;

4. Adequate measures shall be taken during excavation to control dust, odors, fires, rodents, insects, blowing litter, surface water run-on and erosion; and

5. The disposal of all solid waste resulting from the excavation shall be in conformance with the requirements of N.J.A.C. 7:26–2.11.

(k) Control of smoking, smoldering or burning landfills shall be in accordance with the following:

1. In case of a fire on an active sanitary landfill, the responsibility for fire control shall lie with the SWF permit holder. In case of a fire on a terminated, closed or unpermitted landfill, the responsibility for fire control shall lie with the person having the title to the premise upon which the fire is located;

2. The owner or operator of any landfill wherein smoldering, smoking or burning is occurring shall immediately notify the local police and fire department having jurisdiction and the Department hot-line (609) 292–7172;

3. The owner or operator of any active landfill shall be responsible for initiating and continuing fire-fighting actions until all smoldering, smoking and burning ceases;

4. The owner or operator of any landfill shall seek and obtain fire-fighting assistance if smoldering, smoking or burning persists for longer than 24 hours;

5. The owner or operator of any landfill shall not conduct disposal activities within the burning area. Precautions shall be taken to prevent disposal activities from interfering with fire-fighting activities; and

6. Any disruption of the finished grade or covered surface shall be repaired and recovered upon completion of fire-fighting activities.

(*l*) Rules concerning the disposal of asbestos and asbestos-containing waste in sanitary landfills follow:

1. The owner or operator of a sanitary landfill may only accept and dispose of asbestos and asbestos-containing waste which has been managed in the following manner:

i. Asbestos and asbestos-containing waste, including waste originating from sources subject to 40 CFR 61.144, 61.145, 61.148, 61.149 and 61.150, except, as provided otherwise below shall have been sufficiently mixed or coated with water or an aqueous solution and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The container shall have been permanently sealed and labeled with a warning label that states:

CAUTION
Contains Asbestos
Avoid Opening or
Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, warning labels specified by Occupational Safety and Health Standards of the United States Department of Labor, Occupational Safety and Health Administration under 29 CFR 1910 may be used;

ii. Air pollution control device asbestos waste originating from sources subject to 40 CFR 61.144, 61.145, 61.148, 61.149 and 61.150 shall have been thoroughly mixed with water into a slurry and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The containers shall have been permanently sealed and labeled in accordance with (*l*)1i above;

iii. In lieu of the requirements of (*l*)1i, and (*l*)1ii above, the asbestos and asbestos-containing waste shall have been formed into nonfriable pellets or other shapes;

iv. All asbestos and asbestos-containing waste from asbestos mills subject to 40 CFR 61.151, shall have been adequately mixed with a wetting agent recommended by the manufacturer of the wetting agent to effectively wet asbestos mill dust and asbestos mill tailings and sealed into leak tight containers (such as 6 mil. plastic bags) while wet. The containers shall be permanently sealed and labeled in accordance with (*l*)1i above;

2. All asbestos and asbestos-containing waste accepted for disposal at a sanitary landfill shall be disposed of in the following manner:

i. Owners or operators of new landfills accepting asbestos or asbestos-containing waste shall meet the following requirements:

(1) The owner or operator of the landfill shall develop a separate area of the landfill, apart from other waste disposal areas, for disposal of asbestos and asbestos-containing waste. It is recommended that the asbestos disposal area be operated by a trench method, with sufficient width and ramping to allow the transport vehicle to back up to or into the trench to allow for proper unloading of the asbestos and asbestos-containing waste in a manner that prevents the rupture of the containers during the unloading operation.

(2) Upon acceptance of the waste, the asbestos disposal area shall immediately be prepared. After unloading, the asbestos and asbestos-containing waste shall be immediately covered with a minimum of three feet of soil.

(3) In areas in which asbestos and asbestos-containing waste has been previously deposited, as required by (*l*)2i(2) above, the current working face may be prepared by removal of cover material; however, no previously deposited asbestos and asbestos-containing waste shall be exposed and a minimum of six inches of cover material shall be maintained between the cells. After unloading, the asbestos and asbestos-containing waste shall be immediately covered with a minimum of three feet of soil.

(4) The final cover of the asbestos disposal area shall be a minimum of three feet of soil and shall be sufficient to minimize infiltration into the asbestos and asbestos-containing waste. The final slopes shall be graded to facilitate run-off away from the asbestos disposal area.

(5) The final cover shall be seeded and maintained to prevent erosion and exposure of the asbestos and asbestos-containing waste.

ii. Owners or operators of existing landfills must comply with one of the following two options for disposal of asbestos and asbestos-containing waste:

(1) The owner or operator of the landfill may develop a separate area of the landfill for asbestos and asbestos-containing waste disposal, prepared and operated as required by (*l*)2i above; or

(2) A separate excavation may be prepared in the working face of the landfill. The excavation shall be of sufficient width and depth so as to allow the asbestos and asbestos-containing waste to be deposited such that a minimum of three feet of earth or other cover material may be placed between the top of the waste deposited and the top surface of the working face. A written notice must be recorded along with the deed for the landfill property, for all landfilled areas, with the appropriate county recording office, notifying future owners of the property that asbestos has been disposed in the landfill and that disruption or excavation is expressly prohibited under (*l*)2v below.

iii. The asbestos and asbestos-containing waste deposited in the disposal areas described in (*l*)2i and (*l*)2ii above, shall immediately be covered with three feet of earth or other approved cover material in a

manner that prevents the rupture of the containers during the burying operation.

iv. For disposal areas identified in (*l*)2i and (*l*)2ii(1) above, a detailed metes-and-bounds description of the asbestos disposal area shall be recorded, along with the deed for the landfill property, with the appropriate county recording office, notifying future owners of the property that disruption or excavation is expressly prohibited pursuant to N.J.A.C. (*l*)2v below. This description shall also include the depths of asbestos and asbestos-containing waste and cover material and shall remain in the record in perpetuity.

v. For disposal areas identified in (*l*)2i and (*l*)2ii above, the intermediate and/or final landfill cover may not be disrupted, except as required for pollution control or remedial action, in which case such disruption must be managed in compliance with State and Federal regulations governing the removal, disposal or other handling of asbestos or asbestos-containing waste.

vi. No person may enter an asbestos disposal area at a landfill during the unloading and covering of asbestos and asbestos-containing waste without wearing a respirator approved for asbestos by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration. This equipment shall be provided and maintained in good working order by the landfill owner or operator.

3. Acceptance of asbestos or asbestos-containing waste at a sanitary landfill for disposal shall be in accordance with the waste flow requirements of N.J.A.C. 7:26–6.

4. There shall be no visible air emissions during or after acceptance and disposal.

5. The requirements in this subsection do not apply to renovation or demolition projects wherein the total project involves less than 260 feet of asbestos-coated pipe or less than 160 square feet of asbestos-coated surface, such as ducts, boilers, tanks, structural members and the like.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
CFR cites updated.
Administrative Correction, effective February 5, 1990: Deleted incorrectly-cited text.
See: 22 N.J.R. 382(b).

7:26–2A.9 Closure and post-closure care of sanitary landfills

(a) This section shall govern the closure and post-closure care of all sanitary landfills. This section includes requirements for the preparation of a Closure and Post–Closure Plan, as defined in (d)1 below, for all new sanitary landfills and every sanitary landfill operating on or after January 1, 1982. It also establishes requirements concerning establishment and use of the escrow account required pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E–100 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., for every sanitary landfill operating on or after January 1, 1982.

(b) The following words and terms, when used in this section shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the department rules, N.J.A.C. 7:26–1.4:

"Accredited financial institution" means any commercial bank, savings bank or savings and loan association with its principal office located in the State of New Jersey, and insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

"Closure" shall mean the construction and implementation of all environmental safeguards required by law or by the sanitary landfill's approved Closure and Post–Closure Plan and the facility's approved engineering design subsequent to the termination of operations at any portion of that facility. Closure may include but is not limited to all activities and costs associated with the design, purchase, construction and maintenance of all items in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfills subsequent to the termination of operations at any portion thereof, including but not necessarily limited to, the costs of placement of acceptable cover, the installation of methane gas monitoring, venting, or evacuation systems, the installation and monitoring of wells or leachate collection and control systems at the site or in the vicinity of any sanitary landfill.

"Closure period" means, unless otherwise specified, the period beginning after the landfill or a portion thereof has ceased to accept waste or the period as determined by the department.

"Escrow account" means an interest-bearing account with an accredited financial institution as escrow agent, wherein funds shall be deposited by the owner or operator of every sanitary landfill pursuant to N.J.S.A. 13:1E–100 et seq., and this section. This account shall be based upon the standard escrow agreement provided by the department for execution by and between the escrow agent and the owner or operator of the sanitary landfill. There shall be only one escrow account for each sanitary landfill, unless otherwise authorized by the department.

"Liquidity" shall mean that availability of funds for drawdowns consistent with a landfill's approved closure plan, or, if there is no approved closure plan, consistent with the department's closure strategy for the landfill facility.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land where on a sanitary landfill facility is or has been located, and any person, partnership or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill.

"Post-closure care" means those activities necessary to maintain and monitor a sanitary landfill in accordance with an approved engineering design and applicable laws and regulations after the landfill has been properly closed.

(c) General closure and post-closure care requirements are as follows:

1. Every owner or operator of a sanitary landfill shall be jointly and severally liable for the proper operation and closure of the sanitary landfill, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operations and closure.

2. The owner or operator of a sanitary landfill shall notify the department in writing of his intention to suspend or terminate operations at that landfill. The department shall receive notice at least 10 days prior to the date of suspension of operations, which notice shall include the duration of the suspension, and shall receive notice at least 180 days prior to the date of termination of operations.

3. No person shall contract to sell any land which has been utilized as a sanitary landfill facility at any time unless the contract of sale for the land describes such use and the period of time that the land was so utilized, as required in (c)4 below. Upon written request, any prospective purchaser of such land may obtain from the department a history of the compliance by the landfill with all applicable statutes, rules and regulations administered by the department.

4. Upon closure of the sanitary landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate county recording office. The description shall include the general types, locations, and depths of wastes on the site, the depth and type of cover material, the dates the landfills were in use and all such other information as may be of interest to potential landowners, and shall remain in the record in perpetuity.

5. The post-closure care period shall continue for 30 years after the date of completing closure of the sanitary landfill or as the following conditions apply:

i. The department may reduce the post-closure care period to less than 30 years when it has been adequately demonstrated that the reduced period is sufficient to protect human health and the environment;

ii. Prior to the time that the post-closure care period is due to expire, the department may extend the post-closure care period upon a finding that such extended period is necessary to protect human health and/or the environment; and

iii. Any aggrieved person may petition the department for an extension or reduction of the post-closure care period, based on good cause.

6. If the department intends to reduce or extend the post-closure care period to less than or more than 30 years, public notice of that intention shall be provided.

(d) General requirements for a Closure and Post–Closure Plan are as follows:

1. No person shall construct or operate a sanitary landfill without an approval from the department of a Closure and Post–Closure Plan. Such Plan shall consist of both a Closure and Post–Closure Care Plan and a Closure and Post–Closure Financial Plan in accordance with the provisions of (e) and (f) below, except as otherwise authorized by the department.

2. The submission for approval by the department of the Closure and Post–Closure Plan shall be made upon application for new sanitary landfill registration.

3. Existing sanitary landfills in operation after January 1, 1982 shall submit the Closure and Post–Closure Plan for approval by the department in accordance with the following schedule:

i. Those sanitary landfills which ceased accepting waste during calendar year 1982 or which shall cease accepting waste during calendar year 1983 shall submit a Plan no later than three months from the effective date of this section;

ii. Those sanitary landfills not included in (d)3i above and which accept in excess of 100,000 cubic yards of waste per year, as delivered, shall submit a Plan no later than six months from the effective date of this section; and

iii. All remaining sanitary landfills not provided for in (d)3i and ii above shall submit a Plan no later than 12 months from the effective date of this section.

4. No owner or operator shall submit a Closure and Post–Closure Care Plan for approval which includes any unauthorized expansion of the proposed or actual sanitary landfill operation.

5. Any owner or operator who fails to submit the Closure and Post–Closure Plan, as required by this subsection, shall be subject to denial, revocation or suspension of the registration of the sanitary landfill and other regulatory or legal actions which the department is allowed to institute by law.

6. The owner or operator may apply for departmental approval to amend the Closure and Post–Closure Plan at any time during the sanitary landfill's operation, closure or post-closure care period.

7. The department may require the amendment of an engineering design and a Closure and Post–Closure Plan at any time it is deemed necessary during the sanitary landfill's operation, closure or post-closure care period.

8. Any sanitary landfill that is closed under the provisions of this section shall be maintained in accordance

with the approved Closure and Post–Closure Plan and must remain in compliance with all regulations of this subchapter.

9. A copy of the approved Closure and Post–Closure Plan shall be kept on file at the sanitary landfill during the course of the sanitary landfill's operation and, after closure, shall be filed with the municipal clerk.

10. When closure is complete the owner or operator must submit certification to the department, within six months of closure, both by the owner or operator and by a New Jersey licensed professional engineer that the sanitary landfill has been closed in accordance with the specifications of the approved Closure and Post–Closure Plan.

(e) The Closure and Post–Closure Care Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit to the department a Closure and Post–Closure Care Plan prepared, signed and sealed by a New Jersey licensed professional engineer to provide for closure and post-closure care of the sanitary landfill;

2. The Closure and Post–Closure Care Plan shall provide for the design and implementation of the following:

i. A Soil Erosion and Sediment Control Plan certified by the local soil conservation district in accordance with the Soil Erosion and Sediment Control Act of 1975, as amended (N.J.S.A. 4:24–39 et seq.);

ii. Final cover;

iii. Final cover vegetation;

iv. A program for the maintenance of final cover and final cover vegetation;

v. A program for the maintenance of side slopes;

vi. Institution of run-on and run-off control programs;

vii. A program for the maintenance of run-on and run-off control programs;

viii. Groundwater monitoring wells;

ix. A program for the maintenance of groundwater monitoring wells;

x. A program for the monitoring of groundwater in accordance with NJPDES rule, N.J.A.C. 7:14A–1, and any permit for that sanitary landfill issued pursuant thereto;

xi. A methane gas venting or evacuation system;

xii. A program for the maintenance of methane gas venting or evacuation system;

xiii. A leachate collection and/or control system;

xiv. A program for the operation and maintenance of a leachate collection and/or control system;

xv. A program for the installation of a facility access control system;

xvi. A program for the maintenance of the facility access control system;

xvii. Measures to conform the site to the surrounding area;

xviii. A program for the maintenance of measures to conform the site to the surrounding areas;

3. The department may require additional closure and post-closure care measures to waive any of the above requirements, should specific health and/or environmental circumstances justify such action;

4. The Closure and Post–Closure Care Plan shall include a schedule for the implementation of all the provisions of this section; and

5. Within 90 days of the closure of the sanitary landfill, the owner or operator of the sanitary landfill shall obtain and submit to the department an "as built" certification by a New Jersey licensed professional engineer that each provision of the Closure and Post–Closure Plan has been implemented as designed and approved.

(f) The Closure and Post–Closure Financial Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit a Closure and Post–Closure Financial Plan to the department which shall set forth the costs and expenses, and establish the means for meeting those costs and expenses, associated with full implementation of the approved Closure and Post–Closure Plan.

2. The Closure and Post–Closure Financial Plan shall include an estimate which details the cost of each provision of the Closure and Post–Closure Care Plan and a projection of funds that will be available from the escrow account. Where the total expenses projected for the Closure and Post–Closure Care Plan exceed the amount of funds projected in the escrow account, the owner or operator must identify specific alternative funds which are to be dedicated to ensure payment of all costs identified in the Closure and Post–Closure Plan. The Plan shall provide:

i. That no withdrawals may be made from the escrow account until such time as the funds projected in the escrow account are sufficient to pay for all closure costs identified in the Closure and Post–Closure Financial Plan; or

ii. That withdrawals may be made from the escrow account concurrent with the use of the alternative funds described above, provided that such alternative funds are established in a manner similar to the escrow account and the expenditures from such alternative funds are made subject to the approval of the department.

3. The Closure and Post–Closure Financial Plan shall include the intervals at which each closure provision is to be implemented as well as a projection of when each escrow account withdrawal is anticipated.

4. The Financial Plan shall take into consideration the effect of inflation on closure and post-closure expenses. Unless otherwise approved, the owner or operator shall calculate the latest closure cost estimate using a calculated adjusted inflation factor derived from the annual Implicit Price Deflator for the Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business." The adjusted inflation factor shall be the 10–year moving average inflation rate (average annual percentage) for the most current 10–year period of Gross National Product Implicit Price Deflators, for example, 1974 compared with 1984 or 116.50 compared with 223.43 which yields a 6.73 percent average annual percentage change. The adjusted annual closure cost estimate shall equal the latest closure cost estimate times the adjusted average inflation factor.

5. The owner or operator shall review the cost estimate every two years and, if necessary, revise the Closure and Post–Closure Financial Plan. The updated Financial Plan shall be submitted on the second anniversary of the date of the Financial Plan was last approved.

(g) Pursuant to N.J.S.A. 13:1E–100, et seq. the requirements for the escrow account are as follows:

1. The owner or operator of every sanitary landfill shall deposit in an escrow account as defined in (a) above, on or before the 20th of each month, an amount equal to $0.30 per cubic yard of solids and $0.004 per gallon of liquids of all solid waste accepted for disposal during the preceding month. It is noted that disposal of liquid waste in sanitary landfills is limited to only those few facilities permitted to accept such waste;

2. In the event that a measure other than the "cubic yard" or "gallon" is used by the owner or operator of a sanitary landfill, the amount to be deposited shall be calculated by using equivalents established by the Division of Taxation;

3. Upon approval of the department, those sanitary landfills which by the nature of their operation do not have the ability to measure the waste received in the manner provided for in this section may compute quantities of waste received by using an alternative, acceptable method;

4. The escrow account shall be for the closure and post-closure care of a particular sanitary landfill and all funds therein shall be used exclusively for the closure and post-closure care of that landfill in accordance with the approved Closure and Post–Closure Plan.

5. The owner or operator of a sanitary landfill who shall fail to deposit funds into an escrow account, as provided herein, or uses those funds for any purpose other than closure and post-closure care costs, as approved by the department, shall be guilty of a crime of the third degree.

6. Where an owner or operator has ownership or control over more than one sanitary landfill, a separate escrow account must be established for each facility;

7. The escrow account shall be kept separate and apart from all other accounts maintained by the owner or operator. The fact that the owner or operator has previously established an escrow account pursuant to another law, rule or regulation, does not relieve them of their responsibility to establish an escrow account under these rules;

8. Every escrow account established pursuant to this section shall be based upon and governed by the standard escrow agreement provided for such purpose by the department. Any revision to an escrow agreement shall first be approved by the department and filed by the department with the accredited financial institution as escrow agent. A copy of the standard escrow agreement provided by the department may be obtained from the Office of Special Funds Administration, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, N.J. 08625.

9. The escrow agreement and any other document(s) evidencing the existence of the escrow account must contain a reference to the purpose of the account that will put the personal creditors of the owner or operator on notice as to the nature of the account.

10. The escrow account shall be established and maintained so as to maximize yield, minimize risk and maintain liquidity, and shall be subject to the approval of the department.

11. All funds deposited in the escrow account must be readily available in the event that circumstances necessitate the closure or post-closure care of the sanitary landfill prior to the date originally contemplated.

12. All interest or other income that results from investment of funds in the escrow account shall be deposited into the escrow account and subjected to the same restrictions as the principal;

13. Withdrawals from the escrow account shall be authorized by the department upon submission and approval of a written request therefor which identifies the specific provision(s) of the Closure and Post–Closure Plan for which funding is sought. Authorization for such withdrawal will be granted only in accordance with the approved Closure and Post–Closure Care Plan, and after compliance with the following conditions:

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i. The owner or operator has complied with all requests to amend the Closure and Post–Closure Plan;

ii. Except as otherwise authorized by the department, the owner or operator submits to the department, pursuant to (e)5 above, "as built" certifications by a New Jersey licensed professional engineer that the applicable provision(s) of the Closure and Post–Closure Plan for which the preceding withdrawal was obtained has been, or is being, implemented as set forth in the Closure and Post–Closure Plan;

iii. Except as otherwise authorized by the department, the owner or operator submits to the department "as built" certifications by a New Jersey certified public accountant that the preceding withdrawal has been, or is being, expended as set forth in the Closure and Post–Closure Plan; and

iv. Where the department has approved a Closure and Post–Closure Financial Plan providing for the use of alternative funds pursuant to (f)2ii above, withdrawals from the escrow account will only be authorized to the extent that the cost exceeds the balance of the alternative fund. Where the alternative fund is an account, the department shall allow the maintenance of the minimum balance necessary to keep such account open.

14. No withdrawals from an escrow account may be made without written approval of the department, except as otherwise authorized by the department;

15. The department, although acknowledging the need for fund expenditure totalling a specific sum may, at its discretion, grant approval for the withdrawal of only a portion thereof, conditioning subsequent approvals upon the owner or operator's verification that the sum(s) authorized have been used solely for closure or post-closure care costs;

16. The department may, at its discretion, determine that there is a need for closure or post-closure care expenditures and may require the owner or operator to withdraw such funds from the escrow account at any time to meet such expenses;

17. Funds remaining in the escrow account after complete and proper closure and post-closure care operations shall be paid into the Sanitary Landfill Facility Contingency Fund. A sanitary landfill will be deemed to be properly and completely closed where the department determines that no further post-closure care maintenance or monitoring is necessary at the facility. When the department makes such a determination, it shall notify the escrow agent and the owner or operator of the determination and shall supply the owner or operator with written approval for the transfer of the excess funds. Upon receipt of this written approval, all funds in said account shall be transferred to the Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E–100 et seq. and the account will be closed;

18. The escrow account shall not constitute an asset of the owner or operator and shall be established in such a manner as to ensure that the funds in the account will not be available to any creditor other than the department in the event of bankruptcy or reorganization of the owner or operator.

19. The owner or operator of every sanitary landfill must arrange, with the financial institution wherein the funds are to be deposited, for a monthly statement of the escrow account to be sent to Landfill Closure Escrow Account, Office of Special Funds Administration, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, New Jersey 08625; provided, however, the Department may at its discretion upon written petition from the owner or operator relieve the owner or operator from the requirement for the monthly statement of the escrow account and substitute a quarterly (that is, once every three months) statement requirement therefor if it determines that monthly reporting on an account of less than $25,000 would impose an unnecessary burden on the financial institution;

20. The owner or operator of every sanitary landfill shall file with the department, in duplicate, an annual audit of the escrow account established for the closure of the sanitary landfill. The annual audit of the escrow account shall be conducted by a New Jersey certified public accountant and shall be filed with the department no later than October 31 of each year, including each of the post-closure care period years. For the purposes of the escrow account only, the fiscal year shall begin on October 1 and terminate on September 30 of the following year, except that fiscal year 1982 shall begin on January 1, 1982 and terminate on September 30, 1982;

21. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Office of Special Funds Administration, Landfill Closure Escrow Account, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, New Jersey 08625, a statement showing the exact amounts of all solid waste accepted for disposal during the preceding month, the total amounts of solid waste received calendar year-to-date, the funds deposited in and withdrawn from the escrow account for the particular sanitary landfill during the current month, interest accrued, escrow account balance, and the total calendar year-to-date funds deposited in and withdrawn from the escrow account. These statements shall be filed on forms provided by the Department; provided, however, the Department may at its discretion upon written petition from the owner or operator relieve the owner or operator from the requirement for monthly reports and substitute a quarterly (that is, once every three months) reporting requirement therefor, if it determines that the monthly reporting on an account of less than $25,000 would impose an unnecessary burden on the owner or operator.

Correction: (g)20 and 21 were inadvertently omitted from code.
See: 19 N.J.R. 1341(b).
Notice of action on petition for rulemaking; disbursement of escrow funds.
See: 28 N.J.R. 1076(c).

Case Notes

Regulations adopted applied only to operating and not to closed landfills. Vi-Concrete Co. v. State, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

State Department of Environmental Protection may install and maintain monitoring wells on closed landfill. Vi-Concrete Co. v. State, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

Amounts taxpayers spent to cleanup pollutant spill were not considered in determining "true value" for tax assessment. Inmar Associates, Inc. v. Borough of Carlstadt, 214 N.J.Super. 256, 518 A.2d 110 (App. Div.1986) affirmed in part, reversed in part 112 N.J. 593, 549 A.2d 38 (1988).

Operator of sanitary landfill was liable for certain taxes and escrow accounts on solid waste disposed in its facilities and accepted pursuant to joint order issued by Department of Environmental Protection and Board of Public Utilities that required landfill to remain open beyond its intended closing date. Edgeboro Disposal, Inc. v. Division of Taxation, Dept. of Treasury, 15 N.J.Tax 139 (A.D.1993).

APPENDIX A

GUIDELINES FOR A GROUND WATER MODELING EFFORT

1. The model of use must have a history that documents its ability to represent real world situations. In addition it should also be demonstrated that the model of choice has the ability for proposed management of ground water resources.

2. The set of equations, that govern ground water flow and pollutant, and the derivations of these equations must be presented.

3. The numerical methods used to solve the set of ground water flow and pollutant transport equations must be presented.

4. The Boundary Conditions and Initial Conditions used in solving the ground water flow and pollutant transport equation sets should be presented both mathematically and in narrative form.

5. A technical narrative describing the model to be used and a justification for the application of this to the specific problem should be presented. This should include whether the model is finite element, finite difference or some other scheme. The objective of the model should be stated up front.

6. The unknown quantities that the model is solving for should be described and explained. In addition those parameters derived from the initial unknown quantities should also be described and explained.

7. Appropriate analytical methods should be used to verify the validity of the numerical technique used to solve the flow equations in the model.

8. A sensitivity study of the error tolerance used and modal spacing needs to be conducted. The results should be presented and explained.

9. Perform mass balance calculations on selected elements in the model to verify physical validity.

10. The model must be calibrated against field data. It is important to note that if there is insufficient field data available for calibration then the model will extrapolate values of unknown accuracies. This is particularly important since there is no one unique solution to a model and the most accurate solution (that closest to the real world situation) is a result of sufficient field data collection and model calibration with that data. It often takes more than 25 runs with the same data to properly calibrate a model to the real world situation. The level of field data considered to be sufficient should be agreed to before the modeling effort is initiated.

11. Limits and confidence on model predictions should be established and stated in the beginning of the modeling report.

12. All inputs and outputs to the computer program should be listed and explained in technical narrative.

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

7:26–2B.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the design, construction, operation and maintenance of the following types of disposal facilities:

1. Thermal destruction facilities which dispose of nonhazardous solid waste;

2. Thermal destruction facilities which dispose of nonhazardous solid waste and which incorporate energy recovery;

3. Solid waste transfer station facilities; and

4. Solid waste materials recovery facilities; and

5. Solid waste co-composting and composting facilities.

(b) The requirements of this subchapter are in addition to the general requirements found at N.J.A.C. 7:26–2.10 and 2.11.

(c) This subchapter shall apply to the following facilities:

1. All proposed solid waste facilities of the types identified in (a) above shall be designed, constructed, operated and maintained in accordance with the requirements of this subchapter; and

2. Any existing solid waste facilities of the types identified in (a) above determined to be operating in an environmentally unsound manner.

(d) This subchapter does not apply to hazardous waste facilities. See N.J.A.C. 7:26–7, 8, 9, 10, 11, and 12.

7:26–2B.2 Construction

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

7:26–2B.3 Purpose

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

1. To establish additional engineering design submission requirements for thermal destruction facilities, transfer stations, materials recovery facilities, and composting and co-composting facilities to ensure that adverse impacts are minimized and pollution of the environment is prevented; and

2. To establish operational requirements to ensure the proper operation of thermal destruction facilities to minimize adverse impacts and prevent pollution of the environment.

7:26–2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26–2.10:

1. The rated capacity of the facility, in both tons per day and tons per hour, and the maximum gross heat release rating for each incinerator/boiler;

2. The expected short term and projected future long term daily loadings;

3. The designation of normal loading, unloading and storage areas, including capacities in cubic yards and tons. Describe the time such areas can be practically used, based on expected short term daily loadings;

4. The designation of emergency loading, unloading, storage or other disposal capabilities to be used when facility system down time exceeds 24 hours;

5. The designation of alternate disposal areas or plans for transfer of stored waste in the event facility system down time exceeds 72 hours;

6. The expected daily quantity of waste residue generation;

7. The proposed ultimate disposal location for all facility generated waste residues including, but not limited to, ash residues and by-pass materials, by-products resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

8. A descriptive statement of any materials recycling or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the outgoing residue;

9. A descriptive statement and detailed specification of all process equipment, pollution control systems, instrumentation and monitoring mechanisms. Schematic diagrams shall be provided, where applicable. Equipment specifications, including information pertaining to the make, model and manufacturer, if available, and to the related processing equipment capacity, reliability and efficiency shall be submitted. Information on individual unit synchronization with upstream and downstream equipment shall also be submitted;

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

11. A descriptive statement and detailed specification of the proposed on-site and off-site transportation system intended to service employee vehicles, solid waste vehicles transporting waste to the facility for processing, and other vehicles removing reclaimed materials and/or process residues from the facility. The number, type, capacity, and frequency of these vehicles shall be specified. On-site parking, access and exit points, and the mechanisms or features which will be employed to provide for an even flow of traffic into, out of, and within the site, shall be identified;

12. Interior floor plans showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas as well as other functional areas such as office space and employee's facilities shall be submitted;

13. A plan identifying, locating and describing utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system and energy system. Profiles on utility lines including horizontal and vertical dimensions, as well as grades, shall be provided. Existing pipeline carrying capacity and percent of that capacity being currently used shall be identified. Interface of the proposed facility with the existing utility systems and the specifications on materials to be used for constructing new systems or extending existing systems shall be detailed;

14. A waste supply analysis program characterizing the quantity and composition of the solid waste in the service area shall be submitted. The waste characterization shall be performed by utilizing a statistically relevant plan which justifies the population sample. The sampling program shall provide for seasonal and locational fluctuations in the quantity and composition of the waste types to be handled at the facility. Anticipated changes in solid waste quantity and composition for each of the waste types to be serviced by the proposed facility shall be projected for that term reflecting anticipated facility life. Within this framework, the effect of existing or future source separation programs on the supply of solid waste within the service area shall be described and quantified. Quantity and composition analyses shall be carried out simultaneously where possible and shall provide information relating to anticipated maximum, minimum and average daily loading in accordance with the following:

i. The composition data for the non-combustible solid waste, indicating percent by weight and percent by volume, generated within the service area shall be defined within the following framework:

(1) Aluminum;

(2) Ferrous metals;

(3) Other non-ferrous metals;

(4) Glass;

(5) Ceramics and fines; and

(6) Oversize bulky items.

ii. The composition data for combustible solid waste, indicating percent by weight and percent by volume, generated within the service area shall be defined for the following:

(1) Newspaper;

(2) Corrugated paper;

(3) Other paper products;

(4) Plastics;

(5) Wood;

(6) Yard wastes;

(7) Food wastes; and

(8) Textiles, rubber, leather and other combustibles.

iii. The composition data for the proximate analysis of the solid waste, indicating percent by weight, generated within the service area shall be defined for the following:

(1) Total Moisture;

(2) Ash (include percent by volume);

(3) Volatiles;

(4) Fixed Carbon; and

(5) Heating Value (Btu/lb. on an as received and moisture free basis).

iv. The composition data for the ultimate analysis of the solid waste, indicating percent by weight, generated within the service area shall be defined for the following:

(1) Ash;

(2) Carbon;

(3) Chlorine;

(4) Hydrogen;

(5) Nitrogen;

(6) Oxygen; and

(7) Sulfur;

v. The quantity data for the solid waste generated within the service area shall be defined within the following framework:

(1) Quantity of waste types by geographic points (that is, municipality of origin); and

(2) Weight, volume and corresponding load density characteristics expressed in terms of daily, average, peak and minimum flow to the facility.

15. A comprehensive analysis of the materials and energy balance for the proposed facility shall be performed. The analysis shall account for every handling and processing step starting with waste delivery scheduling and ending with product and residue removal from the site. Quantification and qualification of sidestream pollutants shall be accounted for in the analysis. Indicate how the facility design will provide redundant features or contingencies in the process line that will allow for an uninterrupted flow of waste through the system in the case of overload or equipment malfunction. Indicate adjustments available within the system that allow for modifying recovery and processing rates based on the anticipated variability in the solid waste stream;

i. The materials balance for the proposed facility shall include, but not be limited to, the following:

(1) A description of the maximum designed processing capacity for each piece of equipment on the processing line, including auxiliary equipment in tons per hour;

(2) A description of the anticipated materials recovery rates, if applicable, in tons per hour for each individual equipment unit as well as the anticipated loadings to be made to that particular unit under anticipated peak and average loading conditions; and

(3) A solid waste composition component, accounting for combustible and non combustible mate-

rials in tons per hour at each processing point along the system line, including materials intentionally recovered as well as entrained contaminants, balanced against values for those materials passing through the unit unaffected by the actions of that unit. Provide a unit recovery efficiency value based on incoming solid waste component concentrations.

ii. The energy balance for the proposed facility shall account for conversion efficiencies and losses that occur throughout the process, including losses incurred by transmission to markets, if applicable. Variations in energy production shall be enumerated in reference to fluctuations in the quality and quantity of incoming solid waste. The energy produced by the facility shall be balanced against the energy consumed by the facility in recovering products from the solid waste stream. Describe how the proposed energy production will meet market demands. Identify instances where energy production rates will exceed secured market demands and contingencies for energy use, if any, under these conditions.

16. An artist's rendition, showing the facility as it will appear when construction is completed;

17. An occupational health and safety plan prepared in conformance with the Safety and Health Standards, 29 CFR 1910 and 1926, of the Federal Department of Labor, Occupational Safety and Health Administration, shall be submitted as part of the preliminary O and M manual;

18. A facility staffing plan submitted as part of the final O and M manual containing the following:

i. The job title for each position at the facility;

ii. A written job description for each position, including duties and performance standards. The description shall include the requisite skills, education, and other qualifications deemed necessary for employees assigned to each position;

iii. An explanation of the criteria and reasons used in selecting the required number and types of positions, as well as the qualifications for each position; and

iv. A statement of the staffing provided for each operating shift, including the job titles and number of employees for each title, and for each shift.

19. A written training plan which includes the type and amount of both the initial and annual followup training to be provided to facility personnel shall be submitted as part of the final O and M manual;

20. An emergency contingency plan which delineates procedures for responding to fire, explosions or any unplanned sudden or non-sudden releases of harmful constituents to the air, soil, or surface or ground water shall be submitted to the Department as part of the preliminary O and M manual, to the local police and fire departments, and to the local and county health departments or other offices of emergency management. The contingency plan shall contain:

i. A description of the actions facility personnel shall take in the event of various emergency situations;

ii. A description of arrangements made with the Department and local police and fire departments which allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of response personnel responding to an emergency situation; and

iii. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as an emergency coordinator for the facility shall be submitted as part of the final O and M manual. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

21. A community relations plan for facilities with a design capacity of 500 tons per day or greater identifying the steps that the owner or operator will take to transfer information and solicit input from the community in which the facility is located shall be submitted to the Department as a part of the preliminary O and M manual. The community relations plan shall contain the following:

i. A minimum of two open meetings with local officials, or their representatives, and the general public of the district affected by the proposed facility prior to and during facility construction. The purpose of such meetings will be to inform the community of the operations of such facility, including the progress of construction and projected initial tipping fees;

ii. Annual open meetings with the local officials, or their representatives, and the general public of the district where the facility is located subsequent to the initial startup of operations. The purpose of these meetings is to allow public input and to provide a forum for exchanging ideas; and

iii. A notification procedure, whereby the public is provided a report of findings in the case of an emergency incident at the facility.

(b) Thermal destruction facility engineering design requirements are as follows:

1. Facilities shall be designed in such a way as to allow for the control of both the rate of air feed and temperature of burn in the combustion chambers;

2. The combustion chambers and ancillary support equipment shall be designed with the capability of handling and effectively disposing of those wastes authorized for receipt at the proposed facility, notwithstanding the expected normal fluctuations in quantity, moisture content, heat release value, and chemical makeup of those wastes;

3. The waste loading system servicing the combustion chambers shall be designed and equipped in such a manner as to prevent the occurrence of backfire into the feed hopper. To this end, automated waste loading systems shall be gas tight when operating the forward ram stroke portion of the charging cycle;

4. Combustion chamber design shall provide for the minimum operating temperature, combustion gas residence time and excess air requirements specified in the "Air Pollution Control Guidelines for Resource Recovery Facilities" (implemented under the authority of N.J.S.A. 26:2C–9.2) and specified in the air pollution permit obtained pursuant to N.J.A.C. 7:27–8;

5. All combustion systems shall be equipped with state-of-the-art air emission technology designed to control the emission of hydrocarbons, particulates, dioxins, sulfur oxides, nitrogen oxides, carbon monoxide, heavy metals, hydrochloric acid, acid gases, trace metals and other pollutants as may be specified in the air pollution permits and certificates obtained pursuant to N.J.A.C. 7:27–8;

6. Combustion chamber interior walls shall be designed to withstand excess corrosion and wear generated by high temperatures and the oxidative-reductive atmosphere;

7. To the maximum extent practicable, except where batch feed or fluidized bed systems are utilized, the primary combustion chamber shall be designed to provide for a positive means of transporting waste into the chamber, through the chamber and to an eventual ash discharge point down line. A conventional ram loading device is not considered an internal transfer mechanism in itself;

8. A vessel shall be designed to quench or cool all siftings and bottom ash that remain after the completion of the primary chamber combustion process. The vessel shall be designed to handle the maximum potential ash volumes that could be generated when the combustion unit is operating at a maximum design throughput capacity. The quench vessel shall be designed to maintain a water level of sufficient height to effectively prevent the infiltration of exterior air into the combustion chamber, while maintaining suitable freeboard to prevent spillage. Quenched ash shall be dewatered prior to storage for ultimate disposal;

9. The stacks servicing the combustion units shall be designed and constructed in conformance with the requirements of the Department's Bureau of Air Pollution Control, the New Jersey Uniform Construction Code, N.J.A.C. 5:23, and the Federal Aviation Administration's limitations relating to infringement on navigable airspace;

10. The boilers employed for the purpose of recovering heat energy shall be equipped with a boiler tube-boiler wall cleaning system designed to periodically remove excess accumulations of surface deposits;

11. The boilers servicing the facility shall be designed, manufactured and installed in such a manner as to be capable of operating in conformance with the requirements of N.J.A.C. 12:90, "Boilers, Pressure Vessels and Refrigeration;"

12. The steam condenser system servicing a boiler shall be designed with the capability to condense the maximum design output of the boiler without any energy extraction from the process, for the most critical weather conditions of the summer season affecting the ability of the system to reject heat energy to the atmosphere (facilities utilizing the indirect air cooled condensing technology); or in the case where an adjacent water body is to be used the highest annual water temperature and lowest flow conditions anticipated. The Department will consider reasonable alternatives to this 100 percent steam condensing capability requirement, uninterrupted facility availability;

13. The feedwater system servicing a boiler shall be designed with the capability of delivering 100 percent of the feed water requirement of the boiler. The Department will consider reasonable alternatives to this requirement, provided such alternatives are environmentally sound and will maximize uninterrupted facility availability;

14. Facilities shall be designed and constructed in such a manner as to promote an aesthetically pleasing facade in keeping with the architectural character of the area surrounding the site. Facility equipment, including, but not limited to, fans, emission control devices, tanks, storage containers, conveyors' piping and similar equipment shall be housed within the confines of a building structure or shall be buffered in such a manner as to reduce potential negative visual impacts offsite;

15. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste, facility process waste residues and effluents, and recovered materials, if applicable. The design shall allow for, at a minimum, three days of storage at maximum anticipated loading rates;

16. Facilities shall be designed and equipped with appropriate control mechanisms to minimize and contain the accidental spillage of reagents, lubricants or other liquids used in the operation or maintenance of the facility as well as any waste generated by such operation;

17. Facility waste storage areas shall be designed with the capability of maintaining interior pressure below that of the exterior atmosphere, and shall employ the use of electronically activated self opening and closing delivery doors or other similarly effective method approved by the Department, to prevent the migration of odors and dust outside the confines of the waste receiving and storage building. Air drawn off as a result of maintaining negative pressure shall be directed to the combustion chamber. Such control mechanisms shall be designed to effectively

operate during all periods when wastes are being received or are in storage at the facility;

18. All facilities, their related subsystems and appurtenances, including all vehicles while on-site, shall be designed, positioned and buffered in such a manner that the sound levels generated by their operation shall not exceed those limits established pursuant to the Noise Control regulations, N.J.A.C. 7:29;

19. All waste size reduction equipment, which due to the nature of its operation may have the potential for explosion, shall be designed and equipped with an effective explosion detection and suppression system which shall be situated within the facility in such a manner so as to directionalize the force of any explosion in order to effectively minimize damage to the building and the chances of injury to employees and the public;

20. All facilities shall be designed in a manner that affords fluid vehicular movement on-site and prevents traffic backups and related traffic hazards on access roads servicing the facility site. The on-site roadway design configuration and layout shall provide sufficient roadway for unobstructed vehicular passage, with parking areas, maneuvering space in the loading and unloading areas, and traffic control measures (that is, lane delineations, signals, signs and barriers), in order to achieve this goal. All on-site roadways used by solid waste vehicles shall be constructed and surfaced in accordance with standards for heavy truck usage;

21. Off-site solid waste vehicle routes for the conveyance of solid waste to, and residues from, the facility shall be defined and delineated in a manner which will minimize impacts on surrounding residential development or similar sensitive receptors. The solid waste vehicle traffic to and from the proposed facility shall not result in a decrease in the existing level of service, as defined by the New Jersey Department of Transportation, of a major intersection;

22. Facilities shall be designed with perimeter security fencing and gate controls to prevent unauthorized access to the site and to control the offsite escape of litter. Metallic chain link fencing, or its equivalent, extending to a height of seven feet shall be the minimum design standard;

23. Facility layout design shall conform to the configuration of the site. A buffer and setback area shall be provided to allow for adequate planning for and installation of pollution control equipment that may be required due to future advances in the state-of-the-art. All main building enclosures shall be designed with a minimum setback of 100 feet from the facility's property line. The Department may allow a reduction in the setback limit if the applicant satisfactorily demonstrates that such a reduction will not pose an adverse impact on the adjacent land use activities;

24. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling and extinguishing any and all fires that may occur as a result of facility operation;

25. The interior layout design for all facilities shall provide for system installations that maximize accessibility for repairs, maintenance and ease of cleaning, while affording employee safety;

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

27. All tipping floors, sorting pads, waste storage areas, bunkers and pits shall be constructed of concrete or other similar quality material that will withstand heavy vehicle usage. Floor drains shall be provided in all such areas and surfaces shall be appropriately graded to facilitate washdown operations. Floor drains shall be designed to discharge wastewater into a collection and treatment system approved by the Department. In those cases where waste or residue storage pits are to be utilized the base and sidewalks shall be sufficiently waterproofed to prevent ground water intrusion. Tipping floors shall be designed with suitable wheel stops to prevent delivery vehicles overdriving the pit edge;

28. Redundant features or other aspects of system layout shall be incorporated into the facility design to maximize online availability for the receipt and processing of that quantity of waste directed to the facility. Mechanical components shall be constructed of materials that will withstand the rigors of facility operation and shall have a rated handling capacity that prevents backups and blockages within the related system. Replacement equipment and parts for equipment which is subject to excess wear or frequent breakdown due to the nature of operation, shall be stored onsite in order to provide expedient repair. In addition, a properly sized storage area shall be incorporated into the design;

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

30. A remote telemetry system shall be installed within the facility's central control station as a component of the remote computer monitoring system of the automated systems. The remote telemetry system shall be capable of transferring monitoring data required by the Department, by telephone lines directly to the Department's computer;

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

32. All thermal destruction facilities shall be equipped with an independent, auxiliary power system capable of supplying energy at normal levels in the case of a power supply failure.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
On-site and off-site hyphenated throughout rule, "vehicles" replaced by "solid waste vehicles" and "hauling" replaced by "transporting".

Case Notes

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

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

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

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

(b) All solid waste transfer stations and materials recovery facilities, except for those regulated pursuant to N.J.A.C. 7:26–2.4(c)4, shall be designed in accordance with the following:

1. Facilities shall be designed with a system capable of collecting, storing, treating and disposing of wastewater generated during normal operations, including the washout and cleaning of equipment, trucks and floors;

2. Facility processing, tipping, sorting, storage and compaction areas shall be located within the confines of a totally enclosed building;

3. Facilities shall be designed with concrete or equivalent tipping floors or ramps to ensure the proper containment and channeling of wastewater to sanitary sewer connections or corrosion resistant holding tanks and to withstand heavy vehicle usage;

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

5. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste to insure an environmentally sound operation and afford sufficient space to allow for proper processing of maximum anticipated daily incoming waste loading;

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

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

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

9. Offsite truck routes for the conveyance of solid waste shall be defined and delineated in such a manner as to minimize impacts on surrounding residential development or similar sensitive receptor and shall not exceed the existing level of service, as defined by the New Jersey Department of Transportation of any major intersection;

10. Facility layout design shall conform to the configuration of the site. A setback area shall be provided to allow for adequate buffering of the site. All main building enclosures shall be designed with a minimum setback of 50 feet from the facility property line;

11. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling and extinguishing any and all fires that may occur;

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

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

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

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

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

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

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

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

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

5. A utilities plan identifying, locating and describing all utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system and water supply system. A descriptive statement of the carrying capacities of the existing systems and the remaining availability within the system for the facility's utility needs.

(d) The engineering report shall include:

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

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

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

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

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

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

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

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

(b) Co-composting facilities require, in addition to a SWF permit, a NJPDES permit obtained from the Division of Water Resources.

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

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

i. Municipality of origin; and

ii. Weight, volume and corresponding load density characteristics.

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

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

ii. Identify the dewatering processes instituted, including a description of the equipment or technique used, the chemical reagents employed and a determination of the percent solids achieved;

iii. Express quantities on a dry weight basis and volume of the percent solids delivered to the facility. Identify the maximum, minimum and average delivery rates anticipated; and

iv. Provide a physical/chemical analysis for the sludge from each source, in accordance with the Sludge Quality Assurance regulations, N.J.A.C. 7:14–4. The Department may require additional testing where conditions dictate.

3. A description of the number, type, capacity and delivery or removal frequency (indicate both average and peak periods) of all transport vehicles. Describe on-site parking capabilities, loading and unloading facilities, access and exit points and mechanisms and features employed to provide for an even flow of traffic onto, on and away from the site. Describe the related material construction specifications and details;

4. Identify, locate and describe the utilities intended to service the proposed facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system, electrical or other energy system;

5. Process management should be based on specific and objective processing goals. Processing goals should be identified including, but not limited to, rapid processing, drying method, materials handling, nitrogen retention, etc. Describe the underlying conceptual basis or strategy upon which the process management will be based. A rationale should be given for the management strategy chosen in reference to others;

6. Describe all process steps including, but not limited to, waste delivery, storage, mixing, composting methods, curing, screening, finishing, packaging and related process equipment and pollution control systems, instrumentation and monitoring mechanisms, if applicable. Within the context of the process description, identify the mix ratio of solid waste to sludge as well as the bulk weight and porosity of the mix. Provide an indication of the period of time during which active composting is to take place and the temperatures to be reached and maintained within that period. Identify the rate of aeration afforded and the time frame established for compost curing. Submit equipment specifications relating to make, model, manufacturer, processing capacity, reliability, efficiency and the relevant design and operating criteria that directly relates to the equipment's intended performance, plus the number of equipment units which will be available at the facility. Information on individual unit synchronization with upstream and downstream equipment, if applicable, shall also be provided;

7. A comprehensive materials balance for the proposed facility shall be submitted. The materials balance shall account for every handling and processing step starting with waste delivery scheduling to the facility and ending with final product and waste/residue removal from the site. Final compost product distribution requirements will be governed by the guidelines or regulations established by the Division of Water Resources. Quantification and qualification of sidestream process pollutants, if any, shall also be provided for in the materials balance. If any materials recovery is anticipated, document the anticipated materials recovery rates in tons per hour for each recovered component; and

8. A discussion of the contingency disposal options to be utilized if the composted end product cannot be marketed. These disposal options shall be in accordance with the approved district solid waste management plan and any other Departmental requirements established for the distribution of sewage sludge compost.

(d) If a natural ground surface is to be used for storage, composting or curing, or any surface impoundments, lagoons, or other structures for storage or conveyance of leachate, runoff or condensate are proposed, soil borings of the property shall be provided in accordance with the following:

Acreage	Minimum Number of Borings
1–10	4
10–50	8
50–100	14
100–200	20
over 200	24

(e) The site plan map shall depict the facility layout on the property and include profile views of all structures, utilities and enclosures showing height, breadth and bulk dimensions. Dimensions for loading, unloading, storage (for example, incoming waste, outgoing product), processing, composting and curing areas shall be provided. Identify the type of drainage system, run-off and leachate control systems. Building setbacks and the distances of any onsite proposed or existing structure, processing area or treatment area, and streets from the site boundaries shall be indicated. The site plan map shall include interior floor plans showing the layout, profile view and dimensions of the interior unloading, sorting, storage, processing, and loading areas as well as auxiliary functional areas such as offices and employee's facilities.

7:26–2B.7 (Reserved)

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

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

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

(c) The facility shall not initiate full scale operations until a suitable testing period has demonstrated, to the satisfaction of the Department, that the facility, as constructed, will operate safely and in conformance with the SWF permit. In order to facilitate the testing:

1. The owner or operator shall notify the Department one month prior to the initiation of the facility start-up and shake-down testing period;

2. The Department reserves the right to have a representative present at the facility during the testing to observe the testing; and

3. The Department reserves the right to collect its own samples to verify the test results.

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

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

2. The owner or operator shall record the results of the inspections in a bound log book which shall be available at the facility at all times for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the

date and nature of any repairs or other remedial actions taken.

(e) A Department inspector may, at the option of the Department, be stationed at facilities operating at a capacity of 250 tons per day or greater, on a daily basis and during all facility operating hours. The owner or operator of such a facility shall allow entry to the inspector at any time during operating hours. The owner or operator shall make available office space for Department personnel to prepare inspection reports.

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

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

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

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

(j) All facilities and their related sub-systems and appurtenances shall be operated, at all times, in full compliance with the sound level limitations established in the Department's Noise Control regulations, N.J.A.C. 7:29.

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

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

(m) Prior to disposal, the operator shall perform a waste determination on all residual ash, in accordance with N.J.A.C. 7:26–8.5. Such determination shall be based on analyses of representative composite samples collected in the manner specified in the facility's SWF permit. At a minimum the sampling shall include analyses for E.P. toxicity and total 2, 3, 7, 8 TCDD, and shall be performed at the frequency specified in the facility's SWF permit.

(n) The Department may require the operator to perform additional analyses on ash removed from exhaust gases and collected by emission control equipment, at a frequency established by the Department, based on the storage capability and ash disposal scheduling of the proposed facility.

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

(p) The analysis of the ash shall be submitted to the Division's Bureau of Hazardous Waste Planning and Waste Classification for classification. The operator shall dispose of the onsite generated residual ash at a facility authorized and permitted to receive the waste type I.D. number assigned to the residual ash by the Bureau.

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

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

1. The date, time and place of sampling, measurement or analysis;

2. The name of the individual who performed the sampling, measurement or analysis;

3. The sampling and analytical methods utilized;

4. The results of such sampling, measurement or analyses; and

5. The signature and certification of the report by an appropriate authorized agent for the facility.

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

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

1. Facilities shall maintain sufficient personnel during each scheduled shift to assure the proper and orderly operation of all system components, along with the ability to handle all routine facility maintenance requirements. Such personnel shall have sufficient educational background, employment experience and/or training to enable them to perform their duties in such a manner as to ensure the facility's compliance with the requirements of the Act, this chapter, and the conditions of its SWF permit;

2. Each shift shall have a designated shift supervisor authorized by the owner or operator to direct and implement all operational decisions during that shift;

3. A facility utilizing a boiler to generate steam, power or heat shall employ individuals licensed in accordance with the Rules and Regulations of the New Jersey Department of Labor, "Boilers, Pressure Vessels and Refrigeration," N.J.A.C. 12:90; and

4. Any facility designed with a capacity to process 500 tons of solid waste or greater per 24 hour operating period, shall have under contract a New Jersey licensed professional engineer as a consultant to oversee the general plant operations. This engineer shall possess experience in the design and operation of the major system components or equipment that constitute the facility.

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

1. All personnel who are directly involved in facility waste management activities or who operate, service, or monitor any facility equipment, machinery or systems shall successfully complete an initial program of classroom instruction and on-the-job training that includes instruction in the operation and maintenance of the equipment, machinery and systems which they must operate, service or monitor in the course of their daily job duties, and which teaches them to perform their duties in a manner that ensures the facility's compliance with the requirements of the Act, this chapter and the conditions of its SWF permit;

2. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the facility's permits;

3. The training program shall ensure that facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise. The training program shall provide instruction in the use of personal safety equipment, procedures for inspecting and repairing facility equipment, the use of communications or alarm systems, the procedures to be followed in response to fires, explosions or other emergencies, and the procedures to be followed during planned or unplanned shutdown of operations;

4. Facility personnel shall successfully complete the initial training program required herein within six months after the effective date of this subchapter or six months after the date of their employment or assignment to the facility, whichever is later. Employees hired after the effective date of this subchapter shall not work in unsupervised positions until they have completed the training program required herein;

5. Facility personnel shall take part in a planned annual review of the initial training program; and

6. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least one year from the date the employee last worked at the facility.

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

1. The plant operator or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;

2. Concurrently, the plant operator or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

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

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

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

iii. When notifying the Department, report the type of substance and the estimated quantity discharged, if known, the location of the discharge, actions the person reporting the discharge is currently taking or proposing to take in order to mitigate and discharge and any

other information concerning the incident which the Department may request at the time of notification.

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
500 tons-per-day capacity replaced by 250 tons-per-day minimum that allows an inspector to be stationed at a thermal destruction facility.

7:26–2B.9 Additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26–6.

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26–6.

(b) Transfer stations and materials recovery facilities may accept solid waste from any in-State solid waste district, out-of-State source, or any combination thereof provided:

1. The transfer station or materials recovery facility has been formally included within the district solid waste management plan of the district(s) within which it is located and has received all necessary State and local approvals. Transfer stations and materials recovery facilities do not need to be incorporated within the solid waste management plan of each district from which solid waste or recyclables are collected; only the district within which its facility is located;

2. The recordkeeping and O and D form requirements of N.J.A.C. 7:26–2.13 are met;

3. For solid waste from in-State:

i. Solid waste received at the facility is returned to the district where the waste was originally generated or the same amount and type of solid waste is brought to the district where the waste was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility;

ii. Where material is removed for recycling from the solid waste received, the same type or amount of solid waste less the amount of materials removed for recycling shall be returned to the district in which the material was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

iii. On the 30th day of the next calendar month following receipt at the transfer station or materials recovery facility, an in-lieu payment is made to the district designated disposal facility in an amount suitable to compensate for the tonnage which would otherwise have gone to the facility. The payment shall be made pursuant to the designated facility's tariff for special in-lieu payments pursuant to N.J.A.C. 14:11–7.10 for the amount and type of waste which was generated in that district and not returned. In such instances, said waste shall be disposed of at the designated facility in the district in which the transfer station or materials recovery facility is located. Records maintained pursuant to N.J.A.C. 7:26–2.13 shall so indicate the disposal and the in-lieu payments made.

4. For solid waste from out-of-State:

i. Solid waste received at the facility or the same amount and ID type of solid waste is transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

ii. If material is removed from recycling from the solid waste received, the same ID type or amount of solid waste less the amount of materials removed for recycling shall be transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; and

5. The receiving facility's tariff and permit requirements are met.

(c) Transfer stations and materials recovery facilities which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26–2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

(d) The transfer station or materials recovery facility shall determine the ID type of the solid waste as provided at N.J.A.C. 7:26–2.13. As provided therein, the transfer station is not the generator of solid waste received from other counties.

New Rule, R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Case Notes

Waste flow control regulations favored district's designated facilities at expense of out-of-state providers of processing and disposing services, and discriminated against interstate commerce; heightened scrutiny test was applicable under dormant commerce clause analysis; overruling *J. Filiberto Sanitation*, 857 F.2d 913. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, C.A.3 (N.J.)1995, 48 F.3d 701, rehearing and rehearing in banc denied, on remand 893 F.Supp. 301.

7:26–2B.10 Additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26–6

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26–6.

(b) All district designated facilities shall accept solid waste from transfer stations or materials recovery facilities provided that the requirements of N.J.A.C. 7:26–2.13 are met. A district designated facility that has established a tariff for special in-lieu payment pursuant to N.J.A.C. 14:11–7.10 may accept payment from transfer stations or materials recovery facilities pursuant to that tariff, in-lieu of accepting the solid waste.

(c) Pursuant to N.J.A.C. 14:11–7.10, all transfer stations and materials recovery facilities subject to this section may establish a tariff rate for in-lieu payments made pursuant to N.J.A.C. 7:26–2B.9.

(d) Transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26–2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

Amended by R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

SUBCHAPTER 3. TRANSPORTATION

Subchapter Historical Note

All provisions of this subchapter became effective July 2, 1984 as R.1984 d.279. See 16 N.J.R. 986(a), 16 N.J.R. 1766(a). This subchapter expired June 9, 1985 and the subchapter was adopted as a new rule pursuant to Executive Order No. 66(1978) as R.1985 d.558, effective November 4, 1985. See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a). See chapter and section levels for further amendments.

7:26–3.1 Improper transportation prohibited

(a) The transportation of organic and/or combustible matter or other forms of solid waste on the roadways and highways in this State shall be made only through the use of:

1. Transportation systems established, operated and maintained in accordance with the rules set forth in this subchapter;

2. Other methods of transportation as may be approved by the Department.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
"Collection" and "haulage" replaced by "transportation" throughout.

Case Notes

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

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

7:26–3.2 Registration

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. Any device used for the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle. The registration statement shall be signed by the person engaged in or desiring to engage in the transportation of solid waste, shall be executed on forms prescribed by and furnished by the Department and shall state such information necessary and proper to enforcement of this subchapter, as the Department may

require. In addition to obtaining an approved registration statement from the Department, the person engaged in or desiring to engage in the transportation of solid waste shall comply with all of the rules and regulations of the New Jersey Division of Motor Vehicles.

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

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

(d) Prior to May 1 of each calendar year, each registrant, other than a hazardous waste transporter, shall submit to the Department a statement updating the information contained in the original registration statement. This update shall be on forms furnished by the Department. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration was granted. Hazardous waste transporters shall submit updated registration statements on or before October 1 of each calendar year, as more fully set forth at N.J.A.C. 7:26–7.5(c)5.

(e) A registrant shall notify the Department in writing within thirty (30) days of any change in the information supplied on its current registration statement.

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

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

(h) All solid waste vehicles registered with the Department for the transportation of solid waste must be owned or leased by the applicant, and, if leased, a copy of the lease shall be supplied when filing the registration statement.

As amended, R.1980 d.250, effective June 9, 1980.
See: 12 N.J.R. 70(b), 12 N.J.R. 391(d).
As amended, R.1981 d.49, effective February 6, 1981.
See: 13 N.J.R. 129(a).
(d): Amend "February 1" to "March 15."
As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(a): references to the Bureau deleted.
New (b) added, former (b)-(e) made (c)-(f). In (c), "without first obtaining" was "without having"; in (e), May 1 was March 15, "initial registration" was "implementation", hazardous waste haulers excepted from May 1 updating and required to file by October 1.
(g) and (h) added.
Amended by R.1985 d.558, effective November 4, 1985.
See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).
Text "or hazardous" deleted.
Amended by R.1987 d.535, effective December 21, 1987.
See: 19 N.J.R. 1610(a), 19 N.J.R. 2434(a).
Added registrant and its operators to subsection (d).
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
New (h) added requiring all applicants to own or lease a vehicle being registered and if leased a copy of the lease must be supplied.

Case Notes

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

7:26–3.3 Exceptions and conditions

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

1. Persons transporting only their own household solid waste in passenger automobiles bearing general registration plates;

2. Persons transporting only their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds.

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

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

As amended, R.1974 d.234, eff. August 21, 1974.
See: 6 N.J.R. 343(c).
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
"Hauling" replaced by "transporting", "vehicles" as "solid waste vehicles" and maximum gross weight in (a)2 changed from 5,000 to 8,000 pounds.

7:26–3.4 Transporter requirements (General)

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

(b) All collected solid waste shall be properly deposited at an approved facility in accordance with subchapters 1 and 2 of this chapter.

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

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

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

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

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

(h) Each registered unit of a solid waste vehicle, except those exempted from fee payment under N.J.A.C. 7:26–3.3, used in the transportation of solid waste shall properly, permanently, and conspicuously display the New Jersey Department of Environmental Protection (N.J.D.E.P.) registration number in letters and numbers at least three inches in height, and shall carry the current N.J.D.E.P. registration certificate in the solid waste vehicle. In addition, in letters and numbers at least three inches in height, the capacity of the solid waste container in cubic yards, in tons or in gallons, with the appropriate unit designated, shall be permanently affixed on both sides of the solid waste vehicle so as to be visible to the operator of the solid waste facility.

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

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

As amended, R.1976 d.303, effective November 1, 1976.
See: 8 N.J.R. 374(d), 8 N.J.R. 509(a).
Amended by R.1987 d.535, effective December 21, 1987.
See: 19 N.J.R. 1610(a), 19 N.J.R. 2434(a).
Added (j).
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
References to "collection and haulage" changed to "transportation", "vehicles" changed to "solid waste vehicles", at (h) requirement that N.J.D.E.P. registration number be permanently displayed.

Case Notes

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

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

7:26–3.5 Transporter requirements (Specific)

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

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

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

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

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

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

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

2. No transporter shall transport asbestos and/or asbestos-containing waste unless such waste is properly packaged in accordance with 40 CFR 61.152 and N.J.A.C. 7:26–2A.8(1). In no case shall loose asbestos or asbestos-containing waste be transported.

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

4. Asbestos waste shall be transported directly to the disposal facility. No intermediate storage or transfer of such waste is permitted.

5. Transportation and disposal of asbestos-containing waste shall be conducted in accordance with waste flow requirements of N.J.A.C. 7:26–6.

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

(e) Rules concerning transportation and disposal of Type 13C waste follow:

1. Every transporter of Type 13C waste shall complete a waste origin/disposal (O and D) form in accordance with the requirements of N.J.A.C. 7:26–2.13(c).

2. Every transporter of Type 13C waste transporting that waste out-of-State for disposal shall, upon the collection of Type 13C waste, report to the designated district facility for the county where the waste was generated for weighing or weighing and inspection, verification of the completed O and D form and receipt of the verified O and D form prior to transporting the load out-of-State for disposal. The transporter shall retain the O and D form during transit to serve as verification that the load was originally weighed as required by this paragraph and submit a copy of the O and D form in accordance with the requirements of (e)4 below.

3. The transporter shall obtain from the out-of-State facility a dump ticket receipt which should contain the following information:

i. The name, address and state facility ID number, if applicable, of the disposal facility;

ii. The transporter vehicle plate number(s) for each unit of the solid waste vehicle;

iii. The N.J.D.E.P. registration number and decal number for each registered unit of the solid waste vehicle;

iv. The gross vehicle weight, the net vehicle weight and the total tonnage of Type 13C waste disposed as recorded by the facility scale;

v. If the out-of-State facility does not have a scale, the total volume in cubic yards, of Type 13C waste disposed;

vi. The date the vehicle was weighed; and

vii. The signature of the facility weighmaster or operator.

4. Every transporter of Type 13C waste disposing of such waste at an out-of-State disposal facility shall, within 10 days of weighing at the designated district facility, submit a copy of the O and D form described in N.J.A.C. 7:26–2.13(c)6 above attached to a copy of the out-of-State dump ticket receipt described in (e)3 above to the New Jersey designated district facility where the Type 13C waste was originally weighed or weighed and inspected.

5. Every transporter of Type 13C waste disposing of such waste at an out-of-State disposal facility shall retain the original O and D form described in N.J.A.C. 7:26–2.13(c)6 above and the out-of-State dump ticket receipt described in (e)3 above for a period of three years from the date of disposal of the Type 13C waste at the out-of-State disposal facility.

6. No transporter shall transfer or allow to be transferred, or otherwise alter, Type 13C waste destined for out-of-State disposal by adding or subtracting any waste types to the load after weighing at the designated district facility and receipt of the certified O and D form.

Amended by R.1985 d.65, effective February 19, 1985.
See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).
(e) added.
Amended by R.1985 d.558, effective November 4, 1985.
See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).
Substantially amended.
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Reference to "collection and haulage" changed to "transportation", "vehicle" changed to "solid waste vehicle" and CFR cite updated. Old (d) deleted. Old (e) recodified as new (d).
Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, expires March 26, 1996).
See: 28 N.J.R. 1305(a).

7:26–3.6 (Reserved)

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

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

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

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
References to "collector-haulers" changed to "transporter", "solid waste vehicle" added in title line.

7:26–3.8 Applicability

See N.J.A.C. 7:26–7, 8, 9, 10, 11, 12 to find additional hazardous waste rules.

R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
Amended by R.1985 d.558, effective November 4, 1985.
See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).
Deleted text "The regulations in ... with hazardous waste." and added "additional".

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

Subchapter Historical Note

Subchapter 3A, entitled Special Medical Waste, was originally adopted as an emergency new rule, R.1988 d.429, effective August 10, 1988 (expires October 9, 1988). See: 20 N.J.R. 2321(a). The concurrent proposal was adopted, R.1988 d.523, effective October 7, 1988. See: 20 N.J.R. 2321(a), 20 N.J.R. 2760(a). Subchapter 3A was adopted as an Emergency Repeal and New rule with concurrent proposal, R.1989 d.396, effective June 26, 1989. See: 21 N.J.R. 2109(a). The concurrent proposal was readopted as R.1989 d.506, effective August 25, 1989. See: 21 N.J.R. 2967(a).

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

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

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

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

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

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

(f) The Department, in conjunction with the New Jersey Board of Public Utilities, may direct the disposal of regulated medical waste which is defined in N.J.A.C. 7:26–3A.6.

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

Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

7:26–3A.2 Construction

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

7:26–3A.3 Severability

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

7:26–3A.4 Record retention

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

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

7:26–3A.5 Definitions

(a) For the purposes of this subchapter, all of the terms defined in 40 C.F.R. Section 260.10 and N.J.A.C. 7:26–1.4 are hereby incorporated by reference. In case of conflict between 40 C.F.R. Section 260.10 and N.J.A.C. 7:26–1.4, the definitions in N.J.A.C. 7:26–1.4 will control, except for the following terms, which when used in this subchapter shall have the following meanings:

"Administrator" means the Administrator of the United States Environmental Protection Agency.

"EPA" means the United States Environmental Protection Agency.

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

"Federal demonstration program" means the United States Environmental Protection Agency rules at 40 C.F.R. Part 259.

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

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, po-

litical subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

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

"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a "transporter". A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered a transfer station and must be permitted as such pursuant to N.J.A.C. 7:26–2.4.

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

"Transporter" means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water.

"Treatment", "treated", or "treats" when used in any section of this subchapter except for N.J.A.C. 7:26–3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. When used in the context of N.J.A.C. 7:26–3A.6(a), treatment means either the provision of medical services of the preparation of human or animal remains for interment or cremation.

"Treatment facility" means a facility which treats regulated medical waste.

(b) In addition, when used in this subchapter, the following terms shall have the meanings given below:

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

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

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

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

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

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

"Destination facility" means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form.

"Destroyed regulated medical waste" means regulated medical waste that has been ruined, torn apart, or mutilated through processes such as thermal treatment, melting, shredding, grinding, tearing or breaking, so that it is no longer generally recognizable as medical waste. It does not mean compaction.

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

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

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

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

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

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

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

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

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

"Regulated medical waste" means those medical wastes that have been listed in N.J.A.C. 7:26–3A.6 and that must be managed in accordance with the requirements of this subchapter.

"Tracking form" means a medical waste tracking form, including the New Jersey medical waste tracking form, the federal tracking form, and the tracking form from other states that are participating in the Federal demonstration program that must accompany all applicable shipments of regulated medical waste.

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

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

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

"Waste category" means either untreated regulated medical waste or treated regulated medical waste.

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

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

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

TABLE

REGULATED MEDICAL WASTE

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
3. Human Blood and Blood Products	Liquid waste human blood; products of blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.
4. Sharps	Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
7. Unused Sharps	The following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

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

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;

2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26–3A.5(b);

3. Ash from incineration of regulated medical waste once the incineration process has been completed;

4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed; and

5. Human corpses, remains, and anatomical parts that are intended for interment or cremation.

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

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

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

7:26–3A.7 Mixtures

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

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

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

(a) Any person who generates regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (d) below, and shall pay fees in accordance with the following:

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

Generator Category	Pounds Generated Per Year	Base Fee Category
1	less than 50	$100.00
2	50–200	$300.00
3	200–300	$500.00
4	300–1000	$1,000.00
5	greater than 1,000	$3,500.00

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

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

1. All regulated medical waste transporters shall pay a fee of $3,957 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to regulated medical waste transporters changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_1" so that the total fees collected from transporters equals the budget for regulated medical waste transporters. The fee for regulated medical waste transporters shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_1", which is the annual assessment rate for transporters, times the base fee which is "F" with "F" being equal to $3,957. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of transporters who will be registering with the Department. The equation for the foregoing is:

$N (r_1 \times F)$ = budget for regulated medical waste transporters.

(c) All intermediate handlers and owners and operators of destination facilities in this state shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (d) below, and pay fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall pay a registration, education and report analysis fee of $2,046 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to intermediate handlers and destination facilities changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_2" so that the total fees collected from intermediate handlers and destination facilities equals the budget for intermediate handlers and destination facilities. The fee for intermediate handlers and destination facilities shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_2 ", which is the annual assessment rate for intermediate handlers and destination facilities, times the base fee which is "F" with "F" being equal to $2,046. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of intermediate handlers and destination facilities who will be registering with the Department. The equation for the foregoing is:

$N (r_2 \times F)$ = budget for intermediate handlers and destination facilities.

3. Persons who only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) The generator, transporter, intermediate handler and destination facility regulated medical waste registration statement shall be executed on forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;

2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and fees shall be payable by May 30 of each calendar year, except that during the 1989 registration year, fees shall be payable before July 23, 1989;

3. The registration year for intermediate handlers and destination facilities shall extend from January 1 through December 30 of each calendar year and shall be payable by January 29 of each calendar year, except that during the 1989 registration year fees shall be payable before August 15, 1989; and

4. The Department's address for regulated medical waste is:

Medical Waste Advisement Unit
Division of Solid Waste Management
New Jersey Department of Environmental Protection
401 East State Street
CN 414
Trenton, New Jersey 08625

(e) The Department shall prepare an annual fee schedule report of regulated medical waste fees which shall include the following:

1. The annual assessment rate of "r_1" for transporters and "r_2" for intermediate handlers and destination facilities for the forthcoming fiscal year;

2. The projected number of transporters, number of intermediate handlers and destination facilities that will register with the Department;

3. A detailed financial statement showing the estimated budget for transporters and the estimated budget for intermediate handlers and destination facilities for the forthcoming fiscal year. The statement shall include a separate breakdown of the regulated medical waste program for each of the budgets listed above by account title (for example, printing and office supplies, vehicular, and maintenance of vehicles); and

4. A detailed financial statement of the previous fiscal year's actual expenditures for each budget including a separate breakdown of the total number of transporters registered and total number of intermediate handlers and destination facilities registered, actual revenue and any credit or deficit to be carried forward to the next fiscal year.

(f) The Department shall hold a public hearing concerning the fees assessed for transporters, intermediate handlers and destination facilities only when the projected fees exceed a 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(g) In those years in which a public hearing is not required in accordance with (f), above, publication of the forthcoming year's annual adjustment rate of "r_1" and "r_2" and the projected number of transporters and intermediate handlers and destination facilities together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(h) The annual fee schedule report may be obtained, at any time after public notice is published in accordance with (f) or (g) above, by submitting a request and self addressed

10 inch by 13 inch (minimum size) envelope to the address listed at N.J.A.C. 7:26–3A.8(d).

Amended by R.1990 d.358, effective July 16, 1990.
See: 22 N.J.R. 1478(a), 22 N.J.R. 2145(a).
Generator categories expanded to 5; fees restructured.

7:26–3A.9 Education

All transporters, except generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26–3A.17(a), and intermediate handlers' and destination facilities' supervisory personnel shall attend an education and training session which will be provided by the Department, and shall also be required to disseminate the information obtained at the training session to all employees.

7:26–3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26–3A.6(a)) including sharps containing residual fluid;

2. Fluids (quantities greater than 20 cubic centimeters); and

3. Other regulated medical waste.

(c) If other waste is placed in the same container(s) as regulated medical waste, then the generator shall package, label, and mark the container(s) and its entire contents according to the requirements in N.J.A.C. 7:26–3A.11, 3A.14 and 3A.15.

7:26–3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;

2. Leak-resistant;

3. Impervious to moisture;

4. Have a strength sufficient to prevent tearing or bursting under normal conditions of use and handling; and

5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging that is puncture-resistant; and

2. Package fluids (quantities greater than 20 cubic centimeters) in packaging that is break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

7:26–3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;

2. Maintain the regulated medical waste in a nonputrescent state, using refrigeration when necessary;

3. Lock the outdoor storage areas containing regulated medical waste (for example, dumpsters, sheds, tractor trailers, or other storage areas) to prevent unauthorized access;

4. Limit access to on-site storage areas to authorized employees; and

5. Store the regulated medical waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents.

7:26–3A.13 Decontamination standards for reusable containers

(a) Generators, transporters, intermediate handlers and destination facility owners and operators shall comply with the following requirements with respect to reusing containers:

1. All non-rigid packaging and inner liners shall be managed as regulated medical waste under this subchapter and shall not be reused;

2. Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, shall be decontaminated if the container shows signs of visible contamination; and

3. If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of any visible signs of contamination in accordance with (a)2 above, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this subchapter.

7:26–3A.14 Labeling requirements

(a) Generators shall label each package of regulated medical waste according to the following labeling requirements before transporting or offering for transport off-site:

1. Each package of untreated regulated medical waste shall have a water-resistant label affixed to or printed on the outside of the container. The label shall include the words "Medical Waste," or "Infectious Waste," or display the universal biohazard symbol. Red plastic bag(s) used as inner packaging need not display a label; and

2. Packages containing treated regulated medical wastes are not required to be labeled under this section but are required to be marked in accordance with the requirements of N.J.A.C. 7:26–3A.15.

7:26–3A.15 Marking (identification) requirements

(a) Generators (including intermediate handlers) shall mark each package of regulated medical waste according to the following marking requirements before the waste is transported or offered for transport off-site:

1. The outermost surface of each package prepared for shipment shall be marked with a water-resistant identification tag of sufficient dimension to contain the following information:

i. The generator's or intermediate handler's name;

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address;

iii. The transporter's name;

iv. The transporter's NJDEP solid waste registration number;

v. The date of shipment; and

vi. Identification of contents as medical waste.

2. In addition to the requirements of (a)1 above, if the generator has used inner containers, including sharps and fluid containers, each inner container shall be marked with indelible ink or imprinted with water-resistant tags. The marking or the tag shall contain the following information:

i. The generator's or intermediate handler's name; and

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address.

Case Notes

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

7:26–3A.16 General requirements for generators of regulated medical waste

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

(b) A generator who either treats and destroys or disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act, but any person who disposes of regulated medical waste via sewer disposal shall comply with all applicable Federal, State, county and local statutes, rules and ordinances) is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including the generator logging, reporting, registration, and fee requirements of this subchapter.

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

(d) Generators of regulated medical waste shall use transporters who have NJDEP registration numbers, who have notified the EPA and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is a generator meeting the requirements of N.J.A.C. 7:26–3A.17(a) or unless the transporter is the U.S. Postal Service and the requirements of N.J.A.C. 7:26–3A.17(b) are met.

7:26–3A.17 Exemptions

(a) Generators of less than three cubic feet of regulated medical waste per month who transport only their own regulated medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26–3A.16(d) and the requirements of N.J.A.C. 7:26–3A.27(c) provided they meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a

vehicle with a gross weight of less than 8,000 pounds which is owned by the generator or the generator's authorized employee;

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

3. The generator complies with the requirements of N.J.A.C. 7:26–3A.19(e).

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

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

2. The generator shall retain the original receipt and the returned registered mail receipt and attach them to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26–3A.19(f).

Administrative Correction in (a).
See: 23 N.J.R. 3138(a).

7:26–3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste which has been treated may be transported to or otherwise unloaded at any transfer station which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26–2.6, to authorize the facility to accept regulated medical waste.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26–2.6, to authorize the facility to accept regulated medical waste.

7:26–3A.19 Generator use of tracking form

(a) A generator who transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators who meet the requirements of N.J.A.C. 7:26–3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26–3A.8(d), unless the regulated medical waste is transported for disposal to another state which is participating in the Federal demonstration program and which prints its own tracking form and requires its use, in which case the transporter shall supply the generator with the receiving state's form.

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Sign the certification statement on the tracking form by hand;

2. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form; and

3. Retain one copy, in accordance with N.J.A.C. 7:26–3A.21.

(e) Generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26–3A.17(a) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form, noting the date the regulated medical waste was transported;

3. Retain the generator copy in accordance with N.J.A.C. 7:26–3A.21;

4. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

5. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26–3A.31(d).

(f) Generators who transport their regulated medical waste through the U.S. Postal Service and who meet the requirements of N.J.A.C. 7:26–3A.17(b) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service and noting the date the shipment was mailed;

3. Retain the generator copy in accordance with N.J.A.C. 7:26–3A.21; and

4. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or

2. The intermediate handler or destination facility if transported solely by rail; or

3. The last rail transporter to handle the waste in the United States if exported by rail.

Case Notes

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

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

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

7:26–3A.21 Generator recordkeeping

(a) Each generator shall:

1. Keep a copy of each tracking form required by N.J.A.C. 7:26–3A.19 for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26–3A.22(b).

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

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

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

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

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

(d) All generators of 300 pounds per year or more of regulated medical waste shall maintain a daily generator log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26–3A.8(d), or on forms approved by the Department, which shall include the information listed in (f) below.

(e) Generators of less than 300 pounds per year of regulated medical waste shall maintain a generator monthly log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26–3A.8(d), which shall contain the information listed in (f) below.

(f) The generator log shall include, but not be limited to, the following information:

1. The date of the entry;

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

3. The total quantity in pounds for each Waste Class of regulated medical waste generated each day, or each month for generators of less than 300 pounds per year;

4. The name and NJDEP solid waste transporter registration number of each transporter who transported regulated medical waste corresponding to the descriptions in (f)2 and 3 above;

5. The EPA regulated medical waste transporter number of each transporter listed in (f)4 above;

6. The date that the regulated medical waste was given to every transporter listed in (f)4 above;

7. The name and address of each intermediate handler or destination facility that received the regulated medical waste, and the quantity in pounds for each Waste Class of regulated medical waste sent to each facility corresponding to the transporter who transported the regulated medical waste to that facility; and

8. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer) corresponding to the facility listed in (f)7 above.

(g) The generator logging forms are available at the address listed in N.J.A.C. 7:26–3A.8(d) and copies of the generator log shall be retained for at least three years from the date that the waste was generated unless the Department specifically requires an additional retention period.

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

1. The date of the report;

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

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

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

5. The EPA regulated medical waste transporter number for each transporter listed in (h)4 above;

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

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

(i) Copies of the generator reports shall be retained for at least three years from the date that the report is due, unless the Department specifically requires an additional retention period.

7:26–3A.22 Exception reporting for generators

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

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26–3A.8(d), and the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must be postmarked on or before the 46th day following the date the waste was accepted by the initial transporter and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

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

7:26–3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D–9.

7:26–3A.24 Generators of regulated medical waste who incinerate regulated medical waste on-site

(a) The requirements of N.J.A.C. 7:26–3A.25 and 3A.26 shall apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(b) Generators of regulated medical waste who incinerate such waste on-site and who accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26–3A.38 through 3A.42.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26–2, 2B, 4 and 16 unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26–3A.37.

7:26–3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;

2. The length of the incineration cycle;

3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;

4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and

5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;

2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;

3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and

4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall compile the generator on-site incinerator operating log required by (a) above during the following period: June 22, 1989 to June 22, 1991 and shall retain the operating log until at least June 22, 1992 unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26–3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

7:26–3A.26 Reporting for generators who incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of a generator on-site incinerator report on forms available from the Department at the address listed in N.J.A.C. 7:26–3A.8(d), and submit one copy of the generator on-site incinerator report to the Department, and two copies to:

Chief, Waste Characterization Branch
Office of Solid Waste (OS–332)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

(b) The generator on-site incinerator reports shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log during the period covering June 22, 1989 through December 22, 1989 and during the period covering June 22, 1990 through December 22, 1990, and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;

2. Facility type (for example, hospital, laboratory);

3. Contact person;

4. Waste feed information;

5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and

6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration number of the transporter(s), and the name and address of the disposal facility.

(c) Each generator on-site incinerator report shall contain the following certification, signed by the facility owner or his authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

(d) The first generator on-site incinerator report is due by February 6, 1990 and shall contain information covering the period from June 22, 1989 through December 22, 1989.

(e) The second generator on-site incinerator report is due by February 6, 1991 and shall contain information covering the period from June 22, 1990 through December 22, 1990.

(f) Beginning July 1, 1991, the owner or operator of an on-site incinerator shall submit to the Department only, an annual generator on-site incinerator report on forms available from the Department at the address listed at N.J.A.C. 7:26–3A.8(d) for the period from July 1 through June 30 which shall be due July 30 of each calendar year.

7:26–3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26–3A.27 through 3A.36 apply to transporters, including generators who transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26–3A.8;

2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26–3.2, pay fees in accordance with N.J.A.C. 7:26–4, and comply with the requirements of N.J.A.C. 7:26–3.1, 3.4, 3.7, and 16;

3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A–6; and

4. They notify the EPA in accordance with N.J.A.C. 7:26–3A.29.

(d) Generators of less than three cubic feet of regulated medical waste per month who meet the requirements of N.J.A.C. 7:26–3A.17(a) are exempt from the requirements of (c) above.

(e) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26–3A.16, 3A.18, 3A.20, 3A.21, 3A.22 and 3A.23, when he consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(f) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26–3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or

2. Remove regulated medical waste from a reusable container; or

3. Modify packaging of regulated medical waste.

7:26–3A.28 Transporter acceptance of regulated medical waste

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container is labeled and marked in accordance with N.J.A.C. 7:26–3A.14 and 3A.15.

(b) Transporters shall not accept a shipment of regulated medical waste from a generator unless accompanied by a properly completed tracking form as required under N.J.A.C. 7:26–3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging, that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;

2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

7:26–3A.29 Transporter EPA notification

(a) Transporters (including owners or operators of transfer facilities) are prohibited from transporting regulated medical waste generated in New Jersey unless they have notified EPA in writing in accordance with (c) and (d) below and have submitted a copy of the notification form to the Department at the address listed in N.J.A.C. 7:26–3A.8(d).

(b) Transporters who accept regulated medical waste that was not generated in New Jersey but was generated in another state that is participating in the Federal demonstration program shall notify the EPA in writing in accordance with (c) and (d) below and shall submit a copy of the notification form to that state's waste management agency.

(c) The original and one copy of the transporter notification must be sent to:

Chief, Waste Characterization Branch (OS–332)
EPA Office of Solid Waste
401 M Street, SW
Washington, DC 20460

(d) Each transporter notification shall contain the following information:

1. The transporter's name, mailing address, and EPA hazardous waste identification number (if any);

2. The name, address and telephone number for each transportation or transfer facility (by site) that the transporter will operate from in New Jersey or from another state which is participating in the federal demonstration program;

3. The NJDEP solid waste transporter registration number;

4. The following statement signed by a corporate official or the owner or operator: "I certify, under penalty of criminal or civil prosecution for making or submission of false statements, representations, or omissions, that I have read, understand, and will comply with the regulations at 40 C.F.R. Part 259, issued under authority of Subtitle J of the Resource Conservation and Recovery Act."

(e) EPA will issue transporters who notify under this section a unique EPA Medical Waste Identification Number for New Jersey if the regulated medical waste is generated in New Jersey, or a unique EPA Medical Waste Identification Number for the state of generation if other than New Jersey. This identification number will apply to all transporter sites identified in (d)2 above. Transporters may accept regulated medical waste after notifying under this section as long as the notification complies with the requirements of (d) above. Upon receipt of an EPA Medical Waste Identification Number, the transporter shall include it on Box 5 of the medical waste tracking form.

7:26–3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26–3, transporters shall use vehicles to transport regulated medical waste that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;

2. The transporter shall ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit;

3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and

4. The cargo-carrying body shall be secured if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;

2. The transporter's NJDEP solid waste transporter registration number; and

3. A sign, or the following words imprinted:

i. MEDICAL WASTE; or

ii. REGULATED MEDICAL WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26–3A.27 through 3A.36.

7:26–3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26–3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26–3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which is participating in the Federal demonstration program and which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for transport or transporting any regulated medical waste the transporter shall:

1. Certify that the tracking form accurately reflects the number and total weight in pounds of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and

2. Return a signed copy of the tracking form to the generator before leaving the generator's site.

(c) The transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility, or destination facility on the tracking form;

2. Retain one copy of the tracking form in accordance with N.J.A.C. 7:26–3A.34; and

3. Give the remaining copies of the tracking form to the accepting transporter, intermediate handler, or destination facility.

(e) Any transporter who transports regulated medical waste across an international border, or who delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Sign the tracking form and verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction, or destination facility;

2. Retain one copy of the signed tracking form for his records; and

3. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26–3A.44 apply to rail transporters in lieu of the requirements of subsections (b), (c) and (d) of this section.

7:26–3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) below, the transporter shall deliver the entire quantity of regulated medical waste that he has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or

2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

7:26–3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter may choose to consolidate to a single tracking form all shipments of regulated medical waste less than 220 pounds.

(b) When the transporter receives the signed tracking form that he initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26–3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

4. Maintain a transporter consolidation log indicating all shipments consolidated on that form. The transporter consolidation log must accompany the tracking form and include the following information:

i. The name of each generator;

ii. The generator's address or if the regulated medical waste was generated in another state which issues a permit or identification number, then use that permit or identification number and, if the generator's state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator;

iv. The quantity in pounds of regulated medical waste (number of containers and/or weight in pounds) by waste category (i.e., "untreated" or "treated") shipped by each generator; and

v. The names, NJDEP registration numbers of all previous transporters or, if the transporters do not transport in New Jersey, then use the permit or identification number issued by the state in which the transporter is registered, and if the state does not issue permits or identification numbers, use the transporters' addresses.

7:26–3A.34 Recordkeeping for transporters of regulated medical waste

(a) A transporter of regulated medical waste shall keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: another transporter; or the owner or operator of an intermediate handling facility or destination facility. The transporter shall retain a copy of this form for a period of three years from the date the waste was accepted by the next party unless the Department specifically requires an additional retention period.

(b) For any regulated medical waste that was received by the transporter and consolidated by the transporter to another tracking form, the transporter shall:

1. Retain a copy of the generator-initiated tracking form signed by the transporter for three years from the date the waste was accepted by the transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility for three years from the date the waste was accepted by the intermediate handler or destination facility unless the Department specifically requires an additional retention period.

(c) Retain a copy of each regulated medical waste transporter report required by N.J.A.C. 7:26–3A.35 for three years after the date of submission unless the Department specifically requires an additional retention period.

7:26–3A.35 Transporter reporting

(a) A transporter who accepts regulated medical waste which is generated in New Jersey or that is to be stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey shall submit a regulated medical waste transporter report to the Department describing the source and disposition of the waste. The regulated medical waste transporter reports shall be submitted on forms available from the Department and sent to the address listed at N.J.A.C. 7:26–3A.8(d).

(b) If the regulated medical waste was generated in New Jersey, the transporter shall also send a copy of the regulated medical waste transporter report to the EPA at the following address:

Chief, Waste Characterization Branch (OS–332)
Office of Solid Waste
U.S. Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

(c) In addition, if the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the transporter shall submit a copy of the report to the EPA at the address in (b) above and to the waste management agency of the generation state.

(d) Each regulated medical waste transporter report shall include, but not be limited to, the following information:

1. The transporter's name, address, and EPA medical waste identification number and NJDEP solid waste transporter registration number or if the transporter does not transport in New Jersey, then use the permit or identification number issued of the state in which the transporter is registered;

2. The name and telephone number of a contact person;

3. The total number of generators from whom the transporter accepted regulated medical waste;

4. The name, address, and type of each generator (for example, hospital, doctor) from whom the transporter accepted regulated medical waste;

5. The amount by weight in pounds and waste category (untreated or treated) of regulated medical waste accepted from each generator;

6. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey, or from all generators in another state which is participating in the Federal demonstration program, that the transporter delivered to an intermediate handler or to a destination facility;

7. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey or from all generators in another state which is participating in the Federal demonstration program that the transporter delivered to a second transporter or to a transfer facility; and

8. The certification of the transporter report signed by the owner or operator, or his authorized representative.

(e) Transporters who transport or deliver regulated medical waste to an intermediate handler or to a destination facility shall also provide the following information:

1. The name and address of each intermediate handler and destination facility to which the waste was delivered;

2. The amount in pounds, by waste category, that was delivered;

3. The total number of intermediate handlers and destination facilities to which waste was delivered.

(f) The transporter shall submit regulated medical waste transporter reports covering the following periods:

1. A regulated medical waste transporter report covering the 180 day period from June 23, 1989, to December 19, 1989 which is due on or before February 2, 1990.

2. A regulated medical waste transporter report covering the 180 day period from December 20, 1989, to June 17, 1990 which is due on or before August 1, 1990.

3. A regulated medical waste transporter report covering the 180 day period from June 18, 1990, to December 14, 1990 which is due on or before January 28, 1991.

4. A regulated medical waste transporter report covering the 180 day period from December 15, 1990, to June 12, 1991 which is due on or before July 27, 1991.

5. After June 12, 1991 an annual regulated medical waste transporter report shall be submitted to the Department only which shall cover the period from July 1 through June 30 and shall be due on or before July 30 of each calendar year.

(g) Each transporter who initiates a tracking form shall meet the requirements of N.J.A.C. 7:26–3A.22, exception reporting, except that the 35 and 45 day periods begin on the day the transporter accepted the waste from the generator.

7:26–3A.36 Additional reporting for transporters of regulated medical waste

The Department and the Administrator may require transporters to furnish additional information concerning the quantities and management methods of regulated medical waste as he or she deems necessary under RCRA Section 11004 and as the Department may deem necessary under N.J.S.A. 13:1D–9.

7:26–3A.37 Temporary authorization to operate a regulated medical waste incinerator

(a) This section applies only to and sets forth requirements for an authorization to operate an incinerator that accepts regulated medical waste for disposal.

(b) Notwithstanding the requirements of N.J.A.C. 7:26–2 and 2B, but subject to the requirements of N.J.A.C. 7:26–16, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1. The owner or operator shall submit documentation as submitted to the Department demonstrating that the incinerator was in operation accepting regulated medical waste for disposal on or before March 6, 1989;

2. The owner or operator of the disposal facility continues to accept regulated medical waste for disposal;

3. The owner or operator registers and pays fees as a regulated medical waste destination facility in accordance with N.J.A.C. 7:26–3A.8;

4. The owner or operator of the facility shall have a current certificate to operate control apparatus or equipment pursuant to N.J.A.C. 7:27;

5. The owner or operator shall be or is fully permitted pursuant to N.J.A.C. 7:26–2 and 2B prior to expiration of the facility's current certificate to operate control apparatus or equipment issued pursuant to N.J.A.C. 7:27. For the purposes of the temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate;

6. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

7. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling windblown papers and other lightweight materials such as fencing shall be implemented;

8. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

9. The owner or operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

10. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of the local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

11. The owner or operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

12. The facility owner or operator shall be responsible for the sanitary condition and orderly operation of the area;

13. The Departments' inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

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

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

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

14. An operation and maintenance manual meeting the requirements of N.J.A.C. 7:26–2B.4(a)17 through 20 shall be maintained at the facility;

15. The owner or operator shall obtain or has obtained all applicable permits and approvals required by Federal, State, county and local ordinance;

16. The facility shall not pose a threat to the public health, safety or the environment; and

17. The facility shall only accept regulated medical waste from transporters who have NJDEP registration numbers and who have notified the EPA in accordance with N.J.A.C. 7:26–3A.29 and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is exempt from these requirements pursuant to N.J.A.C. 7:26–3A.17(a) or unless the transporter is the U.S. Postal Service and the generator who has shipped the waste has complied with N.J.A.C. 7:26–3A.17(b).

7:26–3A.38 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26–3A.38 through 3A.42 apply to owners and operators of facilities located in New Jersey that receive regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities (that is, treatment and destruction facilities, a facility that causes the regulated medical waste to meet the conditions of N.J.A.C. 7:26–3A.6(b)3 or 4 including incineration facilities, and disposal facilities); and

2. Intermediate handlers (that is, facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26–3A.6(b)3 or 4).

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

7:26–3A.39 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26–3A.40(a) on the tracking form;

3. Immediately give the transporter at least one copy of the signed tracking form:

i. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26–3A.17(a), immediately give the generator at least one copy of the signed tracking form.

ii. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26–3A.17(b) the disposal facility shall mail at least one copy to the generator directly.

4. Send a copy of the tracking form to the generator (or to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

5. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26–3A.41.

(b) When an intermediate handler receives regulated medical waste the owner or operator shall meet the following requirements:

1. The owner or operator shall meet all the requirements for generators under both N.J.A.C. 7:26–3A.10 through 3A.16 and 3A.18 through 3A.23, including signing the tracking form accepting the waste as specified in Box 20 and entering the new tracking form number in Box 21 when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

2. The owner or operator shall maintain an intermediate handler log matching the original generator's tracking forms to the tracking form that he initiates. The intermediate handler log shall include:

i. The name(s) of generator(s);

ii. The generator's address. If the generator is not located in New Jersey, then use the generator's state permit or identification number. If the state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number;

iv. The new tracking form number to which the waste is assigned;

3. Within 15 days of receipt of the tracking form that he initiated and that was signed by the destination facility, the intermediate handler shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in (b)2i above;

ii. Send a copy of each tracking form to the generator who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26–3A.41.

(c) If a destination facility or intermediate handler receives from a rail transporter regulated medical waste that is accompanied by shipping papers containing the information required on the medical waste tracking form, with the exception of the generator's certification and chain of custody signatures, the owner or operator or his agent, shall:

1. Sign and date each copy of the tracking form or the shipping papers (if the tracking form has not been received);

2. Note any discrepancies as defined in N.J.A.C. 7:26–3A.40(a) on each copy of the tracking form or shipping papers (if the tracking form has not been received);

3. Immediately give the rail transporter at least one copy of the tracking form or shipping papers (if the tracking form has not been received);

4. If the facility is a destination facility, send a copy of the signed and dated tracking form to the generator within 15 days after the delivery. If the owner or operator has not received the tracking form within 15 days of delivery, he shall send a copy of the signed and dated shipping papers to the party initiating the tracking form;

5. If the facility is an intermediate handler, retain a copy of the tracking form (or the shipping papers if the tracking form has not been received), until he receives a copy of the tracking form signed by the owner or operator of the destination facility. He then shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form (or the shipping papers if the tracking form has not been received) initiated by another party;

ii. Send a copy of each tracking form (or each set of shipping papers) to the party who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26–3A.41.

(d) The destination facilities and intermediate handlers as set forth in (c) above shall retain a copy of the tracking form (or shipping papers if signed in lieu of the tracking form) for at least three years from the date of acceptance of the regulated medical waste unless the Department specifically requires an additional retention period.

(e) The destination facilities and intermediate handlers receiving shipments by rail should expect to receive the tracking form from the generator, or the preceding non-rail transporter who will have sent the tracking form to the facility by some other means (for example, by mail).

7:26–3A.40 Tracking form discrepancies for intermediate handlers and destination facilities

(a) Tracking form discrepancies are:

1. For packages, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;

2. For waste by categories (that is, untreated or treated), discrepancies in number of packages for each catego-

ry of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;

3. Packaging that is broken, torn, or leaking; and

4. Regulated medical waste that arrives at an intermediate handler or a destination facility unaccompanied by a tracking form, or for which the tracking form is incomplete or not signed.

(b) Upon discovering a discrepancy, the owner or operator shall attempt to resolve (for example, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator shall submit a letter, within 15 days of receiving the waste describing the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator shall include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in (a)4 above, the letter shall specify the quantity of waste received, the transporter, and the generator(s). The letter shall be submitted as follows:

1. If the regulated medical waste was generated and disposed of in New Jersey, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26–3A.8(d); and

ii. The EPA Regional Administrator for New Jersey.

2. If the regulated medical waste was generated in New Jersey but disposed of in another state, the letter shall be sent to:

i. The EPA Regional Administrator for New Jersey;

ii. The EPA Regional Administrator for the state of disposal; and

iii. The Department at the address listed in N.J.A.C. 7:26–3A.8(d).

3. If the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the letter shall be sent to:

i. The EPA Regional Administrator for the state of generation;

ii. The EPA Regional Administrator for New Jersey; and

iii. The Department at the address listed in N.J.A.C. 7:26–3A.8(d).

4. If the regulated medical waste was generated in a state which is not participating in the Federal demonstration program, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26–3A.8(d).

7:26–3A.41 Recordkeeping for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility or an intermediate handler receiving regulated medical waste generated, treated, destroyed, disposed of or otherwise managed in New Jersey shall maintain records for a minimum of three years from the date the waste was accepted unless the Department specifically requires an additional retention period. These records shall contain the following information:

1. Copies of all tracking forms required by N.J.A.C. 7:26–3A.39(a)5, (b)3iii, and (c)5iii; and the logs required by N.J.A.C. 7:26–3A.39(b)2;

2. Copies of all discrepancy reports required by N.J.A.C. 7:26–3A.40(b).

7:26–3A.42 Additional reporting for intermediate handlers and destination facilities

(a) All regulated medical waste intermediate handlers and destination facilities are required to submit an annual intermediate handler and destination facility report to the Department, covering the period from January 1 through December 31 of each calendar year and shall be submitted by February 15 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26–3A.8(d), which shall include, but not be limited, to the following information:

i. A description of the sources, the types and amounts of regulated medical waste treated and/or destroyed; and

ii. The methods used for treatment and/or destruction.

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D–9.

7:26–3A.43 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26–3A.44 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26–3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26–3A.31(f).

7:26–3A.44 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;

ii. Return a signed copy of the tracking form to the non-rail transporter;

iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26–3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26–3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26–3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

SUBCHAPTER 4. FEES FOR SOLID WASTE, EXCLUDING HAZARDOUS WASTE FEES

Subchapter Historical Note

Revisions to the original rules in this subchapter were filed on April 28, 1975, as R.1975 d.110, to become effective on April 29, 1975. See: 7 N.J.R. 101(a), 7 N.J.R. 259(a). Subsequent revisions were filed on October 18, 1976 as R.1976 d.327, to become effective on November 1, 1976. See: 8 N.J.R. 374(d), 8 N.J.R. 510(d). Additional amendments were filed on June 20, 1978, as R.1978 d.205, to become effective on July 1, 1978. See: 10 N.J.R. 327(c).

7:26–4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities, or any other methods of transportation or disposal, excluding hazardous waste, requiring registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds, need not pay any solid waste fee to the Department.

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

Amended by R.1974 d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c).
Amended by R.1983 d.269, effective July 5, 1983.
See: 15 N.J.R. 662(a), 15 N.J.R. 1095(b).
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Added text "of solid waste, excluding hazardous waste".
Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

Case Notes

Operator was liable for certain taxes and escrow accounts on solid waste disposed in its facilities under joint order issued by Department of Environmental Protection and Board of Public Utilities requiring landfill to remain open beyond intended closing date and requiring operator to extend credit to cash-based haulers in amount of rate increase. Edgeboro Disposal, Inc. v. Division of Taxation, 284 N.J.Super. 208, 664 A.2d 942 (A.D.1993).

Solid waste collector who failed to comply with terms of rate increase allowance; refund. In the Matter of the Petition of A. Fiore and Sons, Inc., 94 N.J.A.R.2d (EPE) 124.

7:26–4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid by certified check or money order and made payable to "Treasurer, State of New Jersey" at the following address:

New Jersey Department of Environmental Protection
Licenses and Collections—Solid Waste
401 E. State Street, CN 414
Trenton, N.J. 08625

(b) Engineering design fees and transporter registrations may be paid in person at the Bureau of Registration and Permits Administration, at the address set forth in (a) above.

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

7:26–4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration, volume monitoring and planning consistency activities is as follows:

1. The permittee for a facility who is required to submit to the Department monthly summaries of waste received at such facility shall pay an annual facility volume monitoring fee of $902.00. The annual facility volume monitoring fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

2. The permittee for a facility shall pay an annual facility registration update fee of $313.00. The annual facility update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

3. An applicant for a solid waste facility permit shall pay a fee of $501.00 for determination of consistency with the district solid waste management plan. The fee is due at the time the application is submitted.

(b) The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	$39,087
Sanitary Landfill—operating at less than 31,200 tpy	$ 6,013
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	$12,027
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	$ 4,510
Thermal Destruction Facilities—operating at 100 tons per day or more	$26,058
Thermal Destruction Facilities—operating at 9.6 tons per day or more, but less than 100 tons per day	$13,029
Thermal Destruction Facilities—operating at less than 9.6 tons per day	$ 6,013

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:

Class A: design capacity of less than 800 pounds per hour of on-site generated waste
Class B: design capacity of less than 800 pounds per hour, but less than 50 tons per day of on-site generated waste
Class C: commercial, with design capacity of less than 50 tons per day
Class D: commercial, with design capacity of at least 50 tons per day, but less than 100 tons per day
Class E: commercial, with design capacity of at least 100 tons per day, but less than 400 tons per day
Class F: commercial, with design capacity of at least 400 tons per day

2. Sanitary landfills:

Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26–1.4)
Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26–1.4)
Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26–1.4)

3. Transfer stations and materials recovery facilities:

Class A: design capacity of less than 100 tons per day
Class B: design capacity of at least 100 tons per day but less than 250 tons per day
Class C: design capacity of at least 250 tons per day

4. Compost facilities:

Class A: vegetative, sole source
Class B: vegetative, regional
Class C: compostable type 10 solid waste of less than 100 tons per day
Class D: compostable type 10 solid waste of at least 100 tons per day

5. Closure plan submissions:

Closure Plan I (pre–1982)
Class A: less than 10 acres
Class B: 10 to 30 acres
Class C: more than 30 acres
Closure Plan II (post–1982)
Class A: less than 10 acres
Class B: 10 to 30 acres
Class C: more than 30 acres

(d) The following table sets forth fees (in dollars) for services for the classes of solid waste facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

		Class A	Class B	Class C
a.	Pre-application meeting	N/A	833	1,566
b.	Administrative completeness determination	1,566	1,566	3,132
c.	Preliminary environmental and health impact study review	15,660	23,490	31,320
d.	Engineering design report review	7,830	11,745	20,881
c.	Recycling plan consistency review	6,352	6,352	12,703
f.	Hearing officer's report	5,218	10,442	15,660
g.	Major modification to permit	5,218	10,442	15,660
h.	Minor modification to permit	2,086	3,132	4,178
i.	Solid waste facility permit renewal	5,218	10,442	15,660
j.	Transfer of ownership of permit	5,218	10,442	15,660
k.	Minor technical reviews	1,046	1,566	2,086

		Class D	Class E	Class F
a.	Pre-application meeting	2,612	3,915	5,218
b.	Administrative completeness determination	6,264	9,396	12,528
c.	Preliminary environmental and health impact study review	31,320	46,980	62,640
d.	Engineering design report review	109,620	164,430	219,240
e.	Recycling plan consistency review	10,016	15,024	20,032
f.	Hearing officer's report	62,640	93,960	125,280
g.	Major modification to permit	46,980	70,470	93,960
h.	Minor modification to permit	10,450	15,660	20,900
i.	Solid waste facility permit renewal	49,592	70,470	93,960
j.	Transfer of ownership of permit	31,320	46,980	62,640
k.	Minor technical reviews	2,086	3,132	4,178
l.	Construction Inspections (per facility)	13,029	13,042	13,042

2. Sanitary Landfill Facilities

		Class A	Class B	Class C
a.	Pre-application meeting	5,218	4,698	N/A
b.	Administrative completeness determination	12,528	11,275	6,264
c.	Preliminary environmental and health impact study review	62,640	56,376	31,320
d.	Engineering design report review	93,960	84,564	46,980
e.	Recycling plan consistency review	8,208	7,388	4,104
f.	Hearing officer's report	31,320	28,188	15,660
g.	Major modification to permit	73,082	65,772	36,538
h.	Minor modification to permit	18,792	16,913	9,396
i.	Solid waste facility permit renewal	62,640	56,376	31,320
j.	Transfer of ownership of permit	62,640	56,376	31,320
k.	Minor technical reviews	4,178	3,758	2,086
l.	Construction Inspections (per facility)	3,007	3,007	3,007

3. Transfer Stations and Materials Recovery Facilities

		Class A	Class B	Class C
a.	Pre-application meeting	N/A	3,132	3,132
b.	Administrative completeness determination	2,086	3,132	4,178
c.	Preliminary environmental and health impact study review	20,878	31,320	41,762
d.	Engineering design report review	41,762	62,640	83,518
e.	Recycling plan consistency review	6,156	9,234	12,313
f.	Hearing officer's report	10,442	15,660	20,878
g.	Major modification to permit	26,102	41,762	52,198
h.	Minor modification to permit	6,264	10,442	12,528
i.	Solid waste facility permit renewal	15,660	20,878	31,320
j.	Transfer of ownership of permit	15,660	20,878	31,320
k.	Minor technical reviews	520	1,046	2,086

4. Compost Facilities

		Class A	Class B	Class C	Class D
a.	Pre-application meeting	N/A	N/A	3,915	5,218
b.	Administrative completeness determination	626	2,086	9,396	12,528
c.	Preliminary environmental and health impact study review	1,566	20,878	46,980	62,640
d.	Engineering design report review	2,612	41,762	70,470	93,960
e.	Recycling plan consistency review	879	2,638	4,397	6,156
f.	Hearing officer's report	2,612	10,442	23,490	31,320
g.	Major modification to permit	2,612	26,102	54,810	73,082
h.	Minor modification to permit	1,566	6,264	14,094	18,792
i.	Solid waste facility permit renewal	5,218	15,660	46,980	62,640
j.	Transfer of ownership of permit	5,218	15,660	46,980	62,640
k.	Minor technical reviews	1,046	1,566	2,086	3,132
l.	Pre-construction site visits and construction inspections (per visit)	157	251	157	251

5. Closure Plan I (pre–1982)

		Class A	Class B	Class C
a.	Pre-application meeting	N/A	N/A	N/A
b.	Administrative completeness determination	520	1,046	1,046
c.	Preliminary environmental and health impact study review	N/A	N/A	N/A
d.	Engineering design report review	2,612	4,178	5,218
e.	Hearing officer's report	N/A	N/A	N/A
f.	Major modification to approval	2,612	4,178	5,218
g.	Minor modification to approval	1,046	1,303	1,566
h.	Solid waste facility approval renewal	1,046	1,303	1,566
i.	Transfer of ownership of approval	2,612	4,178	5,218
j.	Minor technical reviews	263	520	520

6. Closure Plan II (post–1982)

		Class A	Class B	Class C
a.	Pre-application meeting	N/A	N/A	N/A
b.	Administrative completeness determination	1,566	2,086	2,612
c.	Preliminary environmental and health impact study review	N/A	N/A	N/A
d.	Engineering design report review	5,218	15,660	20,878
e.	Hearing officer's report	N/A	N/A	N/A
f.	Major modification to approval	5,218	15,660	20,878
g.	Minor modification to approval	1,566	5,218	7,830
h.	Solid waste facility approval renewal	1,566	5,218	7,830
i.	Transfer of ownership of approval	5,218	15,660	20,878
j.	Minor technical reviews	520	520	520

7. Annual Topographic Map Submissions

a.	Pre-application meeting	N/A
b.	Administrative completeness determination	N/A
c.	Preliminary environmental and health impact study review	N/A
d.	Engineering design report review	2,086
e.	Hearing officer's report	N/A
f.	Major modification to permit	N/A
g.	Minor modification to permit	N/A
h.	Solid waste facility permit renewal	N/A
i.	Transfer of ownership of permit	N/A
j.	Minor technical reviews	N/A

N/A means the item is not applicable to that submission type.

(e) For submissions concerning disruption, methane venting systems, on-site disposal, or cover material, the applicant/permittee shall request an initial review of the submis-

sion. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of $52.20.

(f) The omission of any type of service (including, without limitation, a solid waste facility permit renewal involving no modifications) from the fee schedules set forth in (a), (b), (d) and (e) above shall not be construed as a waiver of the Department's authority to assess fees for such services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of $52.20. The Department will calculate the fee for performance of the Department's services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a), (b), (d) or (e) above, the amount of the fee shall be equal to the amount listed in (a), (b), (d) or (e).

2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of $52.20.

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee shall request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

(h) The Department may, in its discretion, refrain from commencing work on the activity which is the subject of a fee determined pursuant to (e) or (f) above until the Department has received full payment of the fee. If the Department has already commenced work, the Department may, in its discretion, suspend such work until it has received full payment of the fee.

Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Deleted "hazardous wastes" from (a)3i.
Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Note: Reference to the repeal of N.J.A.C. 7:26–4.3 was inadvertently left out of the headings to the notices of proposal and adoption (20 N.J.R. 2668(a), 21 N.J.R. 1002(b)); however, language in the Summary of the proposal and subsequent introduction of new material clearly demonstrated the Department's intention to repeal and replace the rule.
Amended by R.1991 d.368, effective July 15, 1991.
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).
Deleted "facilities"; added "annual facility registration, volume monitoring and planning consistency activities" in (a).
Deleted "a facility monitoring fee from all facilities that are", "be paid when submitting the annual registration update", "The fee is $500.00 per year."; added "The permittee for a facility who is", "at such facility", "pay an annual facility volume monitoring fee of $902.00. The annual facility volume monitoring fee is due at the time the annual registration update is submitted but in no event later than May 1 of each calendar year." in (a)1.
Substituted old text with new text in (a)2.
Substituted old text with new text in (a)3.
Deleted (a)4 through 11.
Added (c), (d), (e), (f), (g), (h).
Amended by R.1991 d.368, effective July 14, 1991 (operative March 1, 1992).
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).
N.J.A.C. 7:26–4.3(b) made operative.
Administrative Correction to (b), thermal destruction facilities.
See: 24 N.J.R. 1121(a).
Administrative Correction to (b).
See: N.J.R. June 1, 1992.
Amended by R.1993 d.98, effective March 1, 1993.
See: 24 N.J.R. 1999(a), (see also 24 N.J.R. 2687(a)), 25 N.J.R. 990(b).
Added new structure at (b).

7:26–4.4 Fee schedule for transporters

(a) For solid waste transporters, excluding those solely transporting hazardous waste, an annual registration and inspection fee shall be paid.

(b) The registration year shall extend from May 1 through April 30. Fees shall be payable prior to May 1 of each calendar year. No pro rata adjustment of fees shall be made by the Department.

(c) All transporters shall pay an annual fee of $222.00 for each solid waste cab or for each solid waste single unit-vehicle.

(d) All transporters shall pay an annual fee of $222.00 for each solid waste trailer.

(e) All transporters shall pay an annual fee of $47.00 for each solid waste container.

(f) The registration of a single-unit solid waste vehicle, solid waste trailer, solid waste cab, and solid waste container is non-transferable.

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Rule at this cite formerly entitled "Engineering design review (per design)".
Amended by R.1991 d.368, effective July 15, 1991 (operative July 15, 1991).
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).
Added "an annual" and changed fees in (c), (d), (e).
Deleted (g).

7:26–4.5 County enforcement activity fees for solid waste control program

(a) General provisions are as follows:

1. Scope: Unless otherwise provided by state or statute, the following shall constitute the rules of the Department of Environmental Protection concerning fees to be charged for enforcement activities undertaken by county health departments pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., and the County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H.

2. Construction: This section shall be liberally construed to permit the Department and its component divisions to effectuate the purposes of the above referenced laws.

3. Purpose: This section is promulgated for the following purposes:

i. To aid counties in the development and implementation of a solid waste control program; and

ii. To provide a basis for the Department to review county department fees for enforcement activities related to their solid waste control program based upon the objectives in N.J.S.A. 13:1E et seq. and N.J.A.C. 7:26–1.

4. Definitions: The following words and terms, when used in this section, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions founded in the Department rules, N.J.A.C. 7:26–1.4.

"County department" means a county department of health established pursuant to P.L. 1975, c.329 (N.J.S.A. 26:3A2–1 et seq.) as amended and supplemented, with the purpose of providing environmental health programs throughout the county and other local health programs in any municipality which contracts therefor with the county board (N.J.S.A. 26:3A2–21 et seq.)

"Department" means the Department of Environmental Protection.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a sanitary landfill facility is located, and any person or corporation which owns a majority interest in any other corporation which owns a majority interest in any sanitary landfill facility.

"Program" means a solid waste control program prepared by the county department pursuant to this section and the procedures and standards authorized by the County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H, and which has been submitted to the Department for review.

(b) Enforcement activity fee schedule established: In accordance with N.J.S.A. 13:1E–9, there is hereby established a fee schedule which shall apply to all sanitary landfill facilities required to be registered with the Department and subject to a county department program.

1. Duties and powers of the county department are as follows:

i. Any county department may charge and collect from the owner or operator of any sanitary landfill facility fees established by ordinance or resolution adopted by the county governing body. Such fees shall be established in accordance with this section for the purpose of enforcing the rules and regulations adopted by the Department related to solid waste collection and disposal, and in conformance with all applicable County Environmental Health Standards of Administrative Procedure and Performance, N.J.A.C. 7:1H, adopted pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2–21 et seq.

ii. Within six months of the effective date of this section and by September 1 of each succeeding year as part of its annual work program, pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2–21 et seq., a county department shall submit to the Department a Solid Waste Control Program (Program). The Program shall be submitted to each municipality located in the county for review and comment prior to its submittal to the Department and shall contain monitoring and enforcement activities at least equivalent to those set forth in N.J.A.C. 7:1H–3.4(a) through (u) and shall also include the following:

(1) Identification and number of operating facilities to be inspected;

(2) Projection of the number of inspections to be conducted by facility name (minimum twice per month);

(3) Purpose of inspections;

(4) A description of the procedures for:

(A) Determining inspection frequency;

(B) Accounting for activities performed;

(C) Actions to be taken after inspections have been performed; and

(D) Taking legal action.

(5) In each succeeding year, a report on the previous year's activities, including a detailed financial statement of the previous year's expenditures, actual amount of fees collected and any surplus which can be credited to the next year's costs.

iii. The Program shall include certain county budgetary costs as follows, provided they are both reasonable and necessary. The Department may consider

additional costs based upon particular local needs and abilities provided the Department is satisfied that those additional costs are both reasonable and necessary.

(1) Personnel: Identify type, number, and salary required, including benefits therefor;

(2) Local training: In addition to county department training costs, personnel performing solid waste inspections shall also be trained by the Department through the arrangement of joint inspections with departmental inspectors experienced in facility inspections. It shall be the responsibility of the county department to arrange such joint training inspections;

(3) Protective equipment;

(4) Vehicles and maintenance;

(5) Test equipment;

(6) Laboratory and analysis;

(7) Office equipment and supplies;

(8) Secretarial, office and general administrative support; and

(9) Costs based on (b)1ii(1) through (5) above.

2. Fees for the Program are as follows:

i. After review by the Department of its Program, and pursuant to a resolution or ordinance adopted by the county governing body, any county department may charge and collect fees from the owner or operator of any sanitary landfill facility within its jurisdiction, as follows:

(1) At the maximum rate of $0.01 per cubic yard of solid waste accepted for disposal at a facility;

(2) In the event that any solid waste is measured, upon acceptance for disposal, by other than cubic yards, the fee shall be assessed on the equivalents utilized pursuant to the Sanitary Landfill Closure and Contingency Fund Act, P.L. 1981, c.306, and the Recycling Act, P.L. 1981, c.278;

(3) Fees shall be assessed and collected by a county department each month in the manner provided for in (b)2 of this section;

(4) Except as otherwise provided for herein, the owner or operator of every sanitary landfill facility subject to a county department program shall submit to the appropriate county department, on or before the 20th of each month, a fee equal to $0.01 per cubic yard of solid waste accepted for disposal during the preceding month, together with a completed copy of Department form No. SFA–001 which is submitted for that month to the Department in accordance with the escrow account reporting requirements pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, P.L. 1981, c.306.

ii. Subject to the approval of the Department, a higher fee may be assessed in the event that the county department documents the need for a greater amount in a succeeding year's program.

3. Utilization of fees: Fees provided for in this section shall be utilized exclusively to fund county solid waste monitoring and enforcement activities as identified in the Program.

R.1974, d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c): The rule originally at this cite was entitled "Exemptions".
Deleted and Reserved by R.1975 d.110, effective April 29, 1975.
See: 7 N.J.R. 101(a), 7 N.J.R. 259(a).
R.1983 d.50, effective March 7, 1983.
See: 14 N.J.R. 1328(a), 15 N.J.R. 330(d).
Recodified by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

7:26–4.6 Annual adjustment of fees

(a) The Department shall adjust the fees for each activity provided in N.J.A.C. 7:26–4.3, 4.4 and 15.6 annually, 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 Annual Solid Waste Fee Schedule Report provided in (b) below.

(b) Each year, the Department shall prepare an Annual Solid Waste Fee Schedule Report. The report shall include the following:

1. The Department's actual number of hours to perform each type of activity and the 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. 7:26–4.3, 4.4 and 15.6. In reporting the actual hours and formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records 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 from previous years, if the Department determines that it has not performed an activity a sufficient number of times within the period covered by the report to provide data sufficient to reliably determine the hours required to perform the activity;

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

iv. If the Department determines that the creation of additional classifications of facilities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications. The Department's determination shall be in its reasonable discretion, based on 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. The Department may also consolidate existing classifications of facilities or activities for which it determines that the same number of hours is required to perform an activity for more than one classification of facility or activity. This subparagraph (b)1 provides only for the creation of additional classifications (or consolidation of existing classifications) 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;

v. With respect to fees assessed for an activity to be performed more than once in the period covered by the fee (such as an annual compliance monitoring fee assessed for several compliance monitoring inspections to be performed in a one-year period), the data upon which the report is based may show a decrease in the amount of time required to perform an activity, all or part of which decrease results from a lack of Department staff sufficient to perform the activity the expected number of times within the period. In such event, the Department may maintain the fee at the level required to defray the cost of staff sufficient to perform the activity the expected number of times within the period. If the Department has performed the activity for any category of facilities at an average frequency less than the frequency upon which the fee is based, the Department shall credit the total excess fees paid by the facilities in the category against the revenues necessary to fund the same activity for the following year; and

2. A statement of the hourly rate for calculating fees. The hourly rate is the average cost of one hour of Department staff time, calculated according to the following formula:

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

where:

i. AS equals the average salary of a full-time Department employee working in the Department's solid waste program;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's solid waste program, calculated as a percentage of the average salary, which 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, 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 and data system management) attributable to a full-time Department employee working in the Department's solid waste program;

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 solid waste activities, divided by the total number of 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 solid waste program spends annually performing activities for which fees are to be imposed under N.J.A.C. 7:26–4.3, 4.4 or 15.6.

(c) Promptly after completing the report described in (b) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26–4.3, 4.4 or 15.6 within the one-year period covered by the report.

(d) Promptly after making the adjustment of fees pursuant to the report described in (b) above, the Department shall publish in the New Jersey Register a notice of administrative change, pursuant to N.J.A.C. 1:30–2.7(c), setting forth adjusted fees and the operative date thereof. The Department shall also publish a notice of the adjusted fees and the operative date thereof in the DEPE Bulletin, and mail a copy of the notice to each owner or operator of a registered solid waste vehicle or facility; to the County Board of Chosen Freeholders of each solid waste management district and to the district solid waste management implementing agency as designated in accordance with N.J.S.A. 13:1E–21; and the Hackensack Meadowlands Development Commission. The notice shall state that the report is available, and direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

New Rule, R.1992 d.311, effective August 3, 1992.
See: 24 N.J.R. 3690(a), 24 N.J.R. 2726(a).

Case Notes

Solid waste collection utility rates adjusted downward. In the Matter of the petition of Bridgewater Resources to Increase Rates, 94 N.J.A.R.2d (EPE) 17.

7:26–4.7 (Reserved)

As amended, R.1982 d.289, effective September 7, 1982 (operative September 15, 1982).
See: 14 N.J.R. 368(a), 14 N.J.R. 979(b).
(b)1 and 2 added.
As amended, R.1980 d.250, effective June 9, 1980.
See: 12 N.J.R. 70(b), 12 N.J.R. 391(d).
As amended, R.1981 d.49, effective February 6, 1981.
See: 13 N.J.R. 129(a).
(a): Amend "April 1 through March 31" to "May 1 through April 30".
(b): Amend "April 1 through March 31" to "May 1 through April 30".
As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(b): "October 1 through September 30" was "May 1 through April 30."
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substantially amended.
Repealed by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
The rule at this cite was entitled "Fee schedule for transporting".

7:26–4.8 (Reserved)

As amended, R.1984, d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
In (a) and (b), "Board of Public Utilities" was "Board of Public Utility Commissioners", reference to form N.J.B.S.W.M. 41 deleted.
Repealed by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
The rule formerly at this cite was entitled "Exemption from fee payment".

7:26–4.9 (Reserved)

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
Original submission schedule replaced.
Repealed by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
The rule formerly at this cite was entitled "Time for submission of fees".

7:26–4.10 (Reserved)

Recodified by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Recodified to N.J.A.C. 7:26–4.5 with no change in text.

SUBCHAPTER 4A. HAZARDOUS WASTE FEES

Subchapter Historical Note

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

7:26–4A.1 General provisions

In accordance with N.J.S.A. 13:1E–1 et seq., specifically 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.

Amended by R.1995 d.205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

7:26–4A.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
Attention: Hazardous Waste Fee Unit
Division of Hazardous Waste Management
401 E. State St.
CN 028
Trenton, New Jersey 08625

(b) All fees shall be paid within 30 days of the date on the bill issued by the Department unless otherwise specified herein. Those fees not paid within the time due shall be subject to penalties pursuant to N.J.S.A. 13:1E–9 and 13:1E–12.

Case Notes

Solvent recovery facility was solid waste facility even after it no longer accepted additional solid waste; inspection fees. All County Environmental Services, Inc. v. State of New Jersey, 92 N.J.A.R.2d (EPE) 144.

7:26–4A.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) Hazardous waste generator annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

1. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: $125.00

2. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: $180.00

3. Hazardous waste generators manifesting 100 or more tons but less than 150 tons of hazardous waste annually: $300.00

4. Hazardous waste generators manifesting 150 or more tons of hazardous waste annually: $400.00

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

1. Generators located in the State of New Jersey: $11.10 per manifest.

2. Hazardous waste facilities: $11.10 per manifest for waste received from generators located outside of the State of New Jersey. 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 transporters, generators and facilities are as follows:

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

F = Fee
T = Inspection time (expressed as a percentage of the Department's total annual time for all major facilities)
W = 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 = Total annual cost for major inspections
F = $(T + W)/2 \times I$

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: $960.00.

3. Inspection fee for a non-commercial hazardous waste facility: $2,040.

4. Inspection fee for a generator: $1,370.

5. Inspection fee for a transporter: $1,370.

6. Inspection fee for closure inspection: $1,100.

7. Inspection fee for delisting inspection: $660.

8. Inspection fee for compliance inspection: $700.

9. Fee for compliance reviews: $660.

(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 will 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. The fee for the classification of the following wastes is $1,500 per classification:

i. Manufacturing process waste streams;

ii. Wastes for which the source of contamination is unknown;

iii. Wastes for which an analytical assessment for the presence of substances listed at N.J.A.C. 7:26–8.13 through 8.16 is required;

2. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26–8.13 through 8.16 is not required, and 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: $1,000;

3. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26–8.13 through 8.16 is not required, and 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: $500.00;

4. Fee for the review of sampling plans submitted in support of waste classification requests, for each plan submitted: $1,000;

5. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26–8.17 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: $6,500;

ii. Development, monitoring, and review of sampling plan: $1,000;

iii. Development and publication of public notice in the New Jersey Register: $6,400;

(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 per cent 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 facility among those listed below shall be paid at time of application submission and are as follows:

i. Land disposal (without storage) $77,000

ii. Storage (including treatment) $38,000, subject to any rebate available under (e)13 below

iii. Incineration with trial burn $83,000

iv. Incineration without trial burn $54,000

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) $58,000

ii. Storage (including treatment) $11,600

iii. Incineration with trial burn $73,000

iv. Incineration without trial burn $44,000

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, and are as follows:

i. Land disposal (without storage) $58,000

ii. Storage (including treatment) $30,000, subject to any rebate available under (e)13 below

iii. Incineration with trial burn $73,000

iv. Incineration without trial burn $44,000

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 $10,000

ii. Closure without soil sampling plan $6,000

5. The fee for the approval/denial of existing facility changes pursuant to N.J.A.C. 7:26–12.3(c) shall be paid at time of submission of request for change and is $3,000.

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 $3,000.

7. The fee for permit modifications shall be paid at time of modification request and are as follows:

i. Minor modification: $1,750;

ii. Major modification: $3,500.

8. The fee for facility annual report shall be paid at time of submission of report and is $800.00.

9. The fee for a RD & D permit shall be paid at time of application for permit and is $38,000.

10. The fee for generator accumulation of waste in tank review shall be paid at time of submission of request and is $1,200.

11. The fee for treatability study approval/denial shall be paid at time of submission of application and is $600.00.

12. The fee for permit exemption qualification determinations shall be paid at time of submission of request and is $600.00.

13. A noncommercial hazardous waste facility which has paid a fee under (e)1ii or (e)3ii 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 or (e)3ii above, the Department shall rebate the difference between the fee provided in (e)1ii or (e)3ii above and the actual cost.

(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. 7:26–1.4. 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:	$25.00;
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):	$100.00;
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):	$225.00; 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):	$250.00.

Amended by R.1992 d.65 effective February 3, 1992, (with (a) and (b) operative July 1, 1992).
See: 23 N.J.R. 814(a), 23 N.J.R. 1113(a), 24 N.J.R. 412(a).
Fee schedule revised upwards.

7:26–4A.4 Exemption from fee payment

(a) A hazardous waste generator is exempt from annual reporting fees if the quantity of manifested waste is less than 1.33 tons per year.

(b) Homeowners seeking waste classification of oil spill residues from home heating oil tanks are exempt from the classification fees.

7:26–4A.5 Severability

If any court or other tribunal determines that any provision of this subchapter is invalid, unconstitutional or unenforceable, such determination shall be confined in its operation to the provision directly involved in the controversy in which such determination shall have been rendered, and shall not affect or impair the remainder of this subchapter or the application thereof, and the remainder of this subchapter shall remain in full force and effect.

New Rule, R.1992 d.65, effective February 3, 1992.
See: 23 N.J.R. 814(a), 24 N.J.R. 412(a).

7:26–4A.6 Annual adjustment of fees

(a) The Department shall adjust the fees for each activity described in N.J.A.C. 7:26–4A.3 annually, based upon the following formula:

Fee = (hours required) x (hourly rate)

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

(b) Each year, the Department shall prepare an Annual 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. 7:26–4A.3. In formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records 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 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 will report them in the Annual 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 classifications 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:

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

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;

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 fulltime 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 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. 7:26–4A.3.

3. Those fees which are changed pursuant to the annual fee review process take precedence over the fees set forth at N.J.A.C. 7:26–4A.3. For those fees which remain unchanged by the annual review process, the fees set forth at N.J.A.C. 7:26–4A.3 will continue to apply.

(c) Promptly after completing the report described in (b) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26–4A.3 above within the one-year period covered by the report.

(d) Promptly after making the adjustment to the fees pursuant to the report described in (b) 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. 7:26–4A.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.

New Rule, R.1993 d.302, effective June 21, 1993.
See: 24 N.J.R. 2001(a), 25 N.J.R. 2719(a).

SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

Subchapter Historical Note

Subchapter 5, was originally titled Rules of Practice and Procedure and was adopted pursuant to authority of N.J.S.A. 13:1E–1 et seq. Subchapter 5 became effective October 23, 1973 as R.1973 d.300. See: 5 N.J.R. 370(c). Amendments to this subchapter became effective October 7, 1980 as R.1980 d.433. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). These amendments repealed 7:26–5.4(b)-(*o*) and renumbered (p)-(s) as (b)-(e).

Amendments to section 5.5 became effective December 6, 1982 as R.1982 d.433. See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a). The amended subsection was (e) added.

Further amendments were throughout the subchapter, effective July 2, 1984 as R.1984 d.279. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Subchapter 5 expired on October 7, 1985 pursuant to Executive Order No. 66(1978) and the Department does not intend to readopt its provisions. Repealed effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 5, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted by R.1990 d.50, effective January 16, 1990. See: 21 N.J.R. 2734(a), 22 N.J.R. 187(a).

7:26–5.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., including the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, amending and supplementing the Solid Waste Management Act (hereinafter "the Act"), including violation of any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act. This subchapter shall also govern the procedures for requesting adjudicatory hearings on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than $50,000 for each violation of each provision of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 13:1E–1 et seq. or any other statute, in connection with the violation for which the assessment is levied.

(e) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the Act. Specifically, the Department may revoke or suspend a permit, license or other operating authority, without regard to whether or not a civil administrative penalty has been or will be assessed pursuant to this subchapter.

(f) For purposes of this subchapter, any person who undertakes or performs an obligation imposed upon another person pursuant to the Act, or any rules promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, may at the discretion of the Department be subject to a civil administrative penalty pursuant to this subchapter in the same manner and in the same amount as such other person.

Case Notes

In criminal prosecution the State was required to offer evidence establishing that land was acquired after the enactment of statute and that the United States had not filed an acceptance of exclusive jurisdiction. State v. Ingram, 226 N.J.Super. 680, 545 A.2d 268 (L.1988).

7:26–5.2 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, the Department shall, by means of notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one violation in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. This notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, administrative order, permit, license, district solid waste management plan or Part A permit application violated;

2. Concisely state the facts which constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing, pursuant to the procedures in N.J.A.C. 7:26–5.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order of a contested case or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:26–5.3, the notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of civil administrative penalty assessment;

2. If a hearing is requested pursuant to N.J.A.C. 7:26–5.3 and the Department denies the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of notice of such denial; or

3. If a hearing is requested pursuant to N.J.A.C. 7:26–5.3 and an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

7:26–5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402.:

1. The name, address, telephone number and EPA Identification Number (if applicable) of the violator and its authorized representative;

2. The violator's defenses, to each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding which the violator denies, the violator shall allege the fact or facts as the violator believes such fact or facts to be;

4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative Change in (a).
See: 23 N.J.R. 3325(b).

7:26–5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each requirement of any rule listed in N.J.A.C. 7:26–5.4(g).

(b) Each violation of a rule listed in N.J.A.C. 7:26–5.4(g) shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of any rule listed in N.J.A.C. 7:26–5.4(g) may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall determine the amount of a civil administrative penalty for each violation of any rule listed in N.J.A.C. 7:26–5.4(g) on the basis of the provision violated, according to the following procedure. For a violation of a requirement or condition of an administrative order, permit, license or other operating authority, the Department may in its sole discretion identify the corresponding requirement of any rule summary listed in N.J.A.C. 7:26–5.4(g) and determine the amount of the civil administrative penalty on the basis of the rule provision violated.

1. Identify the rule violated as listed in N.J.A.C. 7:26–5.4(g)7 through 12;

2. Identify the corresponding base penalty dollar amount for the rule violated as listed in N.J.A.C. 7:26–5.4(g)7 through 12;

3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

Severity Factor	Multiplier
i. Violator had violated the same rule less than 12 months prior to the violation	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.50
iv. Violator had violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.25

4. To obtain the civil administrative penalty, add all of the severity penalty components pursuant to (f)3 above, to the base penalty. If the sum total exceeds $50,000, then the civil administrative penalty shall be $50,000.

EXAMPLE:

Base penalty (for violation of N.J.A.C. 7:26–7.4(a)6)	=	$1,000
Subparagraph (f)3iii applies: 0.50 × 1000	=	500
Subparagraph (f)3iv applies: 0.25 × 1000	=	+ 250
Civil administrative penalty		$1,750

5. For the purpose of this section, violation of the "same rule" means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the same item on the list must be violated to be considered violation of the "same rule"; and

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26–7 through N.J.A.C. 7:26–12, is provided for informational purposes only. In the event that there is a conflict between the rule summary in N.J.A.C. 7:26–5.4(g) and a provision in N.J.A.C. 7:26–7 through N.J.A.C. 7:26–12, then the provision in N.J.A.C. 7:26–7 through N.J.A.C. 7:26–12 shall prevail. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:26.

1.–6. (Reserved)

7. The violations of N.J.A.C. 7:26–7, Labeling, Records and Transportation Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C. 5 16	Rule Summary	Base Penalty
7:26–7.1(a)	Failure to placard vehicle containing hazardous waste.	$5,000
7:26–7.1(b)	Hazardous waste facility accepting hazardous waste in a vehicle not properly placarded.	$2,000
7:26–7.2(a)	Failure to label containers containing hazardous waste with manifest numbers.	$500
7:26–7.2(b)	Failure of generator to ensure all containers are of proper construction type or properly labeled.	$2,000
7:26–7.2(c)	Removal of container markings prior to emptying and cleaning.	$3,000
7:26–7.2(d)	Transfer of hazardous waste to new container (in transit) without labeling with manifest numbers.	$500
7:26–7.2(e)	Hazardous waste facility accepting hazardous waste containers that are not properly labeled or marked.	$2,000
7:26–7.3(a)1	Failure to use manifest forms from the Department for hazardous waste originating in New Jersey.	$300
7:26–7.3(a)2	Failure to use approved manifest forms for hazardous waste originating in another state and destined for New Jersey.	$300
7:26–7.3(a)3	Failure to use approved manifest forms for hazardous waste originating in New Jersey and destined for another state.	$300
7:26–7.4(a)1	Failure of generator to have EPA identification number before it treats, stores, transports, offers for transportation, or disposes of hazardous waste.	$2,000
7:26–7.4(a)2	Failure of generator to have EPA identification number before it offers hazardous waste to a hazardous waste hauler or TSD facility.	$2,000
7:26–7.4(a)3	Failure of generator to prepare a manifest before transporting or offering for transport hazardous waste off-site.	$10,000
7:26–7.4(a)4i	Failure of generator to supply generator's name, mailing address, site address, or phone number on the manifest.	$300
7:26–7.4(a)4ii	Failure of generator to supply generator's EPA I.D. number on the manifest.	$300
7:26–7.4(a)4iii	Failure of generator to supply hauler(s) name, phone number, or New Jersey registration number on the manifest.	$300
7:26–7.4(a)4iv	Failure of generator to supply hauler(s) EPA I.D. number on the manifest.	$300
7:26–7.4(a)4v	Failure of generator to supply designated facility's name, address or phone number on the manifest.	$1,000
7:26–7.4(a)4vi	Failure of generator to supply designated facility's EPA I.D. number on the manifest.	$1,000
7:26–7.4(a)4vii	Failure of generator to list name, type, or quantity of waste being shipped on the manifest.	$1,000
7:26–7.4(a)4viii	Failure of generator to list special handling instructions on the manifest.	$300
7:26–7.4(a)4ix	Failure of generator to supply waste reuse facility identification number on the manifest.	$300
7:26–7.4(a)5i	Failure of generator to sign manifest.	$2,000
7:26–7.4(a)5ii	Failure of generator to obtain signature of initial hauler and date of acceptance on the manifest.	$1,000

Rule	Rule Summary	Base Penalty
7:26–7.4(a)5iii	Failure of generator to retain one copy of manifest or to forward one copy to state of origin or one to state of destination.	$1,000
7:26–7.4(a)6	Failure of hauler, unable to deliver hazardous waste to designated facility, to notify generator for instructions; or failure of generator to provide further instructions to hauler unable to deliver hazardous waste to designated facility.	$1,000
7:26–7.4(a)7	Failure of generator shipping hazardous waste within the U.S. solely by railroad or solely by water to send three copies of approved manifest form signed and dated to owner or operator of designated facility.	$1,000
7:26–7.4(a)8	Failure of generator to send at least three copies of signed and dated manifest for rail shipments of hazardous waste within the U.S. to next non-rail hauler, designated facility, or last rail hauler.	$10,000
7:26–7.4(a)10	Generator offering acute hazardous waste or toxic waste for final land disposal in New Jersey.	$10,000
7:26–7.4(c)	Failure of generator to comply with requirements for shipping hazardous wastes out of the U.S.	$10,000
7:26–7.4(d)	Failure of generator shipping wastes out of the U.S. to file an exception report.	$10,000
7:26–7.4(e)2	Failure of generator to utilize a properly registered hauler.	$5,000
7:26–7.4(e)2	Failure of generator to utilize transporter with registration number properly displayed.	$500
7:26–7.4(e)3	Generator designating an unauthorized facility, or a waste reuse facility which had not received a waste reuse identification number, on the manifest.	$1,000
7:26–7.4(e)4	Generator shipping or permitting the shipment of hazardous waste to an unauthorized facility, or to a waste reuse facility which had not received a waste reuse identification number.	$25,000
7:26–7.4(f)1	Failure of generator to keep copy of manifest for three years.	$1,000
7:26–7.4(f)2	Failure of generator to keep copy of annual report or exception report for three years.	$500
7:26–7.4(f)3	Failure of generator to keep copy of manifest during course of unresolved enforcement action or as requested by the Department.	$1,000
7:26–7.4(f)3	Failure of generator to keep copy of annual report or exception report during course of unresolved enforcement action or as requested by the Department.	$500
7:26–7.4(g)1	Failure of generator to submit annual report of manifest activities by March 1.	$500
7:26–7.4(g)2	Failure of generator who stores hazardous waste for more than 90 days to submit annual report summarizing treatment and disposal activities by March 1.	$500
7:26–7.4(h)	Failure of generator to comply with exception reporting requirements.	$1,000
7:26–7.4(j)1	Generator offering hazardous waste, to waste reuse facility, without complying with applicable requirements.	$25,000
7:26–7.5(b)2i	Failure of hauler to compile list of sites corresponding to each manifested shipment of X700–series hazardous waste.	$1,000
7:26–7.5(b)2ii	Failure of hauler to include name, address, quantity, or ID number of manifest on list.	$300
7:26–7.5(b)2iii	Failure of hauler to attach list to copy of manifest and forward to the Department.	$1,000
7:26–7.5(b)2iv	Failure of hauler to obtain a signed receipt from each site at which he accepts X–700 series hazardous waste.	$1,000
7:26–7.5(c)1	Failure of hauler to obtain hazardous waste hauler license prior to operation.	$10,000
7:26–7.5(c)5	Failure of hauler to update license information prior to October 1 of each year.	$500
7:26–7.5(c)6	Failure of hauler to notify Department of change of information on license.	$500
7:26–7.5(d)1	Failure of hauler transporting hazardous wastes to have EPA identification number.	$1,000
7:26–7.5(d)2	Hauler accepting hazardous waste from a generator when it is not accompanied by a properly completed manifest.	$1,000
7:26–7.5(d)3	Hauler accepting improperly labeled hazardous waste.	$1,000
7:26–7.5(d)3	Hauler accepting hazardous waste that does not reasonably fit the description of the manifest.	$3,000
7:26–7.5(d)4	Failure of hauler to sign or date manifest.	$2,000
7:26–7.5(d)4	Failure of hauler to return a signed copy of manifest to generator before transporting.	$500
7:26–7.5(d)5	Failure of hauler to ensure that manifest accompanies hazardous waste.	$10,000
7:26–7.5(d)6i	Failure of hauler to obtain date of delivery and handwritten signature of other hauler or of owner or operator of designated facility.	$2,000
7:26–7.5(d)6ii	Failure of hauler to retain copy of manifest.	$1,000
7:26–7.5(d)6iii	Failure of hauler to give remaining copies of manifest to the accepting hauler or designated facility.	$1,000
7:26–7.5(d)8i(1)	Failure of rail hauler accepting hazardous waste from non-rail hauler to sign or date manifest.	$2,000
7:26–7.5(d)8i(2)	Failure of rail hauler accepting hazardous waste from non-rail hauler to return a signed copy of manifest to non-rail hauler.	$500
7:26–7.5(d)8i(3)	Failure of rail hauler accepting hazardous waste from non-rail hauler to forward manifest to next non-rail hauler, designated facility, or last rail hauler in United States.	$1,000
7:26–7.5(d)8ii	Failure of rail hauler to ensure appropriate shipping paper accompanies hazardous waste at all times.	$10,000
7:26–7.5(d)8iv(1)	Failure of rail hauler delivering hazardous waste to designated facility to obtain date of delivery or handwritten signature of owner or operator of designated facility.	$2,000
7:26–7.5(d)8iv(2)	Failure of rail hauler delivering hazardous waste to designated facility to retain copy of manifest.	$500
7:26–7.5(d)8v(1)	Failure of rail hauler delivering hazardous waste to non-rail hauler to obtain date of delivery or handwritten signature of non-rail hauler.	$2,000
7:26–7.5(d)8v(2)	Failure of rail hauler delivering hazardous waste to non-rail hauler to retain copy of manifest.	$500
7:26–7.5(d)8vi	Failure of non-rail hauler accepting hazardous waste from rail hauler to sign or date manifest.	$2,000
7:26–7.5(d)8vi	Failure of non-rail hauler accepting hazardous waste from rail hauler to return signed copy of manifest to rail hauler.	$500
7:26–7.5(d)9	Failure of hauler transporting waste out of U.S. to indicate date waste left U.S.	$2,000
7:26–7.5(d)10	Failure of hauler to deliver entire quantity to designated facility, next designated hauler or place outside U.S.	$5,000
7:26–7.5(d)11	Failure of hauler to contact generator for instructions and to revise manifest in case of undeliverable shipment.	$2,000
7:26–7.5(d)12	Failure of hauler to provide complete program of instruction for hauler employees.	$2,000
7:26–7.5(d)13	Failure of hauler to comply with 49 CFR 391.	$2,000
7:26–7.5(d)14	Failure of hauler to operate their vehicles in conformance with 49 CFR 392.	$2,000
7:26–7.5(d)15	Failure of hauler to equip vehicle with emergency equipment in conformance with 49 CFR 393.	$500
7:26–7.5(d)16	Failure of haulers to transport hazardous waste in accordance with 49 CFR 397.	$1,000
7:26–7.5(d)17	Failure of hauler to prevent registered vehicle from being used by another hauler not properly licensed by the Department.	$10,000
7:26–7.5(d)18	Failure of hauler to have in possession a list of agencies to notify in event of discharge.	$500
7:26–7.5(d)19	Failure of hauler to display registration decal.	$1,000
7:26–7.5(e)	Failure of hauler to allow the Department to enter and inspect any vehicle.	$5,000
7:26–7.5(f)1i	Failure of hauler to immediately notify the Department and the generator concerning an unauthorized discharge of hazardous waste during transportation.	$5,000
7:26–7.5(f)1ii	Failure of hauler to take appropriate immediate action to protect human health and environment from a discharge of hazardous waste during transportation.	$10,000
7:26–7.5(f)1iii	Failure of hauler to take any action required by N.J.A.C. 7:1E–2.3.	$10,000
7:26–7.5(f)1iv	Failure of hauler to clean up the discharge and take action as may be required or approved.	$10,000

Rule	Rule Summary	Base Penalty
7:26–7.5(f)3	Failure by air, rail, highway or water hauler having a discharge to comply with State and federal notice and report requirements.	$3,000
7:26–7.5(g)1	Failure of hauler to properly complete manifest.	$2,000
7:26–7.5(g)2	Hauler accepting hazardous waste from generator who failed to properly complete manifest.	$2,000
7:26–7.5(g)3	Hauler transporting hazardous waste to unauthorized facility.	$5,000
7:26–7.5(h)1	Failure of hauler to maintain signed copy of manifest for three years.	$1,000
7:26–7.5(h)2	Failure of water bulk shipment hauler to maintain copy of shipping paper for three years.	$1,000
7:26–7.5(h)3	Failure of rail hauler to maintain copy of manifest and shipping paper for three years.	$1,000
7:26–7.5(h)5	Failure of hauler to maintain copy of manifest and date shipment left U.S. for three years.	$1,000
7:26–7.5(h)6	Failure of hauler to maintain copy of manifest during the course of unresolved enforcement action or as requested by the Department.	$1,000
7:26–7.5(i)	Failure by hauler to submit annual report of transportation activities by May 1 of each year.	$1,000
7:26–7.6(a)1	Failure of facility owner or operator to obtain EPA identification number.	$5,000
7:26–7.6(a)2	Failure of facility operator to accept waste only if properly labeled and marked.	$2,000
7:26–7.6(a)2	Facility operator accepting hazardous waste not accompanied by properly completed manifest.	$10,000
7:26–7.6(a)4	Failure of facility operator to reconcile a significant manifest discrepancy with the generator or transporter within 15 days of receipt or to report the unresolved discrepancy to the Department within 16 days of receipt.	$1,000
7:26–7.6(a)5	Failure of facility to obtain written generator approval or to execute manifests before shipping waste to another facility.	$10,000
7:26–7.6(b)1	Failure of facility owner or operator to sign or date manifest.	$2,000
7:26–7.6(b)2	Failure of facility owner or operator to note any significant discrepancies in the manifest on each copy of the manifest.	$1,000
7:26–7.6(b)3	Failure of facility owner or operator to give hauler a copy of manifest.	$1,000
7:26–7.6(b)4	Failure of facility owner or operator to send copy of manifest to generator within thirty days after delivery of hazardous waste.	$1,000
7:26–7.6(b)5	Failure of facility owner or operator to forward copy of manifest to Department or to generator's State agency by next business day.	$1,000
7:26–7.6(b)6	Failure of facility owner or operator to retain copy of manifest for three years.	$1,000
7:26–7.6(c)	Importing hazardous waste from a foreign country without notifying the Department or the EPA at least four weeks in advance of expected delivery.	$10,000
7:26–7.6(d)1	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to sign or date manifest or shipping paper.	$2,000
7:26–7.6(d)2	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to note any significant discrepancies in manifest or shipping paper on each copy of manifest or shipping paper.	$1,000
7:26–7.6(d)3	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to give hauler a copy of manifest or shipping paper.	$1,000
7:26–7.6(d)4	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to send copy of manifest or shipping paper to generator within thirty days after delivery.	$1,000
7:26–7.6(d)5	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to retain copy of manifest for three years.	$1,000
7:26–7.6(e)1	Facility operator accepting waste other than that authorized by Department.	$25,000
7:26–7.6(e)2	Facility operator accepting waste from an unauthorized hauler.	$5,000
7:26–7.6(e)3	Facility operator accepting waste from a hauler failing to display Department registration number.	$500
7:26–7.6(f)1	Failure of facility owner or operator to maintain daily operating record.	$1,000
7:26–7.6(f)2	Failure of facility owner or operator to prepare and submit two copies of an annual report by March 1 of each year or failure of report to meet requirements.	$1,000
7:26–7.7(d)	Generator exempt pursuant to N.J.A.C. 7:26–7.7(b) or (c) offering hazardous waste to unregistered hauler.	$3,000
7:26–7.7(d)	Failure of generator exempt pursuant to N.J.A.C. 7:26–7.7(b) or (c) to obtain written receipt from hauler or to retain receipt on file for three years.	$500

8. The violations of N.J.A.C. 7:26–8, Hazardous Waste Criteria, Identification and Listing, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26–8.5(a)	Failure of generator of solid waste to determine if waste is hazardous.	$10,000
7:26–8.5(c)	Failure of generator, on request by Department, to submit plan for analyzing the waste to detect presence of hazardous waste constituents listed in N.J.A.C. 7:26–8.16.	$10,000
7:26–8.5(d)	Failure of generator to keep records of any test results, analysis or other determinations for three years.	$2,000

9. The violations of N.J.A.C. 7:26–9, Requirements for Hazardous Waste Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26–9.2(a)2	Handling hazardous waste in a manner that causes or may cause an unauthorized discharge of pollutants.	$5,000
7:26–9.2(b)1	Installation or use of new underground storage tanks containing hazardous waste.	$10,000
7:26–9.2(b)2	Conversion of underground storage tanks in use or ready for use for storage of hazardous waste.	$10,000
7:26–9.2(b)3	Use of existing underground storage tanks for hazardous waste without monitoring pursuant to N.J.A.C. 7:14A–6 or not within time limitation or without managing pursuant to N.J.A.C. 7:26–10.5(e)6.	$10,000
7:26–9.2(b)4	Use of hazardous waste piles.	$25,000
7:26–9.2(c)	Discharging of hazardous waste into a sewer system without approval or not in conformance with such approval.	$25,000
7:26–9.2(d)	Final land disposal of acute hazardous waste or toxic waste not exempted by N.J.A.C. 7:26–9.2(d)1 and 2.	$50,000
7:26–9.3(a)1	Failure of generator to ship waste off site within 90 days or to place it in an on-site authorized facility.	$2,000
7:26–9.3(a)2	Failure of generator to place waste in containers that meet required standards or are properly managed.	$2,000
7:26–9.3(a)3	Failure of generator to clearly mark container with date when accumulation period begins or to make mark visible for inspection.	$5,000
7:26–9.3(b)	Failure of generator accumulating hazardous waste in above ground tanks for 90 days or less without receiving Department approval, to comply with each requirement of N.J.A.C. 7:26–9.3(b)1 through 9.	$2,000
7:26–9.3(d)1	Failure of generator accumulating hazardous waste on-site without a permit to ensure that quantity of waste in each area is less than 55 gallons of hazardous waste or less than one quart of acutely hazardous waste.	$1,000

Rule	Rule Summary	Base Penalty
7:26–9.3(d)2	Failure of generator accumulating hazardous waste on-site without a permit to place waste in containers meeting standards of N.J.A.C. 7:26–7.2 or to appropriately manage containers.	$1,000
7:26–9.3(d)3	Failure of generator accumulating hazardous waste on-site without a permit to have accumulation area at or near any point of generation where wastes initially accumulate in a process.	$1,000
7:26–9.3(d)4	Failure of generator to mark container with the words "HAZARDOUS WASTE".	$1,000
7:26–9.3(d)5	Failure of generator to mark container with the date the quantity reaches the volume indicated in N.J.A.C. 7:26–9.3(d)1.	$1,000
7:26–9.3(d)6	Failure of generator to comply with N.J.A.C. 7:26–9.3(d)6i, ii, or iii, within three days after quantity of waste reaches the volume identified in N.J.A.C. 7:26–9.3(d)1.	$1,000
7:26–9.4(a)1	Failure of a facility owner or operator who receives a new hazardous waste stream from an off site source to notify generator in writing, of permit, and acceptance of new waste stream.	$2,000
7:26–9.4(a)3	Failure of facility owner or operator to notify the Department or comply with each requirement of N.J.A.C. 7:26–9.1(c)13 before accepting an off-site waste stream for waste reuse.	$2,000
7:26–9.4(b)1i	Failure of facility owner or operator to obtain detailed chemical analysis of representative sample before treating, storing or disposing of any hazardous waste.	$10,000
7:26–9.4(b)1iii	Failure of facility owner or operator to repeat analysis as necessary to ensure that it is accurate and up to date.	$5,000
7:26–9.4(b)1v	Failure of owner or operator of an off site facility to inspect each hazardous waste shipment received or analyze to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.	$3,000
7:26–9.4(b)2	Failure of facility owner or operator to develop or follow a written waste analysis plan, or to comply with each of the requirements of N.J.A.C. 7:26–9.4(b)2.	$5,000
7:26–9.4(b)3ii	Failure of facility owner or operator to conform waste analysis with provisions of proposed plan pending final approval by Department.	$5,000
7:26–9.4(c)1	Facility owner or operator accepting waste it is not authorized to handle.	$25,000
7:26–9.4(c)2	Failure of facility owner or operator to follow each of the requirements of N.J.A.C. 7:26–9.4(c)2 if offered waste of a type it is not authorized to handle.	$1,000
7:26–9.4(d)1i	Facility owner or operator storing hazardous waste in inadequate container.	$2,000
7:26–9.4(d)2	Failure of facility owner or operator to handle hazardous waste as required by N.J.A.C. 7:26–9.4(d)2.	$2,000
7:26–9.4(d)3	Failure of facility owner or operator to use container compatible with hazardous waste stored.	$2,000
7:26–9.4(d)4	Failure of facility owner or operator to comply with any of the requirements for management of containers.	$1,000
7:26–9.4(d)5	Failure of facility owner or operator to perform daily inspection of each area where containers are stored.	$1,000
7:26–9.4(d)6	Failure of facility owner or operator to store containers holding ignitable or reactive wastes at least 50 feet from property line.	$2,000
7:26–9.4(d)7	Failure of facility owner or operator to comply with each of the special requirements for incompatible wastes.	$2,000
7:26–9.4(e)1i	Failure of facility owner or operator to keep ignitable, reactive or incompatible wastes separated and protected from sources of ignition or reaction.	$5,000
7:26–9.4(e)1ii	Failure of facility owner or operator to confine smoking or open flame to specially designated locations while handling ignitable or reactive waste.	$2,000
7:26–9.4(e)1iii	Failure of facility owner or operator to conspicuously place "No Smoking" signs wherever there is a hazard from ignitable or reactive waste.	$500
7:26–9.4(e)2	Failure of the facility owner or operator to treat, store, or dispose of ignitable, reactive or mixtures of incompatible wastes in accordance with each of the requirements of N.J.A.C. 7:26–9.4(e)2i through v.	$2,000
7:26–9.4(f)1	Failure of facility owner or operator to inspect for malfunctions, deterioration, errors or discharges.	$2,000
7:26–9.4(f)2	Failure of facility owner or operator to perform frequent inspections pursuant to N.J.A.C. 7:26–9.4(f)2.	$2,000
7:26–9.4(f)3	Failure of facility owner or operator to develop or follow written schedule for inspecting monitoring, safety, emergency, security equipment, etc.	$2,000
7:26–9.4(f)4	Failure of facility owner or operator to follow proposed schedule for inspecting monitoring equipment pending Department approval.	$2,000
7:26–9.4(f)5	Failure of facility owner or operator to remedy any deterioration or malfunction immediately or on an appropriate schedule.	$5,000
7:26–9.4(f)6	Failure of facility owner or operator to record inspections in log or to retain required information for three years.	$2,000
7:26–9.4(g)	Failure of facility owner or operator to provide required classroom or on-the-job training for facility personnel.	$2,000
7:26–9.4(h)1	Failure of facility owner or operator to have adequate surveillance system, or adequate artificial or natural barrier or means to control entry.	$25,000
7:26–9.4(h)3	Failure of facility owner or operator to post signs meeting each requirement of N.J.A.C. 7:26–9.4(h)3.	$2,000
7:26–9.4(i)	Failure of facility owner or operator to keep written operating records meeting each requirement of N.J.A.C. 7:26–9.4(i)1 through 10.	$2,000
7:26–9.4(j)	Failure of facility owner or operator to prepare or submit two copies of annual report to Department by March 1 in accordance with N.J.A.C. 7:26–7.6(f)2.	$1,000
7:26–9.4(k)1	Failure of facility owner or operator to furnish upon request, or make available for inspection, any record.	$5,000
7:26–9.4(k)2	Failure of facility owner or operator to keep any record during course of any unresolved enforcement action or as requested by the Department.	$2,000
7:26–9.4(k)3	Failure of facility owner or operator to submit copy of waste disposal locations or quantities to Department or local land authority upon closure of facility.	$25,000
7:26–9.4(*l*)	Failure of facility owner or operator to provide, when requested, work space at the facility for a Department inspector and equipment overseeing monitors and analysis.	$1,000
7:26–9.4(n)	Failure of facility owner or operator to post a warning sign provided by the Department in work areas.	$1,000
7:26–9.5	Failure of facility owner or operator to provide facility with ground water monitoring system in accordance with N.J.A.C. 7:14A–6.	$50,000
7:26–9.6(a)	Failure of facility owner or operator to design, construct, maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents.	$5,000
7:26–9.6(b)	Failure of facility owner or operator to equip facility with emergency equipment.	$10,000
7:26–9.6(c)	Failure of facility owner or operator to test and maintain emergency equipment.	$5,000
7:26–9.6(d)	Failure of facility owner or operator to maintain access to communications or alarm system.	$5,000
7:26–9.6(e)	Failure of facility owner or operator to maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency.	$2,000
7:26–9.6(f)	Failure of facility owner or operator to make required arrangements with police or fire departments, emergency response contractors, equipment suppliers, or local hospitals, or to document any such authority's refusal of such arrangements.	$5,000
7:26–9.7(a)	Failure of facility owner or operator to have contingency plan designed to minimize hazards to human health and environment.	$10,000
7:26–9.7(b)	Failure of facility owner or operator to carry out provisions of the plan immediately if there is a fire, explosion or release.	$25,000

Rule	Rule Summary	Base Penalty
7:26–9.7(c)	Failure of contingency plan to describe actions to be taken to comply with N.J.A.C. 7:26–9.7(a), (b), or (e).	$5,000
7:26–9.7(d)	If facility has SPCC (40 CFR 112 or 151) or DPCC (N.J.A.C. 7:1E) plan, failure of facility owner or operator to amend that plan to incorporate hazardous waste management provisions.	$5,000
7:26–9.7(e)	Failure of contingency plan to describe arrangements agreed to by local police or fire departments, hospitals, contractors, or State or local emergency response teams.	$1,000
7:26–9.7(f)	Failure of contingency plan to list name, addresses or phone numbers of persons qualified to act as emergency coordinator.	$2,000
7:26–9.7(g)	Failure of contingency plan to list emergency equipment, updated as required, with its location, description, or capabilities specified.	$2,000
7:26–9.7(h)	Failure of contingency plan to include evacuation procedure for personnel including signals, evacuation routes or alternate evacuation routes.	$2,000
7:26–9.7(i)	Failure of contingency plan to be maintained at facility with a copy sent to local police or fire departments, hospitals or State or local emergency response teams.	$2,000
7:26–9.7(j)	Failure of facility owner or operator to review or amend contingency plan as necessary.	$2,000
7:26–9.7(k)	Failure of facility owner or operator to make emergency coordinator thoroughly familiar with plan or available at all times.	$5,000
7:26–9.7(*l*)1	Failure of emergency coordinator to identify character, source, amount or areal extent of discharged materials, or to activate alarms or communications systems, or to notify appropriate State or local agencies if necessary.	$5,000
7:26–9.7(*l*)2	Failure of emergency coordinator to assess possible hazards to human health and environment.	$5,000
7:26–9.7(*l*)3	Failure of emergency coordinator to notify appropriate emergency response agency in situation threatening health and environment.	$5,000
7:26–9.7(*l*)4	Failure of emergency coordinator to take reasonable measures to ensure hazards are minimized.	$5,000
7:26–9.7(*l*)5	Failure of the emergency coordinator to monitor leaks, pressure buildup, gas generation, or ruptures, if the facility stopped operating due to fire, explosion or discharge.	$5,000
7:26–9.7(*l*)6	Failure of emergency coordinator to provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or other material.	$5,000
7:26–9.7(*l*)7	Failure of emergency coordinator to insure that in affected area of facility no incompatible waste is treated, stored or disposed of until cleanup procedures are complete, or to insure that emergency equipment is cleaned and fit for intended use before operations are resumed.	$5,000
7:26–9.7(*l*)8	Failure of facility owner or operator to notify DEP and local authorities that facility is in compliance before operations are resumed.	$5,000
7:26–9.7(*l*)9	Failure of facility owner or operator to submit incident report to DEP within 15 days after the incident.	$2,000
7:26–9.8(b)	Failure of facility owner or operator to close in a manner that minimizes further maintenance and controls to the extent necessary to protect human health and environment.	$50,000
7:26–9.8(c)	Failure of facility owner or operator to have written closure plan with plan.	$25,000
7:26–9.8(c)	Failure of facility owner or operator to keep copy of closure plan, or any revisions, at the facility.	$1,000
7:26–9.8(f)	Failure of facility owner or operator to amend or request modification of closure plan within 60 days of change.	$2,000
7:26–9.8(g)	Failure of facility owner or operator to notify DEP 180 days prior to anticipated commencement of closure.	$10,000
7:26–9.8(h)1	Failure of facility owner or operator to submit closure plan pursuant to the provisions of N.J.A.C. 7:26–9.8(h).	$10,000
7:26–9.8(i)	Failure of facility owner or operator to treat, remove or dispose of waste within 90 days after final volume of wastes received or closure plan approved.	$10,000
7:26–9.8(j)	Failure of facility owner or operator to complete closure within 180 days after final volume of wastes received or closure plan approved.	$10,000
7:26–9.8(k)	Failure of facility owner or operator, when closure is complete, to have disposed of or decontaminated all facility equipment or structures.	$10,000
7:26–9.8(*l*)	Failure of facility owner or operator, when closure completed, to submit its own certification or that of an independent registered professional engineer to the Department.	$10,000
7:26–9.9(b)	Failure of facility owner or operator to continue proper post-closure care for 30 years and to comply with N.J.A.C. 7:26–9.9(b).	$10,000
7:26–9.9(e)	Failure of facility owner or operator to ensure that post-closure activity does not disturb final cover, liner(s), or containment or monitoring system.	$10,000
7:26–9.9(f)	Failure of facility owner or operator to perform post-closure care activities in accordance with post-closure plan.	$10,000
7:26–9.9(g)	Failure of facility owner or operator to have written post-closure plan.	$10,000
7:26–9.9(g)	Failure of facility owner or operator to keep copy of post-closure plan, or any revisions, at the facility.	$1,000
7:26–9.9(j)	Failure of facility owner or operator to amend or request modification of post-closure plan when necessary.	$2,000
7:26–9.9(k)	Failure of facility owner or operator to submit post-closure plan 180 days in advance of closure and pursuant to N.J.A.C. 7:26–9.9(k).	$10,000
7:26–9.9(m)	Failure of facility owner or operator, within 90 days after closure, to submit to local authorities and DEP detailed information on site.	$25,000
7:26–9.9(n)	Failure of facility owner or operator to comply with requirements for notice in deed to property.	$5,000
7:26–9.10(e)1	Failure of facility owner or operator to have a written estimate of the cost of closing facility.	$5,000
7:26–9.10(e)2	Failure of facility owner or operator to adjust closure cost estimate for inflation within 30 days after each anniversary of the preparation of the first closure cost estimate.	$5,000
7:26–9.10(e)3	Failure of facility owner or operator to revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.	$5,000
7:26–9.10(e)4	Failure of facility owner or operator to keep the latest closure cost estimate and adjusted closure cost estimate at the facility.	$5,000
7:26–9.10(f)	Failure of facility owner or operator to establish financial assurance for closure of facility.	$10,000
7:26–9.11(c)1	Failure of facility owner or operator to have a written estimate of the cost of post-closure care.	$5,000
7:26–9.11(c)2	Failure of facility owner or operator to adjust cost estimate of post-closure care for inflation within 30 days after each anniversary of the preparation of the first post-closure care cost estimate.	$5,000
7:26–9.11(c)3	Failure of facility owner or operator to revise the post-closure care cost estimate whenever a change in the post-closure plan increases the cost of post-closure care.	$5,000
7:26–9.11(c)4	Failure of facility owner or operator to keep the latest post-closure care cost estimate at the facility.	$1,000
7:26–9.11(d)	Failure of facility owner or operator to establish financial assurance for post-closure care of facility.	$10,000
7:26–9.13(a)	Failure of facility owner or operator to meet liability requirements for sudden accidental occurrences.	$10,000
7:26–9.13(b)	Failure of facility owner or operator to meet the liability requirements for nonsudden occurrences.	$10,000
7:26–9.14(a)	Failure of facility owner or operator or guarantor to notify Department of commencement of proceeding under Title 11 of the Bankruptcy Code.	$25,000
7:26–9.14(b)	Failure of facility owner or operator to establish other financial assurances or liability coverage pursuant to N.J.A.C. 7:26–9.14(b).	$10,000

10. The violations of N.J.A.C. 7:26–10, Additional Operational and Design Standards for Hazardous Waste Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26–10.4(b)1	Failure of container storage area to have a containment system capable of collecting and holding spills, leaks and precipitation.	$5,000
7:26–10.4(b)1i	Failure of container storage area to have an underlying base free of cracks or gaps; sufficiently impervious with permeability rating no greater than $10-7$ cm/sec.	$5,000
7:26–10.4(b)1ii	Failure of container storage area to consist of material compatible with material stored.	$5,000
7:26–10.4(b)1iii	Failure of container storage area to be sloped or designed and operated to drain efficiently, and for containers to be protected from contact with accumulated liquids.	$5,000
7:26–10.4(b)1iv	Failure of container storage area to have capacity to contain 10 percent of volume of all containers or volume of largest container whichever is greater and additional capacity for rainwater.	$10,000
7:26–10.4(b)2	Failure of container storage area to be protected from run-on, unless this requirement is waived.	$5,000
7:26–10.4(b)3	Failure of facility owner or operator to protect container storage area by removing accumulated precipitation from sump or collection area in a timely manner to prevent blockage or overflow.	$3,000
7:26–10.4(b)4	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	$5,000
7:26–10.4(c)1	Failure of facility owner or operator to remove all hazardous wastes and residues from containment system at closure or failure to remove or decontaminate remaining containers, liners, bases and soil containing or contaminated with hazardous waste.	$10,000
7:26–10.4(c)2	Failure of facility owner or operator at closure, to treat waste as a hazardous waste unless proven to be non-hazardous.	$10,000
7:26–10.5(b)1	Failure of tanks to have sufficient strength or to meet other specified requirements.	$10,000
7:26–10.5(b)2	Failure of facility owner or operator to have shell thickness reports at facility for life of the tank.	$1,000
7:26–10.5(c)1	Facility owner or operator placing waste or other material in tank incompatible with such material.	$10,000
7:26–10.5(c)2i	Failure of tank to have controls to prevent overfilling.	$2,000
7:26–10.5(c)2ii	Failure of facility owner or operator to maintain sufficient freeboard for uncovered tanks to prevent overtopping by wave or wind action or precipitation.	$2,000
7:26–10.5(d)1	Failure of above-ground tank storage areas to have a containment system capable of collecting and holding spills, leaks and precipitation.	$10,000
7:26–10.5(d)1i	Failure of above-ground tank storage area to have an underlying base free of cracks or gaps, or to be sufficiently impervious.	$5,000
7:26–10.5(d)1ii	Failure of containment system to consist of material compatible with material stored.	$10,000
7:26–10.5(d)1iii	Failure of containment system to be sloped or designed and operated to drain efficiently or to have tanks protected from contact with accumulated liquids.	$5,000
7:26–10.5(d)1iv	Failure of containment system to have capacity to contain 10 percent of volume of all tanks or volume of largest tank, whichever is greater, and additional capacity for rainwater.	$10,000
7:26–10.5(d)2	Failure of facility owner or operator to prevent run-on into containment system unless requirement waived.	$5,000
7:26–10.5(d)3	Failure of facility owner or operator to remove accumulated precipitation from sump or collection area in a timely manner.	$3,000
7:26–10.5(d)4	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	$5,000
7:26–10.5(e)1i	Failure of facility owner or operator to inspect overfilling control equipment each operating day.	$1,000
7:26–10.5(e)1ii	Failure of facility owner or operator to inspect data gathered from monitoring equipment each operating day.	$1,000
7:26–10.5(e)1iii	Failure of facility owner or operator to monitor monitoring equipment continuously during use if no automatic alarm.	$1,000
7:26–10.5(e)1iv	Failure of facility owner or operator to inspect level of waste in uncovered tanks each operating day.	$1,000
7:26–10.5(e)1v	Failure of facility owner or operator to inspect construction materials of above-ground portions of a tank for erosion or corrosion and leaking of pipes, seams or fixtures.	$2,000
7:26–10.5(e)1vi	Failure of facility owner or operator to inspect area immediately surrounding tank for signs of leakage.	$1,000
7:26–10.5(e)2	Failure of facility owner or operator to develop and implement schedule and procedure for assessing condition of tank.	$1,000
7:26–10.5(e)3	Failure of facility owner or operator to specify procedures to respond to tank spills or leakage as part of contingency plan.	$2,000
7:26–10.5(e)4	Failure of facility owner or operator to remedy any leak, crack or wall thinning or any equipment or process malfunction discovered during inspection.	$5,000
7:26–10.5(e)5	Failure of facility owner or operator to subject above ground tank to periodic integrity testing on appropriate schedule.	$1,000
7:26–10.5(e)6	Failure of facility owner or operator to subject underground tank to periodic integrity testing.	$2,000
7:26–10.5(h)1	Failure of facility owner or operator at closure to remove all hazardous wastes and residues from tanks, discharge control equipment, discharge confinement structures and the containment system.	$10,000
7:26–10.5(i)1	Failure of facility owner or operator to meet specific requirements before placing ignitable or reactive waste in a tank.	$5,000
7:26–10.5(i)2	Failure of facility owner or operator treating or storing ignitable or reactive wastes in covered tanks to comply with NFPA's buffer zone requirements for tanks.	$5,000
7:26–10.5(j)1	Failure of facility owner or operator to prevent placing incompatible wastes in the same tank.	$5,000
7:26–10.5(j)2	Failure of facility owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste.	$5,000
7:26–10.6(a)3	Failure of facility owner or operator to design and operate surface impoundments used as TSDs in such a way as to prevent discharges.	$50,000
7:26–10.6(a)4	Failure of facility owner or operator to obtain permit pursuant to N.J.A.C. 7:14A for surface impoundments.	$25,000
7:26–10.6(b)	Failure of surface impoundment used as TSD to have liner system that prevents migration of waste during active life of impoundment.	$50,000
7:26–10.6(b)1i	Failure of surface impoundment to have two liners installed to cover all surrounding earth likely to be in contact with the waste or leachate.	$50,000
7:26–10.6(b)1ii	Failure of primary liner synthetic material to be at least 30 mils thick to prevent flow of liquid through liner during active life of facility.	$25,000
7:26–10.6(b)1iii	Failure of secondary liner to consist of at least three feet of soil or synthetic material at least 30 mils thick to prevent liquid from flowing through during life of facility.	$25,000
7:26–10.6(b)1iv	Failure of facility owner or operator to place lower liner on foundation capable of providing support.	$50,000
7:26–10.6(b)1v	Failure of each liner to be suitable for purpose intended and compatible with waste placed in impoundment.	$50,000
7:26–10.6(b)1vi	Failure of liner to have properties that prevent failure due to pressure head, contact with the waste, climatic conditions, and stress of installation.	$50,000
7:26–10.6(b)1vii	Failure of bottom surface of secondary liner to be no less than five feet above seasonally high water table.	$50,000
7:26–10.6(b)1ix	Failure of surface impoundment to have secondary collection system between primary and secondary liner.	$50,000
7:26–10.6(b)1x	Failure of facility owner or operator to obtain certification of system by licensed engineer.	$10,000
7:26–10.6(c)1	Failure of surface impoundment to be designed and constructed to prevent discharge during active life.	$10,000
7:26–10.6(c)2	Failure of surface impoundment to be designed and constructed to prevent overtopping and to provide at least 60 centimeters of freeboard.	$5,000

Rule	Rule Summary	Base Penalty
7:26–10.6(c)3	Failure of surface impoundment to be designed with dikes.	$5,000
7:26–10.6(c)4	Failure of earthen dikes to have protective covers.	$5,000
7:26–10.6(c)5	Failure of surface impoundments to be designed in such a way that flow of waste into impoundment can be immediately shut off.	$25,000
7:26–10.6(c)6	Failure of surface impoundments to be designed with a run-on control system.	$5,000
7:26–10.6(c)7	Failure of facility owner or operator to obtain certification of system by licensed engineer.	$10,000
7:26–10.6(d)	Failure of owner or operator of surface impoundment to implement a groundwater monitoring system.	$10,000
7:26–10.6(e)1	Failure to maintain and operate surface impoundments to prevent overtopping, so as to comply with N.J.A.C. 7:26–10.6(c)2.	$5,000
7:26–10.6(e)2	Failure to operate surface impoundment with at least 60 centimeters of freeboard.	$5,000
7:26–10.6(e)3	Failure to maintain and operate earthen dikes in accordance with N.J.A.C. 7:26–10.6(c)3 or to keep free of burrowing animals.	$5,000
7:26–10.6(e)4	Failure to divert run-on away from surface impoundment.	$5,000
7:26–10.6(e)5	Failure to meet requirements for placing ignitable or reactive waste in surface impoundment.	$5,000
7:26–10.6(e)6	Failure to prevent incompatible wastes and/or materials from being placed in same surface impoundment.	$5,000
7:26–10.6(e)8	Failure of facility owner or operator of surface impoundment to conduct a groundwater decontamination program if groundwater is contaminated.	$25,000
7:26–10.6(e)9	Failure to operate surface impoundment in such a way that odors cannot be detected off-site.	$2,000
7:26–10.6(e)10	Failure of facility owner or operator to meet requirements before placing acute hazardous waste in surface impoundment.	$50,000
7:26–10.6(e)11	Failure of facility owner or operator to comply with each requirement of N.J.A.C. 7:26–10.6(e)11 before placing F020–series waste into surface impoundment.	$50,000
7:26–10.6(f)1	Failure of facility owner or operator to comply with inspection requirements for surface impoundments prior to and following construction.	$5,000
7:26–10.6(f)2	Failure of facility owner or operator to comply with inspection requirements during operation and closure of surface impoundments.	$2,000
7:26–10.6(f)3	Failure of facility owner or operator of surface impoundment to remedy deterioration or malfunction or condition of permit noncompliance.	$5,000
7:26–10.6(f)4	Failure of facility owner or operator of surface impoundment to have liners certified by registered professional engineer upon completion of construction.	$10,000
7:26–10.6(g)1	Failure of facility owner or operator to remove surface impoundment from service if liquid level suddenly drops or if dike leaks.	$25,000
7:26–10.6(g)2	Failure of facility owner or operator to comply with requirements necessary when surface impoundment is removed from service.	$25,000
7:26–10.6(g)3	Failure of facility owner or operator of surface impoundment to comply with requirements if liquid leaks into leak detection system.	$25,000
7:26–10.6(g)4	Failure of facility owner or operator to have requirements for surface impoundment in contingency plan.	$2,000
7:26–10.6(g)5	Failure of facility owner or operator to comply with requirements for placing surface impoundments back into service.	$25,000
7:26–10.6(g)6	Failure of facility owner or operator to close surface impoundment that is not being put back into service in accordance with (h)1 through 6.	$25,000
7:26–10.7(b)2	Failure of facility owner or operator, throughout normal operation of incinerator, to conduct sufficient waste analyses to verify compliance with permit.	$5,000
7:26–10.7(f)1	Failure of facility owner or operator to operate incinerator in accordance with operating requirements of permit.	$5,000
7:26–10.7(f)3	Feeding hazardous waste into the incinerator during start up and shut down when it is not operating within the conditions of operation in the permit.	$10,000
7:26–10.7(f)4i	Failure of facility owner or operator to keep combustion zone of incinerator totally sealed against fugitive emissions.	$3,000
7:26–10.7(f)4ii	Failure of facility owner or operator to maintain combustion zone of incinerator at lower pressure.	$3,000
7:26–10.7(f)4iii	Failure of owner or operator of incinerator to provide approved alternate means of control of fugitive emissions.	$3,000
7:26–10.7(f)5	Failure of owner or operator to operate incinerator with automatic feed cut off.	$3,000
7:26–10.7(f)6	Failure of facility owner or operator to cease operation of incinerator if change in waste feed or operating conditions exceed permit limits.	$5,000
7:26–10.7(f)7i	Failure of owner or operator of incinerator to fulfill all the conditions of N.J.A.C. 7:27–8 permit.	$5,000
7:26–10.7(f)7ii	Failure of all components connected or attached to the equipment or control apparatus of the incinerator to be functioning properly or to be used in accordance with N.J.A.C. 7:27–8 permit.	$5,000
7:26–10.7(h)1	Failure of owner or operator of incinerator to conduct the following monitoring while incinerating hazardous waste:	
7:26–10.7(h)1i	Combustion temperature, waste feed rate, auxiliary fuel feed rate, continuously;	$2,000
7:26–10.7(h)1ii	Carbon monoxide or oxygen, continuously;	$2,000
7:26–10.7(h)1iii	Upon request by DEP, sampling or analyses of waste or exhaust emissions.	$5,000
7:26–10.7(h)1iv	Upon request by DEP, monitoring on continuous basis of sulfur dioxide, total organics, opacity or other contaminant or parameter specified by the Department.	$5,000
7:26–10.7(h)2	Failure of facility owner or operator to completely inspect incinerator or associated equipment at least daily, or to check emergency waste feed cut-off controls or alarm systems daily.	$2,000
7:26–10.7(*l*)1	Failure of facility owner or operator to remove all hazardous waste and hazardous waste residues from incinerator site.	$10,000
7:26–10.7(*l*)2	Failure of owner or operator of incinerator to have scrubber water tested and approved by DEP before discharge to POTW or to navigable water.	$5,000
7:26–10.8(b)	Failure of hazardous waste landfill to be in compliance with N.J.A.C. 7:14A and applicable provisions of N.J.A.C. 7:26–13.	$5,000
7:26–10.8(d)3	Failure of owner or operator of hazardous waste landfill to establish gas monitoring system, gas venting program and to notify Department within 30 days of gas detection.	$10,000
7:26–10.8(e)1	Failure of owner or operator of hazardous waste landfill to manage run-on, run-off system after storm.	$5,000
7:26–10.8(e)2	Failure of owner or operator of hazardous waste landfill to collect run-off.	$5,000
7:26–10.8(e)3	Failure of owner or operator of hazardous waste landfill to remove, treat or dispose of leachate in accordance with N.J.A.C. 7:26 and N.J.A.C. 7:14A.	$10,000
7:26–10.8(e)4	Failure of owner or operator of hazardous waste landfill to prevent migration of pollutants into surface waters or groundwater.	$10,000
7:26–10.8(e)6i	Failure of facility owner or operator to cover hazardous waste landfill.	$10,000
7:26–10.8(e)6ii	Failure of owner or operator of hazardous waste landfill to apply daily or intermediate cover to landfill.	$5,000
7:26–10.8(e)7	Operating a hazardous waste landfill within 200 feet of property boundary.	$10,000
7:26–10.8(e)8	Failure of owner or operator of hazardous waste landfill to render ignitable, corrosive or reactive waste to no longer meet definition before placing in hazardous waste landfill.	$10,000
7:26–10.8(e)9	Owner or operator of hazardous waste landfill placing incompatible wastes and materials in same landfill cell.	$10,000
7:26–10.8(e)10	Owner or operator of hazardous waste landfill placing prohibited wastes in hazardous waste landfill:	
7:26–10.8(e)10i	Bulk liquids;	$10,000
7:26–10.8(e)10ii	Non-containerized liquid waste; or	$10,000
7:26–10.8(e)10iii	Waste containing free liquid;	$10,000

Rule	Rule Summary	Base Penalty
7:26–10.8(c)10iv	Acute hazardous waste (H) as listed in N.J.A.C. 7:26–8.15(a)5 and toxic waste (T) as listed in N.J.A.C. 7:26–15(a)6.	$10,000
7:26–10.8(c)11	Failure of owner or operator of hazardous waste landfill to meet criteria before placing containerized waste in landfill.	$10,000
7:26–10.8(c)12	Failure of owner or operator of hazardous waste landfill to comply with requirements for containers placed in landfill. Unless they are very small, such as an ampule, containers must be either:	
7:26–10.8(e)12i	At least 90 percent full when placed in landfill; or	$2,000
7:26–10.8(e)12ii	Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of landfill.	$2,000
7:26–10.8(e)13	Owner or operator of hazardous waste landfill placing hazardous waste in landfill without Department approval if liquid is detected in secondary collection system.	$25,000
7:26–10.8(e)13i	Failure of owner or operator to comply with any conditions contained in DEP authorization.	$2,000
7:26–10.8(e)14	Failure of owner or operator of hazardous waste landfill to pump out and properly dispose of leachate collected in secondary system.	$10,000
7:26–10.8(e)15	Failure of owner or operator of hazardous waste landfill to operate leachate collection system so that leachate depth over primary liner does not exceed one foot.	$5,000
7:26–10.8(e)17	Failure of owner or operator of hazardous waste landfill to prevent odors from being detected offsite.	$2,000
7:26–10.8(e)18	Failure of owner or operator of hazardous waste landfill to control insects and rodents.	$500
7:26–10.8(e)19	Failure of owner or operator of hazardous waste landfill to control dust.	$500
7:26–10.8(e)21	Failure of owner or operator of hazardous waste landfill to comply with requirements for F020, F021, F022, F023, F026, and F027 wastes.	$10,000
7:26–10.8(e)22	Failure of owner or operator of hazardous waste landfill to use test for determining presence of free liquids before accepting waste.	$5,000
7:26–10.8(g)1i	Failure of owner or operator of hazardous waste landfill to prevent overpacked drums to be made of material that will react with, or be decomposed or ignited by waste contained from being placed in landfill.	$5,000
7:26–10.8(g)1ii	Failure of owner or operator of hazardous waste landfill to tightly seal overpacked drums before placing in landfill.	$2,000
7:26–10.8(g)1iii	Failure of overpacked drums to meet DOT regulations being placed in landfill.	$2,000
7:26–10.8(g)2	Failure to meet requirements for inside containers of overpacked drums before placing in a hazardous waste landfill.	$5,000
7:26–10.8(g)2i	Failure of metal outer container to be full after packing with inside containers and absorbent material.	$5,000
7:26–10.8(g)2ii	Failure to have absorbent material that is not capable of reacting dangerously with, being decomposed by, or being ignited by the contents inside the containers in accordance with N.J.A.C. 7:26–9.4(e).	$5,000
7:26–10.8(g)3	Failure to prevent incompatible wastes from being placed in same outside container.	$5,000
7:26–10.8(g)4	Failure to meet requirements for overpacked reactive wastes before placing in hazardous waste landfill.	$5,000
7:26–10.8(h)2	Failure to meet inspection requirements for hazardous waste landfill.	$2,000

11. The violations of N.J.A.C. 7:26–11, Additional Requirements for Hazardous Waste Facilities Operating Under Existing Facility Status, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty
7:26–11.2(a)2	Failure of facility owner or operator to prevent hazardous wastes or treatment reagents from being placed in tank if they can cause its inner liner to rupture, leak, corrode, or otherwise fail.	$10,000
7:26–11.2(a)3	Failure of facility owner or operator to operate uncovered tanks to ensure at least two feet of freeboard, unless tank is equipped with a containment structure, drainage control system or diversion structure.	$2,000
7:26–11.2(a)4	Failure of facility owner or operator to provide stop in flow mechanism where hazardous waste is continuously fed into tank.	$2,000
7:26–11.2(b)1	Failure of facility owner or operator to provide additional waste analyses or documentation when substantially different waste is stored in tank.	$5,000
7:26–11.2(b)1i	Failure to conduct waste analyses and trial treatment or storage tests; or	$5,000
7:26–11.2(b)1ii	Failure to obtain written, documented information on similar storage or treatment of similar waste under similar operating conditions to show that all applicable requirements are met.	$5,000
7:26–11.2(c)1	Failure of facility owner or operator to inspect tank discharge control equipment at least daily.	$1,000
7:26–11.2(c)2	Failure of facility owner or operator to inspect data gathered from tank monitoring equipment at least daily.	$1,000
7:26–11.2(c)3	Failure of facility owner or operator to inspect level of waste in tank at least daily during operation.	$1,000
7:26–11.2(c)4	Failure of facility owner or operator to inspect construction materials of the tank for corrosion, leaks, etc. at least weekly.	$2,000
7:26–11.2(c)5	Failure of facility owner or operator to inspect construction materials and areas surrounding confinement structures weekly.	$1,000
7:26–11.2(d)	Failure of facility owner or operator at closure, to remove all hazardous waste and residues from tanks, discharge control equipment, etc.;	$10,000
7:26–11.2(e)1	Failure of facility owner or operator to meet requirements before ignitable or reactive waste is placed in a tank.	$5,000
7:26–11.2(e)2	Failure of facility owner or operator to comply with NFPA requirements for buffer zones for treatment or storage in covered tanks.	$5,000
7:26–11.2(f)	Failure of facility owner or operator to comply with requirements for incompatible wastes.	$5,000
7:26–11.2(f)1	Failure of owner or operator to prevent the placing of incompatible wastes, or wastes and materials, in same tank, except in compliance with N.J.A.C. 7:26–9.4(e)2.	$5,000
7:26–11.2(f)2	Failure of owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste or material, except in compliance with N.J.A.C. 7:26–9.4(e)2.	$5,000
7:26–11.3(a)	Failure of surface impoundments to have at least two feet of freeboard.	$2,000
7:26–11.3(b)	Failure to provide protective cover for earthen dikes of grass, shale, or rock.	$5,000
7:26–11.3(c)	Failure to meet waste analyses and trial test requirements for surface impoundments.	$5,000
7:26–11.3(d)1	Failure of owner or operator to inspect free-board level at least once each operating day.	$1,000
7:26–11.3(d)2	Failure of owner or operator to inspect the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.	$2,000
7:26–11.3(f)	Facility owner or operator placing ignitable or hazardous waste in surface impoundment without meeting requirements of N.J.A.C. 7:26–11.3(f).	$5,000
7:26–11.3(g)	Facility owner or operator placing incompatible wastes in same surface impoundment without compliance with N.J.A.C. 7:26–9.4(e)2.	$5,000
7:26–11.4(a)2	Failure to conduct collection and handling of runoff as a solid waste.	$5,000
7:26–11.4(a)3	Failure to prevent wind dispersion of hazardous waste.	$10,000
7:26–11.4(a)4	Failure to prohibit disposal or disposal operation within 200 feet of property boundary.	$10,000

Rule	Rule Summary	Base Penalty
7:26–11.4(a)5	Failure of owner or operator of hazardous waste landfill to meet the requirement of daily or intermediate cover in accordance with N.J.A.C. 7:26–2.	$5,000
7:26–11.4(a)6	Failure of owner or operator of hazardous waste landfill to treat ignitable or reactive waste before placing in landfill.	$10,000
7:26–11.4(a)7	Placing incompatible wastes in same hazardous waste landfill cell.	$10,000
7:26–11.4(a)8	Placing bulk or non-containerized liquids in landfill without treating liner and liquids and stabilizing liquids.	$10,000
7:26–11.4(a)9	Placing containerized liquids in hazardous waste landfill.	$10,000
7:26–11.4(a)10	Failure to have container, unless very small, such as an ampule, to be either:	
7:26–11.4(a)10i	At least 90 percent full when placed in landfill; or	$2,000
7:26–11.4(a)10ii	Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of landfill.	$2,000
7:26–11.4(a)11	Failure of owner or operator of hazardous waste landfill to cease disposal if liquid detected in secondary collection system unless authorization from Department for continued disposal has been obtained.	$25,000
7:26–11.4(b)1	Failure of facility owner or operator to maintain in operating record details of location and dimensions of each hazardous waste landfill cell.	$10,000
7:26–11.4(b)2	Failure of facility owner or operator to maintain in operating record the contents of each hazardous waste landfill cell and location of each hazardous waste type.	$2,000
7:26–11.4(c)1	Failure of owner or operator of hazardous waste landfill to place final cover over landfill as required by Department.	$50,000
7:26–11.4(c)4i	Failure of owner or operator of a hazardous waste landfill to maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events.	$5,000
7:26–11.4(c)4ii	Failure of facility owner or operator to maintain and monitor the leachate collection, removal, and treatment system to prevent excess accumulation of leachate in the system.	$10,000
7:26–11.4(c)4iii	Failure of facility owner or operator to maintain and monitor the gas collection and control system to control the vertical and horizontal escape of gases.	$10,000
7:26–11.4(c)4iv	Failure of facility owner or operator to protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26–10.4(b)1.	$5,000
7:26–11.4(c)4v	Failure of facility owner or operator to restrict access to the hazardous waste landfill as appropriate for its post-closure use.	$10,000
7:26–11.4(c)4vi	Failure of facility owner or operator to maintain and monitor groundwater monitoring system as per N.J.A.C. 7:26–9.5 or N.J.A.C. 7:14A–6.	$25,000
7:26–11.4(c)4vii	Failure of facility owner or operator to prevent run-on and run-off from eroding or otherwise damaging the final cover.	$3,000
7:26–11.5(b)1	Failure of facility owner or operator, before adding hazardous waste, to bring incinerator to normal operating conditions.	$10,000
7:26–11.5(c)1	Failure of facility owner or operator to meet waste analysis requirements for hazardous waste incinerators.	$10,000
7:26–11.5(d)1	Failure of facility owner or operator when incinerating hazardous waste to monitor instruments relating to combustion and emission control at least every 15 minutes.	$2,000
7:26–11.5(d)2	Failure of facility owner or operator when incinerating hazardous waste to observe stack plume at least hourly.	$2,000
7:26–11.5(d)3	Failure of facility owner or operator to inspect complete incinerator and associated equipment for leaks, spills, etc.; at least daily.	$2,000
7:26–11.5(e)	Failure of facility owner or operator to remove all hazardous wastes and residues from the incinerator at closure.	$10,000
7:26–11.6(b)	Failure of facility owner or operator to bring thermal treatment process to normal operating conditions before adding hazardous waste.	$10,000
7:26–11.6(c)	Failure of facility owner or operator to meet waste analysis requirements for thermal treatment of hazardous waste.	$10,000
7:26–11.6(d)1	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect instruments relating to temperature and emission control at least every 15 minutes.	$2,000
7:26–11.6(d)2	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect stack plume, at least hourly.	$2,000
7:26–11.6(d)3	Failure of facility owner or operator when thermally treating hazardous waste to monitor and inspect process equipment and associated equipment for leaks, spills, etc.; at least daily.	$2,000
7:26–11.6(e)	Failure of facility owner or operator at closure to remove all hazardous waste and residues from thermal treatment process.	$10,000
7:26–11.6(f)	Failure of facility owner or operator to prevent open burning and detonation of waste explosives and highly reactive wastes too close to property line or the open burning of any other hazardous waste.	$5,000
7:26–11.7(a)2	Failure of facility owner or operator to prevent placing of hazardous wastes in treatment process if they could cause process to leak, corrode or fail.	$5,000
7:26–11.7(a)3	Failure of facility owner or operator to provide continuously fed treatment process with a mechanism to stop inflow.	$3,000
7:26–11.7(b)	Failure of facility owner or operator to provide additions to waste analysis required by N.J.A.C. 7:26–9.4(b) for substantially different waste.	$5,000
7:26–11.7(c)1	Failure of facility owner or operator to monitor and inspect discharge control and safety equipment at least once each operating day.	$2,000
7:26–11.7(c)2	Failure of facility owner or operator to gather data from monitoring equipment at least once each operating day.	$2,000
7:26–11.7(c)3	Failure of facility owner or operator to inspect construction materials at least weekly.	$2,000
7:26–11.7(c)4	Failure of facility owner or operator to monitor and inspect discharge confinement structures for erosion, leakage, etc. at least weekly.	$1,000
7:26–11.7(d)	Failure of facility owner or operator to remove all hazardous waste and residues at closure.	$10,000
7:26–11.7(e)	Failure of facility owner or operator to prevent placing ignitable or reactive waste in treatment process unless it is treated according to 7:26–11.7(e).	$10,000
7:26–11.7(f)1	Failure of facility owner or operator to prevent the placing of incompatible wastes, which are not in compliance with N.J.A.C. 7:26–9.4(e), in the treatment process.	$5,000
7:26–11.7(f)2	Failure of facility owner or operator to prevent the placing of hazardous waste in an unwashed tank which previously held incompatible waste or material, except in compliance with N.J.A.C. 7:26–9.4(e)2.	$5,000

12. The violations of N.J.A.C. 7:26–12, Hazardous Waste Facility Permit Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty
N.J.A.C. 7:26–12.1(a)	Construction, installation, modification or operation of hazardous waste facility, without submitting Part A or Part B of permit application.	$50,000
7:26–12.3(b)1	Treating, storing or disposing of hazardous waste types not specified in Part A.	$25,000
7:26–12.3(b)2	Employing processes not specified in Part A application.	$50,000
7:26–12.3(b)3	Exceeding design capacities or operational limits specified in Part A of the permit application.	$50,000
7:26–12.3(c)4	Change in ownership or operational control without receiving approval by Department.	$50,000

Rule	Rule Summary	Base Penalty
7:26–12.3(c)5	Facility owner or operator making changes to existing facility, prior to final disposition of permit application, which amount to reconstruction of facility.	$50,000
7:26–12.3(g)	Failure of facility owner or operator, no longer eligible to continue operation prior to final disposition of permit application, to commence closure immediately.	$10,000
7:26–12.4(a)4	Failure of permittee to take all reasonable steps to minimize or correct any adverse impact on the environment resulting from non-compliance with permit.	$10,000
7:26–12.4(a)8	Failure of permittee to furnish to the Department within a reasonable time, any information which the Department may request and copies of records required to be kept.	$10,000
7:26–12.4(a)9ii	Failure of permittee to allow an authorized representative of the Department to enter and have access to and copy any records that shall be kept under the conditions of the permit.	$5,000
7:26–12.4(a)9iv	Failure of permittee to allow authorized representative of the Department to enter and to sample or monitor any substances or parameters at any location.	$25,000
7:26–12.4(a)10i	Failure to retain records with each piece of required information regarding monitoring sampling and measurements.	$5,000
7:26–12.4(a)11	Failure to sign and certify all applications, reports or information submitted to DEP.	$2,000
7:26–12.4(a)12i	Failure of permittee to give notice to DEP as soon as possible of any planned physical alterations or additions to permitted facility.	$5,000
7:26–12.4(a)12ii	Failure to give advance notice to the Department of any planned changes in the permitted facility or activity which may result in non-compliance with permit requirements.	$5,000
7:26–12.4(a)12iv	Failure to report monitoring results at intervals specified in permit.	$5,000
7:26–12.4(a)12v	Failure to submit compliance reports on interim or final requirements in any compliance schedule within 14 days after schedule date.	$1,000
7:26–12.4(a)12vi	Failure to report any noncompliance which may endanger health or environment, orally within 24 hours or in writing within five days.	$10,000
7:26–12.4(a)12vii	Failure to report all instances of non-compliance not reported under N.J.A.C. 7:26–12.4(a)12iv, v or vi, at time monitoring reports submitted.	$2,000
7:26–12.4(a)12viii	Failure of permittee who becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Department, to promptly submit such facts or information.	$2,000
7:26–12.4(a)14	Failure of permittee to maintain records from each required monitoring well, and for disposal facilities for post closure care period.	$5,000
7:26–12.4(a)15	Permittee commencing treatment, storage, or disposal of hazardous waste at new or modified portion of facility, without certifying that facility has been constructed or modified in accordance with permit, or without Department inspection.	$50,000
7:26–12.4(a)16i	Failure to report, orally within 24 hours, information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.	$25,000
7:26–12.4(a)16ii	Failure to report, orally within 24 hours, information concerning a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste facility which could threaten the environment or human health outside the facility.	$10,000
7:26–12.5(b)	Failure of permittee to give Department required notification in advance of any proposed change of ownership or operational control.	$50,000

Administrative Correction in (g)7.
See: 23 N.J.R. 3138(a).
Amended by R.1993 d.5, effective January 4, 1993.
See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a)), 25 N.J.R. 98(a).
Reflects amendments to N.J.A.C. 7:26–7.6 and 9.4.

Case Notes

Summary proceedings to enforce agency orders, action brought for alleged violations of Pesticide Control Act. State, Dept. of Environmental Protection v. Larchmont Farms, Inc., 266 N.J.Super. 16, 628 A.2d 761 (A.D.1993), certification denied 135 N.J. 302, 639 A.2d 301.

Administrative hearings concerning collection of penalties were not provided for in Solid Waste Management Act; violator is entitled to collection hearing in Superior Court on due process basis, though not to a preliminary Departmental administrative hearing. Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Each shipment of hazardous waste constituted separate violation of regulations governing manifesting and disposing of hazardous waste. Department of Environmental Protection v. Rollins Environmental Services, Inc., 92 N.J.A.R.2d (EPE) 13.

7:26–5.5 Civil administrative penalty determination—discretionary

(a) Notwithstanding N.J.A.C. 7:26–5.4, the Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act. The Department will assess penalties under this section in lieu of N.J.A.C. 7:26–5.4 when the violation is not listed under N.J.A.C. 7:26–5.4 or when, because of the specific circumstances of a violation, the Department in its discretion believes that the penalty amount under N.J.A.C. 7:26–5.4 would be too low to provide a sufficient deterrent effect as required by the Act.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) Notwithstanding N.J.A.C. 7:26–5.4, and unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:26–5.6 through N.J.A.C. 7:26–5.8, the Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the midpoint of the following ranges, unless adjusted pursuant to (i) below.

SERIOUSNESS

		Major	Moderate	Minor
	Major	$40,000–$50,000	$30,000–$40,000	$15,000–$25,000
CONDUCT	Moderate	$30,000–$40,000	$10,000–$20,000	$3,000–$6,000
	Minor	$15,000–$25,000	$3,000–$6,000	$1,000–$2,500

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, adjust the amount determined pursuant to (f), (g) and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (f) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

Case Notes

Department of Environmental Protection entitled to assess penalties; while penalties should be collected by negotiation, the Department may resort to the courts for assistance at any time; neither local governing bodies nor boards of education have standing to bring action for penalties for violations of the Solid Waste Management Act; local board of health has standing to bring penalty action; Department has control over course of litigation over violation claims brought by it as cross-claims. Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

7:26–5.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the mid-point of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be in an amount of not more than $50,000 nor less than $40,000 per act or omission; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of $1,000 per violation.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

Case Notes

Department of Environmental Protection entitled to assess penalties; while penalties should be collected by negotiation, the Department may resort to the courts for assistance at any time; neither local governing bodies nor boards of education have standing to bring action for penalties for violations of the Solid Waste Management Act; local board of health has standing to bring penalty action; Department has control over course of litigation over violation claims brought by it as cross-claims. Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

7:26–5.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section at the mid-point of the following ranges except as adjusted pursuant to (d) below as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Act, the civil administrative penalty shall be in an amount of not more than $30,000 nor less than $20,000 per violation; and

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection the civil administrative penalty shall be in an amount of not more than $5,000 nor less than $3,000 per violation.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and/or severity of violation(s) by the violator;

3. The measures taken by the violator to mitigate the effects of the current violation or prevent future violations;

4. The deterrent effect of the penalty; and/or

5. Other specific circumstances of the violator or the violation.

7:26–5.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) For violations described in this section, the amount of the civil administrative penalty shall be equal to the unpaid fee, up to a maximum of $50,000 per violation.

7:26–5.9 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, in its discretion include as a 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, any district solid waste management plan approved, 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.

7:26–5.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this subchapter are declared to be severable.

SUBCHAPTER 6. INTERDISTRICT AND INTRADISTRICT SOLID WASTE FLOW

Subchapter Historical Note

This subchapter was originally adopted on December 31, 1979 as R.1979 d.502. See: 11 N.J.R. 616(b), 12 N.J.R. 71(b). On December 6, 1982, R.1982 d.434 repealed the existing text and adopted new rules in accordance with a New Jersey Supreme Court decision modifying Department of Environmental Protection authority to direct the interdistrict flow of waste (A.A. Mastrangelo, Inc., et al. v. Commr. Env. Prot., August 11, 1982). See: 14 N.J.R. 1027(b), 14 N.J.R. 1368(a).

7:26–6.1 Authority

This subchapter is promulgated pursuant to the policies set forth in and the authority delegated to the Department of Environmental Protection by the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq. and to the Board of Public Utilities (BPU) pursuant to the Solid Waste Utility Control Act, N.J.S.A. 48:13A–1 et seq.

Law Review and Journal Commentaries

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

Case Notes

Operator of transfer station and recycling center was entitled to preliminary injunctive relief on commerce clause challenge to constitutional validity of solid waste flow regulations; no showing that relief would dismantle significant portion of existing waste flow scheme. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, D.N.J.1995, 893 F.Supp. 301.

Emergency order issued by Dep't of Environmental Protection and Bd. of Public Utilities redirecting county's solid waste flows from closed landfill to transfer station in Pennsylvania did not exceed territorial jurisdiction of those agencies; DEP and BPU were required to comply with procedural requisites regarding amendment to county waste flow plan. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District, 214 N.J.Super. 247, 518 A.2d 1105 (App. Div.1986).

Propriety of selection of site for county landfill by board of chosen freeholders. Twp. Committee of South Harrison Twp. v. Bd. of Chosen Freeholders of Gloucester Cty., 213 N.J.Super. 179, 516 A.2d 1140 (Law Div.1985), reversed 210 N.J.Super. 370, 510 A.2d 42 (1986).

Waste flow redirection regulations promulgated in compliance with Supreme Court decision upheld as reasonable and not violative of the Commerce Clause; ultimate waste flow stream redirection decision properly made by Board of Public Utilities; economic repercussion assessment made; trial-type evidentiary hearing on regulations not required. Elizabeth v. State, Dept. of Environmental Protection, 198 N.J.Super. 41, 486 A.2d 356 (App.Div.1984).

Former N.J.A.C. 7:26–1.11 through 1.15 specifically directing waste flow streams held beyond legislative authority of the Department; regulations more appropriately the realm of the Board of Public Utilities; Department authorized to provide only general direction to solid waste flow. A.A. Mastrangelo, Inc. v. Dept. of Environmental Protection, 90 N.J. 666, 449 A.2d 516 (1982).

Discussion of former N.J.A.C. 7:1–4.2 scheme for determination of out-of-state waste. Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974); reversed 68 N.J. 451, 348 A.2d 505 (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

Jurisdiction regarding authorization of solid waste facility. In re Combustion Equipment Assoc's, 169 N.J.Super. 305, 404 A.2d 1194 (App.Div.1979). Authority of solid waste management districts to direct solid waste to specific disposal facilities (opinions rendered on statutory grounds). Att'y Gen. Form Op. 1980—No. 3.

7:26–6.2 Purpose

The New Jersey Department of Environmental Protection and Energy has reviewed and approved the adopted solid waste management plans for all 22 of the solid waste management districts in New Jersey. Based on these plans, it is evident that interdistrict solutions to planning issues through regional cooperation are required. Further, the Department has determined that the public interest requires the designation of in-State specific disposal facilities to serve as the ultimate destination facility of certain waste streams. This subchapter shall set forth the designations by the Department of intradistrict and interdistrict waste flows, designated specific facilities to serve specific geographic areas. This subchapter shall also set forth the policy for the flow of solid waste prior to receipt at the ultimate designated facility.

Amended by R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

7:26–6.3 Types of waste covered

(a) This subchapter applies to all solid waste, as defined in N.J.A.C. 7:26–2.13, with the exception of the following:

1. Bulk liquid and semi-liquids, ID type 72;
2. Septic tank clean-out wastes, ID type 73;
3. Liquid sewage sludge, ID type 74;
4. Dry sewage sludge, ID type 12;

5. Dry industrial waste, ID type 27, but only if such waste is residue from the operations of a scrap metal shredding facility, provided that the operator of the scrap metal shredding facility satisfies the requirements of (a)5i through iv below:

i. The owner/operator of the scrap metal shredding facility shall obtain the Department's approval of a quality control plan for the facility, which ensures that before shredding the motor vehicles, appliances, or source separated, non-putrescible ferrous and non-ferrous metals received by the facility, the facility removes components that could affect the non-hazardous characteristics of the residue from the operations of the facility. As provided in the quality control plan, the facility may reject any motor vehicles, appliances or source separated non-putrescible ferrous and non-ferrous metal if inspection reveals that components that could affect the non-hazardous characteristics of the residue are present. The facility is considered the generator of the components it accepts for processing, and shall dispose of these components in accordance with all applicable laws, orders and regulations (including N.J.A.C. 7:26–8, if applicable). The components to be removed include, without limitation, the following:

(1) Batteries and cable ends;

(2) Gas tanks;

(3) Catalytic converters;

(4) Unspent airbag canisters;

(5) Transformers;

(6) PCB capacitors; and

(7) Fluorescent lighting fixtures;

ii. The owner/operator of the scrap metal processing facility shall obtain the Department's approval of a sampling and analytical plan which insures monitoring of the characteristics of the residue from the operations of the facility, as set forth in N.J.A.C. 7:26–8 and the most recent edition of the USEPA publication SW–846 "Test Methods for Evaluating Solid Waste–Physical/Chemical Methods," incorporated herein by reference. The operator shall perform sampling and analysis quarterly, including without limitation the Toxicity Characteristic Leaching Procedure (TCLP) parameter as set forth in N.J.A.C. 7:26–8.12, Total Polychlorinated biphenyls (PCB) as set forth in N.J.A.C. 7:26–8.20(b), and Total Petroleum Hydrocarbon Content as set forth in N.J.A.C. 7:26–8.20(a)5. The operator shall submit the analysis performed in accordance with the approved sampling to the Hazardous Waste Regulation Program, Bureau of Advisement and Manifest for classification on January 15, April 15, July 15 and October 15, provided however that if the Department approves less frequent sampling and analysis, the owner/operator shall submit the analysis on the dates specified in the Department's approval of that sampling. Upon a request by the facility and as approved by the Department, the sampling frequency of the approved sampling and analytical plan may be reduced. The owner/operator of the facility shall submit a revised sampling and analytical plan which documents how the accuracy and precision criteria as required in SW–846 will be maintained with a reduced schedule;

iii. On February 15 and August 1 of every year the owner/operator of the scrap metal shredding facility shall submit to the department and to the solid waste district in which the facility is located, a report on forms provided by the Department consistent with the Department's Annual Recycling Tonnage Reporting Manual including the following information:

(1) The total amount of each type of materials which the facility received in the six-month period ending January 1st and July 1st of every year;

(2) The total amount of residue disposed of by the facility;

(3) The total amount of ferrous and non-ferrous metal remaining after shredding; and

(4) The report shall be submitted to the following:

New Jersey Department of Environmental Protection
Division of Solid Waste Management
CN–414
Trenton, NJ 08625
Office of Recycling and Planning; and

iv. The scrap metal shredding facility shall either maintain a scale certified under N.J.A.C. 13:47B–1 and provide specific truck load weigh data to the district in which the facility is located, or transport the residue through the district's weighing facilities to be weighed before the residue is transported for disposal;

6. Source separated Class A recyclable material and Class B recyclable material, as such terms are defined at N.J.A.C. 7:26A–1.3;

7. Hazardous waste, as defined at N.J.A.C. 7:26–8;

8. (Reserved); and

9. Type 13C waste, as defined at N.J.A.C. 7:26–1.4, provided that the Type 13C waste is not commingled with any other waste type(s) and one of the following conditions are met:

i. Recyclable components of the Type 13C waste stream are source separated or source separated and commingled; or

ii. Type 13C waste being transported out-of-State for disposal, including multi-district loads, is first weighed and recorded at the designated district facility prior to disposal at a facility permitted to accept C&D waste; or

iii. Type 13C waste, including multi-district loads, is disposed of at a permitted in-State solid waste facility which is permitted to accept C&D waste.

Public Notice: Notice of receipt of petition for rulemaking.
See: 23 N.J.R. 2187(c).
Action on Petition for Rulemaking: Amend Type 27 waste which exempts certain classes of waste from interdistrict and intradistrict waste flow orders.
See: 23 N.J.R. 2428(b).
Amended by R.1993 d.27, effective January 4, 1993.
See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).
If certain conditions are met, exempts the residue from the operation of scrap metal shredding facilities from the waste flow rules.
Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, expires March 26, 1996).
See: 28 N.J.R. 1305(a).

Law Review and Journal Commentaries

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

7:26–6.4 Informational requirements

Any person registered with the Department for the collection, transportation, and/or disposal of solid wastes affected by this subchapter shall, upon request by the Department, submit, in such form as the Department may deem appropriate, information concerning the sources of wastes collected, and his/her transportation and disposal patterns.

7:26–6.5 District waste flow planning requirements and disposal facility designations

(a) Waste flows within, into and out of the Atlantic County District:

1. All solid waste types 10, 23, and 25 generated from within all Atlantic County municipalities shall be directed to the Atlantic County Transfer Station, facility number 0108M, located in Egg Harbor Township, Atlantic County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective August 8, 1990).

i. Up to 12 tons per day of waste types 10 and 27 generated at the Atlantic County Community College and the Atlantic County Vocational Technical School, and from other commercial, industrial, and governmental generators as may later be determined by agreement between Atlantic County and relevant generators and haulers, shall be disposed of at the Atlantic County Resource Recovery Facility, facility number 0112C, located in Hamilton Township, Atlantic County, New Jersey.

2. All solid waste types 13 and 27 generated from within all Atlantic County municipalities shall be directed to the Atlantic County Landfill, facility number 0108N, located in Egg Harbor Township, Atlantic County, New Jersey.

(b) Waste flows within, into and out of the Bergen County District:

1. Two hundred and fifty thousand (250,000) tons per year of processible solid waste types 10 and 23 generated from within Bergen county and processed at the Sal–Car Transfer Station, facility number 02267b, located in Hillsdale Boro, Bergen County, the DiBella Transfer Station, facility number 0247B, located in Park Ridge Boro, Bergen County, the National Transfer Station, facility number 0231A, located in Lodi Boro, Bergen County, the Garofalo Transfer Station, facility number 0221A, located in Garfield City, Bergen County, and the United Carting Transfer Station, facility number 0218A, located in Fairview Boro, Bergen County, shall be transported directly to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey. (Effective May 1, 1991).

i. All residual ash generated from the operation of the Essex County RRF shall be disposed of by the Bergen County Utilities Authority (BCUA) consistent with the agreement between the BCUA and Essex County and in compliance with the Essex County RRF facility permit at permitted and approved out-of-State landfill facilities. (Effective May 1, 1991).

ii. Bypass waste and nonprocessible waste generated from the operation of the Essex County RRF shall be disposed of consistent with the agreement between the BCUA and Essex County and in accordance with the provisions of the approved Essex County District Solid Waste Management Plan. (Effective May 1, 1991).

2. At the request of Essex County, processible solid waste types 10 and 23 generated within Bergen County in an amount not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993, and 1,700 tons per week from March 1, 1993 through July 31, 1993 shall be transported to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, New Jersey, on an as needed basis from one of the transfer stations set forth in (b)1 above or (b)4 below.

3. Except as may be required by the terms of (b)2 above, to the extent that the five private transfer stations set forth in (b)1 above process tonnages in excess of the 250,000 tons noted above, all excess processible solid waste types 10, 13, 23, 25 and 27 shall be directed from each individual transfer station to an approved out-of-State disposal facility as provided in the Bergen County Plan. (Effective May 19, 1992).

4. All remaining solid waste types 10, 13, 23, 25 and 27 generated within Bergen County and not processed by the five transfer stations identified in (b)1 above shall continue to be directed to the Bergen County Utilities Authority Transfer Station, facility number 0232C, located in North Arlington, Bergen County, prior to transportation to an approved out-of-State disposal facility as provided in the Bergen County Plan. (Effective May 1, 1991).

5. All solid waste type 10 generated from within North Arlington shall be disposed of at the HMDC 1–E landfill, facility number 0239D, located in North Arlington, Bergen County. Upon closure of the HMDC 1–E Landfill, all solid waste type 10 generated from within North Arlington shall be redirected to the Bergen County Utilities Authority Transfer Station, facility number 0232C, located in North Arlington, Bergen County, prior to transportation to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

(c) Waste flows within, into and out of the Burlington County District:

1. All solid waste types 10, 13, 23, 25 and 27 generated from within all Burlington County municipalities, with the exception of (c)1i noted below, shall be disposed of at the Burlington County Landfill, facility number 0318A, located in Florence and Mansfield Townships, Burlington County, New Jersey.

i. All waste types 10, 23, and 27 generated at the Fort Dix Army Base and the McGuire Air Force Base, located within New Hanover and North Hanover Townships, shall be disposed of at the Fort Dix Heat Recovery Incinerator, facility number 0325A, located in New Hanover Township, Burlington County. All non-processible and non-hazardous residual waste shall be disposed of at the Burlington County Landfill.

(d) Waste flows within, into and out of the Camden County District:

1. All residential waste types 10, 13, 23, 25 and 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey. Once transferred, the waste from the Winslow Township Transfer Station shall be disposed of at the South Camden Resource Recovery Facility, Facility Number 0408C, except for waste type 25 which shall continue to be directed from the transfer station to out-of-State disposal in accordance with the laws and regulations of the receiving state.

i. All commercial waste types 10, 13, 23, and industrial waste type 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be disposed of directly at the South Camden Resource Recovery Facility, Facility Number 0408C, except that waste type 25 shall continue to be disposed of directly out-of-State in accordance with the laws and regulations of the receiving state.

2. All waste types 23 and 27 and nonprocessible 13 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility numbers 0427D1SE01, 0427D1SE03, and 0427A–E1, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees shall be disposed of out-of-state in an approved facility in accordance with the laws and regulations of the receiving state.

ii. All waste types 10 and processible 13 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock, and Voorhees shall be disposed of at the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County. (Effective January 13, 1992).

3. All solid waste types 10, 13, 23, and 27 generated within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Borough, Berlin Township, Brooklawn, Camden City, Chesilhurst, Clementon, Collingswood, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi–Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Waterford, Winslow and Woodlynne shall be directed to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey.

i. All waste type 25 from the municipalities listed in (d)3 above, and ash from the operation of the South Camden Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state.

ii. All of the bypass and nonprocessible waste from the operation of the South Camden Resource Recovery Facility shall be disposed of at the Pennsauken Township Sanitary Landfill, facility numbers 0427D1SE01, 0427D1SE03, and 0427A–E1, located in Pennsauken Township, Camden County, New Jersey. Also, in the event that nonhazardous ash from the operation of the resource recovery facility cannot be disposed of at an out-of-State facility, such ash shall be disposed of at the Pennsauken Township Sanitary Landfill. (Effective January 13, 1992).

iii. In the event a unified rate system is established for all solid waste facilities within Camden County, all solid waste types 10, 13, 23, 25 and 27 generated from within Berlin Borough and Berlin Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey. Once transferred, the waste from the Winslow Township Transfer Station

shall be disposed of at the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey, except that waste type 25 shall be directed from the transfer station to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

(e) Waste flows within, into and out of the Cape May County District:

1. All waste types 10, 13, 23, 25, and 27 generated from within the Cape May County municipalities of Avalon, Cape May City, Cape May Point Boro, Dennis, Lower, Middle, North Wildwood, Ocean City, Sea Isle City, Stone Harbor, Upper, West Cape May, West Wildwood, Wildwood, Wildwood Crest, and Woodbine shall be disposed of at the Cape May County regional landfill, facility number 0511C, located in Borough of Woodbine and Township of Upper, Cape May County, New Jersey.

(f) Waste flows within, into and out of the Cumberland County District:

1. All waste types 10, 13, 23, 25, and 27 generated from within the Cumberland County municipalities of Bridgeton, Commercial, Deerfield, Downe, Fairfield, Greenwich, Hopewell, Lawrence, Maurice River, Millville, Stow Creek, Shiloh, Upper Deerfield, and Vineland shall be disposed of at the Cumberland County regional landfill, facility number 0603B, located in Deerfield Township, Cumberland County, New Jersey.

(g) Waste flows within, into and out of the Essex County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Essex County municipalities of Irvington, Livingston, Maplewood, Millburn, and South Orange are hereby directed to the Waste Management of New Jersey Transfer Station, located at 100 Avenue A, in the City of Newark, Essex County, New Jersey.

2. All solid waste types 10, 23, 25, and 27 generated from within the Essex County municipality of Newark are hereby directed to the Waste Management of New Jersey Transfer Station, located at 100 Avenue A, in the City of Newark, Essex County, New Jersey.

3. All solid waste types 10, 13, 23, 25, and 27 generated from within the Essex County municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange are hereby directed to the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at 442 Frelinghuysen Avenue, in the City of Newark, Essex County, New Jersey.

4. All solid waste type 13 generated from within the Essex County municipality of Newark is hereby directed to the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at 442 Frelinghuysen Avenue, in the City of Newark, Essex County, New Jersey.

5. Upon commencement of operations of the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at Hill Street, in the City of Orange, Essex County, New Jersey, all solid waste types 10, 23, 25, and 27 generated from within the Essex County municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange shall be directed to this facility.

6. All solid waste types 10, 23, and 27 generated within the municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, Newark, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, and West Orange is directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey.

i. All waste types 13, 25 and nonprocessible type 27 from the municipalities listed in (g)6 above, shall be disposed of at approved out-of-state facilities in accordance with the laws and regulations of the receiving state. Out–of–State disposal shall be via the Solid Waste Transfer and Recycling, Inc., Transfer Station, facility number 0714R, located in Newark, Essex County, New Jersey.

7. Two hundred and fifty thousand (250,000) tons per year of processible solid waste types 10 and 23 generated from within Bergen County and processed at the transfer stations listed in (b)1 above shall be directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey. (Effective May 1, 1991). In addition, at the request of Essex County, processible solid waste types 10 and 23 generated within Bergen County in an amount not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993, and 1,700 tons per week from March 1, 1993 through July 31, 1993 shall be transported to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, New Jersey, on an as needed basis from one of the transfer stations set forth in (b)1 and 4 above.

i. All residual ash generated from the operation of the Essex County RRF shall be disposed of by the BCUA consistent with the agreement between the BCUA and Essex County and in compliance with the Essex County RRF facility permit at permitted and approved out-of-State landfill facilities. (Effective May 1, 1991).

ii. Bypass waste and nonprocessible waste generated from the operation of the Essex County RRF shall be disposed of consistent with the agreement between the BCUA and Essex County and in accordance with the provisions of the approved Essex County District Solid Waste Management Plan. (Effective May 1, 1991).

(h) Waste flows within, into and out of the Gloucester County District:

1. All solid waste types 10, 13, 23, 25 and 27 generated from within the Gloucester County municipalities of Clayton, Deptford, East Greenwich, Elk, Franklin, Glassboro, Greenwich, Harrison, Logan, Mantua, Monroe, National Park, Newfield, Paulsboro, Pitman, South Harrison, Swedesboro, Washington, Wenonah, West Deptford, Westville, Woodbury, Woodbury Heights, and Woolrich, shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

2. When the Gloucester County resource recovery facility becomes operational, solid waste types 10, 13, 23 and 25 generated in all of Gloucester County's municipalities shall be directed to the resource recovery facility, facility number 0820I, located in West Deptford Township, Gloucester County, New Jersey.

3. All bypass waste and non-hazardous ash from the resource recovery facility shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

(i) Waste flows within, into and out of the Hackensack Meadowlands District:

1. The Hackensack Meadowlands Development Commission shall accept certain waste flows from Bergen and Hudson Counties as described in (b) above and (j) below.

(j) Waste flows within, into and out of the Hudson County District:

1. All waste types 13, 23, 25, and 27 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey for handling prior to transportation to out-of-State permitted disposal facilities in accordance with the laws and regulations of the receiving state. (Effective February 4, 1991).

2. All waste type 10 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York Town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey, for baling prior to disposal at the Hackensack Meadowlands Development Commission 1–E landfill, facility number 0907W, located in North Arlington, Bergen County, New Jersey. (Effective February 4, 1991).

3. Upon closure of the HMDC 1–E landfill, all waste type 10 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York Town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey for handling prior to transportation to out-of-State permitted disposal facilities in accordance with the laws and regulations of the receiving state. (Effective February 4, 1991).

(k) Waste flows within, into and out of the Hunterdon County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Alexandria, Bethlehem, Bloomsbury, Califon, Clinton Town, Clinton Township, Delaware, East Amwell, Flemington, Franklin, Glen Gardener, Hampton, High Bridge, Holland, Kingwood, Lambertville, Lebanon Boro, Lebanon Township, Milford, Raritan, Readington, Tewksbury, Union and West Amwell shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County.

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Stockton and Frenchtown shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County.

3. Up to 100 tons per day of processible solid waste generated within Hunterdon County shall be transported from the Hunterdon County Transfer Station, facility number 1006B, located in Clinton Township, Hunterdon County, New Jersey, to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey, through the year 2001. (Effective June 1, 1988).

(*l*) Waste flows within, into and out of the Mercer County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Mercer County municipalities shall be directed to the Mercer County Transfer Station, facility number 1102D, located in Ewing Township, Mercer County, New Jersey, for processing prior to disposal at

the G.R.O.W.S. landfill in Bucks County, Pennsylvania, in accordance with the laws and regulations of the receiving state. (Effective November 1, 1988).

(m) Waste flows within, into and out of the Middlesex County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all municipalities in Middlesex County shall be disposed of at the Middlesex County Utilities Authority Landfill (Edgeboro), facility number 1204A, located in East Brunswick, Middlesex County, New Jersey. (Effective July 19, 1990).

(n) Waste flows within, into and out of the Monmouth County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Monmouth County municipalities shall be disposed of at the Monmouth County Reclamation Center Landfill and Shredder Facility, facility numbers 1336F and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

(*o*) Waste flows within, into and out of the Morris County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Chester Borough, Chester Township, Dover, Jefferson, Mendham Borough, Mendham Township, Mine Hill, Mount Arlington, Mount Olive, Netcong, Randolph, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens, Washington, and Wharton shall be directed to the Morris County Transfer Station, facility number 1427F, located in Mount Olive Township, Morris County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Boonton Borough, Boonton Township, Butler, Chatham Borough, Chatham Township, Denville, East Hanover, Florham Park, Hanover, Harding, Kinnelon, Lincoln Park, Madison, Montville, Morris Plains, Morris Township, Morristown, Mountain Lakes, Parsippany–Troy Hills, Passaic, Pequannock, and Riverdale shall be directed to the Morris County Transfer Station, facility number 1429J, located in Parsippany–Troy Hills Township, Morris County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

(p) Waste flows within, into and out of the Ocean County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Ocean County municipalities shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

(q) Waste flows within, into and out of the Passaic County District:

1. All solid waste types 10 (except medical wastes), 13 (except large bulky wastes including such items as cable larger than six feet, foam insulation, tires, etc.), 23 (except leaves), 25, and 27 (except dry industrial waste such as plastics, rags, bulk powders, and containers with tar and paint residues, etc.) generated from within the Passaic County municipalities of Haledon, Hawthorne, North Haledon, Passaic City, Prospect Park, and Paterson shall be directed to the Pen Pac, Inc., Fulton Street Transfer Station, facility number 1608H, located in the City of Paterson, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state. (Effective January 23, 1989).

2. Upon issuance of all required departmental permits, all solid waste types 10 (except medical wastes), 13 (except large bulky wastes including such items as cable larger than six feet, foam insulation, tires, etc.), 23 (except leaves), 25, and 27 (except dry industrial waste such as plastics, rags, bulk powders, and containers with tar and paint residues, etc.) generated from within the Passaic County municipalities of Bloomingdale, Clifton, Little Falls, Pompton Lakes, Ringwood, Totowa, Wanaque, Wayne, West Milford, and West Paterson shall be directed to the Pen Pac, Inc., Totowa Transfer Station, facility number 1612B, located in Totowa Borough, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

3. Only solid waste types 10, 13, and 27, which are prohibited from the Fulton Street and Totowa Transfer Stations as indicated in (q)1 and 2 above, generated from all Passaic County municipalities shall be directed to Pen Pac, Inc., Iowa Avenue Transfer Station, facility number 1608A, located in the City of Paterson, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

(r) Waste flows within, into and out of the Salem County District:

1. All waste types 10, 13, 23, 25 and 27 generated from within the Salem County municipalities of Alloway, Carney's Point, Elmer, Elsinboro, Lower Alloways Creek, Mannington, Oldmans, Pennsville, Penns Grove, Pilesgrove, Pittsgrove, Quinton, Salem City, Upper Pittsgrove and Woodstown, shall be disposed of at the Salem County regional landfill, facility number 1701B, located in Alloway Township, Salem County, New Jersey.

(s) Waste flows from within, into and out of the Somerset County District:

1. All nonputrescible, recyclable (commercial and institutional) waste type 10 and all waste type 27 generated from within the Somerset County municipalities of Bound Brook, Franklin, Manville, Millstone, Montgomery, Raritan, Rocky Hill, Somerville, and South Bound Brook, shall be directed to the Somerset Intermediate Recycling Center Transfer Station, facility number 1808K, located in Franklin Township, Somerset County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, North Plainfield, Peapack–Gladstone, Warren, and Watchung, and all solid waste types 10, 13, 23, and 25 generated from within the Somerset County municipalities of Bound Brook, Franklin, Manville, Millstone, Montgomery, Raritan, Rocky Hill, Somerville, and South Bound Brook not directed to the Somerset Intermediate Recycling Center Transfer Station, shall be directed to the Bridgewater Resources, Inc. Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, New Jersey, prior to disposal at permitted out-of-state facilities in accordance with the laws and regulations of the receiving state or pursuant to (s)3 below. (Effective January 2, 1988).

3. Up to 1,400 tons per week of processible solid waste generated within Somerset County shall be transported from the Bridgewater Resources, Inc. Transfer Station to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey, through the year 2001. (Effective June 30, 1989). From January 1, 2002 through November 30, 2008, Somerset County shall increase the processible waste it directs to the Warren County Resource Recovery Facility to 1,977 tons per week.

(t) Waste flows within, into and out of the Sussex County District:

1. All solid waste types 10, 13 and 23 generated from within the Sussex County municipality of Hopatcong shall be disposed of at Hopatcong Sanitary Landfill, facility number 1912A, located in Hopatcong Borough, Sussex County, New Jersey.

i. Upon closure of this facility, all solid waste types 10, 13 and 23 generated from the Sussex County municipality of Hopatcong Borough shall be disposed of at the new Sussex County Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey.

ii. All solid waste types 25 and 27 generated from within the Sussex County municipality of Hopatcong Borough shall be disposed of at the Sussex County Landfill, facility number 1913C located in Lafayette Township, Sussex County, upon commencement of operations. Prior to commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, facility number 1913D.

2. All solid waste types 10, 13, 23, 25 and 27 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Hardyston, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Sparta, Stanhope, Stillwater, Sussex, Vernon, Walpack and Wantage shall be disposed of at the Sussex County Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey, upon commencement of operations. Prior to the commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, Facility Number 1913D.

(u) Waste flows within, into and out of the Union County District:

1. All solid waste type 10 collected by municipal vehicles and generated from within the Union County municipalities of Summit and New Providence shall be directed to the Summit Transfer Station, facility number 2018A, located in Summit, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, and 23 generated from within the Union County municipality of Linden and collected by municipal vehicles shall be disposed of at the Linden Landfill, facility number 2009A, located in Linden, Union County, New Jersey. (Effective January 2, 1988).

3. All solid waste types 10, 13, and 23 formerly delivered by private citizens to the Elizabeth Public Works Convenience Center and all solid waste types 10, 13, and 23 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, and Union Township and collected by municipal vehicles or White Brothers Trucking, and all solid waste types 10 and 13 generated by hospitals from within these same Union County municipalities shall be directed to the Ellesor Transfer Station, facility number 2004D, located in Elizabeth, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

4. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of Berkeley Heights, Clark, Cranford, Fanwood, Garwood, Kenilworth, Mountainside, Plainfield, Rahway, Scotch Plains, Springfield, Westfield, and Winfield; all solid waste type 10 generated within the Union County municipalities of New Providence and Summit not directed to the Summit Transfer Station pursuant to (u)1. above; all solid waste type 13, 23, 25, and 27 generated from within the Union County municipalities of New Providence and Summit;

all solid waste types 10, 13, and 23 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, and Union Township not directed to the Ellesor Transfer Station pursuant to (u)3 above; all solid waste types 25 and 27 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, Union Township and Linden; and all solid waste types 10, 13 and 23 generated within the Union County municipality of Linden not directed to the Linden Landfill pursuant to (u)2 above, shall be directed to the Automated Modular Systems Transfer Station, facility number 2009I, located in Linden, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

5. For the purposes of this rule for Union County, municipal vehicles shall constitute collection vehicles owned or operated by a municipality, or collection vehicles owned or operated by a private entity which operates pursuant to a municipal contract.

6. When the Union County resource recovery facility, facility number 2013C, located in Rahway City, Union County, becomes operational, processable non-recyclable solid wastes generated from all Union County municipalities shall be redirected to the energy recovery facility. Ash from the resource recovery facility and all bypass and nonprocessible waste shall be disposed of at the Empire Landfill located in Lackawanna County, Pennsylvania, in accordance with the laws and regulations of the receiving state.

(v) Waste flows within, into and out of the Warren County District:

1. All processible portions of solid waste types 10, 23, and 27 generated from within all Warren County municipalities shall be disposed of at the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey. (Effective June 1, 1988).

2. All nonprocessible, nonrecyclable portions of solid waste types 10, 23, and 27, all solid waste types 13 and 25 generated from within all Warren County municipalities, and all ash, bypass and nonprocessible waste from the Warren County Resource Recovery Facility shall be disposed of at the Warren County Landfill, facility 2123D, located in White Township, Warren County, New Jersey. (Effective June 1, 1988).

3. Up to 100 tons per day of processible solid waste generated from within Hunterdon County shall be transported from the Hunterdon County Transfer Station, facility number 1006B, located in Clinton Township, Hunterdon County, New Jersey, to the Warren County Resource Recovery Facility through the year 2001. (Effective June 1, 1988).

4. Up to 1,400 tons per week of processible solid waste generated from within Somerset County shall be transported from the Bridgewater Resources Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, New Jersey, to the Warren County Resource Recovery Facility through the year 2001. (Effective June 30, 1989). From January 1, 2002 through November 30, 2008, Somerset County shall increase the processible waste it directs to the Warren County Resource Recovery Facility to 1,977 tons per week.

(w) The dates set forth in parentheses in the preceding subsections indicate when the emergency redirection orders originally implementing the subsections provisions became effective.

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

As amended, R.1984, d.4, effective January 17, 1984.
See: 15 N.J.R. 1914(a), 16 N.J.R. 134(a).
(k) substantially amended; (*o*)11 revised; (p)9–13 added; (v) substantially amended.
As amended, R.1984 d.41, effective February 21, 1984.
See: 15 N.J.R. 1417(a), 16 N.J.R. 367(c).
(m)1iii and iv revised.
As amended R.1984 d.474, effective October 15, 1984.
See: 16 N.J.R. 1000(a), 16 N.J.R. 2806(a).
(c)13 deleted; previous (c)14 redesignated (c)11l (*l*)1 substantially revised.
As amended, R.1984 d.475, effective October 15, 1984.
See: 16 N.J.R. 1149(a), 16 N.J.R. 2808(a).
Substantially amended.
Amended by R.1985 d.317, effective June 17, 1985.
See: 17 N.J.R. 517(b), 17 N.J.R. 1560(a).
(a)8iii added.
Amended by R.1985 d.503, effective October 7, 1985.
See: 15 N.J.R. 517(a), 17 N.J.R. 2388(a).
(k)3 added. This amendment was adopted jointly with the Board of Public Utilities.
Amended by R.1986 d.159, effective May 5, 1986.
See: 17 N.J.R. 2590(a), 18 N.J.R. 983(b).
(p)5i and (p)6i-ii added.
Amended by R.1986 d.164, effective May 5, 1986.
See: 17 N.J.R. 2591(a), 18 N.J.R. 983(c).
Deleted old (d)3 through (d)8 and inserted new (d)3–5.
Amended by R.1987 d.71, effective January 20, 1987.
See: 18 N.J.R. 2171(a), 19 N.J.R. 202(a).
(c) substantially amended.
Amended by R.1987 d.72, effective January 20, 1987.
See: 18 N.J.R. 1773(a), 19 N.J.R. 202(b).
(d) substantially amended.
Amended by R.1988 d.357, effective August 1, 1988.
See: 19 N.J.R. 1142(a), 20 N.J.R. 1910(a).
The amendments to this section were jointly adopted with Public Utilities. The section was substantially amended.
Amended by R.1989 d.308, effective June 5, 1989.
See: 20 N.J.R. 1048(a), 21 N.J.R. 1558(a).

The amendments were jointly adopted with the Board of Public Utilities. Essex County solid waste redirected from HMDC 1–C landfill to 3 transfer stations for processing and transfer to out-of-state facilities.
Amended by R.1990 d.324, effective July 2, 1990.
See: 21 N.J.R. 1486(a), 22 N.J.R. 2005(b).
All Bergen County solid waste, except type 10, directed to facility 0239E1SP01.
Amended by R.1991 d.113, effective March 4, 1991.
See: 22 N.J.R. 284(a), 23 N.J.R. 719(a).
The amendments to this section were jointly adopted with the Board of Public Utilities.
Gloucester City added to waste flow list in (d)1. Designated out-of-state facility deleted by name in (d)1, new (d)4i and (d)5. Added new (d)3, redesignated existing (d)3 as (d)4. Recodified (d)4 as (d)5. Replaced (d)5 and (d)6. Added (d)7. Added (g)6. Repealed (h)1–5 and added new (h)1. Recodified and amended (h)6 to (h)2; (h)6i repealed and added new (h)3. Deleted (t)1 through 8. Recodified (t)9 as (t)1. Added (t)1ii. Deleted (t)10 through 14. Added (t)2.
Amended by R.1993 d.109, effective March 1, 1993.
See: 24 N.J.R. 3291(a), 25 N.J.R. 991(a).
Waste flows updated and simplified for all counties; amendments adopted solely by DEPE, in accordance with Executive Order No. 38(1991) Reorganization Plan 002(1991).

Law Review and Journal Commentaries

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

Solid Waste—Environmental Law—Equitable Estoppel. Judith Nallin, 137 N.J.L.J. No. 1, 50 (1994).

Will Carbone Spark Solid Waste Crisis. Leslie Jeddis Lang, 137 N.J.L.J. No. 9, 10 (1994).

Case Notes

Rule requiring deposit of waste collected in county at transfer station for processing and subsequent disposal was not per se invalid under Commerce Clause. J. Filiberto Sanitation, Inc. v. State of N.J. Dept. of Environmental Protection, C.A.3 (N.J.)1988, 857 F.2d 913.

Emergency waste redirection order; retroactive codification by amendments to administrative code. Passaic County Utilities Authority v. DiBella Sanitation Service, Inc., 272 N.J.Super. 238, 639 A.2d 745 (A.D.1994).

County health department; contract with county utilities authority; regulation of solid waste. Passaic County Utilities Authority v. DiBella Sanitation Service, Inc., 272 N.J.Super. 238, 639 A.2d 745 (A.D.1994).

County could not charge solid waste hauler with transporting waste out of county in violation of waste disposal plan. Passaic County Utilities Authority v. DiBella Sanitation Service, Inc., 272 N.J.Super. 238, 639 A.2d 745 (A.D.1994).

Environmental Rights Act to supplement actions by Department of Environmental Protection and Energy against solid waste hauler. Morris County Transfer Station, Inc. v. Frank's Sanitation Service, Inc., 260 N.J.Super. 570, 617 A.2d 291 (A.D.1992).

Franchisee was entitled to preliminary injunction against hauler diverting waste collected in county. Morris County Transfer Station, Inc. v. Frank's Sanitation Service, Inc., 260 N.J.Super. 570, 617 A.2d 291 (A.D.1992).

Solid waste facility constructed, acquired or operated under Solid Waste Management Act is subject to Act. Matter of Recycling & Salvage Corp., 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Cease and desist order was supported by evidence. Matter of Recycling & Salvage Corp., 246 N.J.Super. 79, 586 A.2d 1300 (A.D. 1991).

Authority to require recycling facility to obtain approval to receive waste. Matter of Recycling & Salvage Corp., 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Finding that business was not recycling facility was supported by evidence. Matter of Recycling & Salvage Corp., 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Emergency waste flow orders were exempt from Sherman Anti-Trust Act. Matter of Fiorillo Bros. of N.J., Inc., 242 N.J.Super. 667, 577 A.2d 1316 (A.D.1990), certification denied 122 N.J. 363, 585 A.2d 371.

Emergency order redirecting solid waste flows from closed landfill to transfer station in Pennsylvania did not exceed territorial jurisdiction of agencies. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District, 214 N.J.Super. 247, 518 A.2d 1105 (App. Div.1986).

Court order barring Philadelphia from using privately-owned, state regulated New Jersey landfill not violative of Federal Commerce Clause as not a mere protectionist measure and as the state interest in enforcing injunction outweighed the burden on interstate commerce. Boro. of Glassboro v. Gloucester Cty. Bd. of Chosen Freeholders, 100 N.J. 134, 495 A.2d 49 (1985), certiorari denied 106 S.Ct. 532, 474 U.S. 1008, 88 L.Ed.2d 464 (1985).

Redirection of solid waste flow for 180 days due to economic emergency condition at landfill, which would have a direct environmental impact, proper: Board of Public Utilities' and Department of Environmental Protection's action in ordering redirection reasonable. In re New Jersey Bd. of Public Utilities, 200 N.J.Super. 544, 491 A.2d 1295 (App.Div.1985).

7:26–6.6 Procedure for modification of waste flows pursuant to an amendment to a District Solid Waste Management Plan

(a) This section shall govern the procedures to be followed in the event that a Board of Chosen Freeholders or the Hackensack Commission adopts a plan amendment, in accordance with N.J.S.A. 13:1E–23, which provides for the modification of existing waste flows.

(b) Upon a determination by the Department that such a plan amendment is complete and acceptable for review, which determination shall be made within 30 days of receipt by the Department, the Department shall forward a copy of that amendment to the Board of Public Utilities (Board).

1. Amendments found not acceptable shall be returned to the district, with explanation of the reasons for such determination.

(c) The Department and the Board shall, after notice pursuant to N.J.S.A. 52:14B–4 and N.J.A.C. 1:30, conduct a public hearing at least 15 days following publication of the proposed waste flow modification in the New Jersey Register.

(d) Within 30 days after the public hearing, the Board shall submit its recommendations to the Department on the proposed waste flow modification.

(e) The Department may, concurrent with, or following approval by the Commissioner of the relevant portions of the plan amendment, adopt the proposed waste flow modifi-

cation pursuant to N.J.S.A. 52:14B–1 et seq. and N.J.A.C. 1:30.

Case Notes

Waste flow control regulations favored district's designated facilities at expense of out-of-state providers of processing and disposing services, and discriminated against interstate commerce; heightened scrutiny test was applicable under dormant commerce clause analysis; overruling *J. Filiberto Sanitation*, 857 F.2d 913. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, C.A.3 (N.J.)1995, 48 F.3d 701, rehearing and rehearing in banc denied, on remand 893 F.Supp. 301.

Procedural defects did not invalidate amendment and emergency order redirecting flow of solid waste in county. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 133 N.J. 206, 627 A.2d 614 (1993).

Department of Environmental Protection was required to adhere to procedural requirements of Administrative Procedure Act governing rule making with respect to adoption of plan amendment. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 133 N.J. 206, 627 A.2d 614 (1993).

Emergency adoption of solid waste flow redirection order must conform with emergency rule-making procedures of Administrative Procedure Act. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D. 1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Order governing place of disposal of solid waste must be jointly issued by Department of Environmental Protection (DEP) and Board of Public Utilities (BPU). Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D. 1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Emergency waste flow redirection order was invalid. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D.1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

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

Emergency order issued by Dep't of Environmental Protection and Bd. of Public Utilities redirecting county's solid waste flows from closed landfill to transfer station in Pennsylvania did not exceed territorial jurisdiction of those agencies; DEP and BPU were required to comply with procedural requisites regarding amendment to county waste flow plan. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District, 214 N.J.Super. 247, 518 A.2d 1105 (App. Div.1986).

7:26–6.7 Procedure for emergency direction or redirection of solid waste flow

(a) Upon a determination by the Department that an emergency condition, including but not limited to the unanticipated closure of a disposal facility or restricted access thereto, requires the redirection of waste flows, the Department may, after approval by the Board, order such redirection.

(b) The Department shall, within 20 days of such redirection, determine the likely duration of the redirection.

1. If the expected duration is 90 days or less, the Department's redirection shall remain in effect.

2. If the expected duration is greater than 90 days but not more than 180 days, the Department and the Board shall, by public notice, request written comment for a 30–day period. The Department and the Board may modify such waste flow redirections on the basis of comments received.

3. If the expected duration is greater than 180 days, the Department shall order the affected districts to submit a plan amendment which provides for the modification of existing waste flows.

Law Review and Journal Commentaries

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

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

Case Notes

Injunction would constitute "emergency condition" within meaning of emergency solid waste flow redirection regulation. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, D.N.J.1995, 893 F.Supp. 301.

Emergency order redirecting of solid waste to another disposal facility must be based on sufficient credible evidence that emergency existed. Matter of Emergency Redirection of Solid Waste from Atlantic County to Cape May County Landfill, 275 N.J.Super. 1, 645 A.2d 144 (A.D.1994).

Economic hardship did not create "emergency" that would justify ordering redirection of solid waste. Matter of Emergency Redirection of Solid Waste from Atlantic County to Cape May County Landfill, 275 N.J.Super. 1, 645 A.2d 144 (A.D.1994).

"Emergency" supporting emergency redirection of solid waste to another disposal facility; definition. Matter of Emergency Redirection of Solid Waste from Atlantic County to Cape May County Landfill, 275 N.J.Super. 1, 645 A.2d 144 (A.D.1994).

Procedural defects did not invalidate amendment and emergency order redirecting flow of solid waste in county. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 133 N.J. 206, 627 A.2d 614 (1993).

Department of Environmental Protection was required to adhere to procedural requirements of Administrative Procedure Act governing rule making with respect to adoption of plan amendment. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 133 N.J. 206, 627 A.2d 614 (1993).

Emergency adoption of solid waste flow redirection order must conform with emergency rule-making procedures of Administrative Procedure Act (APA). Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D. 1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Order governing place of disposal of solid waste must be jointly issued by Department of Environmental Protection (DEP) and Board of Public Utilities (BPU). Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D. 1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Emergency waste flow was invalid. Matter of Certain Amendments to Adopted and Approved Solid Waste Management Plan of Hudson County Solid Waste Management Dist., 258 N.J.Super. 290, 609 A.2d 501 (A.D.1992), certification granted 130 N.J. 398, 614 A.2d 620, affirmed in part, reversed in part 133 N.J. 206, 627 A.2d 614.

Emergency order issued by Dep't of Environmental Protection and Bd. of Public Utilities redirecting county's solid waste flows from closed landfill to transfer station in Pennsylvania did not exceed territorial jurisdiction of those agencies; DEP and BPU were required to comply with procedural requisites regarding amendment to county waste flow plan. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District, 214 N.J.Super. 247, 518 A.2d 1105 (App. Div.1986).

Redirection of solid waste flow for 180 days due to economic emergency condition at landfill, which would have a direct environmental impact, proper; Board of Public Utilities' and Department of Environmental Protection's action in ordering redirection reasonable. In re New Jersey Bd. of Public Utilities, 200 N.J.Super. 544, 491 A.2d 1295 (App.Div.1985).

7:26–6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A–1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and non-ferrous metal remaining after the shredding process; and

2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B–1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

New Rule, R.1993 d.27, effective January 4, 1993.
See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

7:26–6.9 Transporting solid waste between solid waste districts and out-of-State

(a) Notwithstanding the designation of specific disposal facilities for ultimate disposal of certain waste streams, it shall not be a violation of N.J.A.C. 7:26–6 or any franchise approvals issued pursuant to N.J.S.A. 48:13A–5 or solid waste generated in a district to be transported out of that district or for out-of-district waste to enter a solid waste district for the processing or recovery of materials provided the requirements of N.J.A.C. 7:26–2.11, 2.13, and 2B.9 are met.

(b) Facilities designated by solid waste districts for the ultimate in-State disposal of solid waste shall accept out-of-district waste from transfer stations or materials recovery facilities provided the requirements of N.J.A.C. 7:26–2.13 are met.

New Rule, R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Case Notes

Waste flow control regulations favored district's designated facilities at expense of out-of-state providers of processing and disposing services, and discriminated against interstate commerce; heightened scrutiny test was applicable under dormant commerce clause analysis; overruling *J. Filiberto Sanitation*, 857 F.2d 913. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, C.A.3 (N.J.)1995, 48 F.3d 701, rehearing and rehearing in banc denied, on remand 893 F.Supp. 301.

Court order barring Philadelphia from using privately-owned, state regulated New Jersey landfill not violative of Federal Commerce Clause as not a mere protectionist measure and as the state interest in enforcing injunction outweighed the burden on interstate commerce. Boro of Glassboro v. Gloucester Cty. Bd. of Chosen Freeholders, 100 N.J. 134, 495 A.2d 49 (1985), certiorari denied 106 S.Ct. 532, 474 U.S. 1008, 88 L.Ed.2d 464 (1985).

SUBCHAPTER 7. LABELING, RECORDS AND TRANSPORTATION REQUIREMENTS

Subchapter Historical Note

Adopted as R.1978 d.72, effective February 27, 1978. See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

7:26–7.1 Vehicle placard requirements

(a) All vehicles containing hazardous waste shall be conspicuously placarded. The hazardous waste generator shall placard the vehicle or offer the initial hauler the appropriate placards. Such placarding shall meet the requirements of the United States Department of Transportation for the transport of hazardous materials (49 CFR 171—49 CFR 177).

(b) No hazardous waste facility shall accept hazardous waste unless the vehicle is properly placarded in accordance with this section.

Amended by R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
(a): "hazardous waste" was "special waste"; add requirement that hazardous waste generator placard the vehicle; "49 CFR 171–49 CFR 177" was "49 CFR 170 et seq.".
(b): "hazardous waste" was "special waste".

7:26–7.2 Container requirements

(a) The hazardous waste generator shall conspicuously paint, ink or label the appropriate manifest number on all hazardous waste containers that are intended for shipment.

(b) The hazardous waste generator shall insure that all containers used to transport hazardous waste off-site are in conformance with the construction type and labeling requirements of the United States Department of Transportation concerning hazardous material containerization (49 C.F.R. 171–179), including 1, below.

1. Prior to transporting or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 C.F.R. 172.304:

HAZARDOUS WASTE—Federal and/or State Laws Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the New Jersey Department of Environmental Protection.

Generator's Name and Address _____

_____

State Manifest Document Number _____

_____

(c) No person shall remove any markings required by this section until the container has been emptied and cleaned in a manner approved by the Department.

(d) Any person who transfers hazardous waste to a new container while in transit shall label the new container and mark it to reflect the proper manifest number(s).

(e) No hazardous waste facility shall accept hazardous waste containers unless they are properly labeled and marked in accordance with this section, except as provided in N.J.A.C. 7:26–7.6(a)2.

Amended by R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
(a), (b), (d) and (e) amended to change "special waste" to "hazardous waste".
(a): "and permanently" deleted after "shall conspicuously"; "or label" added.
(b): "49 CFR 171–49 CFR 179" was "49 CFR 170 et seq.".
(c): "or mixes" deleted after "transfers".
Amended by R.1987 d.307, effective July 20, 1987.
See: 19 N.J.R. 441(a), 19 N.J.R. 1293(b).
Added (b)1.
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Stylistic revisions.

7:26–7.3 Hazardous waste manifest forms

(a) For the purpose of this chapter, only the Uniform Hazardous Waste Manifest forms as described in the Appendix of 40 CFR 262 are to be used for hazardous waste shipments originating in or destined for New Jersey. Manifests shall be obtained in accordance with the procedures set forth below at (a)1 through 5 and filled out and distributed in accordance with N.J.A.C. 7:26–7.4, 7.5 and 7.6.

1. For shipments originating from a site in New Jersey and destined for another site in New Jersey, manifest forms shall be those supplied by the Department.

2. For shipments originating from a site in another state and destined for New Jersey, manifest forms shall be:

i. Those supplied by the Department.

ii. If the Department's forms are unavailable, the manifest form approved for use by the state of origin which complies with all standards set forth in 40 CFR 262.

iii. If the forms are unavailable from the Department and the state of origin, the manifest form may be obtained from any source.

3. For shipments originating from a site in New Jersey and destined for a site in another state, manifest forms shall be:

i. Those supplied by the consignment (destination) state.

ii. If the forms are not available from the consignment state, the generator shall use the manifest form supplied by the Department.

iii. If the forms are not available from the consignment state or the Department, forms may be obtained from any source.

4. For shipments originating from a site in New Jersey and destined for export to a foreign country, manifest forms shall be those supplied by the Department. If the forms are unavailable from the Department, the manifest form may be obtained from any other source.

5. A person who imports hazardous waste from a foreign country into New Jersey shall use a manifest form supplied by the Department. If the form is unavailable from the Department, the manifest form may be obtained from any other source.

(b) Manifest forms used for shipments to or from New Jersey must provide at least the number of copies which will allow distribution of one copy to the generator, each hauler and the owner/operator of the designated facility for their records, as well as one copy to be returned to the generator by the facility owner or operator. Photocopies may supplement manifest forms that do not provide the necessary number of copies.

(c) Any person who knowingly makes any false statement on any hazardous waste application, label, manifest, record, report, design or other document required to be maintained and/or submitted to the Department, shall, upon conviction, be guilty of a crime of the third degree and notwithstanding the provisions of N.J.S.A. 2C:43–3, shall be subject to a fine of not more than $25,000 for the first offense and not more than $50,000 for the second and each subsequent offense, in addition to any other appropriate disposition authorized by N.J.S.A. 2C:43–2.6.

(d) Any person who recklessly makes any false statement on any hazardous waste application, label, manifest, record, report, design or other document required to be maintained and/or submitted to the Department, shall upon conviction, be guilty of a crime in the fourth degree.

As amended, R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
Section substantially amended.
As amended, R.1984 d.472, effective October 15, 1984.
See: 16 N.J.R. 2044(b), 16 N.J.R. 2811(a).
Substantially amended.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
(a) substantially amended.
Amended by R.1989 d.173, effective April 3, 1989.
See: 20 N.J.R. 867(a), 21 N.J.R. 893(a).
(a)4 and 5 added, manifesting requirements when exporting to or importing from a foreign country.

Law Review and Journal Commentaries

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

Case Notes

Improperly completed manifests and other documentary evidence; violations of hazardous waste management regulations. Noble Oil Company, Inc. v. DEPE, 94 N.J.A.R.2d (EPE) 72.

Each shipment of hazardous waste constituted separate violation of regulations governing manifesting and disposing of hazardous waste. Department of Environmental Protection v. Rollins Environmental Services, Inc., 92 N.J.A.R.2d (EPE) 13.

7:26–7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26–8 are as follows:

1. A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number for the Department.

2. A generator must not offer hazardous waste to a hazardous waste hauler or to an owner or operator of a hazardous waste treatment, storage or disposal facility who does not possess an EPA identification number, except when the waste is destined for a facility in a state where that facility is not required to have an EPA identification number.

3. A generator who transports, or offers for transportation, hazardous waste for offsite use or reuse, treatment, storage, or disposal must prepare a manifest before transporting the waste offsite.

4. A generator shall provide the following information on the manifest form:

i. The generator's name, mailing address, site address, if different from the mailing address, and phone number;

ii. The generator's EPA I.D. number;

iii. The hauler (or haulers) name, phone numbers and New Jersey registration number.

iv. The hauler (or haulers) EPA I.D. number;

v. The treatment, storage, or disposal facility's name, address and phone number (hereinafter referred to as the designated facility);

vi. The treatment, storage, or disposal facility's EPA I.D. number;

vii. The name, type and quantity of hazardous waste being shipped, including such particulars as may be required regarding same;

viii. Special handling instructions and any other information required on the form to be supplied by the generator;

ix. When shipping hazardous waste to a waste reuse facility, the generator shall enter the waste reuse facility identification number in section G of the Uniform Manifest;

x. The proper waste code(s) that accurately describe the shipment of hazardous waste, determined according to the following hierarchy:

Table A. Wastes which can be described only by one or more F, K, P, U, or X codes

	Waste Composition	Manifest Completion Item I	Item J
1.	One F, K, P, or U waste	use the applicable F, K, P or U code	
2.	One X waste (transported within New Jersey only)	use the applicable New Jersey listed X code	
3.	One X waste (transported out-of-State)	code as required by the receiving state †	New Jersey X code
4.	Mixture of two or more F, K, P, and/or U wastes	listed code for the component forming the highest percentage by weight or volume of the total waste depending on units reported in Item 14	all other acutely hazardous listed codes
5.	Mixture of any X waste and one or more F, K, P, or U wastes	listed waste code for the F, K, P, or U listed waste component forming the highest percentage by weight or volume of the total waste	

Waste Composition	Manifest Completion Item I	Item J
	depending on the unit reported in Item 14	

† If this waste is not hazardous in the receiving state, use the New Jersey hazardous waste code and designate in Item J the method of management requested (that is hazardous or non-hazardous treatment, storage or disposal).

Table B. Waste that can be described by F, K, P, U, or X codes and characteristic (D) code(s)

	Waste Composition	Manifest Completion Item I	Item J
1.	One F, K, P, or U waste that exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code	
2.	Mixture of two or more F, K, P, or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code for the listed waste forming the highest percentage by weight or volume of the total waste depending on the units reported in Item 14	all other acutely hazardous listed code(s)
3.	Mixture of any X wastes and F, K, P or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P, or U code for the listed waste forming the highest percentage by weight or volume of the total waste depending on the units reported in Item 14	all other acutely hazardous listed code(s) and any New Jersey listed waste codes
4.	One or more X wastes which exhibit RCRA characteristic(s) (D wastes) and are destined for New Jersey waste oil recycling facilities	X code (if more than one, use X code of waste forming highest percentage by weight or volume of total waste depending on the units reported in Item 14)	other X code(s)
5.	One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are treated (other than recycling), stored or disposed in New Jersey	characteristic D code(s)	X code(s)
6.	One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are transported out of State	code as required by receiving state†	X code(s)

† If this waste is not hazardous in the receiving state because it is being burned for energy recovery or recycled under the Federal program or similar state program, use the New Jersey hazardous waste code.

Table C. Waste is not F, K, P, U, or X but displays one or more characteristics (D waste)

	Characteristics Exhibited	Manifest Completion Item I	Item J
1.	Waste displays only one characteristic	D code for the characteristic	
2.	Waste displays multiple characteristics	D code for the first characteristic displayed according to the following order: 1. ignitability 2. reactivity 3. corrosivity 4. EP toxicity	

Table D. Wastes are not listed or characteristic but are classified as hazardous waste by the Department or by the generator in accordance with N.J.A.C. 7:26–8.5(d), 7:26–8.6 or 7:26–8.16(a) because of their constituent content (C waste)

	Waste Constituent(s) Present	Manifest Completion Item I	Item J
1.	Wastes considered hazardous due to the presence of only one constituent	C code for constituent	
2.	Wastes considered hazardous due to presence of multiple constituents	C code for the constituent forming the highest percentage by weight or volume of the total waste depending on the units reported in Item 14	

5. Before allowing the manifested waste to leave the generator's property, the generator must:

i. Sign the manifest certification by hand; and

ii. Obtain the handwritten signature of the initial hauler and date of acceptance on the manifest; and

iii. Retain one copy and forward one copy to the state of origin and one copy to the state of destination; and

iv. Make additional copies of the manifest form, if necessary to provide the required number of copies described in this subsection (a) and 7:26–7.3(b) above; and

v. Give the remaining copies of the manifest form to the hauler.

6. If the designated facility rejects a shipment or if the transporter is unable to deliver the shipment of hazardous waste to the designated facility, the generator shall comply with all applicable generator requirements at N.J.A.C. 7:26–7.6(a)6.

7. For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three copies of the approved manifest form dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each hauler.

8. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the approved manifest form dated and signed in accordance with this section to:

i. The next non-rail hauler, if any; or

ii. The designated facility if transported solely by rail; or

iii. The last rail hauler to handle the waste in the United States if exported by rail.

9. An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator requirements of this section.

10. As of September 25, 1986, no generator shall offer for final land disposal in New Jersey acute hazardous waste (H), as listed in N.J.A.C. 7:26–8.15(a)5, and toxic waste (T), as listed in N.J.A.C. 7:26–8.15(a)6, except in accordance with the following:

i. Where the final land disposal method is a land treatment unit, as approved in accordance with N.J.A.C. 7:14A and N.J.A.C. 7:14A and N.J.A.C. 7:26, to accept such waste; or

ii. Where the final land disposal method is a surface impoundment or landfill, the generator shall demonstrate and obtain prior Department approval in accordance with 11 below that the following requirements are met:

(1) The waste has been rendered non-acute hazardous or non-toxic; or

(2) The waste cannot be rendered non-acute hazardous or non-toxic, destroyed by chemical, biological and thermal processes, recycled or reclaimed, in accordance with N.J.A.C. 7:26, at an authorized hazardous waste facility, and the waste has been chemically stabilized and completely encapsulated to eliminate its leaking potential to the environment.

11. Documentation of the demonstration required by 10ii above shall be submitted for Department approval and shall include, but not be limited to, the following:

i. For treatment methods to render the waste non-acute hazardous or non-toxic and for the stabilization and encapsulation methods to eliminate the leaking potential to the environment, the generator shall submit:

(1) A statement of the generator's interest and need for the proposed action;

(2) A description of the waste and an estimate of the average and maximum monthly and annual quantities of the waste generated;

(3) A description of the treatment method(s) or stabilization and encapsulation method(s);

(4) The justification for this action including any supporting tests, acceptance scientific publications or completed public or private research projects; and

(5) Certification by the generator which states the following:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

ii. For waste which cannot be rendered non-acute hazardous or non-toxic, destroyed by chemical, biological or thermal processes, recycled or reclaimed, the generator shall submit:

(1) Information detailing the specific markets that have been explored and the basis for the conclusion that there are no treatment, destruction, recycling or reclamation methods available for this waste. This information may include, but shall not be limited to, information available through the New Jersey Hazardous Waste Facilities Plan (see N.J.S.A. 13:1E–58) as published by the New Jersey Hazardous Waste Facilities Siting Commission or other state hazardous waste plans; and

(2) Certification, by the generator of the waste, which states the following:

"I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete; that available technically feasible treatment, destruction, reclamation or recycling processes have been explored and that the following wastes (listed by waste code) to be disposed of in New Jersey authorized hazardous waste landfills or hazardous waste surface impoundments cannot be treated, destroyed, recycled, or reclaimed. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

iii. The certification required by i(5) and ii(2), above, shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

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

12. If the Department denies the approval required by (a)11 above, the generator may request a 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. The hearing request shall be in writing and shall be filed with the Department within 10 calendar days of receipt of the denial. The hearing request shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Depart-

ment of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402.

13. A generator exempted according to N.J.A.C. 7:26–7.7(e) shall comply with the full requirements of this section upon off-site shipment of the hazardous waste for final disposition.

(b) Any person who exports hazardous waste to a foreign country shall comply with the requirements of this subchapter and with the special requirements of this section, including recordkeeping and annual reporting requirements at (f) and (g) below.

1. A person shall not export hazardous waste unless:

i. Notification is provided in accordance with (c) below;

ii. The receiving country has consented to accept the hazardous waste;

iii. A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest or for exports by water (bulk shipment) to the shipping paper; and

iv. The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

Note: In conjunction with the United States Department of State, EPA will provide a complete notification, described in (c) below, to the receiving country and any transit countries. Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of this subsection (b). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(c) When shipping hazardous waste outside the United States, a primary exporter shall:

1. Provide a complete notification to the EPA and a copy to the Department at least 60 days prior to the date the initial shipment is intended to be shipped off site. This notification may cover a period of up to 12 months.

i. Complete notification shall be in writing, signed by the primary exporter and contain, at a minimum, the following information:

(1) The name, mailing address, telephone number, and EPA identification number of the primary exporter.

(2) By consignee, for each hazardous waste type:

(A) The name and site address of the consignee and any alternative consignee;

(B) A description of the hazardous waste and the EPA hazardous waste number (from 40 C.F.R. Pt. 261, Subparts C and D), United States Department of Transportation proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste identified in 49 C.F.R. Pts. 171–177;

(C) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

(D) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(E) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(F) A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (for example, land or ocean incineration, other land disposal, ocean dumping, recycling); and

(H) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

2. Upon request by EPA, furnish to EPA any additional information which a receiving country requests in order to respond to a notification;

3. Send the notification to the Office of International Activities (A–106), EPA, 401 M Street, SW, Washington, D.C. 20460 and a copy to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, Trenton, New Jersey 08625, with "Attention: Notification to Export" prominently displayed on the front of each envelope. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (c)1 above. Where a claim of confidentiality is asserted with respect to any notification information required by (c)1 above, EPA may find the notification not complete until such a claim is resolved in accordance with 40 C.F.R. 260.2;

4. Provide EPA, the Department, and the receiving country through EPA with a written renotification of any change in the conditions specified in the original notification, including any exceedance of the original estimate of the quantity of hazardous waste, except that renotification is not required for changes of the telephone number reported under (c)1i(1) above, decreases in the quantity of hazardous waste reported under (c)1i(2)(D) above, or changes in the means of transportation reported under (c)1i(2)(F) above;

5. Not ship the hazardous waste prior to obtaining an EPA Acknowledgment of Consent, acknowledging the receiving country's consent to the changes requiring renotification, except that the receiving country's consent is not required for changes in the transit country information required under (c)1i(2)(E) or (c)1i(2)(H) above;

6. Obtain the manifest in accordance with N.J.A.C. 7:26–7.3(a)4, and complete the manifest in accordance with (a)4 above, except as modified by the requirements below:

i. In lieu of the name, site address, and EPA identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

ii. In Special Handling Instructions and Additional Information, the primary exporter shall identify the point of departure from the United States;

iii. In lieu of the name, site address and EPA identification number of a permitted alternate facility, the primary exporter shall enter the name and site address of any alternate consignee;

iv. The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent."; and

v. In lieu of the requirements of (a)6 above, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA and the Department, in accordance with (c)4 above, of a change in the conditions of the original notification to allow shipment to a new consignee and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

7. Attach a copy of the EPA Acknowledgment of Consent to the manifest required to accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper;

i. The hazardous waste shipment shall conform to the terms of the receiving country's written consent as stated in the EPA Acknowledgment of Consent (See (b)1iv above);

8. Provide the transporter with an additional copy of the manifest for delivery to the United States Customs official at the point the hazardous waste leaves the United States in accordance with N.J.A.C. 7:26–7.5(d)9iii; and

9. Require the consignee to confirm in writing the delivery of the hazardous waste to consignee's facility and to describe any significant discrepancies (as defined in 40 C.F.R. § 264.72(a) for purposes of this section only) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(d) In lieu of the requirements of (h) below, a primary exporter shall file an Exception Report, in accordance with (h) below, with the Administrator of EPA and a copy to the Department if:

1. The primary exporter has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

2. Within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received in accordance with (c)9 above; or

3. The waste is returned to the United States.

(e) It shall be considered a violation of this section for a hazardous waste generator to:

1. Fail to properly complete any part of the manifest form as required by the Department; or

2. Utilize a transporter of hazardous waste who is not properly registered with the Department pursuant to N.J.A.C. 7:26–7.5 and/or who fails to display a current Department registration number (see N.J.A.C. 7:26–7.5(d)); or

3. Designate on the manifest form a hazardous waste facility which is not an authorized facility (see N.J.A.C. 7:26–1.4) or a waste reuse facility which has not received

a waste reuse facility identification number from the Department; or

4. Ship or permit the shipment of hazardous waste to any site which is not an authorized hazardous waste facility or a waste reuse facility which has not received a waste reuse facility identification number from the Department.

(f) Recordkeeping requirements are as follows:

1. A generator shall keep a copy of each manifest, signed in accordance with (a)5 above, for three years, and a signed copy from the owner and operator of the facility which received the waste. The signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

2. A generator shall keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

i. For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export sent in accordance with (c)1 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent received in accordance with (c)5 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste received from the consignee in accordance with (c)9 above for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report submitted in accordance with (g) below for a period of at least three years from the due date of the report.

3. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department or USEPA.

(g) Annual reporting requirements are as follows:

1. The hazardous waste generator shall submit to the Department by March 1 of each year a report of manifest activities during the previous calendar year. The report shall be on forms approved by the Department and shall include the following information:

i. Generator's name, address, and EPA identification number; and

ii. Each designated facility's name, address, and EPA identification number and the following information for each designated facility:

(1) For each hazardous waste sent, a description of the waste, DOT hazardous class, EPA or State hazardous waste number, total annual amount, and unit of measure; and

iii. Each transporter's name, address, and EPA identification number; and

iv. Waste reuse facility identification number, name, and address;

v. Summary by the unit of measure of hazardous waste shipped during the previous calendar year;

vi. Waste minimization information, which shall include the following:

(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

vii. The year covered by the report;

viii. A report on any exports of hazardous waste in accordance with (g)4 below;

ix. The name(s) of the hauler(s) used; and

x. The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative; and

xi. In accordance with N.J.A.C. 7:26–8.2(a)22v, information on waste sent for treatability studies.

2. Any generator who stores hazardous waste for more than 90 days, or who treats or disposes of hazardous waste on site shall complete and submit to the Department an annual report summarizing, by manifest waste type, the method(s) of treatment and/or disposal utilized and the quantities of waste stored, treated and/or disposed. Said reports shall be submitted to the Department by March 1 of each year for the preceding calendar year.

3. The hazardous waste generator shall include all waste shipped to a waste reuse facility in the report of facility activities as required in (g)1.

4. Any person exporting hazardous waste shall file with the EPA and the Department no later than March 1 of each calendar year, a report summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year. The report shall include the following information:

i. The EPA identification number, name, and mailing and site address of the exporter;

ii. The calendar year covered by the report;

iii. The name and site address of each consignee;

iv. By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, the United States Department of Transportation (DOT) hazard class, the name and USEPA identification number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

v. Waste minimization information, which shall include the following:

(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years dating to 1984 and, to the extent such information is available, for years prior to 1984; and

vi. A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil and criminal penalties for submitting false information including the possibility of fine and/or imprisonment."

5. Reports required under (g)4 above shall be sent to: Office of the International Activities (A–106), United States Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 and New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, 401 East State Street, Trenton, New Jersey 08625.

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at 609–292–7081 to inform the Department of the situation.

2. A generator shall submit an Exception Report to the Department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

i. A legible copy of the manifest for which the generator does not have confirmation of delivery; and

ii. A letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

3. The generator is responsible for assuring that the Department and the designated facility's state receive copies of the completed manifest, containing the handwritten signature of the owner or operator of the designated facility. If the waste receiving facility is located in a state that does not mandate its facilities to return copies of the completed manifests to the states of origin and disposal, the generator must so distribute these copies. The generator may provide photocopies to satisfy this requirement, if the manifest form provided by the destination State does not contain sufficient number of copies.

4. In the case of interstate shipments for which the manifest has not been returned, the Department will provide notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to USEPA) in the case of unauthorized states).

(i) The Department, as it deems necessary, may require generators to furnish additional reports concerning only the quantities and disposition of hazardous wastes identified or listed in N.J.A.C. 7:26–8.

(j) A generator shall not offer hazardous waste to a waste reuse facility for use or reuse unless:

1. The generator has registered with the Department's waste reuse facility program. To register, a generator shall submit the following information to: New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, NJ 08625.

i. Generator's name, mailing address, site address and telephone number;

ii. Generator's EPA identification number;

iii. A description of the process which generated the waste;

iv. A physical and chemical analysis, of the waste(s) to be reused;

v. An estimate of the volume of waste (which is intended for reuse) generated per year;

vi. Updates of any information submitted under this subsection where changes occur in the process generat-

ing the waste, the analysis of the waste or the volume of the waste;

vii. Any other information as requested by the Department.

2. The generator has complied with all applicable requirements for labeling and accumulation of hazardous waste as contained in N.J.A.C. 7:26.

3. The generator has completed a Uniform Manifest and has included the waste reuse facility's identification number in Section G of the manifest, which must accompany the waste when shipped to the waste reuse facility.

4. The waste transporter is registered as a hazardous waste transporter with the Department.

5. The designated waste reuse facility has qualified, for a permit-by-rule under N.J.A.C. 7:26–12.1(b)11 to receive the generator's waste and has received a waste reuse facility identification number from the Department pursuant to N.J.A.C. 7:26–12.1(b)11.

(k) If the generator utilizes an out-of-State designated facility and a manifest discrepancy considered a significant discrepancy according to the standards at N.J.A.C. 7:26–7.6(a)4 is known to the generator, the generator shall immediately submit to the Department a copy of the manifest and a letter report describing the nature of the discrepancy and the arrangements made for the disposition of the waste.

As amended, R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
Section substantially amended.
As amended, R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(e)3: Cross-reference added.
As amended, R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(a)7 and 8: three copies of manifest form stipulated.
(a)9 and (i) added.
As amended, R.1984 d.472, effective October 15, 1984.
See: 16 N.J.R. 2044(b), 16 N.J.R. 2811(a).
Substantially amended.
Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
(a)10.–12. added.
Correction: Added operative date to annotation on rule.
See: 18 N.J.R. 1379(a).
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
Substantially amended.
Correction: 7:26–8.15(e) and (f) now (a)5 and 6.
See: 19 N.J.R. 2167(a).
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substituted "transporter" for "hauler" and changed address in (j).
Amended by R.1989 d.141, effective March 20, 1989.
See: 20 N.J.R. 1329(a), 21 N.J.R. 752(a).
Language added at (j)2 . . . "Labeling and accumulation".
Amended by R.1989 d.173, effective April 3, 1989.
See: 20 N.J.R. 867(a), 21 N.J.R. 893(a).
At (a)6. and new 7., instructions added to the generator in the case of waste rejected at a facility and new manifest requirements. (c)4, added. At (g), detailed requirements added regarding annual reporting form, including "unit of measure" and "waste minimization information".
Amended by R.1990 d.228, effective May 7, 1990.
See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).
In (g)1., revised i-iii, deleted iv-x, renumbered xi-xvii as iv-x, added new xi.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (a)13.
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Prohibition of export of hazardous waste added to (b); notification and manifesting requirements added to (c) and (d); recordkeeping added to (f); reporting to (g).
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Added 4x.
Administrative Correction and change in (a)12.
See: 23 N.J.R. 3325(b).
Amended by R.1993 d.5, effective January 4, 1993.
See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a), 25 N.J.R. 98(a)).
New (k) added requiring generators using out-of-State designated facilities to immediately report significant manifest discrepancies.

Law Review and Journal Commentaries

Solid Waste—Environmental Protection—Hazardous Material. Judith Nallin, 136 N.J.L.J. No. 4, 62 (1994).

Case Notes

Regulations adopting more stringent standards for recyclable by-products than federal government were to be evaluated under commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations did not violate commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations were consistent with Resource Conservation and Recovery Act. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Small quantity generator exemption from regulation; application. U.S. v. Eastern of New Jersey, Inc., D.N.J.1991, 770 F.Supp. 964.

New Jersey Department of Environmental Protection and Energy's filing order to show cause and verified complaint was exempt from automatic stay as exercise of state's power to protect health, safety, and welfare of public. In re Madison Industries, Inc., D.N.J.1993, 161 B.R. 363.

Commissioner of Department of Environmental Protection and Energy was obliged to impose civil administrative penalties against generator and transporter. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Each truckload of hazardous waste, which was not accompanied by written manifest was separate offense; penalty against generator was warranted despite generator's claim that it was victim of transporter's fraud and the department's negligence in enforcing its regulations. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Hazardous waste generator or transporter is strictly liable for violation of regulations governing transportation and disposal of hazardous waste. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Penalty for each truckload of hazardous waste that transporter accepted from generator was warranted. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D. 1993).

Dumping of hazardous wastes; mislabeled manifests; penalties. Department of Environmental Protection v. Rollins Environmental Services, Inc. 92 N.J.A.R.2d (EPE) 67.

7:26–7.5 Hazardous waste transporter responsibilities

(a) This section applies to all hazardous waste transporting, including the transporting of hazardous waste fuels and the import or export of hazardous waste from or to a foreign country. This section does not apply to the transportation of hazardous waste from one point to another on the site where the hazardous waste is generated, stored, or disposed. Hazardous waste transporter requirements are also found at N.J.A.C. 7:26–3.4(d), (e), (f), and (i).

(b) A transporter of hazardous waste shall also comply with N.J.A.C. 7:26–7.4 if the transporter:

1. Mixes hazardous waste of different DOT shipping descriptions by placing them into a single container; or

2. Accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26–7.7(b) or (c).

i. A transporter of hazardous waste who accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726 or X727 from generators exempted by N.J.A.C. 7:26–7.7(b) or (c) shall compile a list of sites corresponding to each manifested shipment at which the transporter accepts these hazardous wastes.

ii. The list of sites at which the transporter accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26–7.7(b) or (c) shall contain the waste owner's name and address, the address of the site, the quantity of waste accepted at the site, and the identification numbers of the manifest corresponding to the list.

iii. The transporter shall attach a copy of the site list to the copy of the manifest and forward these to the Department in compliance with N.J.A.C. 7:26–7.4. The transporter shall also retain a copy of this list on file for a period of three years and shall make this list available, upon request, to representatives of the New Jersey Department of Environmental Protection.

iv. The transporter shall obtain a signed receipt from each site at which he accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26–7.7(b) or (c), retain a copy of these receipts on file for a period of three years, and shall make these receipts available to the Department upon request.

v. The transporter shall notify the USEPA and update the transporter's notification of hazardous waste activities to include generator activities in addition to transporter activities.

(c) License issuance, renewal and revocation requirements are as follows:

1. Prior to operation, a hazardous waste transporter shall obtain a hazardous waste transporter license from the Department. A "hazardous waste transporter license" is a form of approved registration, and shall be deemed the equivalent of an "approved registration" under N.J.S.A. 13:1E–5.

2. The application for a hazardous waste transporter license 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. This information includes, but is not limited to, the following:

i. After July 1, 1981, proof of compliance with the minimum financial responsibility requirements covering public liabilities, property damage and environmental restoration set out in section 30 of the Federal Motor Carrier Act of 1980, 23 U.S.C. 315, and 49 CFR 387 as adopted;

ii. Provision for a training program in the safe management of hazardous waste for all employees who will handle such waste. (See N.J.A.C. 7:26–7.5(d)12);

iii. 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.

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

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. In addition, such applicant shall submit in lieu of a disclosure statement an alternative information statement on forms supplied by the Department, and containing the information set forth in N.J.A.C. 7:26–12.2(g)2.

5. Every hazardous waste transporter license issued by the Department shall indicate on its face an annual renewal/expiration date, which shall be September 30. Prior to October 1 in each calendar year, each licensee shall submit to the Department a statement updating the information contained in the license application. Such

information shall be submitted on forms supplied by the Department. In no case shall the submission of an updated licensing statement alter the conditions under which the license was granted.

6. A licensee shall notify the Department in writing within 30 days of any change of information supplied on the licensee's current licensing application.

7. The failure to submit updated information and to submit all applicable fees (See N.J.A.C. 7:26–4A) within 30 days after the annual renewal/expiration date of a hazardous waste transporter license shall be sufficient cause for the Department to revoke the license or to declare it expired.

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

9. No person shall be issued a hazardous waste transporter license 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 license 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 or to provide for employee training as required under paragraphs 2.i. and 2.ii. above;

ii. Any of the disqualifying reasons set forth in N.J.A.C. 7:26–16.8 or 16.9;

iii. 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 of this State;

iv. A pattern of violations of the environmental protection statutes or regulations of this or any other State, or the federal government.

(d) General requirements are as follows:

1. A transporter shall not transport hazardous wastes without having received an EPA identification number.

2. A transporter shall not accept hazardous waste from a generator unless it is accompanied by a manifest, properly completed with all information required by State and Federal law and rules and signed by the generator in accordance with the provisions of N.J.A.C. 7:26–7.4. In the case of exports, the transporter shall not accept such waste from a primary exporter or other person:

i. If the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; and

ii. Unless, in addition to a manifest signed in accordance with the provisions of N.J.A.C. 7:26–7.4(a)5, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

3. The hazardous waste transporter shall not accept hazardous waste from a generator or from another transporter if it is not labeled as set forth at N.J.A.C. 7:26–7.2(a) or if the hazardous waste does not reasonably fit the description of the manifest.

4. Before transporting the hazardous waste and in accordance with instructions on the manifest, the transporter shall sign and date the manifest, acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

5. The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

6. A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

i. Obtain the date of delivery and the handwritten signature of that transporter or of the owner and operator of the designated facility on the manifest;

ii. Retain one copy of the manifest; and

iii. Give the remaining copies of the manifest to the accepting transporter or designated facility.

7. The requirements of (d)5 and (d)6 above do not apply to water (bulk shipment) transporters if:

i. The hazardous waste is delivered by water (bulk shipment) to the designated facility;

ii. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signature) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste;

iii. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

iv. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

v. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter.

8. For shipments involving rail transportation, the requirements of (d)5, 6 and 7 above do not apply and the following requirements do apply:

i. When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(1) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(2) Return a signed copy of the manifest to the non-rail transporters;

(3) Forward the approved manifest form to:

(A) The next non-rail transporter, if any;

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States; and

(4) Retain one copy of the manifest and rail shipping paper.

ii. Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times;

iii. Intermediate rail transporters are not required to sign either the manifest or shipping paper;

iv. When delivering hazardous waste to the designated facility, a rail transporter shall:

(1) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(2) Retain a copy of the manifest or signed shipping paper.

v. When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(1) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(2) Retain a copy of the manifest.

vi. Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

9. Transporters who transport hazardous waste out of the United States shall, in addition to all other applicable requirements of this subchapter:

i. Indicate on the manifest the date the hazardous waste left the United States;

ii. Return a signed copy of the manifest to the generator; and

iii. Give a copy of the manifest to a United States Customs Official at the point of departure from the United States.

10. The hauler must deliver the entire quantity of hazardous waste which the hauler has accepted from a generator or a hauler to:

i. The designated facility listed on the manifest; or

ii. The next designated hauler; or

iii. The place outside the United States designated by the generator.

11. 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, the transporter shall comply with all applicable transporter requirements at N.J.A.C. 7:26–7.6(a)6.

12. All hauler employees who will handle hazardous waste shall successfully complete a program of instruction that teaches them to perform their duties in a way that ensures the hauler's compliance with this subchapter including, but not limited to the following procedures:

i. Vehicle operation in a manner to prevent a hazard to human health or the environment;

ii. Handling of hazardous wastes in a manner to prevent a hazard to human health or the environment;

iii. Notification of appropriate Federal, State and local officials in the event of a hazardous waste discharge during transportation;

iv. Emergency procedures to be undertaken in the event of a discharge of hazardous waste during transportation, including containment of waste to minimize injury to human health and the environment in conformance with Subpart D of 49 CFR 177 and N.J.A.C. 7:1E–2.3; and

v. The use of emergency equipment required in this subchapter.

13. Haulers shall conform to the standards in 49 CFR 391, including but not limited to:

i. Qualification of haulers;

ii. Background and character of haulers;

iii. Examinations and tests; and

iv. Physical examinations and tests.

14. Haulers shall operate their vehicles in conformance with 49 CFR 392, including but not limited to:

i. Driving of vehicles;

ii. Stopped vehicles;

iii. Use of lighted lamps and reflectors;

iv. Accidents;

v. Fueling precautions; and

vi. Prohibitive practices.

15. Haulers shall equip their vehicles with emergency equipment in conformance with Subpart H of 49 CFR 393.

16. Haulers shall transport hazardous waste in conformance with 49 CFR 397, including but not limited to:

i. Compliance with Federal motor carrier safety regulations;

ii. State and local laws, ordinances and regulations;

iii. Attendance and surveillance of motor vehicles;

iv. Parking;

v. Routes;

vi. Fires;

vii. Smoking;

viii. Fueling; and

ix. Tires.

17. The hazardous waste hauler shall not allow the vehicle, properly registered with the Department to haul hazardous waste, to be used by any other person for hauling hazardous waste if that person is not licensed by the Department to haul hazardous waste.

18. Haulers shall have in their possession a current list of all Federal and State agencies to be notified in the event of a discharge of hazardous waste during transportation.

19. 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 a current State of New Jersey hazardous waste transporter registration decal, issued by the Department, and the New Jersey Solid Waste Administration (N.J.S.W.A.) registration number in letters and numbers at least three inches in height. In addition, the capacity of the vehicle in cubic yards or in gallons, with the appropriate unit designated, shall be marked on both sides of the vehicle so as to be visible to the operator of the hazardous waste facility to which the hazardous waste is being transported.

(e) The Department and its authorized representatives shall have the power to enter and inspect vehicles transporting or licensed to transport hazardous waste, while in operation on the highways of this State or at the premises or places of business of the owner or lessee of such vehicles.

(f) An unauthorized discharge of hazardous waste during transportation requires the following:

1. The hazardous waste transporter shall:

i. Immediately notify the Department and the generator; and

ii. Take appropriate immediate action to protect human health and environment; and

iii. Take any action required by N.J.A.C. 7:1E–2.3; and

iv. Clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State or local officials so that the hazardous waste discharge no longer presents a threat to human health or the environment.

2. If a discharge of hazardous waste occurs during transportation and an official (Federal, State or local government) acting within the scope of official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

3. An air, rail, highway or water transporter who has discharged hazardous waste shall:

i. Give notice, if required by 49 CFR 171.15 to the National Response Center (800–424–8802 or 202–426–2675); and

ii. Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

iii. Contact the Department at 609–292–5560 or 609–292–7172.

(g) It shall be considered a violation of this section for a hazardous waste transporter to:

1. Fail to properly complete the appropriate manifest form; and/or

2. Accept hazardous waste from a generator who fails to properly complete the manifest form; and/or

3. Transport hazardous waste to a hazardous waste facility which is not an authorized facility.

(h) Recordkeeping requirements are as follows:

1. A hazardous waste hauler must keep a copy of the manifest signed by the generator, the hauler and the next designated hauler or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial hauler.

2. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) hauler must retain a copy of a shipping paper containing all the information required in (d)7 above for a period of three years from the date the hazardous waste was accepted by the initial hauler.

3. For shipments of hazardous waste by rail within the United States:

i. The initial rail hauler must keep a copy of the manifest and shipping paper with all the information required in (d)8 above for a period of three years from the date the hazardous waste was accepted by the initial hauler; and

ii. The final rail hauler must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial hauler.

4. Intermediate rail haulers are not required to keep records pursuant to this section.

5. A hauler who hauls hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial hauler.

6. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(i) Annual Report—On or before May 1 of each year, every hazardous waste hauler shall submit to the Department an annual report describing the types and quantities of hazardous waste transported by the hauler during the previous calendar year. The annual report shall be submitted on forms provided by the Department.

As amended, R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
Section substantially amended.
As amended, R.1982 d.494, effective January 17, 1983.
See: 14 N.J.R. 20(a), 15 N.J.R. 88(a).
(b)3 added.
As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(c) substantially amended concerning disclosure statements, renewal and expiration dates, updating of information, and violations leading to revocation of license.
(i) added.
As amended, R.1984 d.472, effective October 15, 1984.
See: 16 N.J.R. 2044(b), 16 N.J.R. 2811(a).
(d)2 and 4 amended.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
(b)3v. added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added "including the hauling of hazardous waste fuels" and deleted "The regulation in" to (a).
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substantially amended.
Amended by R.1989 d.173, effective April 3, 1989.
See: 20 N.J.R. 867(a), 21 N.J.R. 893(a).
At (d)11, full cite to N.J.A.C. 7:26–7.6(a)6 and 7 added.
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Requirements for foreign import/export of hazardous waste added.

Case Notes

Commissioner of Department of Environmental Protection and Energy was obliged to impose civil administrative penalties against generator and transporter. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Each truckload of hazardous waste, which was not accompanied by written manifest was separate offense; penalty against generator was warranted, despite generator's claim that it was victim of transporter's fraud and the department's negligence in enforcing its regulations. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Hazardous waste generator or transporter is strictly liable for violation of regulations governing transportation and disposal of hazardous waste. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Penalty for each truckload of hazardous waste that transporter accepted from generator was warranted. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D. 1993).

Dumping of hazardous wastes; mislabeled manifests; penalties. Department of Environmental Protection v. Rollins Environmental Services, Inc. 92 N.J.A.R.2d (EPE) 67.

7:26–7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1. Every facility owner or operator shall obtain an EPA identification number from the Department.

2. Except as hereinafter provided, the facility operator shall only accept hazardous waste shipments which are properly labeled and marked in accordance with these rules, and which are accompanied by a properly completed manifest unless no manifest is required pursuant to N.J.A.C. 7:26–8. All manifests for waste shipments destined for New Jersey shall contain all elements of information listed in N.J.A.C. 7:26–7.4(a)4.

3. The facility operator may accept a hazardous waste which appears to be other than the quantity or waste type described in the manifest, provided the facility is authorized to accept such waste and thereafter complies with (a)4 below.

4. If at the time of acceptance or after acceptance of the hazardous waste delivery, the facility operator determines that there is a "significant discrepancy", as described below, between the waste accepted and the waste described in the manifest, the operator shall comply with this paragraph.

i. Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(1) Significant discrepancies in quantity are:

(A) For bulk waste, variations greater than 10 percent in weight; and

(B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping order.

ii. When a significant discrepancy is discovered, the facility owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter; and

iii. If the significant discrepancy is resolved within 15 days of receipt of the waste shipment, the owner or operator shall enter a description of the significant discrepancy and its resolution into the facility's operating record according to N.J.A.C. 7:26–9.4(i)10; or

iv. If the significant discrepancy is not resolved within 15 days of receipt of the waste shipment, the owner or operator shall submit to the Department, before the end of the sixteenth day after receipt of shipment, a copy of the manifest and a letter report describing the nature of the significant discrepancy, the attempts to reconcile the discrepancy and the arrangements made for disposition of the waste.

(1) The owner or operator shall also enter a description of the unresolved significant discrepancy, in accordance with N.J.A.C. 7:26–9.4(i)10, and all follow-up information into the facility operating record;

5. The manifest facility shall not ship the waste received to another facility unless prior written approval from the generator of the waste is obtained and all required manifest forms are executed.

6. If a shipment of hazardous waste is rejected by a hazardous waste facility or if a transporter is unable to deliver a shipment of hazardous waste to the designated hazardous waste facility, the hazardous waste facility owner or operator, the transporter, and the generator shall comply with the following requirements:

i. If the shipment of hazardous waste is immediately rejected by the hazardous waste facility or if the transporter is unable to deliver the shipment of hazardous waste to the designated hazardous waste facility, the transporter shall contact the generator, who shall instruct the transporter to return the shipment to the generator or to deliver the shipment to an alternate hazardous waste facility.

(1) If the shipment of hazardous waste is returned to the generator, the Uniform Hazardous Waste Manifest shall be completed as follows:

(A) In the Discrepancy Indication space of the Uniform Hazardous Waste Manifest, the facility operator shall indicate the reason(s) for the rejection and that the waste is to be returned to the generator. The facility operator shall complete, sign and date the Certification of Receipt and date the Uniform Hazardous Waste Manifest;

(B) The transporter shall receive manifest copies 1, 2, 3, and 5 from the facility operator and shall return the shipment to the generator. The facility operator shall retain manifest copy 4;

(C) The generator, upon receiving the rejected shipment, shall certify the return receipt (signature and date) in the Special Handling Instructions and Additional Information section of the Uniform Hazardous Waste Manifest;

(D) The generator shall then distribute manifest copies 1, 2, 3, and 5 as indicated on the form, except that if the shipment was rejected by an out-of-state facility which did not return the manifest copies 1, 2, 3, and 5, the generator shall notify the facility state and the generator state of receipt of the waste and shall provide those states with a photocopy of the generator's manifest copy; and

(E) The generator shall arrange to dispose of the waste at an authorized facility using another manifest in accordance with N.J.A.C. 7:26–7.4.

(2) If the shipment of hazardous waste is delivered to an alternate hazardous waste facility, the Uniform Hazardous Waste Manifest shall be completed as follows:

(A) The designated facility operator shall indicate the reason(s) for the rejection and that the waste is to be shipped to an alternate facility in the Discrepancy Indication Space of the Uniform Hazardous Waste Manifest. The designated facility operator shall complete, sign, and date the Certification of Receipt (Section 20) on the Uniform Hazardous Waste Manifest;

(B) The transporter shall indicate the alternate facility's name, address, EPA Identification Number, and telephone number in the Special Handling Instructions and Additional Information section;

(C) The designated facility operator shall photocopy the manifest and retain the copy;

(D) After receipt of the original manifest copies 1, 2, 3, 4, and 5 from the designated facility operator, the transporter shall transport the hazardous waste to the indicated alternate authorized facility;

(E) Upon receipt of the originally rejected shipment, the alternate facility operator shall certify receipt (signature and date) in Section 15 of the Uniform Hazardous Waste Manifest; and

(F) The alternate facility operator shall then distribute manifest copies 1, 2, 3, and 5 and retain copy 4.

ii. If a hazardous waste facility rejects all or part of a shipment of hazardous waste after the Uniform Hazardous Waste Manifest has been distributed by the facility, the hazardous waste facility owner or operator, the transporter, and the generator shall comply with the following requirements:

(1) The owner or operator of the hazardous waste facility shall describe the nature of the rejection in Section 19 of the facility's manifest copy;

(2) The owner or operator of the hazardous waste facility shall ship the waste to the generator with three photocopies of the revised manifest, each copy to be signed by the owner or operator, the transporter returning the hazardous waste to the generator, and the generator;

(3) The generator shall retain one copy of the revised signed manifest, return one copy to the transporter returning the hazardous waste to the generator, and return one copy to the owner or operator of the hazardous waste facility;

(4) The owner or operator shall notify the generator state and the facility state of the rejection by sending to each state a photocopy of the revised signed manifest copy, returned to the owner or operator by the generator in accordance with (3) above, showing that the generator received the rejected waste; and

(5) The owner or operator, the generator, and the transporter returning the hazardous waste to the generator shall each retain a copy of the revised, signed hazardous waste manifest.

(b) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his or her agent, shall:

1. Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

2. Complete Item K of the Uniform Hazardous Waste Manifest indicating the handling code for each waste listed on the manifest, as listed in the instructions contained on the manifest form;

3. Note any significant discrepancies in the manifest on each copy of the manifest;

4. Immediately give the transporter at least one copy of the signed manifest;

5. Within 30 days after the delivery, send a copy of the manifest to the generator;

6. Forward the pertinent copy of the uniform manifest form to the Department and to the generator's State agency by the next business day; and

7. Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(c) When importing hazardous waste from a foreign country, a person shall meet all the requirements of this subchapter and this section. The manifest for imported hazardous waste shall be completed in accordance with N.J.A.C. 7:26–7.3 except that:

1. In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

2. In place of the generator's signature on the certification statement, the United States importer or his/her agent shall sign and date the certification and obtain the signature of the initial transporter.

3. Notice in writing shall be given to the Department and to the Regional Administrator for the United States Environmental Protection Agency (Region II) at least four weeks in advance of the date that the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(d) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator of the facility shall:

1. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received; and

2. Note any significant discrepancies in the manifest or shipping paper (if the manifest has not been reviewed) or each copy of the manifest or shipping paper; and

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been reviewed); and

4. Within 30 days after delivery, send a copy of the signed and dated shipping paper to the generator; however, if the manifest has not been received within 30 days after delivery the owner or operator, or the owner's or operator's agent, shall send a copy of the shipping paper signed and dated to the generator; and

5. Retain at the facility a copy of each manifest and shipping paper (if signed in lieu of manifest at the time of delivery) for at least three years from the date of delivery.

(e) It shall be considered a violation of this section for a hazardous waste facility operator, or any other person to:

1. Accept a type of waste which they are not specifically authorized by the Department to accept; or

2. Accept waste from a hazardous waste transporter which is not authorized by the Department to transport that waste; or

3. Accept waste from a hazardous waste vehicle which fails to display a current Department registration number, as required by N.J.A.C. 7:26–7.5(d).

(f) Reporting and recordkeeping requirements are as follows:

1. Owners or operators of hazardous waste facilities shall maintain a daily operating record pursuant to N.J.A.C. 7:26–9.4(i).

2. The owner or operator shall prepare and submit two copies of an annual report to the Department by March 1 of each year, except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A–4.6. The report shall include:

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

ii. The calendar year covered by the report;

iii. A compilation of the daily operating record kept pursuant to N.J.A.C. 7:26–9.1 et seq. for the calendar year covered by the report;

iv. A summary of all manifest numbers for all hazardous waste received, identifying those shipments which were rejected in whole or in part, and identifying those shipments where a significant discrepancy occurred;

v. For each type of hazardous waste accepted, a report of the total quantity received and the quantities consigned to each treatment, recovery, or disposal process used. The report shall include the quantities of each waste type placed into storage and removed from storage during the reporting period. For off-site facilities, this information shall be listed by the EPA identification number of each generator;

vi. Monitoring data under N.J.A.C. 7:14A–6.1 et seq. (Rules of the Division of Water Resources), where required;

vii. The most recent closure cost estimate under N.J.A.C. 7:26–9.10(e) and the most recent post-closure cost estimate under N.J.A.C. 7:26–9.11(c)2, where applicable;

viii. A certification signed and dated by the owner or operator of the facility or his authorized representative stating "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties under N.J.S.A. 13:1E–1 et seq. for submitting false information, including the possibility of fine and imprisonment;"

ix. For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator.

3. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulation activity or as requested by the Department.

(g) A person who imports hazardous waste shall obtain a manifest as directed under N.J.A.C. 7:26–7.3(a)5.

As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
(c)3 added.
As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(a)4iii, (c)3, and (f)2ix added: "For off-site facilities . . ." added to (f)2v.
As amended, R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(c)3: Notice is required to be given to Regional Administrator.
(f)2: exception under N.J.A.C. 7:14A–4.6 added.
As amended, R.1984 d.472, effective October 15, 1984.
See: 16 N.J.R. 2044(b), 16 N.J.R. 2811(a).
Last sentence added to (a)2; (b)5 amended.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substituted "vehicle" for "hauler".
Amended by R.1989 d.173, effective April 3, 1989.
See: 20 N.J.R. 867(a), 21 N.J.R. 893(a).
(a)6 and 7 added, clarification of proper completion and distribution waste manifest form when a shipment is rejected by a facility. (b) new 2 added, 2–6 renumbered as 3–7. (g) added.
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Stylistic changes.
Amended by R.1993 d.5, effective January 4, 1993.
See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a), 25 N.J.R. 98(a)).
Changes to replace a penalty designation with a cross-reference to related requirements, requires a facility to describe any and all significant discrepancies, both resolved and reported, as part of the annual record and specifies that bulk weight discrepancy reports shall only be submitted if the discrepancy cannot be resolved by the generator and transporter within one week. This will prevent unnecessary filings. Administrative correction to (a)4ii.

See: 25 N.J.R. 1556(c).

7:26–7.7 Exemption from manifest rules

(a) Rules governing the use of the manifest system do not apply to on-site (as defined in N.J.A.C. 7:26–1.4) transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste facilities.

(b) Generators who only generate less than 1001 gallons/month of hazardous waste with hazardous waste numbers X721, X723, X724, X726, or X727, or generators who only generate hazardous waste number X722 in any amount are exempted from the generator requirements as contained in N.J.A.C. 7:26–7.4 provided they are the original generators and they comply with (d) below.

(c) Used oil collection centers, as defined in N.J.A.C. 7:26A–6.2, with on-site storage capacity of less than 1,001 gallons, and automotive service stations which generate only hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 are exempted from the generator requirements as contained in N.J.A.C. 7:26–7.4 provided they comply with (d) below.

(d) A generator exempted according to (b) or (c) above shall offer this waste only to waste haulers who are registered with the New Jersey Department of Environmental Protection as transporters of hazardous waste; and shall obtain a written receipt from the hazardous waste hauler when the waste is transported off-site, and shall retain these receipts on file for a period of three years and make them available, upon request, to representatives of the New Jersey Department of Environmental Protection.

(e) A generator who generates PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, is exempt from the requirements at N.J.A.C. 7:26–7.4 for that PCB hazardous waste which is transported intra-state provided the following requirements are met:

1. The PCB hazardous waste is transported intra-company only, meaning between sites owned or operated by the same company, between sites owned by a parent and its subsidiary corporations, or between sites owned or operated by subsidiaries of the same parent corporation;

2. The generator's storage facility is in compliance with the requirements at N.J.A.C. 7:26–9.1(c)17;

3. The shipment is direct between the generator-owned or operated site of generation, that is, where the substance becomes a solid waste as defined at N.J.A.C. 7:26–1.6, and the generator's storage facility;

4. The generator complies with all relevant provisions of the Federal Toxic Substances Control Act (TCSA), 15 U.S.C. § 2601 et seq. (1976), as amended, and Federal regulations promulgated pursuant thereto, at 40 C.F.R. pt. 761 as amended, including recordkeeping requirements. Any such records must be available for review by the Department; and

5. The generator complies with the requirements of N.J.A.C. 7:26–7.4 upon off-site shipment of the hazardous waste for final disposition.

Amended by R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
This section formerly concerned "penalty provisions" which rules were recodified, with amendments, at N.J.A.C. 7:26–7.8.
Amended by R.1982 d.494, effective January 17, 1983.
See: 14 N.J.R. 20(a), 15 N.J.R. 88(a).
(b)-(d) added.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
Added text is (b) "or generators who . . . in any amount".
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (e).
Amended by R.1992 d.78, effective February 18, 1992.
See: 23 N.J.R. 2855(a), 24 N.J.R. 584(b).
Deleted time specific reference to Federal regulations and replaced with "as amended".
Amended by R.1993 d.342, effective July 6, 1993.
See: 24 N.J.R. 2383(a), 25 N.J.R. 2863(a).

7:26–7.8 Penalty provisions

(a) Any person who fails to comply with provisions of these regulations or consigns for shipment, handles, stores, or disposes of hazardous waste in a manner inconsistent with these regulations shall be subject to penalties pursuant to N.J.S.A. 13:1E–1 et seq.

(b) Any generator, hauler, facility operator or any other person who discharges or is responsible for discharge of hazardous wastes on the land or in the waters of the State of New Jersey or any place other than an approved hazardous waste facility shall be subject to penalties pursuant to N.J.S.A. 58:10A–1 et seq.

Amended by R.1981 d.281, effective August 6, 1981.
See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).
This section was recodified from N.J.A.C. 7:26–7.7 with amendments, and formerly concerned the effective date for N.J.A.C. 7:26–7 as originally filed and adopted. The amendments concerned substituting "hazardous waste" for "special waste."

SUBCHAPTER 8. HAZARDOUS WASTE CRITERIA, IDENTIFICATION AND LISTING

Subchapter Historical Note

Adopted as R.1981 d.281, effective August 6, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 484(b). Notice of Petition. See: 22 N.J.R. 994(a). Notice of Action on Petition. See: 22 N.J.R. 994(d).

7:26–8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26–1.6 is a hazardous waste if:

1. It is not excluded from regulations as a hazardous waste under N.J.A.C. 7:26–8.2; and

2. It meets any of the following criteria:

i. It is listed in N.J.A.C. 7:26–8.13, 8.14 or 8.15;

ii. It contains a hazardous waste constituent listed in N.J.A.C. 7:26–8.16 and is formally designated a hazardous waste through the operation of N.J.A.C. 7:26–8.6 and 8.7;

iii. It is a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26–8.13, 8.14, 8.15, or 8.20; however, the following mixtures of solid and hazardous wastes listed in N.J.A.C. 7:26–8.13, 8.14, and 8.15 are not hazardous (except by application of paragraphs (a)2i or ii above, or v, vi or vii below) if the generator can demonstrate that the mixture consists of process wastewater, the discharge of which is specified and limited in a permit issued pursuant to N.J.A.C. 7:14A or Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et al. (and consequently N.J.S.A. 58:10A–1 et seq. or N.J.S.A. 58:11–49 et seq.), and the generator has notified the Division of Water Resources when claiming exemption pursuant to (a)2iii(1), (2), (3) or (5) below.

(1) One or more of the following spent solvents listed in N.J.A.C. 7:26–8.13: carbon tetrachloride, tetrachloroethylene, trichoroethylene, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of a facility's wastewater treatment or pre-treatment system does not exceed one part per million; or

(2) One or more of the following spent solvents listed in N.J.A.C. 7:26–8.13: methylene chloride, 1,1,1–trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(3) The following wastes listed in N.J.A.C. 7:26–8.14: heat exchanger bundle cleaning sludge from the petroleum refining industry (Hazardous Waste No. K050); or

(4) A discarded commercial chemical product, or chemical intermediate listed in N.J.A.C. 7:26–8.15, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph "de minimis" losses include those from normal material handling operations including but not limited to: spills from the unloading or transfer of materials from bins or other containers, leaks from valves or other devices used to transfer materials; minor leaks from process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinse from empty containers or from containers that are rendered empty by that rinsing; or

(5) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in N.J.A.C. 7:26–8.13, 8.14, 8.15, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

iv. It is a mixture of solid waste and a hazardous waste that is listed in N.J.A.C. 7:26–8.13, 8.14, 8:15 or 8.20 solely because it exhibits one or more of the characteristics of hazardous waste identified in N.J.A.C. 7:26–8.9 through 8.12, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in N.J.A.C. 7:26–8.9 through 8.12, and the mixture is:

(1) Initially generated as a mixture; or

(2) The result of containment or cleanup of an accidental discharge.

v. It exhibits any of the characteristics of hazardous waste identified in N.J.A.C. 7:26–8.9 through 8.12;

vi. It is listed in 40 C.F.R. Part 261, Subpart D, including all future additions or supplements; or

vii. It is listed in N.J.A.C. 7:26–8.20.

(b) A solid waste which is not excluded from regulation under N.J.A.C. 7:26–8.2 becomes a hazardous waste when any of the following events occur:

1. In the case of a waste listed in this subchapter when the waste first meets the listing description set forth in N.J.A.C. 7:26–8.13, 8.14, 8.15, or 8:20; or

2. In the case of a mixture of solid waste and one or more listed hazardous wastes, when a listed hazardous waste is first added to the solid waste; or

3. In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in N.J.A.C. 7:26–8.9 to N.J.A.C. 7:26–8.12; or

4. In the case of an unlisted waste which does not exhibit any of the characteristics identified in N.J.A.C. 7:26–8.9 to 8.12, when the Department makes a final determination pursuant to N.J.A.C. 7:26–8.6 that the waste is a hazardous waste; or

5. In the case of a waste listed in 40 CFR 261 Subpart D, when the waste first meets the listing description set forth therein; or

6. In the case of a hazardous waste which has been subjected to recycling when the recycled material is accumulated or stored prior to burning or is burned for energy recovery, applied to or placed on the land in a manner that constitutes disposal, or is subjected to further processing prior to becoming a product as commonly traded in commerce.

(c) Unless and until it meets the criteria of N.J.A.C. 7:26–8.1(d):

1. A hazardous waste will remain a hazardous waste.

2. Any solid waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.

(d) Any solid waste described in (c)1 and (c)2 above is not a hazardous waste if it meets the following criteria:

1. In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in N.J.A.C. 7:26–8.9 to N.J.A.C. 7:26–8.12.

2. In the case of a waste which is a listed waste under 40 CFR 261, Subpart D, contains a waste listed under Subpart D or is derived from a waste listed under Subpart D, it also has been excluded in accordance with 40 CFR 260.20(c) and 40 CFR 260.22(c).

3. In the case of a waste which is not listed at 40 CFR 261, Subpart D but which is designated a hazardous waste by the Department pursuant to N.J.A.C. 7:26–8.6 or listed by the Department pursuant to N.J.A.C. 7:26–8.8, contains such waste or is derived from such waste, the Department makes a final determination pursuant to N.J.A.C. 7:26–8.17(c) that the waste is not a hazardous waste.

4. In the case of any solid waste, it is recycled from hazardous wastes and used beneficially, unless it is burned for energy recovery or applied to or placed on the land in a manner that constitutes disposal, or is subject to further processing prior to becoming a product as commonly traded as commerce.

Amended by R.1987 d.18, effective January 5, 1987.
See: 17 N.J.R. 2941(a), 19 N.J.R. 113(a).
New (a)2iii.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added (b)6 and (d)4.
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Stylistic change in (a)2v.
Added (a)2vi.
Added reference to N.J.A.C. 7:26–8.20 in (b)1.
Amended by R.1991 d.420, effective August 5, 1991.
See: 23 N.J.R. 1113(b), 23 N.J.R. 2360(a).
In (a)2iii, changed citations to conform to information, added in new iv(1) and (2). Recodified existing (a)2iv-vi as v-vii.

Law Review and Journal Commentaries

Solid Waste—Environmental Protection—Hazardous Material. Judith Nallin, 136 N.J.L.J. No. 4, 62 (1994).

Case Notes

Validity of regulation defining "listed hazardous wastes" to include wastes derived from listed hazardous wastes. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

In criminal prosecution the State was required to offer evidence establishing that land was acquired by the federal government after the enactment of statute and that the United States had not filed an acceptance of exclusive jurisdiction. State v. Ingram, 226 N.J.Super. 680, 545 A.2d 268 (L.1988).

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

7:26–8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1. Domestic sewage ("Domestic sewage" means untreated sanitary wastes that pass through a sewer system):

i. Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment.

2. Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended, 33 U.S.C. 125 et seq.

3. Irrigation return flows.

4. Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. commencing April 1, 1991 and subsequent thereto, this exemption does not include, how-

ever, the hazardous waste portion of mixtures of radioactive wastes and hazardous wastes.

5. Materials subject to in situ mining techniques which are not removed from the ground as part of the extraction process.

6. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

7. Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

i. The growing and harvesting of agricultural crops;

ii. The raising of animals, including animal manures.

8. Mining overburden returned to the mine site;

9. Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use;

10. Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore;

11. Cement kiln dust waste.

12. Samples of solid waste or water, soil, or air, which are collected for the sole purpose of testing to determine their characteristics or composition.

i. This exemption is only applicable when:

(1) The sample is being transported to a laboratory for the purpose of testing;

(2) The sample is being transported back to the sample collector after testing;

(3) The sample is being stored by the sample collector before transport to a laboratory for testing;

(4) The sample is being stored in a laboratory before testing;

(5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(6) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

ii. In order to qualify for this exemption, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(1) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(2) If these shipping requirements do not apply, include with the shipment the sample collector's name, mailing address, and telephone number; the laboratory's name, mailing address, and telephone number; a description of the sample and its quantity; the date of the shipment; and

(3) Package the sample so that it does not leak, spill, or vaporize from its packaging.

iii. This exemption does not apply if the laboratory determines that the waste is a hazardous waste pursuant to this chapter but the laboratory is no longer meeting any of the conditions of this paragraph.

13. Oil/water mixtures from the cleanout of ballast and/or bilge tanks on boats, barges, ships or other marine vessels, when cleanout and treatment occurs at oil refineries which are also the port facilities at which the offloading of the above materials occurred, and provided that:

i. Those wastes are processed on-site, in waste water treatment facilities which have an appropriate permit from the Department; and

ii. The oily fraction of those wastes is recovered and utilized on-site as a raw material feedstock in the refinery's production process and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such processing is performed in compliance with all applicable Departmental permits.

14. Waste oil generated during the course of normal production and handling procedures at an oil refinery, including waste oil recovered from wastewater treatment systems regulated by the Department, so long as:

i. The waste oil is recycled on-site, at the facility at which it is generated, without having left the premises of that facility; and

ii. The waste oil is utilized as a raw material feedstock in the refinery's production process, and the finished product is indistinguishable, in terms of composition and performance characteristics, from the product produced solely from the refinery's normal non-waste feedstocks; and

iii. Such recycling is performed in compliance with all applicable Departmental permits.

15. Used batteries (or used battery cells) returned to a battery manufacturer for regeneration. Generators, transporters or storers of lead acid batteries destined for reclamation are exempt from regulation under N.J.A.C. 7:26–7 through N.J.A.C. 7:26–12 provided that storage prior to their transportation to a reclamation facility does not exceed 90 days and the generators, transporters or storers do not themselves reclaim the batteries. Owners and operators of battery reclamation facilities are regulated under N.J.A.C. 7:26–7 through N.J.A.C. 7:26–12 (except for manifest requirements at N.J.A.C. 7:26–7.3 and 7.4);

16. Reclaimed industrial ethyl alcohol regulated by the Federal Bureau of Alcohol, Tobacco, and Firearms in the Federal Treasury Department, except this exclusion does not apply in the case of exports; whereupon the person initiating a shipment for reclamation in a foreign country, any intermediary and/or transporter shall comply with N.J.A.C. 7:26–7.4(b) through (d), and 7.5(d), unless provided otherwise in an international agreement as specified in 40 C.F.R. 262.58;

17. Waste-derived products produced for the general public's use that are applied to or placed on the land and that contain hazardous waste, provided the hazardous waste portion has undergone a chemical reaction in the course of production so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recycled material also are not presently subject to regulations;

18. Hazardous scrap metal when recycled;

19. Materials when they are reintroduced on-site to the original production process from which they are generated without first being processed, treated, reclaimed or changed in any way, provided that:

i. The material is returned to an on-site process as a substitute for raw material feedstock and the process uses raw materials as principal feedstocks; and

ii. The material is not a listed hazardous waste with numbers F020, F021, F022, F023, F026, F028; and

iii. The material is not applied to or placed on the land in a manner that constitutes disposal or used to produce products that are applied to or placed on the land, except as exempted in N.J.A.C. 7:26–8.2(a)17; and

iv. The material is not burned for energy recovery, used to produce a fuel, or contained in fuels, except for fuels produced from the refining of oil-bearing hazardous wastes when such wastes directly result from a crude oil refining process, are reinserted on-site, and are reprocessed. The resultant fuel oil must be indistinguishable from and must meet the specifications in terms of trace contaminants, of fuels produced solely from crude oil. Specifically prohibited is the mixing of any hazardous wastes into fuel oil without being reprocessed; and

v. The material is stored no longer than 90 days.

20. Recycled waste oil burned for energy recovery that was processed to a degree acceptable to the Department in an authorized New Jersey waste oil facility;

21. Pulping liquors (that is, black liquors) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, provided at least 75 percent of the amount accumulated in one year is recycled.

22. Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic in N.J.A.C. 7:26–8.12 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations at 40 C.F.R. Part 280.

23. Subject to the following conditions, samples collected for the purpose of conducting a treatability study, defined at N.J.A.C. 7:26–1.4, or treatability study residues returned to the sample originator are not subject to the requirements of N.J.A.C. 7:26–7.1 through 7.5 and N.J.A.C. 7:26–8. Samples collected for the purpose of conducting a treatability study are not included in quantity determinations under N.J.A.C. 7:26–8.3 (small quantity generator). However, treatability study residues or unused samples once returned to the generator or sample collector are specifically not excluded and are subject to the requirements of N.J.A.C. 7:26–7.1 through 7.5 and N.J.A.C. 7:26–8.

i. The samples are accumulated, stored, and prepared for transport by the generator or sample collector; the samples are not stored longer than 90 days prior to transport; and the samples are transported to a testing facility which conducts treatability studies;

ii. The exclusion in this paragraph is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting a treatability study provided that:

(1) The generator or sample collector uses (in "treatability studies") no more than 1,000 kg of any non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(2) The mass of each sample shipment does not exceed 1,000 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

(3) The sample is packaged so that it does not leak, spill, or vaporize from its package during shipment;

(A) The transportation of each sample shipment shall comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

I. The name, mailing address, and telephone number of the originator of the sample;

II. The name, address, EPA identification number and telephone number of the testing facility that will perform the treatability study;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample, including its EPA Hazardous Waste Number;

iii. The sample is shipped to a testing facility meeting the requirements of N.J.A.C. 7:26–8.2(a)23 or to a hazardous waste treatment, storage, or disposal facility which is either permitted under N.J.A.C. 7:26–12 or has existing status under N.J.A.C. 7:26–12.3, or to an out-of-State facility meeting the equivalent regulations in the receiving state;

iv. The generator or sample collector maintains the following records for a period of at least three years after completion of the treatability study:

(1) Copies of the shipping documents;

(2) A copy of the contract with the facility conducting the treatability study; and

(3) Documentation showing:

(A) The amount of waste shipped under this exemption;

(B) The name, address, and EPA identification number of the facility to which the shipment was sent;

(C) The date the shipment was made; and

(D) The amount of unused samples and residues returned to the generator;

v. The generator reports the information required under (a)22iv(3) above as part of its annual report; and

vi. The Department may grant variances for samples collected in New Jersey, on a case-by-case basis, for quantity limits in excess of those specified at (a)22ii above. A variance may be granted for up to an additional 500 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste, except the variance may exceed these quantity limits where the material is not considered a hazardous waste under the Federal regulations at 40 C.F.R. Pts. 260 and 261, but is considered a hazardous waste under the New Jersey rules. Additional quantities granted by a variance are subject to the provisions of N.J.A.C. 7:26–8.2(a)22. The following limitations shall also apply:

(1) The Department may grant a variance only:

(A) Where an equipment or mechanical failure has occurred during the conduct of a treatability study;

(B) To verify results of a previously conducted treatability study;

(C) To study and analyze alternative techniques within a previously evaluated treatment process; or

(D) Where further evaluation of an ongoing treatability study is necessary to determine final specifications for treatment; and

(2) The generator or sample collector requesting a variance under this paragraph shall submit the following written information to the Department:

(A) The reason the generator or sample collector requires an additional quantity of sample for the treatability study evaluation;

(B) The additional quantity needed;

(C) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including, for each previous sample from the waste stream, the date and quantity of shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(D) A description of the technical modifications or changes in specifications which will be evaluated and the expected results;

(E) If additional quantities are being requested due to equipment or mechanical failure, specific information regarding the reason for the failure and a description of what procedures or equipment improvements have been made to protect against further failures; and

(F) Such additional information as the Department deems necessary. The Department may return, reject, or refrain from acting on, a variance request for which it deems additional information necessary until such information is submitted.

24. Samples undergoing treatability studies and the testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to the requirements of N.J.A.C. 7:26–7 through 12, provided the following conditions are met:

i. No less than 45 days prior to conducting treatability studies, the testing facility notifies the Department, in writing, that it intends to conduct treatability studies under N.J.A.C. 7:26–8.2(a)23;

ii. A testing facility conducting treatability studies has an EPA identification number;

iii. No more than a total of 250 kg of "as received" hazardous waste, that is, the waste as it is received in the shipment from the generator or sample collector, shall be subjected to initiation of treatment in all treatability studies in any 24 hour period;

iv. The quantity of "as received" hazardous waste stored at the testing facility for the purpose of evaluation in treatability studies, from all sources, shall not exceed 1,000 kg, the total of which can include not greater than 500 kg of soils, water, or debris contaminated with acute hazardous waste or one kg of acute hazardous waste. This quantity limitation does not include:

(1) Treatability study residues; and

(2) Treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste;

v. No more than 90 days have elapsed since the treatability study for the sample was completed or no more than one year has elapsed since the generator or sample collector shipped the sample to the testing facility, whichever date occurs first, without the hazardous waste and residues being either manifested to a designated hazardous waste facility or returned to the originator of the sample;

vi. The treatability study does not involve the placement of hazardous waste on land or open burning or hazardous waste;

vii. The testing facility retains records, on the premises for three years following completion of each study, that show compliance with the limitations for treatment rate, storage time, and quantity, including the following specific information for each treatability study conducted:

(1) The name, address and EPA identification number of the generator or sample collector of each waste sample;

(2) The date the shipment was received;

(3) The quantity of waste received, including a description of the waste;

(4) The quantity of "as received" waste in storage each day;

(5) The date the treatment study was initiated and the amount of "as received" waste introduced into treatment each day;

(6) The date the treatability study was concluded;

(7) The shipping papers including information for date, amount, and description for any unused sample or residues generated from the treatability study returned to the generator or sample collector or, if sent to a designated facility, the date, the name of the facility, its EPA identification number, and a copy of the manifest; and

(8) A copy of the treatability study contract;

viii. The facility prepares and submits a report to the Department by March 1 of each year that estimates the number of studies and amount of waste expected to be used in treatability studies during the current calendar year and through March 1 of the following year, and includes the following information for the previous calendar year:

(1) The name, address, and EPA identification number of the testing facility conducting the treatability studies;

(2) The types, by process, of treatability studies conducted;

(3) The name, address, and EPA identification number of each person for whom studies have been conducted;

(4) The total quantity of waste in storage each day;

(5) The quantity and types of waste subjected to treatability studies;

(6) The date each treatability study was started and completed or expected to be completed; and

(7) The final disposition of residues and unused sample from each treatability study;

ix. The testing facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under N.J.A.C. 7:26–8. If so, then such hazardous wastes are fully regulated under N.J.A.C. 7:26, unless the residues and unused samples are returned to the sample originator, in accordance with the shipping standards at (a)22ii(3) above, under the exclusion at (a)22 above;

x. The testing facility notifies the Department in writing when it is no longer planning to conduct treatability studies at the site; and

xi. The Department, initially or upon review, after considering the competency, reliability and integrity of the owner or operator, has determined that the facility or operation thereof does not pose a threat to the environment.

25. Waste pesticides generated by farmers from their own use, provided they are disposed of on-site, at the farm which generated the waste, in a manner consistent with the disposal instructions on the pesticide label.

Empty pesticide containers are also excluded, provided each container is triple rinsed using a solvent capable of removing the commercial chemical product.

26. Small capacitors, provided that:

i. The capacitor contains less than 1.36 kilograms (kg.) (three pounds) of dielectric fluid. (Capacitors whose total volume is less than 1,639 cm^3 (100 cubic inches) or whose total weight is less than 4.08 kg. (nine pounds) shall be deemed to contain less than 1.36 kg. of dielectric fluid);

ii. The capacitor is intact and not leaking at the time of disposal;

iii. The capacitor is disposed of as industrial solid waste (I.D. 27) or at a TSCA approved chemical landfill; and

iv. The generator of the capacitor has not at any time manufactured PCBs, PCB-containing electrical equipment, or PCB-containing capacitors.

27. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is recycled for further use.

28. Wastes which fail the test for the toxicity characteristic because chromium is present or are listed in N.J.A.C. 7:26–8.13, 8.14, or 8.15 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

i. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

ii. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

iii. The waste is typically and frequently managed in non-oxidizing environments.

29. Specific wastes which meet the standards of (a)28i, ii and iii above (so long as they do not fail the test for the toxicity characteristic, and do not fail the test for any other characteristic) are:

i. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

ii. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

iii. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

iv. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

v. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

vi. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

vii. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

viii. Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(b) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, a manufacturing process unit, or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under N.J.A.C. 7:26–7 through 13A, 16, 16A and 17 until it exits the unit in which it was generated, unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing or for storage or transportation of product or raw materials.

Amended by R.1987 d.18, effective January 5, 1987.
See: 17 N.J.R. 2941(a), 19 N.J.R. 113(a).
New (a)12.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
Added new (a)13. and 14.
Notice of Correction: The new adoption was erroneously codified as (a)12. and 13. instead of (a)13. and 14.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a)
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added (a)15–21.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Changed an to or in (b).
Amended by R.1990 d.228, effective May 7, 1990.

See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).
Added (a)22 and 23.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (a)24.
Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).
In (a)4, added April 1991 exemption exclusion.
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Industrial ethyl alcohol exclusion amended at (a)16; (a)25 added.
Administrative Correction: Text at (a)22, 23 and 24 recodified to include all recent adoptions.
See: 22 N.J.R. 3148(b).
Amended by R.1991 d.421, effective August 5, 1991.
See: 23 N.J.R. 115(a), 23 N.J.R. 2360(b).
Deleted "EP" in (a)9. Added (a)22. Recodified existing (a)22–25 as 23–26.
Amended by R.1992 d.78, effective February 18, 1992.
See: 23 N.J.R. 2855(a), 24 N.J.R. 584(b).
The amendment at (a)26iii allows small, intact capacitors to be sent to another type of environmentally sound facility handling PCBs.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Clarified that the exclusion for in-process products or materials to include an exemption from regulation under N.J.A.C. 7:26–12, 13, 13A, 16, 16A and 17.
Amended by R.1992 d.448, effective November 16, 1992.
See: 23 N.J.R. 3692(a), 24 N.J.R. 4258(a).
Added (a)27, used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, to list of materials not regulated as hazardous waste.
Amended by R.1992 d.496, effective December 21, 1992.
See: 23 N.J.R. 3410(a), 24 N.J.R. 4523(b).
Amended definition of household waste at (a)6.
Amended by R.1994 d.411, effective August 1, 1994.
See: 26 N.J.R. 1464(a), 26 N.J.R. 3211(a).

7:26–8.3 Special requirements for hazardous waste generated by small quantity generators

(a) A generator is a small quantity generator in a calendar month if he/she generates less than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in (d), (e) and (j) below, and provided the requirements at (f) below are met, a small quantity generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26–7 and N.J.A.C. 7:26–9 through 11.

(c) In determining the quantity of hazardous waste generated, the following rules apply:

1. The generator need only include hazardous waste when it is first generated and is not required to include it again when it is removed from on-site accumulation or storage.

2. The generator is not required to include a hazardous waste produced by the on-site treatment of hazardous waste already included.

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26–7 through 12. If the acutely hazardous waste in a calendar month is equal to or less than those quantities set forth below, then the small quantity generator's quantities of acutely hazardous waste are not subject to regulation under N.J.A.C. 7:26–7 through 12 provided the requirements at (f) below are met.

1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26–8.13, 8.14, or 8.15(a)5; or

2. A total of 100 kilograms of any residue or contaminated soil, water, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acutely hazardous wastes listed in N.J.A.C. 7:26–8.13, 8.14, or 8.15(a)5.

(e) A small quantity generator may accumulate hazardous waste on-site. If at any time more than a total of 100 kilograms of the generator's hazardous waste, or the generator's acutely hazardous waste accumulates on-site in quantities greater than set forth in (d)1 above, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under N.J.A.C. 7:26–7 through 11. The time period of N.J.A.C. 7:26–9.3 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(f) In order for hazardous waste generated by a small quantity generator, in quantities equal to or less than those described at (a) above or at (d) above for acutely hazardous waste, to be excluded from full regulation under this section, the generator shall:

1. Comply with N.J.A.C. 7:26–8.5;

2. If the generator's hazardous waste is stored on-site, store it in compliance with the requirements of (e) above; and

3. Either treat or dispose of the generator's hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

i. Permitted under 40 CFR 270; or

ii. In interim status under 40 CFR 270 and 265; or

iii. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271; or

iv. Permitted, licensed or registered by the Department to manage New Jersey Waste Type No. 27, unless the waste is prohibited from final land disposal in accordance with N.J.A.C. 7:26–9.2(d); or

v. Permitted, licensed or registered by another State to manage municipal or industrial solid waste; or

vi. A facility which:

(1) Beneficially uses or reuses, or legitimately recycles or reclaims the generator's waste; or

(2) Treats the generator's waste prior to beneficial use or reuses, or legitimate recycling or reclamation.

(g) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in N.J.A.C. 7:26–8.9 through 8.12.

(h) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(i) A presumption of non-eligibility for the reduced requirements of this section will be applied. Each generator claiming status as a small quantity generator in any calendar month must, upon request of the Department, supply written records showing a clear and convincing basis for eligibility.

Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
(f)3iv. text added.
Correction: Added operative date to annotation.
See: 18 N.J.R. 1379(a).
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(d)1 and 2 deleted and new text substituted.
Correction: changed (e) to (a)5 in cross references.
See: 19 N.J.R. 2165(a).
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Changed CFR from 122 to 270 and 123 to 271.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (j).
Amended by R.1990 d.445, effective September 4, 1990.
See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
Small quantity generator requirements clarified.
Administrative Correction to (b) added "and (j)".
See: 22 N.J.R. 3366(a).
Amended by R.1992 d.78, effective February 18, 1992.
See: 23 N.J.R. 2855(a), 24 N.J.R. 584(b).
Deleted (j).

7:26–8.4 Residues of hazardous waste in empty containers

(a) Any hazardous waste remaining in either an empty container or an empty inner liner removed from a container, the term "empty" defined in (b) through (e) below, is not subject to regulation under N.J.A.C. 7:26–7 through 11.

1. Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in (b) through (e) below, is subject to regulation under N.J.A.C. 7:26–7 through 11.

(b) Except as provided in (c), (d) and (e) below, a container or an inner liner removed from a container that has held any hazardous waste is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating; and

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

(c) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(d) A container or an inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26–8.13, 8.14, or 8.15(a)5 is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner; and

3. The container or inner liner has been:

i. Triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

ii. Cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

iii. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(e) A container or inner liner which held PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

3. The container or inner liner has been triple rinsed in accordance with procedures described at 40 C.F.R. pt. 761, as amended, with a suitable solvent containing 50 ppm PCBs or less, the solubility of PCBs in the solvent being five percent or more by weight;

4. Any inner liner that prevented contact between the waste and the container is removed; and

5. All requirements of the Federal Toxic Substances Control Act, U.S.C. § 2601 et seq. (1976), and Federal regulations promulgated pursuant thereto have been complied with.

(f) For the purposes of this section, the definition of "container" does not include electrical, hydraulic, or other equipment containing or previously having contained PCBs.

Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
Correction: (e) now (a)5.
See: 19 N.J.R. 2165(a).
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Revised (a); changed (b)2i. to (c); changed (b)3. to (d) and added 1.–3.; added (e) and (f).

7:26–8.5 Hazardous waste determination: generator responsibilities

(a) Any person who generates a solid waste, as defined in N.J.A.C. 7:26–1.6 shall determine whether the waste generated is a hazardous waste.

(b) The generator shall determine whether the waste generated is a hazardous waste listed in N.J.A.C. 7:26–8.13, 8.14 or 8.15 or a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26–8.13, 8.14 or 8.15. If it is not, then the generator shall:

1. Test the waste in accordance with standards set out in N.J.A.C. 7:26–8.9 through 8.12 to determine whether it exhibits any of the characteristics of hazardous waste described therein; or

2. By applying knowledge of the hazardous characteristic of the waste in light of the materials or processes used determine whether it exhibits a characteristic or characteristics described in N.J.A.C. 7:26–8.9 through 8.12; or

3. If the waste generated is a waste oil as defined at N.J.A.C. 7:26–1.4, or a mixture of one or more waste oils and a solid waste, and is being recycled:

i. Determine if the waste oil or mixture:

(1) Is listed at N.J.A.C. 7:26–8.20;

(2) Exhibits a characteristic of hazardous waste described at N.J.A.C. 7:26–8.9 through 8.12; or

(3) Is a hazardous waste under the terms of (d) below; and

ii. Determine if the waste oil is a "used oil" being burned for energy recovery under the federal regulations at 40 C.F.R. Part 266, Subpart E.

NOTE: Federal requirements for the burning of used oil for energy recovery are separate and distinct and, therefore, are in addition to the hazardous waste management requirements of N.J.A.C. 7:26.

(c) If the waste generated has not been classified as a hazardous waste pursuant to (b) above, then the generator shall determine if the waste is listed at N.J.A.C. 7:26–8.20 or is a mixture of one or more wastes listed at N.J.A.C. 7:26–8.20 and solid waste.

(d) If the waste generated is not a hazardous waste by reason of the operation of N.J.A.C. 7:26–8.1(a), then the generator shall, upon request by the Department, submit, in a timely manner on a schedule approved by the Department, a plan for analyzing the waste to detect the presence of hazardous waste constituents listed in N.J.A.C. 7:26–8.16 which the generator, through knowledge of the chemical composition of the waste in light of the materials and processes used, determines may be present in detectable quantities in the waste. The generator shall conduct the approved analysis plan and submit to the Department the results of the analysis as well as such other information as may be necessary to verify the data provided.

(e) Wastes designated as hazardous wastes by operation of this section shall be manifested in accordance with the waste code hierarchy at N.J.A.C. 7:26–7.4(a)4x.

(f) A generator shall keep records of any test results, waste analysis, or other determinations made in accordance with this section for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.

(g) All determinations made by generators pursuant to this section shall be subject to review and reclassification by the Department on a finding that such determination does not meet all standards set forth herein.

Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Changed "If the waste generated is not a hazardous waste" to "The generator shall determine whether the waste generated is a hazardous waste" in (b). Added "If it is not" in (b).
Added (b)3.
Added (c), redesignated (c) as (d).
Added (e), redesignated (d)-(e) as (f)-(g).

Case Notes

Regulations were to be evaluated under commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations did not violate commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations were consistent with Resource Conservation and Recovery Act. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

7:26–8.6 Use of constituent list in generator: Specific hazardous waste determination

(a) A solid waste not excluded from regulation as a hazardous waste under N.J.A.C. 7:26–8.2 may be designated a hazardous waste if it contains a constituent listed in N.J.A.C. 7:26–8.16 and, after consideration of the following factors, the Department concludes that the waste is capable of posing a substantial present or potential hazard to human

health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed:

1. The nature of the toxicity presented by the constituent;

2. The concentration of the constituent in the waste;

3. The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)7 below;

4. The persistence of the constituent or any toxic degradation product of the constituent;

5. The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation;

6. The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems;

7. The plausible types of improper management to which the waste could be subjected;

8. The qualities of the waste generated at individual generation sites or on a regional or national basis;

9. The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent;

10. Actions taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent;

11. Such other factors as may be appropriate.

7:26–8.7 Procedures for decision-making in generator: specific hazardous waste determination

(a) Designation of a solid waste as a hazardous waste pursuant to N.J.A.C. 7:26–8.6 shall be a case by case determination which applies only to the waste stream of the generator required to submit data pursuant to N.J.A.C. 7:26–8.5(d). The Department may, in its discretion, proceed in this case by case manner or proceed with a rulemaking action pursuant to N.J.A.C. 7:26–8.8.

(b) The Department shall notify the generator of its determination under N.J.A.C. 7:26–8.6 by certified letter. Such letter shall include a fact sheet which briefly sets forth the principal facts and the significant factual, methodological, and policy questions considered in preparing the hazard determination.

(c) Within 30 days following the receipt of a hazard determination, the generator may submit a request to the Department for an adjudicatory hearing on the factual matters.

1. Such requests shall state each legal or factual question alleged to be at issue, and their relevance to the hazard determination, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by the "Administrative Procedure Act" N.J.S.A. 52:14B–1 et seq. unless already in the administrative record.

2. Such requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402.

(d) Following the expiration of the time allowed by (c) above for submitting a request for an adjudicatory hearing, the Department shall decide whether the request sets forth material issues of fact relevant to the hazard determination and whether the request represents a "contested case" as defined in the "Administrative Procedure Act" (cited above).

(e) Where the request satisfies the criteria in (d) above, the Office of Administrative Law shall hold hearings in accordance with the "Administrative Procedure Act" N.J.S.A. 52:14B–1 et seq. and N.J.S.A. 52:14F–1 et seq. The Office of Administrative Law shall make the initial decisions concerning the hazard determinations.

(f) The Commissioner shall make all final decisions concerning hazard determinations pursuant to N.J.A.C. 7:26–8.6.

(g) Any generator may request reconsideration of a hazard determination made pursuant to N.J.A.C. 7:26–8.6 provided that such request alleges:

1. A substantial change in the character of the waste stream that renders the original hazard determination obsolete or non-applicable; or

2. New facts concerning the waste stream which would render the original hazard determination invalid, provided such facts were not reasonably available to the generator or the Department at the time of the original hazard determination and were not raised at that time; or

3. An amendment to the regulatory criteria for hazard determination which, if in effect at the time of the original hazard determination, would have rendered the determination invalid.

Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Changed N.J.A.C. 7:26–8.5(c) to N.J.A.C. 7:26–8.5(d).
Administrative change in (c)2.
See: 23 N.J.R. 3325(b).

7:26–8.8 Criteria for listing hazardous waste by category, class or type

(a) The Department shall after public notice and hearing list a solid waste as a hazardous waste upon determining that the solid waste meets one of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in N.J.A.C. 7:26–8.9 to N.J.A.C. 7:26–8.12.

2. It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than two milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible or incapacitating reversible, illness. (Waste listed pursuant to these will be designated Acute Hazardous Waste.)

3. It contains a constituent listed at N.J.A.C. 7:26–8.16 and, after consideration of the same factors as those listed at N.J.A.C. 7:26–8.6, the Department concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. (Wastes listed pursuant to this criteria will be designated toxic wastes).

(b) A constituent shall be listed at N.J.A.C. 7:26–8.16 if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms.

(c) The Department may list classes or types of solid waste as hazardous waste if there is reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in N.J.S.A. 13:1E–1.1 et seq. and N.J.A.C. 7:26–1.4.

(d) The Department will indicate its basis for listing the classes or types of wastes listed in this section by employing one or more of the following Hazard Codes:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
Toxicity Characteristic	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

The Department has incorporated the Federal 40 C.F.R. § 261 Appendix VII at N.J.A.C. 7:26–8.19. Appendix VII identifies the constituent which caused the EPA Administrator to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in §§ 261.31 and 261.32.

(e) Each hazardous waste listed in N.J.A.C. 7:26–8.13, 8.14 or 8.15 is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the recordkeeping and reporting requirements under N.J.A.C. 7:26–7.4(e).

Amended by R.1991 d.421, effective August 5, 1991.
See: 23 N.J.R. 115(a), 23 N.J.R. 2360(b).
In (d), changed "EP Toxic" to "Toxicity Characteristic Waste".
Amended by R.1993 d.300, effective June 21, 1993.
See: 25 N.J.R. 753(a), 25 N.J.R. 2718(a).

Case Notes

Regulations were to be evaluated under commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations did not violate commerce clause. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

Regulations were consistent with Resource Conservation and Recovery Act. Old Bridge Chemicals, Inc. v. New Jersey Dept. of Environmental Protection, C.A.3 (N.J.)1992, 965 F.2d 1287, rehearing denied, certiorari denied 113 S.Ct. 602, 121 L.Ed.2d 538.

7:26–8.9 Characteristic of ignitability

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

1. It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 140°F (60°C), as determined by a Pensky–Martens Closed Cup Tester, using the test method specified in ASTM Standard D–93–79, or a Setaflash Closed Cup Tester, using the test method specified in ASTM standard D–3278.

2. It is not liquified and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

3. It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in the regulation.

4. It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in this subchapter has the EPA Hazardous Waste Number of D001.

7:26–8.10 Characteristic of corrosivity

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

1. It is aqueous and has a pH less than or equal to two or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (also described in "Methods for Analysis of Water and Wastes" EPA 600/4–79–020, March 1979).

2. It is a liquid and corrodes steel (SAE 1020) at a rate greater than 0.25 inches (6.35 millimeters) per year at a test temperature of 130°F (55°C) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM–01–69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods".

(b) A solid waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in this subchapter has the EPA Hazardous Waste Number of D002.

7:26–8.11 Characteristic of reactivity

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

1. It is normally unstable and readily undergoes violent change without detonating;

2. It reacts violently with water;

3. It forms potentially explosive mixtures with water;

4. When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

5. It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

6. It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

7. It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure;

8. It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristics of reactivity, but is not listed as a hazardous waste in this subchapter has the EPA Hazardous Waste Number of D003.

7:26–8.12 Characteristics of toxicity

(a) A solid waste exhibits the characteristic of toxicity if, using test methods described in Appendix II of 40 CFR 261, Subpart D or equivalent methods approved by the Department under N.J.A.C. 7:1–1.2, the extract from a representative sample of the waste contains any of the contaminants listed in Table I, and any additional contaminants listed at Table 1 at 40 CFR 261.24 as amended, at a concentration equal to or greater than the respective value given in those tables. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Appendix II, is considered to be the extract for the purposes of this section.

(b) A solid waste that exhibits the characteristic of toxicity, but is not listed as a hazardous waste in this subchapter, has the EPA Hazardous Waste Number specified in Table I, or Table 1 at 40 CFR 261.24 as amended, which corresponds to the toxic contaminant causing it to be hazardous.

Table I

Maximum Concentration of Contaminants for Characteristic of Toxicity

EPA Hazardous Waste Number	Contaminant	Chemical Abstract Service (CAS) Number	Maximum Concentration (milligrams per liter)
D004	Arsenic	7440–38–2	5.0
D005	Barium	7440–39–3	100.0
D018	Benzene	71–43–2	0.5
D006	Cadmium	7440–43–9	1.0
D019	Carbon tetrachloride	56–23–5	0.5
D020	Chlordane	57–74–9	0.03
D021	Chlorobenzene	108–90–7	100.0
D022	Chloroform	67–66–3	6.0
D007	Chromium	7440–47–3	5.0
D023	o-Cresol	95–48–7	200.0*
D024	m-Cresol	108–39–4	200.0*
D025	p-Cresol	106–44–5	200.0*
D026	Cresol		200.0*
D016	2,4–D	94–75–7	10.0
D027	1,4–Dichlorobenzene	106–46–7	7.5
D028	1,2–Dichloroethane	107–06–2	0.5
D029	1,1–Dichloroethylene	75–35–4	0.7
D030	2,4–Dinitrotoluene	121–14–2	0.13**
D012	Endrin	72–20–8	0.02
D031	Heptachlor (and its epoxide)	76–44–8	0.008
D032	Hexachlorobenzene	118–74–1	0.13**
D033	Hexachlorobutadiene	87–68–3	0.5
D034	Hexachloroethane	67–72–1	3.0
D008	Lead	7439–92–1	5.0
D013	Lindane	58–89–8	0.4
D009	Mercury	7439–97–6	0.2
D014	Methoxychlor	72–43–5	10.0
D035	Methyl ethyl ketone	78–93–3	200.0
D036	Nitrobenzene	98–95–3	2.0
D037	Pentachlorophenol	87–86–5	100.0
D038	Pyridine	110–86–1	5.0**
D010	Selenium	7782–49–2	1.0
D011	Silver	7440–22–4	5.0
D039	Tetrachloroethylene	127–18–4	0.7
D015	Toxaphene	8001–35–2	0.5
D040	Trichloroethylene	79–01–6	0.5
D041	2,4,5–Trichlorophenol	95–95–4	400.0
D042	2,4,6–Trichlorophenol	88–06–2	2.0
D017	2,4,5–TP (Silvex)	93–72–1	1.0
D043	Vinyl chloride	75–01–4	0.2

* If o-, m– and p–Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/L.
** Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
D012 Endrin, 10–hexachloro–"1" changed to "6".
Amended by R.1991 d.421, effective August 5, 1991.
See: 23 N.J.R. 115(a), 23 N.J.R. 2360(b).
Deleted "EP" in heading, (a) and (b).

In (b), added "or Table I at 40 CFR 261.24 as amended," and substantial additions to Table I; deleted old D012 through D017 and substituted new text, added new D018 through D043.
Administrative Correction to Table 1: changed Silver to Silvex
See: 23 N.J.R. 2880(a).
Amended by R.1993 d.300, effective June 21, 1993.
See: 25 N.J.R. 753(a), 25 N.J.R. 2718(a).

7:26–8.13 Hazardous waste from non-specific sources

(a)

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Generic	F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1–trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1–trichloroethane, chlorobenzene, 1,1,2–trichloro–1,2–2–trifluoroethane, 0–dichlorobenzene, trichlorofluoromethane, and 1,1,2–trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the non-halogenated solvents listed above; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004 and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I*)
	F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and all still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2–ethoxyethanol, and 2–nitropropane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the non-halogenated solvents listed above or those solvents listed in F001, F002 or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. NOTE: (I,T) Hazard Code should be used to specify mixtures containing ignitable and toxic constituents.	(I,T)
	F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
	F007	Spent cyanide plating bath solutions from electroplating operations	(R,T)
	F008	Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process	(R,T)
	F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process	(R,T)
	F010	Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process	(R,T)
	F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations	(R,T)
	F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process	(T)
	F014	Cyanidation wastewater tailing pond sediment from mineral metals recovery operations.	(T)
	F015	Spent cyanide bath solutions from mineral metals recovery operations	(R,T)
	F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)
	F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives.	(H)
	F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
	F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
	F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of ma-	(H)

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
		terials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols.	
	F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in N.J.A.C. 7:26–8.14.)	(T)
	F025	Condensed light ends, spent filters and filter aids, and spent dessicant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	
	F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
	F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols.	(H)
	F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.	(T)

Amended by R.1982 d.494, effective January 17, 1983.
See: 14 N.J.R. 20(a), 15 N.J.R. 88(a).
(b)1–8 added.
Amended by R.1983 d.502, effective October 24, 1983.
See: 15 N.J.R. 1184(a), 15 N.J.R. 1861(c).
(b)9–12 Originally adopted as emergency R.1983 d.292, effective July 1, 1983, to expire August 30, 1983.
Amended by R.1985 d.248, effective May 20, 1985.
See: 17 N.J.R. 354(a), 17 N.J.R. 1290(a).
Added "F024" to hazardous waste.
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
Substantially amended.
Amended by R.1987 d.234, effective June 15, 1987.
See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
Added text in (b)4. "or other vehicles or vessels" and "including, but not ... as other vessels."
Amended by R.1987 d.486, effective November 16, 1987.
See: 19 N.J.R. 1278(a), 19 N.J.R. 2165(a).
Amended Generic EPA Hazardous Waste No's. F001–F005.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Amended Hazardous waste sources F007–F012.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Deleted (b)7., X727, and renumbered (b)8., X728, as (b)7.
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Deleted (b).
Amended by R.1991 d.243, effective May 6, 1991.
See: 23 N.J.R. 153(a), 23 N.J.R. 1432(b).
Added "except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process" to F019 in (a).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Conforms the wording of the hazardous waste listing of F003 solvents to the Federal listing at 40 C.F.R. 261.31; spent solvent mixtures or blends that, before use, consist entirely of the solvents listed with waste code number F003 under N.J.A.C. 7:26–8.13(a) will be considered a hazardous waste.
Amended by R.1993 d.351, effective July 19, 1993.
See: 25 N.J.R. 755(a), 25 N.J.R. 3155(a).

7:26–8.14 Hazardous waste from specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Wood Preservation	K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic Pigments	K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
	K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
	K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
	K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
	K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)	(T)
	K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
	K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic Chemicals	K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
	K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
	K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R,T)
	K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R,T)
	K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)
	K015	Still bottoms from the distillation of benzyl chloride	(T)
	K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
	K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	K018	Heavy ends from fractionation in ethyl chloride production	(T)
	K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
	K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
	K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
	K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
	K023	Distillation light ends from the production of phthalic anhydride from napthalene	(T)
	K024	Distillation bottoms from the production of phthalic anhydride from napthalene	(T)
	K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene	(T)
	K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	(T)
	K025	Distillation bottoms from the production of nitro-benzene by the nitration of benzene	(T)
	K026	Stripping still tails from the production of methyl ethyl pyridines	(T)
	K027	Centrifuge and distillation residues from toluene diisocyanate production	(R,T)
	K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
	K029	Waste from the production streams stripper in the production of 1,1,1-trichloroethane	(T)
	K095	Distillation bottoms from the production of 1,1,1-trichloroethane	(T)
	K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane	(T)
	K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
	K083	Distillation bottoms from aniline production	(T)
	K103	Process residues from aniline extraction from the production of aniline	(T)
	K104	Combined wastewater streams generated from nitrobenzene/aniline production	(T)
	K085	Distillation or fractionation column bottoms from the production of chlorobenzenes	(T)
	K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes	(T)
	K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	(C,T)
	K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
	K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
	K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
	K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
	K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine	(T)
	K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene	(T)
	K118	Spent adsorbent solids from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene	(T)
	K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene	(T)
Pesticides	K031	By-products salts generated in the production of MSMA and cacodylic acid	(T)
	K032	Wastewater treatment sludge from the production of chlordane	(T)
	K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane	(T)
	K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane	(T)
	K097	Vacuum stripper discharge from the chlordane chlorinator in production of chlordane	(T)
	K035	Wastewater treatment sludges generated in the production of creosote	(T)
	K036	Still bottoms from toluene reclamation distillation in the production of disulfoton	(T)
	K037	Wastewater treatment sludges from the production of disulfoton	(T)
	K038	Wastewater from the washing and stripping of phorate production	(T)
	K039	Filter cake from the filtration of diethylphosphorodithoric acid in the production of phorate	(T)
	K040	Wastewater treatment sludge from the production of phorate	(T)
	K041	Wastewater treatment sludge from the production of toxaphene	(T)
	K042	Heavy ends or distillation residues from the distillation	(T)

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
		of tetrachlorobenzene in the production of 2,4,5–T	
	K043	2,6–Dichlorophenol waste from the production of 2,4–D	(T)
	K098	Untreated process wastewater from the production of toxaphene	(T)
	K099	Untreated wastewater from the production of 2,4–D	(T)
	K123	Process waste water (including supernates, filtrates, and washwaters) from the production of ethylene-bisdithiocarbamic acid and its salts.	(T)
	K124	Reactor vent scrubber water from the production of ethylene-bisdithio-carbamic acid and its salts.	(C,T)
	K125	Filtration, evaporation and centrifugation solids from the production of ethylene-bisdithio-carbamic acid and its salts.	(T)
	K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene-bisdithio-carbamic acid and its salts.	(T)
	K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C,T)
	K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)
Explosives	K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
	K045	Spent carbon from the treatment of wastewater containing explosives	(R)
	K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
	K047	Pink/red water from TNT operations	(R)
Petroleum Refining	K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
	K049	Slop oil emulsion solids from the petroleum refining industry	(T)
	K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
	K051	API separator sludge from the petroleum refining industry	(T)
	K052	Tank bottoms (leaded) from the petroleum refining industry	(T)
Iron and Steel	K061	Emission control dust/sludge from the electric furnace production of steel	(T)
	K062	Spent pickle liquor from steel finishing operations	(C,T)
Primary Zinc	K066	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production	(T)
	K067	Electrolytic anode slimes/sludges from primary zinc production	(T)
	K068	Cadmium plant leachate residue (iron oxide) from primary zinc production	(T)
Secondary Lead	K069	Emission control dust/sludge from secondary lead smelting	(T)
	K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)
Inorganic Chemicals	K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used	(T)
	K073	Chlorinated hydrocarbon wastes from the purification step of the diaphragm cell process using graphite anodes in chlorine production	(T)
	K106	Wastewater treatment sludge from the mercury cell process in chlorine production	(T)
Ink Formulation	K086	Solvent washes and sludges, caustic wastes and sludges or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
Veterinary Pharmaceuticals	K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
	K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
	K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
Coking	K087	Decanter tank tar sludge from coking operations	(T)
	K060	Ammonia still lime sludge from coking operations	(T)

Amended by R.1986 d.474, effective December 15, 1986.
See: 18 N.J.R. 1037(a), 18 N.J.R. 2445(a).
Added K111 through K116 to Organic Chemicals.
Amended by R.1987 d.280, effective July 6, 1987.
See: 19 N.J.R. 443(a), 19 N.J.R. 1196(b).
Added K117, K118 and K136 to Organic Chemicals.
Amended by R.1988 d.140, effective March 21, 1988.
See: 19 N.J.R. 1938(a), 20 N.J.R. 645(c).
Added K123 through K126 to Pesticides.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Added carbon to Veterinary Pharmaceuticals, K102.
Amended by R.1991 d.422, effective August 5, 1991.
See: 23 N.J.R. 154(a), 23 N.J.R. 2361(a).
Added "Pesticides K131 and K132".
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
At K023, "distillation bottoms" changed to "distillation light ends".
Amended by R.1994 d.411, effective August 1, 1994.
See: 26 N.J.R. 1464(a), 26 N.J.R. 3211(a).

7:26–8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous waste if and when they are a solid waste as defined at N.J.A.C. 7:26–1.6:

1. Any commercial chemical product, or manufacturing chemical intermediate having the generic name and listed in (a)5, 6, or 7 below.

2. Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in (a)5, 6, or 7 below.

3. Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in (a)5 below, unless:

i. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

ii. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or tests conducted by the generator, to achieve equivalent removal; or

iii. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

4. Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in (a)5, 6, or 7, below, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if met specifications, would have the generic name listed in (a)5, 6, or 7 below.

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1 through 4 above, are identified as acute hazardous waste (H). These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstracts Service (CAS)Registry Numbers are:

Hazardous Waste Number	Substance	Chemical Abstracts Number
P023	Acetaldehyde, chloro-	107–20–0
P002	Acetamide, N-aminothioxomethyl)	591–08–2
P057	Acetamide, 2-fluoro-	640–19–7
P058	Acetic acid, fluoro-, sodium salt	62–74–8
P001	3-(alpha-Acetonylbenzyl)–4–hydroxycoumarin and salts when present at concentrations greater than 0.3%	81–81–2 *
P002	1–Acetyl–2–thiourea	591–08–2
P003	Acrolein	107–02–8
P070	Aldicarb	116–06–3
P004	Aldrin	309–00–2
P005	Allyl alcohol	107–18–6
P006	Aluminum phosphide (R,T)	20859–73–8
P007	5–(Aminomethyl)–3–isoxazolol	2763–96–4
P008	4–Aminopyridine	504–24–5
P009	Ammonium picrate (R)	131–74–8
P119	Ammonium vanadate	7803–55–6
P099	Argentate(1–), bis(cyano–C–)–, potassium	506–61–6
P010	Arsenic acid H_3AsO_4,	7778–39–4
P012	Arsenic oxide As_2O_3	1327–53–3
P011	Arsenic oxide As_2O_5	1303–28–2
P011	Arsenic pentoxide	1303–28–2
P012	Arsenic trioxide	1327–53–3
P038	Arsine, diethyl-	692–42–2
P036	Arsonous dichloride, phenyl-	696–28–6
P054	Aziridine	151–56–4
P067	Aziridine, 2–methyl–	75–55–8
P013	Barium cyanide	542–62–1
P024	Benzenamine, 4–chloro–	106–47–8
P077	Benzenamine, 4–nitro–	100–01–6
P028	Benzene, (chloromethyl)–	100–44–7
P042	1,2–Benzendiol, 4–[1–hydroxy–2–(methylamino) ethyl]–, (R)–	51–43–4
P046	Benzeneethanamine, alpha,alpha–dimethyl–	122–09–8
P014	Benzenethiol	108–98–5
P001	2H–1–Benzopyran–2–one, 4–hydroxy–3–(3–oxo–1–phenylbutyl)–, and salts, when present at concentrations greater than 0.3%	81–81–2*
P028	Benzyl chloride	100–44–7
P015	Beryllium	7440–41–7
P017	Bromoacetone	598–31–2
P018	Brucine	357–57–3
P045	2–Butanone, 3,3–dimethyl–1–(methylthio)–0–[(methylamino)carbonyl] oxime	39196–18–4
P021	Calcium cyanide	592–01–8
P021	Calcium cyanide $Ca(CN)_2$	592–01–8
P022	Carbon disulfide	75–15–0
P095	Carbonic dichloride	75–44–5
P023	Chloroacetaldehyde	107–20–0
P024	p-Chloroaniline	106–47–8
P026	1–(o–Chlorophenyl)thiourea	5344–82–1
P027	3–Chloropropionitrile	542–76–7
P029	Copper cyanide	544–92–3
P029	Copper cyanide $Cu(CN)_2$	544–92–3
P030	Cyanides (soluble cyanide salts), not otherwise specified	—
P031	Cyanogen	460–19–5
P033	Cyanogen chloride	506–77–4
P033	Cyanogen chloride (CN)Cl	506–77–4
P034	2–Cyclohexyl–4,6–dinitrophenol	131–89–5
P016	Dichloromethyl ether	542–88–1
P036	Dichlorophenylarsine	696–28–6
P037	Dieldrin	60–57–1
P038	Diethylarsine	692–42–2
P041	Diethyl-p-nitrophenyl phosphate	311–45–5
P040	0,0–Diethyl 0–pyrazinyl phosphorothioate	297–97–2
P043	Diisopropylfluorophosphate (DFP)	55–91–4
P004	1,4,5,8–Dimethanonaphthalene,1,2,3,4,10,10–hexachloro–1,4,4a,5,8,8a,–hexahydro–, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)	309–00–2
P060	1,4,5,8–Dimethanonaphthalene,1,2,3,4,10,10–hexachloro–1,4,4a,5,8,8a–hexahydro– (1alpha,4alpha,4abeta,5beta,8beta,8abeta)–	465–73–6
P037	2,7:3,6–Dimethanonaphth[2,3–b]oxirene, 3,4,5,6,9,9–hexachloro–1a,2,2a,3,6,6a,7,7a–octahydro–, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)–	60–57–1
P051	2,7:3,6–Dimethanonaphth[2,3–b]oxirene, 3,4,5,6,9,9–hexachloro–1a,2,2a,3,6,6a,7,7a–octahydro–,(1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)–, and metabolites	72–20–8*
P044	Dimethoate	60–51–5
P046	alpha,alpha-Dimethylphenethylamine	122–09–8
P047	4,6–Dinitro–o–cresol, and salts	534–52–1*

Hazardous Waste Number	Substance	Chemical Abstracts Number
P048	2,4–Dinitrophenol	51–28–5
P020	Dinoseb	88–85–7
P085	Diphosphoramide, octamethyl-	152–16–9
P111	Diphosphoric acid, tetraethyl ester	107–49–3
P039	Disulfoton	298–04–4
P049	Dithiobiuret	541–53–7
P050	Endosulfan	115–29–7
P088	Endothall	145–73–3
P051	Endrin	72–20–8
P051	Endrin, and metabolites	72–20–8*
P042	Epinephrine	51–43–4
P031	Ethanedinitrile	460–19–5
P066	Ethanimidothioic acid, N–[[(methylamino)carbonyl]oxy]–, methyl ester	16752–77–5
P101	Ethyl cyanide	107–12–0
P054	Ethyleneimine	151–56–4
P097	Famphur	52–85–7
P056	Fluorine	7782–41–4
P057	Fluoroacetamide	640–19–7
P058	Fluoroacetic acid, sodium salt	62–74–8
P065	Fulminic acid, mercury(2 +) salt (R,T)	628–86–4
P059	Heptachlor	76–44–8
P062	Hexaethyl tetraphosphate	757–58–4
P116	Hydrazinecarbothioamide	79–19–6
P068	Hydrazine, methyl-	60–34–4
P063	Hydrocyanic acid	74–90–8
P063	Hydrogen cyanide	74–90–8
P096	Hydrogen phosphide	7803–51–2
P060	Isodrin	465–73–6
P007	3(2H)–Isoxazolone, 5–(aminomethyl)–	2763–96–4
P092	Mercury, (acetato–0)phenyl–	62–38–4
P065	Mercury fulminate (R,T)	628–86–4
P082	Methanamine, N-methyl-N-nitroso	62–75–9
P064	Methane, isocyanato–	624–83–9
P016	Methane, oxybis[chloro–	542–88–1
P112	Methane, tetranitro–(R)	509–14–8
P118	Methanethiol, trichloro-	75–70–7
P050	6,9–Methano–2,4,3–benzodioxathiepin,6,7,8,9,10,10–hexachloro–1,5,5a,6,9,9a–hexahydro–, 3–oxide	115–29–7
P059	4,7–Methano–1H–indene, 1,4,5,6,7,8,8–heptachloro–3a,4,7,7a–tetrahydro–	76–44–8
P066	Methomyl	16752–77–5
P068	Methyl hydrazine	60–34–4
P064	Methyl isocyanate	624–83–9
P069	2–Methyllactonitrile	75–86–5
P071	Methyl parathion	298–00–0
P072	alpha-Naphthylthiourea	86–88–4
P073	Nickel carbonyl	13463–39–3
P073	Nickel carbonyl $Ni(Co)_4$ (T4)–	13463–39–3
P074	Nickel cyanide	557–19–7
P074	Nickel cyanide $Ni(CN)_2$	557–19–7
P075	Nicotine and salts	54–11–5*
P076	Nitric oxide	10102–43–9
P077	p-Nitroaniline	100–01–6
P078	Nitrogen dioxide	10102–44–0
P076	Nitrogen oxide NO	10102–43–9
P078	Nitrogen oxide NO_2	10102–44–0
P081	Nitroglycerine (R)	55–63–0
P082	N–Nitrosodimethylamine	62–75–9
P084	N–Nitrosomethylvinylamine	4549–40–0
P085	Octamethylpyrophosphoramide	152–16–9
P087	Osmium oxide	20816–12–0
P087	Osmium tetroxide	20816–12–0
P088	7–Oxabicyclo 2.2.1 heptane–2,3–dicarboxylic acid	145–73–3
P089	Parathion	56–38–2
P034	Phenol, 2–cyclohexyl–4,6–dinitro–	131–89–5
P048	Phenol, 2,4–dinitro–	51–28–5
P047	Phenol, 2–methyl–4,6–dinitro–, and salts	534–52–1*
P020	Phenol, 2–(1–methylpropyl)–4,6–dinitro–	88–85–7
P009	Phenol, 2,4,6–trinitro–, ammonium salt (R)	131–74–8
P092	Phenylmercury acetate	62–38–4
P093	Phenylthiourea	103–85–5
P094	Phorate	298–02–2
P095	Phosgene	75–44–5
P096	Phosphine	7803–51–2
P041	Phosphoric acid, diethyl 4–nitrophenyl ester	311–45–5
P039	Phosphorodithioic acid, 0,0–diethyl S–[2–(ethylthio)ethylester	298–04–4
P039	Phosphorodithioic acid, 0,0–diethyl S–[(ethylthio)methylester	298–02–2
P044	Phosphorodithioic acid, 0,0–dimethyl S–[2–[(methylamino)]–2–oxoethyl] ester	60–51–5
P043	Phosphorofluoridic acid, bis(1–methylethyl) ester	55–91–4
P089	Phosphorothioic acid, 0,0–diethyl 0–(4–nitrophenyl) ester	56–38–2
P040	Phosphorothioic acid, 0,0–diethyl 0–pyrazinyl ester	297–97–2
P097	Phosphorothioic acid, 0–[4–[(dimethylamino)sulfonyl]phenyl] 0,0–dimethyl ester	52–85–7
P071	Phosphorothioic acid, 0,0,–dimethyl 0–(4–nitrophenyl) ester	298–00–0
P110	Plumbane, tetraethyl-	78–00–2
P098	Potassium cyanide	151–50–8
P098	Potassium cyanide K(CN)	151–50–8
P099	Potassium silver cyanide	506–61–6
P070	Propanal, 2–methyl–2–methylthio)0–[(methylamino)carbonyl]oxime	116–06–3
P101	Propanenitrile	107–12–0
P027	Propanenitrile, 3–chloro–	542–76–7
P069	Propanenitrile, 2–hydroxy–2–methyl–	75–86–5
P081	1,2,3,–Propanetriol, trinitrate (R)	55–63–0
P017	2–Propanone, 1–bromo–	598–31–2
P102	Propargyl alcohol	107–19–7
P003	2–Propenal	107–02–8
P005	2–Propen–1–o1	107–18–6
P067	1,2–Propylenimine	75–55–8
P102	2–Propyn–1–o1	107–19–7
P008	4–Pyridinamine	504–24–5
P075	Pyridine, 3–(1–methyl–2–pyrrolidinyl)–, (S), and salts	54–11–5*
P114	Selenious acid, dithallium(1 +) salt	12039–52–0
P103	Selenourea	630–10–4
P104	Silver cyanide	506–64–9
P104	Silver cyanide Ag(CN)	506–64–9
P105	Sodium azide	26628–22–8
P106	Sodium cyanide	143–33–9
P106	Sodium cyanide Na(CN)	143–33–9
P107	Strontium sulfide SrS	1314–96–1
P108	Strychnidin–10–one, and salts	57–24–9*
P018	Strychnidin–10–one, 2,3–dimethoxy	357–57–3
P106	Strychnine, and salts	57–24–9*
P115	Sulfuric acid, dithallium(1 +) salt	7446–18–6
P109	Tetraethyldithiopyrophosphate	3689–24–5
P110	Tetraethyl lead	78–00–2
P111	Tetraethyl pyrophosphate	107–49–3
P112	Tetranitromethane (R)	509–14–8
P062	Tetraphosphoric acid, hexaethyl ester	757–58–4
P113	Thallic oxide	1314–32–5
P113	Thallium oxide $T1_2O_3$	1314–32–5
P114	Thallium(I) selenite	12039–52–0
P115	Thallium(I) sulfate	7446–18–6
P109	Thiodiphosphoric acid, tetraethyl ester	3689–24–5
P045	Thiofanox	39196–18–4
P049	Thioimidodicarbonic diamide [(H_2N) C(S) $]_2NH$	541–53–7
P014	Thiophenol	108–98–5
P116	Thiosemicarbazide	79–19–6
P026	Thiourea, (2–chlorophenyl)–	5344–82–1
P072	Thiourea, 1–naphthalenyl–	86–88–4
P093	Thiourea, phenyl–	103–85–5
P123	Toxaphene	8001–35–2
P118	Trichloromethanethiol	75–70–7
P119	Vanadic acid, ammonium salt	7803–55–6
P120	Vanadium oxide V_2O_5	1314–62–1
P120	Vanadium pentoxide	1314–62–1
P084	Vinylamine, N–methyl–N–nitroso-	4549–40–0
P001	Warfarin and salts, when present at concentrations greater than 0.3%	81–81–2*
P121	Zinc cyanide	557–21–1
P121	Zinc cyanide $Zn(CN)_2$	557–21–1
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T)	1314–84–7

* CAS Number is given for the parent compound only.

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstract Service (CAS) Registry Numbers are:

Hazardous Waste Number	Substance	Chemical Abstracts Number
U001	Acetaldehyde (I)	75–07–0
U034	Acetaldehyde, trichloro-	75–87–6
U187	Acetamide, N–(4–ethoxyphenyl)-	62–44–2
U005	Acetamide, N–9H–fluoren–2–yl-	53–96–3
U240	Acetic acid, (2,4–dichlorophenoxy)-, salts & esters	94–75–7*
U112	Acetic acid ethyl ester (I)	141–78–6
U144	Acetic acid, lead(2 +) salt	301–04–2
U214	Acetic acid, thallium(1 +) salt	563–68–8
See F027	Acetic acid, (2,4,5–trichlorophenoxy)-	93–76–5
U002	Acetone (I)	67–64–1
U003	Acetonitrile (I,T)	75–05–8
U248	3–(alpha–Acetonylbenzyl)–4–hydroxycoumarin and salts, when present at concentrations of 0.3 percent or less	81–81–2*
U004	Acetopheone	98–86–2
U005	2–Acetylaminofluorene	53–96–3
U006	Acetyl chloride (C,R,T)	75–36–5
U007	Acrylamide	79–06–1
U008	Acrylic acid (I)	79–10–7
U009	Acrylonitrile	107–13–1
U011	Amitrole	61–82–5
U012	Aniline (I,T)	62–53–3
U136	Arsinic acid, dimethyl-	75–60–5
U014	Auramine	492–80–8
U015	Azaserine	115–02–6
U010	Azirino[2',3':3,4]pyrrolo[1,2–a]indole–4,7–dione, 6–amino–8–[[(aminocarbonyl) oxy]methyl]–1,1a,2,8,8a,8b–hexahydro–8a–methoxy–5–methyl–,(1aS–(1aalpha,8beta,8aalpha,8balpha))	50–07–7
U157	Benz[j]aceanthrylene, 1,2–dihydro–3–methyl-	56–49–5
U016	Benz[c]acridine	225–51–4
U017	Benzal chloride	98–87–3
U192	Benzamide, 3,5–dichloro–N–(1,1–dimethyl–2–propynyl)-	23950–58–5
U018	Benz[a]anthracene	56–55–3
U094	Benz[a]anthracene, 7,12–dimethyl-	57–97–6
U012	Benzenamine (I,T)	62–53–3
U014	Benzenamine, 4,4'-carbonimidoylbis[N,N–dimethyl-	492–80–8
U049	Benzenamine, 4–chloro–2–methyl-,hydrochloride	3165–93–3
U093	Benzenamine, N,N–dimethyl–4–(phenylazo)-	60–11–7
U328	Benzenamine, 2–methyl-	95–53–4
U353	Benzenamine, 4–methyl-	106–49–0
U158	Benzenamine, 4,4'–methylenebis,2–chloro-	101–14–4
U222	Benzenamine, 2–methyl-, hydrochloride	636–21–5
U181	Benzenamine, 2–methyl–5–nitro	99–55–8
U019	Benzene (I,T)	71–43–2
U038	Benzeneacetic acid, 4–chloro–alpha–(4–chlorophenyl)-alpha-hydroxy-, ethyl ester	510–15–6
U030	Benzene, 1–bromo–4–phenoxy-	101–55–3
U035	Benzenebutanoic acid, 4–[bis(2–chloroethyl)amino]-	305–03–3
U037	Benzene, chloro-	108–90–7
U221	Benzenediamine, ar-methyl-	25376–45–8
U028	1,2–Benzenedicarboxylic acid, bis(2–ethylhexyl) ester	117–81–7
U069	1,2–Benzenedicarboxylic acid, dibutyl ester	84–74–2
U088	1,2–Benzenedicarboxylic acid, diethyl ester	84–66–2
U102	1,2–Benzenedicarboxylic acid, dimethyl ester	131–11–3
U107	1,2–Benzenedicarboxylic acid, dioctyl ester	117–84–0
U070	Benzene, 1,2–dichloro-	95–50–1
U071	Benzene, 1,3–dichloro-	541–73–1
U072	Benzene, 1,4–dichloro-	106–46–7
U060	Benzene, 1,1'–(2,2–dichloroethylidene) bis(4–chloro-	72–54–8
U017	Benzene, (dichloromethyl)-	98–87–3
U223	Benzene, 1,3–diisocyanatomethyl–(R,T)	26471–62–5
U239	Benzene, dimethyl-(I,T)	1330–20–7
U201	1,3–Benzenediol	108–46–3
U127	Benzene, hexachloro-	118–74–1
U056	Benzene, hexahydro- (I)	110–82–7
U220	Benzene, methyl-	108–88–3
U105	Benzene, 1–methyl–2,4–dinitro	121–14–2
U106	Benzene, 2–methyl–1,3–dinitro	606–20–2
U055	Benzene, 1–methylethyl- (I)	98–82–9
U169	Benzene, nitro	98–95–3
U183	Benzene, pentachloro-	608–93–5
U185	Benzene, pentachloronitro-	82–68–8
U020	Benzenesulfonic acid chloride (C,R)	98–09–9
U020	Benzenesulfonyl chloride (C,R)	98–09–9
U207	Benzene, 1,2,4,5–tetrachloro-	95–94–3
U061	Benzene, 1,1'–(2,2,2–trichloroethylidene)bis[4–chloro-	50–29–3
U247	Benzene, 1,1'–(2,2,2–trichloroethylidene)bis[4–methoxy-	72–43–5
U023	Benzene, (trichloromethyl)- (C,R,T)	98–07–7
U234	Benzene, 1,3,5–trinitro*–*	99–35–4
U021	Benzidine	92–87–5
U202	1,2–Benzisothiazol–3(2H)–one, 1,1–dioxide, & salts	81–07–2*
U203	1,3–Benzodioxole, 5–(2–propenyl)-	94–59–7
U141	1,3–Benzodioxole, 5–(1–propenyl)-	120–58–1
U090	1,3–Benzodioxole, 5–propyl-	94–58–6
U064	Benzo[rst]pentaphene	189–55–9
U248	2H–1 1–Benzopyran–2–one, 4–hydroxy–3–(3–oxo–1–phenyl–butyl)-, & salts, when present at concentrations of 0.3% or less	81–81–2*
U022	Benzo[a]pyrene	50–32–8
U197	p–Benzoquinone	106–51–4
U023	Benzotrichloride (C,R,T)	98–07–7
U085	2,2'–Bioxirane	1464–53–5
U021	[1,1'–Biphenyl]–4,4'–diamine	92–87–5
U073	[1,1'–Biphenyl]–4,4'–diamine,3,3'–dichloro-	91–94–1
U091	[1,1'–Biphenyl]4,4'–diamine, 3,3'–dimethoxy-	119–90–4
U095	[1,1'–Biphenyl]–4,4'–diamine, 3,3–'dimethyl-	119–93–7
U225	Bromoform	75–25–2
U030	4–Bromophenyl phenyl ether	101–55–3
U128	1,3–Butadiene, 1,1,2,3,4,4–hexachloro–	87–68–3
U172	1–Butanamine, N-butyl-N-nitroso-	924–16–3
U031	1–Butanol (I)	71–36–3
U159	2–Butanone (I,T)	78–93–3
U160	2–Butanone, peroxide (R,T)	1338–23–4
U053	2–Butenal	4170–30–3
U074	2–Butene, 1,4–dichloro– (I,T)	764–41–0
U143	2–Butenoic acid *[, 2–methyl–, 7–[[2,3–dihydroxy–2–(1–methoxyethyl)–3–methyl–1–oxobutoxy]methyl]–2,3,5,7a–tetrahydro–1H–pyrrolizin–1–yl ester, [1S–1 alpha (Z), 7(2S*,3R*), 7 aalpha)]–]*	303–34–4
U031	n-Butyl alcohol (I)	71–36–3
U136	Cacodylic acid	75–60–5
U032	Calcium chromate	13765–19–0
U238	Carbamic acid, ethyl ester	51–79–6
U178	Carbamic acid, methylnitroso-, ethyl ester	615–53–2
U097	Carbamic chloride, dimethyl-	79–44–7
U114	Carbamodithioic acid, 1,2–ethanediylbis–, salts & esters	111–54–6*
U062	Carbamothioic acid, bis(1–methylethyl),S–(2,3–dichloro–2–propenyl) ester	2303–16–4
U215	Carbonic acid, dithallium(1 +) salt	6533–73–9
U033	Carbonic difluoride (R,T)	353–50–4
U156	Carbonochloridic acid, methyl ester (I,T)	79–22–1
U033	Carbon oxyfluoride (R,T)	353–50–4
U211	Carbon tetrachloride	56–23–5
U034	Chloral	75–87–6
U035	Chlorambucil	305–03–3
U036	Chlordane, alpha & gamma isomers	57–74–9
U026	Chlornaphazin	494–03–1
U037	Chlorobenzene	108–90–7
U038	Chlorobenzilate	510–15–6
U039	p-Chloro–m–cresol	59–50–7
U042	2–Chloroethyl vinyl ether	110–75–8
U044	Chloroform	67–66–3
U046	Chloromethyl methyl ether	107–30–2
U047	beta-Chloronaphthalene	91–58–7
U048	o-Chlorophenol	95–57–8
U049	4–Chloro–o–toluidine, hydrochloride	3165–93–3
U032	Chromic acid H_2CrO_4, calcium salt	13765–19–0
U050	Chrysene	218–01–9
U051	Creosote	—
U052	Cresol (Cresylic acid)	1319–77–3
U053	Crotonaldehyde	4170–30–3
U055	Cumene (I)	98–82–8
U246	Cyanogen bromide (CN)Br	506–68–3
U197	2,5–Cyclohexadiene–1,4–dione	106–51–4
U056	Cyclohexane (I)	110–82–7
U129	Cyclohexane, 1,2,3,4,5,6–hexachloro–,(1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58–89–9
U057	Cyclohexanone (I)	108–94–1
U130	1,3–Cyclopentadiene, 1,2,3,4,5,5–Hexachloro–	77–47–4
U058	Cyclophosphamide	50–18–0
U240	2,4–D, salts & esters	94–75–7*

Hazardous Waste Number	Substance	Chemical Abstracts Number
U059	Daunomycin	20830–81–3
U060	DDD	72–54–8
U061	DDT	50–29–3
U062	Diallate	2303–16–4
U063	Dibenz[a,h]anthracene	53–70–3
U064	Dibenzo[a,i]pyrene	189–55–9
U066	1,2–Dibromo–3–chloropropane	96–12–8
U069	Dibutyl phthalate	84–74–2
U070	o–Dichlorobenzene	95–50–1
U071	m–Dichlorobenzene	541–73–1
U072	p–Dichlorobenzene	106–46–7
U073	3,3'–Dichlorobenzidine	91–94–1
U074	1,4–Dichloro–2–butene (I,T)	764–41–0
U075	Dichlorodifluoromethane	75–71–8
U078	1,1–Dichloroethylene	75–35–4
U079	1,2–Dichloroethylene	156–60–5
U025	Dichloroethyl ether	111–44–4
U027	Dichloroisopropyl ether	108–60–1
U024	Dichloromethoxy ethane	111–91–1
U081	2,4–Dichlorophenol	120–83–2
U082	2,6–Dichlorophenol	87–65–0
U084	1,3–Dichloropropene	542–75–6
U085	1,2:3,4–Diepoxybutane (I,T)	1464–53–5
U108	1,4–Diethyleneoxide	123–91–1
U028	Diethylhexyl phthalate	117–81–7
U086	N,N'–Diethylhydrazine	1615–80–1
U087	O,O–Diethyl S-methyl dithiophosphate	3288–58–2
U088	Diethyl phthalate	84–66–2
U089	Diethylstilbesterol	56–53–1
U090	Dihydrosafrole	94–58–6
U091	3,3'–Dimethoxybenzidine	119–90–4
U092	Dimethylamine (I)	124–40–3
U093	p-Dimethylaminoazobenzene	60–11–7
U094	7,12–Dimethylbenz[a]anthracene	57–97–6
U095	3,3'–Dimethylbenzidine	119–93–7
U096	alpha,alpha-Dimethylbenzylhydro-peroxide (R)	80–15–9
U097	Dimethylcarbamoyl chloride	79–44–7
U098	1,1–Dimethylhydrazine	57–14–7
U099	1,2–Dimethylhydrazine	540–73–8
U101	2,4–Dimethylphenol	105–67–9
U102	Dimethyl phthalate	131–11–3
U103	Dimethyl sulfate	77–78–1
U105	2,4–Dinitrotoluene	121–14–2
U106	2,6–Dinitrotoluene	606–20–2
U107	Di-n-octyl phthalate	117–84–0
U108	1,4–Dioxane	123–91–1
U109	1,2–Diphenylhydrazine	122–66–7
U110	Dipropylamine (I)	142–84–7
U111	Di-n-propylnitrosamine	621–64–7
U041	Epichlorohydrin	106–89–8
U001	Ethanal (I)	75–07–0
U174	Ethanamine, N-ethyl-N-nitroso-	55–18–5
U155	1,2–Ethanediamine, N,N–dimethyl–N'–2–pyridinyl–N'–(2–thienylmethyl)–	91–80–5
U067	Ethane, 1,2–dibromo–	106–93–4
U076	Ethane, 1,1–dichloro–	75–34–3
U077	Ethane, 1,2–dichloro–	107–06–2
U131	Ethane, hexachloro-	67–72–1
U024	Ethane, 1,1'–[methylenebis(oxy)]bis[2–chloro–	111–91–1
U117	Ethane, 1,1'–oxybis–(I)	60–29–7
U025	Ethane, 1,1'–oxybis[2–chloro–	111–44–4
U184	Ethane, pentachloro-	76–01–7
U208	Ethane, 1,1,1,2–tetrachloro–	630–20–6
U209	Ethane, 1,1,2,2–tetrachloro–	79–34–5
U218	Ethanethioamide	62–55–5
U226	Ethane, 1,1,1,–trichloro–	71–55–6
U227	Ethane, 1,1,2–trichloro–	79–00–5
U359	Ethanol, 2–ethoxy–	110–80–5
U173	Ethanol, 2,2'–(nitrosoimino)bis–	1116–54–7
U004	Ethanone, 1–phenyl–	98–86–2
U043	Ethene, chloro-	75–01–4
U042	Ethene, (2–chloroethoxy)–	110–75–8
U078	Ethene, 1,1–dichloro–	75–35–4
U079	Ethene, 1,2–dichloro–, (E)-	156–60–5
U210	Ethene, tetrachloro-	127–18–4
U228	Ethene, trichloro-	79–01–6
U112	Ethyl acetate (I)	141–78–6
U113	Ethyl acrylate (I)	140–88–5
U238	Ethyl carbamate (urethane)	51–79–6
U117	Ethyl ether (I)	60–29–7
U114	Ethylenebisdithiocarbamic acid, salts and esters	111–54–6*
U067	Ethylene dibromide	106–93–4
U077	Ethylene dichloride	107–06–2
U359	Ethylene glycol monoethyl ether	110–80–5
U115	Ethylene oxide (I,T)	75–21–8
U116	Ethylenethiourea	96–45–7
U076	Ethylidene dichloride	75–34–3
U118	Ethyl methacrylate	97–63–2
U119	Ethyl methanesulfonate	62–50–0
U120	Fluoranthene	206–44–0
U122	Formaldehyde	50–00–0
U123	Formic acid (C,T)	64–18–6
U124	Furan (I)	110–00–9
U125	2–Furancarboxaldehyde (I)	98–01–1
U147	2,5–Furandione	108–31–6
U213	Furan, tetrahydro-(I)	109–99–9
U125	Furfural (I)	98–01–1
U124	Furfuran (I)	110–00–9
U206	Glucopyranose, 2–deoxy–2–(3–methyl–3–nitrosueridoo)–D–	18883–66–4
U206	D–Glucose, 2–deoxy–2–[[(methyl–nitrosoamino)–carbonyl]amino]–	18883–66–4
U126	Glycidylaldehyde	765–34–4
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70–25–7
U127	Hexachlorobenzene	118–74–1
U128	Hexachlorobutadiene	87–68–3
U130	Hexachlorocyclopentadiene	77–47–4
U131	Hexachloroethane	67–72–1
U132	Hexachlorophene	70–30–4
U243	Hexachloropropene	1888–71–7
U133	Hydrazine (R,T)	302–01–2
U086	Hydrazine, 1,2–diethyl–	1615–80–1
U098	Hydrazine, 1,1–dimethyl–	57–14–7
U099	Hydrazine, 1,2–dimethyl–	540–73–8
U109	Hydrazine, 1,2–diphenyl–	122–66–7
U134	Hydrofluoric acid (C,T)	7664–39–3
U134	Hydrogen fluoride (C,T)	7664–39–3
U135	Hydrogen sulfide	7783–06–4
U135	Hydrogen sulfide H_2S	7783–06–4
U096	Hydroperoxide, 1–methyl–1–phenylethyl–(R)	80–15–9
U116	2–Imidazolidinethione	96–45–7
U137	Indeno(1,2,3–cd)pyrene	193–39–5
U190	1,3–Isobenzofurandione	85–44–9
U140	Isobutyl alcohol (I,T)	78–83–1
U141	Isosafrole	120–58–1
U142	Kepone	143–50–0
U143	Lasiocarpine	303–34–4
U144	Lead acetate	301–04–2
U146	Lead, bis(acetato–O)tetrahydroxytri–	1335–32–6
U145	Lead phosphate	7446–27–7
U146	Lead subacetate	1335–32–6
U129	Lindane	58–89–9
U163	MNNG	70–25–7
U147	Maleic anhydride	108–31–6
U148	Maleic hydrazide	123–33–1
U149	Malononitrile	109–77–3
U150	Melphalan	148–82–3
U151	Mercury	7439–97–6
U152	Methacrylonitrile (I,T)	126–98–7
U092	Methanamine, N–methyl- (I)	124–40–3
U029	Methane, bromo-	74–83–9
U045	Methane, chloro- (I,T)	74–87–3
U046	Methane, chloromethoxy-	107–30–2
U068	Methane, dibromo-	74–95–3
U080	Methane, dichloro-	75–09–2
U075	Methane, dichlorodifluoro-	75–71–8
U138	Methane, iodo-	74–88–4
U119	Methanesulfonic acid, ethyl ester	62–50–0
U211	Methane, tetrachloro-	56–23–5
U153	Methanethiol (I,T)	74–93–1
U225	Methane, tribromo-	75–25–2
U044	Methane, trichloro-	67–66–3
U121	Methane, trichlorofluoro-	75–69–4
U036	4,7–Methano–1H–indene,1,2,4,5,6,7,8,8–Octachloro–2,3,3a,4,7,7a–hexahydro–	57–74–9
U154	Methanol (I)	67–56–1
U155	Methapyrilene	91–80–5
U142	1,3,4–Metheno–2H–cyclobuta[cd]pentalen–2–one, 1,1a,3,3a,4,5,5,5a,5b,6–decachlorooctahydro–	143–50–0
U247	Methoxychlor	72–43–5

Hazardous Waste Number	Substance	Chemical Abstracts Number
U154	Methyl alcohol (I)	67–56–1
U029	Methyl bromide	74–83–9
U186	1–Methylbutadiene (I)	504–60–9
U045	Methyl chloride (I,T)	74–87–3
U156	Methyl chlorocarbonate (I,T)	79–22–1
U226	Methyl chloroform	71–55–6
U157	3–Methycholanthrene	56–49–5
U158	4,4'–Methylenebis(2–chloroaniline)	101–14–4
U068	Methylene bromide	74–95–3
U080	Methylene chloride	75–09–2
U159	Methyl ethyl ketone (MEK) (I,T)	78–93–3
U160	Methyl ethyl ketone peroxide (R,T)	1338–23–4
U138	Methyl iodide	74–88–4
U161	Methyl isobutyl ketone (I)	108–10–1
U162	Methyl methacrylate (I,T)	80–62–6
U161	4–Methyl–2–pentanone (I)	108–10–1
U164	Methylthiouracil	56–04–2
U010	Mitomycin C	50–07–7
U059	5,12–Naphthacenedione,8–acetyl–10–[(3–amino–2,3,6–trideoxy)–alpha–L–lyxo–hexopyranosyl)oxy]–7,8,9,10– tetrahydro–6,8,11–trihydroxy–1–methoxy–, (8S–cis)-	20830–81–3
U167	1–Naphthalenamine	134–32–7
U168	2–Naphthalenamine	91–59–8
U026	Naphthalenamine, N,N–bis(2–chloroethyl)–	494–03–1
U165	Naphthalene	91–20–3
U047	Naphthalene, 2–chloro–	91–58–7
U166	1,4–Naphthalenedione	130–15–4
U236	2,7–Naphthalenedisulfonic acid,3,3'–[(3,3'dimethyl[1,1'–biphenyl]–4,4'diyl)–bis(azo)bis[5–amino–4–hydroxy]–, tetrasodium salt	72–57–1
U166	1,4–Naphthoquinone	130–15–4
U167	alpha–Naphthylamine	134–32–7
U168	beta–Naphthylamine	91–59–8
U217	Nitric acid, thallium(1 +) salt	10102–45–1
U169	Nitrobenzene (I,T)	98–95–3
U170	p–Nitrophenol	100–02–7
U171	2–Nitropropane (I,T)	79–46–9
U172	N–Nitrosodi–n–butylamine	924–16–3
U173	N–Nitrosodiethanolamine	1116–54–7
U174	N–Nitrosodiethylamine	55–18–5
U176	N–Nitroso–N–ethylurea	759–73–9
U177	N–Nitroso–N–methylurea	684–93–5
U178	N–Nitroso–N–methylurethane	615–53–2
U179	N–Nitrosopiperidine	100–75–4
U180	N–Nitrosopyrrolidine	930–55–2
U181	5–Nitro–o–toluidine	99–55–8
U193	1,2–Oxathiolane, 2,2–dioxide	1120–71–4
U058	2H–1,3,2–Oxazaphosphorin–2–amine, N,N–bis (2–chloroethyl)tetrahydro–,2–oxide	50–18–0
U115	Oxirane (I,T)	75–21–8
U126	Oxiranecarboxyaldehyde	765–34–4
U041	Oxirane, (chloromethyl)	106–89–8
U182	Paraldehyde	123–63–7
U183	Pentachlorobenzene	608–93–5
U184	Pentachloroethane	76–01–7
U185	Pentachloronitrobenzene (PCNB)	82–68–8
See F027	Pentachlorophenol	87–86–5
U161	2–Pentanone, 4–methyl–	108–10–1
U186	1,3–Pentadiene (I)	504–60–9
U187	Phenacetin	62–44–2
U188	Phenol	108–95–2
U048	Phenol, 2–chloro–	95–57–8
U039	Phenol, 4–chloro–3–methyl–	59–50–7
U081	Phenol, 2,4–dichloro–	120–83–2
U082	Phenol, 2,6–dichloro–	87–65–0
U089	Phenol, 4,4'–(1,2–diethyl–1,2–ethenediyl)bis–, (E)-	56–53–1
U101	Phenol, 2,4–dimethyl-	105–67–9
U052	Phenol, methyl-	1319–77–3
U132	Phenol, 2,2'–methylenebis(3,4,6–trichloro)-	70–30–4
U170	Phenol, 4–nitro-	100–02–7
See F027	Phenol, pentachloro-	87–86–5
See F027	Phenol, 2,3,4,6–tetrachloro-	58–90–2
See F027	Phenol, 2,4,5–trichloro-	95–95–4
See F027	Phenol, 2,4,6–trichloro-	88–06–2
U150	L–Phenylalanine, 4–[bis(2–chloroethyl)amino]-	148–82–3
U145	Phosphoric acid, lead(2 +) salt (2:3)	7446–27–7
U087	Phosphorodithioic acid, 0,0–diethyl S–methyl ester	3288–58–2
U189	Phosphorus sulfide (R)	1314–80–3
U190	Phthalic anhydride	85–44–9
U191	2–Picoline	109–06–8
U179	Piperidine, 1–nitroso-	100–75–4
U192	Pronamide	23950–58–5
U194	1–Propanamine (I,T)	107–10–8
U111	1–Propanamine, N–nitroso–N–propyl-	621–64–7
U110	1–Propanamine, N–propyl- (I)	142–84–7
U066	Propane, 1,2–dibromo–3–chloro	96–12–8
U083	Propane, 1,2–dichloro-	78–87–5
U149	Propanedinitrile	109–77–3
U171	Propane, 2–nitro- (I,T)	79–46–9
U027	Propane, 2,2'–oxybis[2–chloro-	108–60–1
U193	1,3 Propane sultone	1120–71–4
See F027	Propanoic acid, 2–(2,4,5–trichlorophenoxy)-	93–72–1
U235	1–Propanol, 2,3–dibromo–, phosphate (3:1)	126–72–7
U140	1–Propanol, 2–methyl- (I,T)	78–83–1
U002	2–Propanone (I)	67–64–1
U007	2–Propenamide	79–06–1
U084	1–Propene, 1,3–dichloro-	542–75–6
U243	1–Propene, 1,1,2,3,3,3–hexachloro-	1888–71–7
U009	2–Propenenitrile	107–13–1
U152	2–Propenenitrile, 2–methyl- (I,T)	126–98–7
U008	2–Propenoic acid (I)	79–10–7
U113	2–Propenoic acid, ethyl ester (I)	140–88–5
U118	2–Propenoic acid, 2–methyl–, ethyl ester	97–63–2
U162	2–Propenoic acid, 2–methyl, methyl ester (I,T)	80–62–6
See F027	Propionic acid 2–(2,4,5–trichlorophenoxy) (Silvex)	93–72–1
U194	n-Propylamine (I,T)	107–10–8
U083	Propylene dichloride	78–87–5
U148	3,6–Pyridazinedione, 1,2–dihydro-	123–33–1
U196	Pyridine	110–86–1
U191	Pyridine, 2–methyl-	109–06–8
U237	2,4–(1H,3H)–Pyrimidinedione, 5–[bis(2–chloroethyl)amino]–	66–75–1
U164	4(1H)–Pyrimidinone, 2,3–dihydro–6–methyl–2–thioxo–	56–04–2
U180	Pyrrolidine, 1–nitroso–	930–55–2
U200	Reserpine	50–55–5
U201	Resorcinol	108–46–3
U202	Saccharin, & salts	81–07–2*
U203	Safrole	94–59–7
U204	Selenious acid	7783–00–8
U204	Selenium dioxide	7783–00–8
U205	Selenium sulfide	7488–56–4
U205	Selenium sulfide SeS_2, (R,T)	7488–56–4
U015	L–Serine, diazoacetate (ester)	115–02–6
See F027	Silvex (2,4,5–TP)	93–72–1
U206	Streptozotocin	18883–66–4
U103	Sulfuric acid, dimethyl ester	77–78–1
U189	Sulfur phosphide (R)	1314–80–3
See F027	2,4,5–T	93–76–5
U207	1,2,4,5–Tetrachlorobenzene	95–94–3
U208	1,1,1,2–Tetrachloroethane	630–20–6
U209	1,1,2,2–Tetrachloroethane	79–34–5
U210	Tetrachloroethylene	127–18–4
See F027	2,3,4,6–Tetrachlorophenol	58–90–2
U213	Tetrahydrofuran (I)	109–99–9
U214	Thallium(I) acetate	563–68–8
U215	Thallium(I) carbonate	6533–73–9
U216	Thallium(I) chloride	7791–12–0
U216	Thallium chloride T1C1	7791–12–0
U217	Thallium(I) nitrate	10102–45–1
U218	Thioacetamide	62–55–5
U153	Thiomethanol (I,T)	74–93–1
U244	Thioperoxydicarbonic diamide [$(H_2n)C(S)]_2S_2$, tetramethyl-	137–26–8
U219	Thiourea	62–56–6
U244	Thiram	137–26–8
U220	Toluene	108–88–3
U221	Toluenediamine	25376–45–8
U223	Toluene diisocyanate (R,T)	26471–62–5
U328	o-Toluidine	95–53–4
U353	p-Toluidine	106–49–0
U222	o–Toluidine hydrochloride	636–21–5
U011	1H–1,2,4–Triazol–3–amine	61–82–5
U227	1,1,2–Trichloroethane	79–00–5
U228	Trichloroethylene	79–01–6
U121	Trichloromonofluoromethane	75–69–4
See F027	2,4,5–Trichlorophenol	95–95–4
See F027	2,4,6–Trichlorophenol	88–06–2
See F027	2,4,5–Trichlorophenoxyacetic acid (2,4,5–T)	93–76–5

Hazardous Waste Number	Substance	Chemical Abstracts Number
See F027	2,4,5–Trichlorophenoxypropionic acid, salts and esters (Silvex)	93–72–1*
U234	1,3,5–Trinitrobenzene (R,T)	99–35–4
U182	1,3,5–Trioxane, 2,4,6–trimethyl–	123–63–7
U235	Tris(2,3–dibromopropyl) phosphate	126–72–7
U236	Trypan blue	72–57–1
U237	Uracil mustard	66–75–1
U176	Urea, N-ethyl-N-nitroso-	759–73–9
U177	Urea, N–methyl–N–nitroso	684–93–5
U043	Vinyl chloride	75–01–4
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	81–81–2*
U239	Xylene (I)	1330–20–7
U200	Yohimban–16–carboxylic acid, 11,17–dimethoxy–18–[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, 3beta,16beta,17alpha, 18beta,20alpha)–	50–55–5
U249	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314–84–7

* CAS Number is given for the parent compound only.

7. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2, and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding NJDEP hazardous waste numbers are:

AGENCY NOTE: The Department of Environmental Protection is studying wastes to be included in this paragraph.

Amended by R.1982 d.494, effective January 17, 1983.
See: 14 N.J.R. 20(a), 15 N.J.R. 88(a).
Added (g).
Amended by R.1984 d.166, effective May 7, 1984.
See: 15 N.J.R. 1817(a), 16 N.J.R. 1088(a).
(f): U245 1–(p–Chlorobenzyol)–5–methoxy–2–methylindole–3–acetic acid (Indomethacin) delisted.
Amended by R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(d): "off-specification chemical product" included.
(e): P060 was Hexachlorohexathydro-endo, endo dimethanonaphthalene.
Amended by R.1985 d.375, effective July 15, 1985.
See: 17 N.J.R. 356(a), 17 N.J.R. 1760(a).
P001 and P122 substantially amended; added U248, and U249.
Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
Heading changed.
Correction: Added operative date to annotation.
See: 18 N.J.R. 1379(a).
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
Hazardous Waste Numbers changed throughout.
Amended by R.1986 d.474, effective December 15, 1986.
See: 18 N.J.R. 1037(a), 18 N.J.R. 2445(a).
Added Hazardous Waste numbers.
Amended by R.1987 d.486, effective November 16, 1987.
See: 19 N.J.R. 1278(a), 19 N.J.R. 2165(a).
Substantially amended.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Amended by R.1990 d.65, effective February 5, 1990.
See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).
Reference to N.J.A.C. 7:26–1.6 added.
Administrative Correction: Changed U359 from Ethoxyethanal to 2–Ethoxyethanol.
See: 22 N.J.R. 3227(a).
Amended by R.1991 d.209, effective April 15, 1991.
See: 23 N.J.R. 44(a), 23 N.J.R. 1166(a).
Deleted strontium sulfide from hazardous waste list in (a)5.
Deleted ferric dextran and iron dextran from hazardous waste list in (a)6.
Amended by R.1991 d.472, effective September 16, 1991.
See: 23 N.J.R. 1114(a), 23 N.J.R. 2874(a).
In (a)5 and (a)6, substantial revision to hazardous waste code listings.

Case Notes

Former property owner could be held liable under either New Jersey Spill Compensation Control Act or federal law. Analytical Measurements, Inc. v. Keuffel & Esser Co., D.N.J.1993, 843 F.Supp. 920.

7:26–8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26–8.6 and 8.7, shall be manifested with the corresponding waste code numbers. The generator may also refer to 40 C.F.R. § 261 Appendix VIII, incorporated by reference at N.J.A.C. 7:26–8.19(f). Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent. (NOTE: The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing.) These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstract Service (CAS) Registry Numbers are:

NJ Hazardous Waste Number	Substance	Chemical Abstracts Number
C102	(Acetato) phenylmercury	62–38–4
C103	Acetonitrile	75–05–8
C463	Acetophenone	98–86–2
C105	2–Acetylaminofluorene	53–96–3
C106	Acetyl chloride	75–36–5
C107	1–Acetyl–2–thiourea	591–08–2
C108	Acrolein	107–02–8
C109	Acrylamide	79–06–1
C110	Acrylonitrile	107–13–1
C111	Aflatoxins	1402–68–2*
C324	Aldicarb	116–06–3
C112	Aldrin	309–00–2
C113	Allyl alcohol	107–18–5
C497	Allyl chloride	107–05–1
C114	Aluminum phosphide	20859–73–8
C115	4–Aminobiphenyl	92–67–1
C116	6–Amino–1,1a,2,8,8a,8b–hexahydro–8–(hydroxy–methyl) [–8a–methoxy]–5–methylcarbamate azirino–(2,2:3,4)pyrrolo(1,2–a)indole–4,7–dione (ester)	
C117	5–(Aminomethyl) 3–isoxazolol	2763–96–4
C118	4–Aminopyridine	504–24–5
C119	Amitrole	61–82–5
C457	Ammonium Vanadate	7803–55–6
C120	Aniline	62–53–3
C121	Antimony and compounds, N.O.S.	7440–36–0*
C122	Aramite	140–57–8
C123	Arsenic and compounds, N.O.S.	7440–38–2*
C124	Arsenic acid	7778–39–02*
C125	Arsenic pentoxide	1303–28–2
C126	Arsenic trioxide	1327–53–3
C127	Auramine	492–80–8
C128	Azaserine	115–02–6
C129	Barium and compounds, N.O.S.	7440–39–3*
C130	Barium cyanide	542–62–1
C131	Benz[c]acridine	25–51–4
C464	Benzal chloride	98–87–3
C132	Benz[a]anthracene	56–55–3
C133	Benzene	71–43–2
C464	Benzene, (dichloromethyl)	98–87–3
C500	Benzene, 2–amino–1–1 methyl	95–53–4
C501	Benzene, 4–amino–1 methyl	
C134	Benzenearsonic acid	98–05–5

NJ Hazardous Waste Number	Substance	Chemical Abstracts Number
C135	Benzenethiol	108–98–5
C136	Benzidine	92–87–5
C138	Benzo[b]fluoranthene	205–99–2
C139	Benzo[j]fluoranthene	205–82–3
C140	Benzo[a]pyrene	50–32–8
C519	p–Benzoquinone	106–51–4
C141	Benzotrichloride	98–07–7
C142	Benzyl chloride	100–44–7
C143	Beryllium and compounds, N.O.S.	7440–41–7*
C144	Bis(2–chloroethoxy) Methane	111–91–1
C145	Bis(2–chloroethyl) ether	111–44–4
C146	N,N'–Bis(2–chloroethyl)–2–naphthylamine	494–03–1
C147	Bis(2–chloroisopropyl) ether	108–60–1
C148	Bis(chloromethyl) ether	542–88–1
C149	Bis(2–ethylhexyl) phthalate	117–81–7
C150	Bromoacetone	598–31–2
C438	Bromoform	75–25–2
C151	Bromomethane	74–83–9
C152	4–Bromophenyl phenyl ether	101–55–3
C153	Brucine	357–57–3
C154	2–Butanone peroxide	1338–23–4
C465	Butyl benzyl phthalate	85–68–7
C156	2–sec–Butyl–4,6–dinitrophenol	88–85–7
C476	Cacodylic acid	75–60–5
C157	Cadmium and compounds, N.O.S.	7440–43–9*
C158	Calcium chromate	13765–19–0
C159	Calcium cyanide	592–01–8
C160	Carbon disulfide	75–15–0
C466	Carbon oxyfluoride chloral	353–50–4
C416	Carbon tetrachloride	56–23–5
C508	Chloral	75–87–6
C161	Chlorambucil	305–03–3
C162	Chlordane and alpha and gamma isomers	57–74–9 *
C163	Chlorinated benzenes, N.O.S.	**
C164	Chlorinated ethane, N.O.S.	**
C467	Chlorinated fluorocarbons, N.O.S.	**
C165	Chlorinated naphthalene, N.O.S.	**
C166	Chlorinated phenol, N.O.S.	**
C146	Chlornaphazine	494–03–1
C167	Chloroacetaldehyde	107–20–0
C168	Chloroalkyl ethers, N.O.S.	**
C169	p-Chloroaniline	106–47–8
C170	Chlorobenzene	108–90–7
C171	Chlorobenzilate	510–15–6
C172	2–Chloro–1,3–butadiene	126–99–8
C173	p-Chloro-m-cresol	59–50–7
C174	1–Chloro–2,3–expoxybutane	106–89–8
C175	2–Chloroethyl vinyl ether	110–75–8
C176	Chloroform	67–66–3
C177	Chloromethane	74–87–3
C178	Chloromethyl methyl ether	107–30–2
C179	2–Chloronaphthalene	91–58–7
C179	beta-Chloronaphthalene	91–58–7
C180	2–Chlorophenol	95–57–8
C180	0–Chloronaphthalene	95–57–8
C181	1–(o–Chlorophenyl)thiourea	5344–82–1
C172	Chloroprene	126–99–8
C497	3–Chloropropene	107–05–1
C182	3–Chloropropionitrile	542–76–7
C497	3–Chloropropene	107–05–1
C183	Chlorotoluene, N.O.S.	**
C184	Chromium and compounds, N.O.S.	7440–47–3*
C185	Chrysene	218–01–9
C186	Citrus red No. 2	6358–53–8
C509	Coal tars	8007–45–2
C509	Coal Tar Creosote	8007–45–2
C187	Copper cyanide	544–92–3
C188	Creosote, coal tar	8001–58–9
C468	Cresol	1319–77–3
C468	Cresylic acid	1319–77–3
C189	Crotonaldehyde	4170–30–3
C190	Cyanides (soluble salts and complexes), N.O.S.	**
C191	Cyanogen	460–19–5
C192	Cyanogen bromide	506–68–3
C193	Cyanogen chloride	506–77–4
C194	Cycasin	14901–08–7
C195	2–Cyclohexyl–4,6–dinitrophenol	131–89–5
C196	Cyclophosphamide	50–18–0
C223	2,4–D, and salts and esters	94–75–7*
C197	Daunomycin	20830–81–3
C198	DDD	72–54–8
C199	DDE	72–55–9
C200	DDT	50–29–3
C242	DFP	55–91–4
C201	Diallate	2303–16–4
C202	Dibenz[a,h]acridine	226–36–8
C203	Dibenz[a,j]acridine	224–42–0
C204	Dibenz[a,h]anthracene	53–70–3
C205	7H–Dibenzo[c,g]carbazole	194–59–2
C206	Dibenzo[a,e]pyrene	192–65–4
C207	Dibenzo[a,h]pyrene	189–64–0
C208	Dibenzo[a,i]pyrene	189–55–9
C209	1,2–Dibromo–3–chloropropane	96–12–8
C210	1,2–Dibromoethane	106–93–4
C211	Dibromomethane	74–95–3
C212	Di-n-butyl phthalate	84–74–2
C493	m-Dichlorobenzene	541–73–1
C492	o-Dichlorobenzene	95–50–1
C494	p-Dichlorobenzene	106–46–7
C213	Dichlorobenzene, N.O.S.	25321–22–6
C214	3,3'–Dichlorobenzidine	91–94–1
C469	1,4–Dichloro–2–butene	764–41–0
C470	Dichlorodifluoromethane	75–71–8
C215	1,1–Dichloroethane	75–34–3
C216	1,2–Dichloroethane	107–06–2
C217	trans–1,2–Dichloroethene	156–60–5
C145	Dichloroethyl ether	111–44–4
C219	1,1–Dichloroethylene	75–35–4
C217	1,2–Dichloroethylene	156–60–5
C218	Dichloroethylene, N.O.S.	25323–30–2
C147	Dichloroisopropyl ether	108–60–1
C144	Dichloromethoxy ethane	111–91–1
C148	Dichloromethyl ether	542–88–1
C220	Dichloromethane	75–09–2
C221	2,4–Dichlorophenol	120–83–2
C222	2,6–Dichlorophenol	87–65–0
C223	2,4–Dichlorophenoxyacetic acid, salts and esters	94–75–7*
C225	Dichlorophenylarsine	696–28–6
C226	1,2–Dichloropropane	78–87–5
C224	Dichloropropane, N.O.S.	26638–19–7
C227	Dichloropropanol, N.O.S.	26545–73–3
C228	Dichloropropene, N.O.S.	26952–23–8
C229	1,3–Dichloropropene	542–75–6
C230	Dieldrin	60–57–1
C471	Diepoxybutane	1464–53–5
C232	Diethylarsine	692–42–2
C263	1,4–Diethyleneoxide	123–91–1
C149	Diethylhexyl phthalate	117–81–7
C234	1,2–Diethylhydrazine	1615–80–1
C234	N,N–Diethylhydrazine	1615–80–1
C235	0,0-Diethy-s-methylester phosphorodithioic acid	3288–58–2
C235	0,0-Diethyl S-methyl phosphorodithioate	3288–58–2
C236	Diethyl-p-nitrophenyl phosphate	311–45–5
C237	Diethyl phthalate	84–66–2
C238	0,0–Diethyl–o–(2–pyrazinyl) phosphorothioate	297–97–2
C239	Diethylstilbestrol	56–53–1
C240	Dihydrosafrole	94–58–6
C241	3,4–Dihydroxy–alpha–[(methylamino)–methyl] benzyl alcohol	51–43–4
C242	Diisopropyl fluorophosphate	55–91–4
C243	Dimethoate	60–51–5
C244	3,3'–Dimethoxybenzidine	119–90–4
C245	p-Dimethylaminoazobenzene	60–11–7
C246	7,12–Dimethylbenz[a]anthracene	57–97–6
C247	3,3'–Dimethylbenzidine	119–93–7
C248	Dimethylcarbamoyl chloride	79–44–7
C249	1,1–Dimethylhydrazine	57–14–7
C250	1,2–Dimethylhydrazine	540–73–8
C251	3,3–Dimethyl–1–(methylthio)–2–butanone 0–(methylamino)carbonyl oxime	39196–18–4
C253	alpha,alpha–Dimethylphenethylamine	122–09–8
C254	2,4–Dimethylphenol	105–67–9
C255	Dimethyl phthalate	131–11–3
C256	Dimethyl sulfate	77–78–1
C257	Dinitrobenzene, N.O.S.	25154–54–5
C258	4,6–Dinitro–o–cresol and salts	534–52–1*
C259	2,4–Dinitrophenol	51–28–5
C260	2,4–Dinitrotoluene	121–14–2

NJ Hazardous Waste Number	Substance	Chemical Abstracts Number
C261	2,6–Dinitrotoluene	606–20–2
C156	Dinoseb	88–85–7
C262	Di-n-octyl phthalate	117–84–0
C263	1,4–Dioxane	123–91–1
C510	Diphenylamine	122–39–4
C265	1,2–Diphenylhydrazine	122–66–7
C266	Di-n-propylnitrosamine	621–64–7
C267	Disulfoton	298–04–4
C268	Dithiobiuret	541–53–7
C156	DNBP	88–85–7
C269	Endosulfan	115–29–7
C370	Endothall	145–73–3
C270	Endrin and metabolites	77–20–8*
C174	Epichlorohydrin	106–89–8
C241	Epinephrine	51–43–4
C506	Ethanol, 2–ethoxy	110–80–5
C272	Ethyl Carbamate	51–79–6
C472	Ethyl methacrylate	97–63–2
C278	Ethyl methanesulfonate	62–50–0
C272	Ethyl cyanide	107–12–0
C210	Ethylene dibromide	106–93–4
C215	Ethylene dichloride	75–34–3
C506	Ethylene glycol monoethyl ether	110–80–5
C274	Ethylenebisdithiocarbamic acid, salts and esters	111–54–6*
C275	Ethyleneimine	151–56–4
C276	Ethylene oxide	75–21–8
C277	Ethylenethiourea	96–45–7
C215	Ethylidene dichloride	75–34–3
C498	Famphur	52–85–7
C279	Fluoranthene	206–44–0
C280	Fluorine	7782–41–4
C281	Fluoroacetamide	640–19–7
C282	Fluoroacetic acid, sodium salt	62–74–8
C283	Formaldehyde	50–00–0
C479	Fulminic acid, mercury(2') salt	628–86–4
C473	Formic acid	64–18–6
C284	Glycidaldehyde	765–34–4
C285	Halomethane, N.O.S.	**
C286	Heptachlor	76–44–8
C287	Heptachlor epoxide (alpha, beta, and gamma isomers)	1024–57–3*
C288	Hexachlorobenzene	118–74–1
C289	Hexachlorobutadiene	87–68–3
C290	Hexachlorocyclohexane (all isomers)	58–89–9*
C291	Hexachlorocyclopentadiene	77–47–4
C474	Hexachlorodibenzo-p-dioxins	**
C475	Hexachlorodibenzofurans	**
C292	Hexachloroethane	67–72–1
C293	1,2,3,4,10,19–Hexachloro–1,4,4a,5,8,8a–hexahydro–1,4:5,8–endo, endo-dimethanonaphthalene	465–73–6
C294	Hexachlorophene	70–30–4
C295	Hexachloropropene	1888–71–7
C296	Hexaethyl tetraphosphate	757–58–4
C297	Hydrazine	302–01–2
C298	Hydrocyanic acid	74–90–8
C298	Hydrogen cyanide	74–90–8
C511	Hydrogen fluoride	7664–39–3
C299	Hydrogen sulfide	7783–06–4
C476	Hydroxydimethylarsine oxide	75–60–5
C300	Indeno(1,2,3–cd)pyrene	193–39–5
C301	Iodomethane	74–88–4
C477	Isobutyl alcohol	78–83–1
C302	Isocyanic acid, methyl ester	624–83–9
C293	Isodrin	465–73–6
C303	Isosafrole	120–58–1
C304	Kepone	143–50–0
C305	Lasiocarpine	303–34–4
C307	Lead acetate	301–04–2
C306	Lead and compounds, N.O.S.	7439–92–1*
C308	Lead phosphate	7446–27–7
C309	Lead subacetate	1335–32–6
C290	Lindane	58–89–9
C310	Maleic anhydride	108–31–6
C478	Maleic hydrazide	123–33–1
C311	Malononitrile	109–77–3
C319	MEK	78–93–3
C312	Melphalan	148–82–3
C313	Mercury and compounds, N.O.S.	7439–97–6*
C479	Mercury fulminate	628–86–4
C480	Methacrylonitrile	126–98–7
C314	Methapyrilene	91–80–5
C315	Methomyl	16752–77–5
C513	Methoxychlor	72–43–5
C316	2–Methylaziridine	75–55–8
C151	Methyl bromide	74–83–9
C177	Methyl chloride	74–87–3
C481	Methyl chlorocarbonate	79–22–1
C440	Methyl chloroform	71–55–6
C317	3–Methylcholanthrene	56–49–5
C318	4,4'–Methylene–bis–(2–chloroaniline)	101–14–4
C211	Methylene bromide	74–95–3
C220	Methylene chloride	75–09–2
C319	Methyl ethyl ketone	78–93–3
C319	Methyl ethyl ketone Peroxide	78–93–3
C320	Methyl hydrazine	60–34–4
C301	Methyl iodide	74–88–4
C302	Methyl isocyanate	624–83–9
C321	2–Methyllactonitrile	75–86–5
C322	Methyl methacrylate	80–62–6
C323	Methyl methanesulfonate	66–27–3
C324	2–Methyl–2–(methylthio)	116–06–3
C325	N-Methyl-N'-nitro-N-nitrosoguanidine	70–25–7
C326	Methyl parathion	298–00–0
C327	Methylthiouracil	56–04–2
C116	Mitomycin C	50–07–7
C325	MNNG	70–25–7
C328	Mustard gas	505–60–2
C239	Naphthalene	91–20–3
C330	1,4–Naphthoquinone	130–15–4
C331	1–Naphthylamine	134–32–7
C331	alpha-Naphthylamine	134–32–7
C332	2–Naphthylamine	91–59–8
C332	beta-Naphthylamine	91–59–8
C333	1–Naphthyl–2–thiourea	86–88–4
C333	alpha-Naphthylthiourea	86–88–4
C334	Nickel and compounds, N.O.S.	7440–02–0*
C335	Nickel carbonyl (T–4)	13463–39–3
C336	Nickel cyanide	557–19–7
C337	Nicotine and salts	54–11–5*
C338	Nitric oxide	10102–43–9
C339	p-Nitroaniline	100–01–6
C340	Nitrobenzene	98–95–3
C341	Nitrogen dioxide	10102–44–0
C342	Nitrogen mustard and hydrochloride salt	51–75–2*
C343	Nitrogen mustard N-oxide and hydrochloride salt	126–85–2*
C346	Nitroglycerine	55–63–0
C347	4–Nitrophenol	100–02–7
C507	2–Nitropropane	79–46–9
C348	4–Nitroquinoline,1–oxide	56–57–5
C349	Nitrosamine, N.O.S.	35576–91–1
C350	N-Nitrosodi-n-butylamine	924–16–3
C351	N–Nitrosodiethanolamine	1116–54–7
C352	N–Nitrosodiethylamine	55–18–5
C353	N–Nitrosodimethylamine	62–75–9
C356	N-Nitroso-N-ethylurea	759–73–9
C357	N–Nitrosomethylethylamine	10595–95–6
C358	N-Nitroso-N-methylurea	684–93–5
C359	N-Nitroso-N-methylurethane	615–53–2
C360	N–Nitrosomethylvinylamine	4549–40–0
C361	N–Nitrosomorpholine	59–89–2
C362	N–Nitrosonornicotine	16543–55–8
C363	N–Nitrosopiperidine	100–75–4
C482	N–Nitrosopyrrolidine	930–55–2
C365	N–Nitrososarcosine	13256–22–9
C366	5–Nitro–o–toluidine	99–55–8
C367	Octamethylpyrophosphoramide	152–16–9
C369	Osmium tetroxide (T–4)	20816–12–0
C370	7–Oxabicyclo heptane–2,3–dicarboxylic acid	145–73–3
C483	Paraldehyde	123–63–7
C371	Parathion	56–38–2
C374	PCNB	82–68–8
C372	Pentachlorobenzene	608–93–5
C484	Pentachlorodibenzo-p-dioxins	**
C485	Pentachlorodibenzofurans	**
C373	Pentachloroethane	76–01–7
C374	Pentachloronitrobenzene	82–68–8
C375	Pentachlorphenol	87–86–5
C376	Phenacetin	62–44–2

NJ Hazardous Waste Number	Substance	Chemical Abstracts Number
C377	Phenol	108–95–2
C514	Phenylenediamine	25265–76–3
C102	Phenylmercury acetate	62–38–4
C381	Phenylthiourea	103–85–5
C381	N–Phenylthiourea	103–85–5
C384	Phorate	298–02–2
C382	Phosgene	75–44–5
C383	Phosphine	7803–51–2
C498	Phosphorothioic acid, 0,0–dimethyl ester, 0–ester with p-hydroxy-N,N-dimethyl benzene sulfonamide	52–85–7
C385	Phthalic acid esters, N.O.S.	**
C386	Phthalic anhydride	85–44–9
C517	2–Picoline	109–06–8
C387	Polychlorinated biphenyl, N.O.S.	**
C388	Potassium cyanide	151–50–8
C389	Potassium silver cyanide	506–61–6
C390	Pronamide	23950–58–5
C507	Propane, 2–nitro	79–46–9
C392	1,3 Propane Sultone	1120–71–4
C449	Propane, 1,2,3–trichloro–	96–18–4
C486	n-Propylamine	107–10–8
C226	Propylene dichloride	78–87–5
C316	1,2–Propylenimine	75–55–8
C394	Propylthiouracil	51–52–5
C395	2–Propyn–1–ol	107–19–7
C396	Pyridine	110–86–1
C397	Reserpine	50–55–5
C518	Resorcinol	108–46–3
C398	Saccharin and salts	81–07–2*
C399	Safrole	94–59–7
C400	Selenious acid	7783–00–8
C401	Selenium and compounds, N.O.S.	7782–49–2*
C400	Selenium dioxide	7783–008
C402	Selenium sulfide	7488–56–4
C403	Selenourea	630–10–4
C404	Silver and compounds, N.O.S.	7440–22–4*
C405	Silver cyanide	506–64–9
C447	Silvex	93–72–1
C406	Sodium cyanide	143–33–9
C407	Streptozotocin	18883–66–4
C409	Strychnine and salts	57–24–9*
C446	2,4,5–T	93–76–5
C441	TCCD	1746–01–6
C447	2,4,5–TP	93–72–1
C410	1,2,4,5–Tetrachlorobenzene	95–94–3
C411	2,3,7,8–Tetrachlorodibenzo-p-dioxin	1746–01–6
C487	Tetrachlorodibenzo-p-dioxins	**
C488	Tetrachlorodibenzofurans	**
C412	Tetrachloroethane, N.O.S.	25322–20–7
C413	1,1,1,2–Tetrachloroethane	630–20–6
C414	1,1,2,2–Tetrachloroethane	79–34–5
C415	Tetrachloroethene	127–18–4
C415	Tetrachloroethylene	127–18–4
C416	Tetrachloromethane	56–23–5
C417	2,3,4,6–Tetrachlorophenol	58–90–2
C418	Tetraethyldithiopyrophosphate	3689–24–5
C419	Tetraethyl lead	78–00–2
C420	Tetraethyl pyrophosphate	107–49–3
C489	Tetranitromethane	509–14–8
C422	Thallic oxide	1314–32–5
C423	Thallium(I) acetate	563–68–8
C421	Thallium and compounds, N.O.S.	7440–28–0*
C424	Thallium(I) carbonate	6533–73–9
C425	Thallium(I) chloride	7791–12–0
C426	Thallium(I) nitrate	10102–45–1
C427	Thallium selenite	12039–52–0
C428	Thallium(I) sulfate	7446–18–6
C429	Thioacetamide	62–55–5
C251	Thiofanox	39196–18–4
C520	Thiomethanol	74–93–1
C135	Thiophenol	108–98–5
C430	Thiosemicarbazide	79–19–6
C431	Thiourea	62–56–6
C432	Thiram	137–26–8
C433	Toluene	108–88–3
C502	2,4–Toluenediamine	95–80–7
C503	2,6–Toluenediamine	823–40–5
C504	3,4–Toluenediamine	496–72–0
C505	Toluenediamine, N.O.S.	25376–45–8
C436	Toluene diisocyanate	26471–62–5
C500	o-Toluidine	95–53–4
C435	o-Toluidine hydrochloride	636–21–5
C501	p-Toluidine	106–49–0
C437	Toxophene	8001–35–2
C438	Tribromomethane	75–25–2
C439	1,2,4–Trichlorobenzene	120–82–1
C440	1,1,1–Trichloroethane	71–55–6
C441	1,1,2–Trichloroethane	79–00–5
C442	Trichloroethene	79–01–6
C442	Trichloroethylene	79–01–6
C443	Trichloromethanethiol	75–70–7
C490	Trichloromonofluoromethane	75–69–4
C444	2,4,5–Trichlorophenol	95–95–4
C445	2,4,6–Trichlorophenol	88–06–2
C446	2,4,5–Trichlorophenoxyacetic acid	93–76–5
C447	2,4,5–Trichlorophenoxypropionic acid	93–72–1
C448	Trichloropropane, N.O.S.	25735–29–9
C449	1,2,3–Trichloropropane	96–18–4
C450	0,0,0–Triethyl phosphorothioate	126–68–1
C451	Trinitrobenzene	99–35–4
C452	Tris(1–aziridinyl)phosphine sulfide	52–24–4
C453	Tris(2,3–dibromopropyl)phosphate	126–72–7
C491	Trypan blue	72–57–1
C455	Uracil mustard	66–75–1
C456	Urethane	51–79–6
C457	Vanadic acid, ammonium salt	7803–55–6
C458	Vanadium pentoxide and dust	1314–62–1
C459	Vinyl chloride	75–01–4
C104	Warfarin and salts	81–81–2*
C461	Zinc cyanide	557–21–1
C462	Zinc phosphide	1314–84–7

* CAS Number is given for the parent compound only.

** More than one CAS Number applies.

(b) Test methods contained in Appendix III to 40 CFR Part 261 or otherwise approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

Amended by R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
Cross-reference corrected; "a given hazardous constituent" was "a given toxic constituent".
Amended by R.1983 d.502, effective October 24, 1983.
See: 15 N.J.R. 1184(a), 15 N.J.R. 1861(c).
CDDs and CDFs originally added as emergency R.1983 d.292, effective July 1, 1983, to expire August 30, 1983.
Amended by R.1984 d.166, effective May 7, 1984.
See: 15 N.J.R. 1817(a), 16 N.J.R. 1088(a).
1–(p–Chlorobenzoyl)–5–methoxy–2–methylindole–3–acetic acid (Indomethacin) delisted.
Amended by R.1985 d.248, effective May 20, 1985.
See: 17 N.J.R. 354(a), 17 N.J.R. 1290(a).
Added: 2–chloro–1, 3–butadiene (chloroprene) and 3–chloropropene (allyl chloride).
Amended by R.1986 d.371, effective September 8, 1986.
See: 18 N.J.R. 792(a), 18 N.J.R. 1798(a).
Assigned waste code numbers.
Amended by R.1986 d.474, effective December 15, 1986.
See: 18 N.J.R. 1037(a), 18 N.J.R. 2445(a).
Added new chemicals; added (b).
Amended by R.1987 d.486, effective November 16, 1987.
See: 19 N.J.R. 1278(a), 19 N.J.R. 2165(a).
Added C506 and C507.
Amended by R.1991 d.209, effective April 15, 1991.
See: 23 N.J.R. 44(a), 23 N.J.R. 1166(a).
Deleted strontium sulfide from hazardous constituents list in (a).
Amended by R.1992 d.440, effective November 2, 1992.
See: 23 N.J.R. 3093(b), 24 N.J.R. 2003(a), 24 N.J.R. 4126(a).
Entire list was repealed and replaced; addition of CAS number.
Amended by R.1993 d.351, effective July 19, 1993.
See: 25 N.J.R. 755(a), 25 N.J.R. 3155(a).

Case Notes

Former property owner could be held liable under either New Jersey Spill Compensation Control Act or federal law. Analytical Measurements, Inc. v. Keuffel & Esser Co., D.N.J.1993, 843 F.Supp. 920.

7:26–8.17 Delisting procedure

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in N.J.A.C. 7:26–8.13, 8.14, 8.15 or 8.20 may petition for a regulatory amendment under this section, and shall satisfy the following requirements:

1. The petitioner shall demonstrate to the satisfaction of the Department that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under N.J.A.C. 7:26–8.8(a)2, that it also does not meet the criterion of N.J.A.C. 7:26–8.8(a)3; and

2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded may still, however, be a hazardous waste by operation of N.J.A.C. 7:26–8.9, 8.10, 8.11 or 8.12.

(b) The procedures in this section may also be used to petition the Department for a regulatory amendment to exclude from N.J.A.C. 7:26–8.1(a)2iii or (d)1, a waste which is described in those sections and is either a waste listed in, contains a waste listed in, or is derived from a waste listed in N.J.A.C. 7:26–8.13, 8.14, 8.15 or 8.20. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by (a) above, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, the petitioner's demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of N.J.A.C. 7:26–8.9, 8.10, 8.11 or 8.12.

(c) If the waste is listed with codes "I", "C", "R", or "E":

1. The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in N.J.A.C. 7:26–8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in N.J.A.C. 7:26–8.9, 8.10, 8.11 or 8.12 using any applicable test methods prescribed therein.

2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26–8.9 through N.J.A.C. 7:26–8.12.

(d) If the waste is listed with code "T":

1. The petitioner must demonstrate that:

i. The waste does not contain the constituent or constituents as defined in 40 CFR Appendix VII that caused the Department to list the waste, using the appropriate test methods prescribed in 40 CFR 261 Appendix III; or

ii. Although containing one or more of the hazardous constituents (as defined in 40 CFR 261 Appendix VII) that caused the waste to be listed, the waste does not meet the criterion of N.J.A.C. 7:26–8.8(a)3 when considering the factors referenced therein.

2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

3. The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in N.J.A.C. 7:26–8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein;

4. A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26–8.9 through 8.12.

(e) If the waste is listed with the code "H":

1. The petitioner shall demonstrate that the waste does not meet both of the following criteria:

i. The criterion of N.J.A.C. 7:26–8.8(a)2; and

ii. The criterion of N.J.A.C. 7:26–8.8(a)3 when considering the factors referenced therein.

2. Based on a complete application, the Department shall determine, where there is a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

3. The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in N.J.A.C. 7:26–8.9, 8.10, 8.11, or 8.12 using any applicable test methods prescribed therein;

4. A waste which is so excluded, however, still may be a hazardous waste by operation of N.J.A.C. 7:26–8.9 through 8.12.

(f) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(g) Each petition shall include:

1. The petitioner's name and address;

2. A statement of the petitioner's interest in the proposed action;

3. A description of the proposed action;

4. A statement of the need and justification for the proposed action, including any supporting tests, studies or other information;

5. The name and address of the laboratory facility performing the sampling or tests of the waste;

6. The names and qualifications of the persons sampling and testing the waste;

7. The dates of sampling and testing;

8. The location of the generating facility;

9. A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

10. A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

11. Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in N.J.A.C. 7:26–8.8(a)3;

12. A description of the methodologies and equipment used to obtain the representative samples;

13. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

14. A description of the tests performed (including results);

15. The names and model numbers of the instruments used in performing the tests; and

16. The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

17. Petitions shall be submitted in duplicate to:

Director
Division of Waste Management
New Jersey Department of Environmental Protection
CN 028
Trenton, NJ 08625

(h) After receiving a petition for an exclusion, the Department may request any additional information which may reasonably be required to evaluate the petition.

(i) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(j) The Department may exclude only part of the waste for which the demonstration is submitted where there is reason to believe that variability of the waste justifies a partial exclusion.

(k) To the maximum extent practicable, the Department shall, within 12 months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste, publish in the New Jersey Register a proposal to grant or deny a petition. The Department shall grant or deny such a petition within 24 months after receiving a complete application.

(*l*) The Department shall give public notice of proposed delistings by publication in the New Jersey Register. A period of at least 30 days shall be allowed for public comment. Public hearings will be scheduled, if in the discretion of the Department, the public comment has raised issues affecting the public health and safety, and/or the environment. Public comments will be reviewed and answered in the final notice. A proposed delisting will become effective upon publication of the final notice in the New Jersey Register, and the delisting will be described in Appendix I of this subchapter, incorporated herein by reference.

Amended by R.1986 d.473, effective December 15, 1986.
See: 18 N.J.R. 1335(a), 18 N.J.R. 2446(a).
Substantially amended.
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Reference to N.J.A.C. 7:28–8.20 added in (a) and (b) with stylistic revisions.

Amended by R.1991 d.172, effective April 1, 1991.
See: 22 N.J.R. 3430(f), 23 N.J.R. 1004(a).
Added Appendix I in (*l*).

Law Review and Journal Commentaries

Solid Waste—Environmental Protection—Hazardous Material. Judith Nallin, 136 N.J.L.J. No. 4, 62 (1994).

Case Notes

Validity of New Jersey Department of Environmental Protection and Energy regulation defining "listed hazardous wastes" to include wastes derived from listed hazardous wastes. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

7:26–8.18 Hazardous determinations made prior to the effective date of this subchapter

(a) Every solid waste designated as a hazardous waste or special waste by the Department prior to the effective date of this subchapter shall retain the status of hazardous waste, and must be managed as such, for a period of six months after the effective date of this subchapter, unless the Department specifically authorizes a change in the status of the waste.

(b) Six months after the effective date of this subchapter, no solid waste shall be considered a hazardous waste unless it has been listed or designated a hazardous waste in accordance with the standards and procedures set out in this subchapter.

7:26–8.19 Incorporation by reference

(a) When testing is performed it shall be conducted in accordance with the procedures and methods contained herein and as set forth in 40 CFR Part 261 Appendices III and X. The Department may approve alternate test methods for those wastes that are beyond the regulatory scope of the Federal program.

(b) The most current versions of the following publications are incorporated by reference into this chapter whenever or wherever mentioned herein:

1. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D–3278, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

2. "ASTM Standard Test Methods for Flash Point by Pensky–Martens Closed Tester," ASTM Standard D–93–79 or D–93–80, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

3. "Flammable and Combustible Liquids Code" available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

4. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. The latest edition and updates of SW–846 are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600, as document number PB 87–120–291.

(c) The references listed in paragraph (a) of this section are also available for inspection at the New Jersey State Library, 185 West State Street, Trenton, New Jersey and the Newark Public Library, 5 Washington Street, Newark, New Jersey.

(d) For hazardous wastes listed at N.J.A.C. 7:26–8.13 and 8.14, the Department incorporates by reference the basis for those listings at 40 C.F.R. Part 261, Appendix VII.

(e) The Department incorporates by reference 40 C.F.R. Part 261, Appendix II, for use in complying with N.J.A.C. 7:26–8.12.

(f) The Department incorporates by reference the Federal listing of hazardous constituents at 40 C.F.R. Part 261, Appendix VIII.

New Rule, R.1987 d.18, effective January 5, 1987.
See: 19 N.J.R. 2941(a), 19 N.J.R. 113(a).
Amended by R.1987 d.514, effective December 7, 1987.
See: 19 N.J.R. 1482(a), 19 N.J.R. 2278(a).
Deleted text in (a) ", or as otherwise required by the Department." and added "The Department may . . .".
Amended by R.1991 d.156, effective March 18, 1991.
See: 22 N.J.R. 3299(a), 23 N.J.R. 852(a).
Stylistic revisions and added address of National Technical Information Service in (b)4.
Added (d).
Amended by R.1993 d.300, effective June 21, 1993.
See: 25 N.J.R. 753(a), 25 N.J.R. 2718(a).
Amended by R.1993 d.351, effective July 19, 1993.
See: 25 N.J.R. 755(a), 25 N.J.R. 3155(a).

7:26–8.20 State hazardous waste from non-specific sources

(a) State hazardous wastes from non-specific sources are as follows:

	NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic	1. X721	Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, garages, and used oil collection centers as defined at N.J.A.C. 7:26A–6.2	(T)
	2. X722	Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks	(T)
	3. X723	Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced	(T)
	4. X724	Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels	(T)

	NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
	5. X725	Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils	(T)
	6. X726	The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils	(T)
	7. X728	Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities	(T)

(b)

	NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic	1. X750	PCB liquids containing 50 ppm or more by dry weight of PCBs	(T)
	2. X751	PCB solids containing 50 ppm or more by dry weight of PCBs	(T)
	3. X752	Drained electrical, hydraulic or other equipment which at the time of draining contained liquids with 500 ppm or more of PCBs by dry weight	(T)
	4. X753	Undrained electrical, hydraulic or other equipment containing liquids with 50 ppm or more of PCBs by dry weight	(T)
	5. X754	Sludge or dredge material containing 50 ppm or more of PCBs by dry weight	(T)

New Rule, R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Amended by R.1991 d.110, effective March 4, 1991 (operative May 3, 1991).
See: 22 N.J.R. 288(a), 23 N.J.R. 715(a).
Added (a).
Amended by R.1992 d.78, effective February 18, 1992.
See: 23 N.J.R. 2855(a), 24 N.J.R. 584(b).
Amended to bring the Department's PCB concentration level into agreement with Federal regulations.
Amended by R.1993 d.342, effective July 6, 1993.
See: 24 N.J.R. 2383(a), 25 N.J.R. 2863(a).

7:26–8.21 Hazardous constituents for groundwater monitoring

(a) The following table lists the hazardous constituents for which groundwater samples are to be analyzed when such analysis is required, pursuant to the detection monitoring program of N.J.A.C. 7:14A–6.15(i) or the compliance monitoring program of N.J.A.C. 7:14A–6.15(j), or both.

List of Hazardous Constituents for Groundwater Monitoring[1]

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100	200
			8270	10
Acenaphthylene	208-96-8	Acenaphthylene	8100	200
			8270	10
Acetone	67-64-1	2-Propanone	8240	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	10
Acrolein	107-02-8	2-Propenal	8030	5
			8240	5
Acrylonitrile	107-13-1	2-Propenenitrile	8030	5
			8240	5
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5α,8α,8aβ)-	8080	0.05
			8270	10
Aliyl chloride	107-05-1	1-Propene, 3-chloro-	8010	5
			8240	100
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	10
Aniline	62-53-3	Benzenamine	8270	10
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony	6010	300
			7040	2,000
			7041	30
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	8270	10
Arsenic	(Total)	Arsenic	6010	500
			7060	10
			7061	20
Barium	(Total)	Barium	6010	20
			7080	1,000
Benzene	71-43-2	Benzene	8020	2
			8240	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100	200
			8270	10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100	200
			8270	10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100	200
			8270	10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-	8080	0.05
			8250	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-	8080	0.05
			8250	40
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-	8080	0
			8250	30
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5α,6β)-	8080	0.05
			8250	10
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis[2-chloro-	8270	10
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-	8270	10
Bis(2-chloro- 1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	108-60-1	Propane, 2,2'-oxybis[1-chloro-	8010	100
			8270	10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	8060	20
			8270	10
Bromodichloromethane	75-27-4	Methane, bromodichloro-	8010	1
			8240	5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010	2
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060	5
			8270	10
Cadmium	(Total)	Cadmium	6010	40
			7130	50
			7131	1
Carbon disulfide	75-15-0	Carbon disulfide	8240	5
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010	1
			8240	5
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080	0.1
			8250	10
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8240	5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8240	10
Chloroform	67-66-3	Methane, trichloro-	8010	0.5
			8240	5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8240	5
Chromium	(Total)	Chromium	6010	70
			7190	500
			7191	10
Chrysene	218-01-9	Chrysene	8100	200
			8270	10
Cobalt	(Total)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Total)	Copper	6010	60
			7210	200
m-Cresol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	40
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene)bis[4-chloro-	8080	0.05
			8270	10
4,4'-DDT	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8240	5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-	8010	100
			8240	5
			8270	10
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-	8010	10
			8240	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010	2
			8020	5
			8120	10
			8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010	5
			8020	5
			8120	10
			8270	10
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010	2
			8020	5
			8120	15
			8270	10
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8240	5
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-	8010	10
			8240	5
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8240	5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-	8010	0.5
			8240	5
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010	1
			8240	5
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8240	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-	8010	0.5
			8240	5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8240	5
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8240	5
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,	8080	0.05
			8270	10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060	5
			8270	10
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	8270	10
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	8270	10
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	8270	10
alpha, alpha-Dimethylphenethylamine	122-09-8	Benzeneethanamine, α,α-dimethyl-	8270	10
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060	5
			8270	10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	10
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040	150
			8270	50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040	150
			8270	50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090	0.2
			8270	10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150	1
			8270	10
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060	30
			8270	10
1,4-Dioxane	123-91-1	1,4-Dioxane	8015	150
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-ethylthio) ethyl]ester	8140	2
			8270	10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α, 9aβ)-	8080	0.1
			8250	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-	8080	0.05
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ,3α,6α,6aβ,7β,7aα)-	8080 8250	0.1 10
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β, 4aβ,5β,6aβ,6bβ,7R*)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8240	2 5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8240 8270	10 5 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	10
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester	8270	10
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α, 5aβ,6β,6aα)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8120 8270	5 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8270	0.5 10
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone	591-78-6	2-Hexanone	8240	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270	10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	10
Lead	(Total)	Lead	6010 7420 7421	40 1,000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8240	5 5
Methapyrilene	91-80-5	1,2,Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	8270	10
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8240	20 10

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Common name[1]	CAS RN[2]	Chemical abstracts service index name[3]	Suggested methods[4]	PQL (µg/L)[5]
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010	1
			8240	10
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010	15
			8240	5
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010	5
			8240	5
Methyl ethyl ketone; MEK	78-93-3	2-Butanone	8015	10
			8240	100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010	40
			8240	5
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015	2
			8240	5
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	8140	0.5
			8270	10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8240	50
Naphthalene	91-20-3	Naphthalene	8100	200
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	50
			7520	400
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	50
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10
p-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040	10
			8270	50
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro-, 1-oxide	8270	10
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	10
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8270	10
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8270	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	10
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	10
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester	8270	10
Polychlorinated biphenyls; PCBs	See Note 7	1,1'-Biphenyl, chloro derivatives	8080	50
			8250	100
Polychlorinated dibenzo-p-dioxins; PCDDs	See Note 8	Dibenzo[b,e][1,4]dioxin, chloro derivatives	8280	0.01
Polychlorinated dibenzofurans; PCDFs	See Note 9	Dibenzofuran, chloro derivatives	8280	0.01
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloroethane	76-01-7	Ethane, pentachloro-	8240	5
			8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	10
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	10
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10

Common name[1]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
Phenol	108-95-2	Phenol	8040	1
			8270	10
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	8140	2
			8270	10
2-Picoline	109-06-8	Pyridine, 2-methyl-	8240	5
			8270	10
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8240	5
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Pyridine	110-86-1	Pyridine	8240	5
			8270	10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Total)	Selenium	6010	750
			7740	20
			7741	20
Silver	(Total)	Silver	6010	70
			7760	100
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8240	5
Sulfide	18496-25-8	Sulfide	9030	10,000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo [b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	8280	0.005
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
			8240	5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
			8240	5
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8240	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid ($[(HO)_2P(S)]_2O$), tetraethyl ester	8270	10
Thallium	(Total)	Thallium	6010	400
			7840	1,000
			7841	10
Tin	(Total)	Tin	7870	8,000
Toluene	108-88-3	Benzene, methyl-	8020	2
			8240	5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	8001-35-2	Toxaphene	8080	2
			8250	10
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8270	10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8240	5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010	0.2
			8240	5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010	1
			8240	5
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-	8010	10
			8240	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8240	5
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010	80
			7910	2,000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8240	5
Vinyl chloride	75-01-4	Ethene, chloro-	8010	2
			8240	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Xylene (total)	1330-20-7	Benzene, dimethyl-	8020	5
			8240	5
Zinc	(Total)	Zinc	6010	20
			7950	50

1. The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

2. Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

3. Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

4. CAS index names are those used in the 9th Cumulative Index.

5. Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

6. Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds: PQLs are not a part of the regulation.

7. Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

8. This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

9. This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.

New Rule, R.1990 d.259, effective May 21, 1990.
See: 21 N.J.R. 3844(a), 22 N.J.R. 1558(a).
Administrative Correction to hazardous constituents for groundwater samples in Appendix IX.
See: 22 N.J.R. 3366(b).

APPENDIX I

WASTES EXCLUDED UNDER N.J.A.C. 7:26–8.17

Table 1—Wastes Excluded From Non–Specific Sources

Facility	Address	Waste Description
(Reserved)		

Table 2—Wastes Excluded From Specific Sources

Facility	Address	Waste Description
(Reserved)		

Table 3—Wastes Excluded From Commercial Chemical Products, Off–Specification Species, Container Residues, and Spill Residues Thereof

Facility	Address	Waste Description
Beecham Labs	Piscataway, New Jersey	Contaminated soil (approximately 2,400 cubic yards) which contains acetone, methylene chloride, methyl isobutyl ketone and toluene each in concentrations of 4.7 ppm or less.

New Rule, R.1991 d.172, effective April 1, 1991.
See: 22 N.J.R. 3431(a), 23 N.J.R. 1004(a).

SUBCHAPTER 9. REQUIREMENTS FOR HAZARDOUS WASTE FACILITIES

Subchapter Historical Note

Adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b).

7:26–9.1 Scope and applicability

(a) The standards and requirements in this subchapter apply to all persons treating, storing or disposing of hazardous waste unless specifically provided otherwise in this subchapter, N.J.A.C. 7:26–8.1 et seq. or N.J.A.C. 7:14A–4.1 et seq.

(b) An owner or operator of an "existing facility" who is eligible to operate the facility prior to final disposition of a permit application must comply with all requirements of this subchapter (see N.J.A.C. 7:26–12.3) except those that specifically address requirements for new facilities or facilities operating pursuant to a permit issued pursuant to N.J.A.C. 7:26–12.1 et seq. After final disposition of the permit application all sections apply to existing facilities in accordance with subsection 9.1(a).

1. The owner or operator of an existing facility whose existing facility status has been terminated is subject to all requirements under N.J.A.C. 7:26–9, N.J.A.C. 7:26–10 and N.J.A.C. 7:26–11 until applicable closure and post-closure responsibilities under N.J.A.C. 7:26–9.8, 9.9, 9.10 and 9.11 have been fulfilled. These standards apply to all treatment, storage and disposal activities at these facilities, except as specifically provided otherwise in this subchapter or in N.J.A.C. 7:26–1 or N.J.A.C. 7:26–8.

(c) The standards and requirements of this subchapter do not apply to:

1. The following handlers of hazardous waste.

i. Any person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1420 et seq.), except that these standards and requirements do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea (whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of N.J.A.C. 7:26–7); and

ii. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

(1) Has a permit for ocean dumping issued under 40 CFR Part 220 (Ocean Dumping, authorized by the Marine Protection, Research and Sanctuaries Act, as amended, 33 U.S.C. 1420 et seq.);

(2) Complies with the following hazardous waste regulations:

(A) Identification number, N.J.A.C. 7:26–7.6(a)1.

(B) Use of manifest system, N.J.A.C. 7:26–7.6(b) and (d).

(C) Manifest discrepancies, N.J.A.C. 7:26–12.4(a)17i.

(D) Operating record, N.J.A.C. 7:26–9.4(i).

(E) Annual report, N.J.A.C. 7:26–9.4(j).

(F) Unmanifested waste report, N.J.A.C. 7:26–12.4(a)17ii.

Such report must be designated "Unmanifested Waste Report" and include the EPA identification number, name, and address of the facility, the date the facility received the waste, the EPA identification number, name and address of the generator and the transporter, if available, a description and the quantity of each unmanifested hazardous waste and facility received; the method of treatment, storage, or disposal for each hazardous waste, the certification signed by the owner or operator of the facility or his authorized representative and a brief explanation of why the waste was unmanifested, if known.

2. Any person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control program approved or promulgated under the Safe Drinking Water Act (42 U.S.C. 300 et seq.), except that these standards and requirements do apply to the above-ground treatment or storage of hazardous waste before it is injected underground;

3. The owner or operator of a publicly owned treatment works (POTW) with respect to the treatment or storage of hazardous wastes are delivered to the POTW by treatment vehicle or vessel, or through a pipe;

4. Any generator accumulating waste onsite for less than 90 days except to the extent that the requirements are included in N.J.A.C. 7:26–9.3.

5. Any farmer disposing of waste pesticides from the farmer's own use provided the following are performed:

i. Each emptied pesticide container is triple rinsed in accordance with N.J.A.C. 7:26–8.15; and

ii. Pesticide residues are disposed of on the farmer's own farm in a manner consistent with the disposal instruction on the pesticide label;

6. The owner or operator of a totally enclosed treatment facility as defined in N.J.A.C. 7:26–1.4;

7. Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which when spilled becomes a hazardous waste, except that with respect to such activities, the appropriate requirements of N.J.A.C. 7:26–9.6 and 9.7 concerning preparedness and prevention, and emergency contingency plans and emergency procedures are applicable to owners or operators of treatment, storage, and disposal facilities otherwise subject to this subchapter.

i. This paragraph only applies to activities taken in immediate response to a spill.

ii. After immediate response activities are completed, the standards and requirements of this subchapter apply fully to the management of any spill residue or debris which is a hazardous waste under N.J.A.C. 7:26–8.1 et seq.;

8. Any person accumulating less than 1,001 gallons of waste oil unless the waste oil is a hazardous waste pursuant to 40 CFR 261;

9. The owner or operator of an industrial boiler or an industrial furnace burning a hazardous waste, provided the following conditions are met:

i. The wastes to be burned in the device are to be beneficially used or reused as a fuel for the purpose of

recovering usable energy and are limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said wastes to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26–8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C. 7:26–7.

ii. A "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" has been issued in accordance with the provisions of N.J.A.C. 7:27–8. Such permit description must include a listing of each specific waste, the composition of each waste, and the process from which each waste was generated.

iii. The rated gross heat input of the device is greater than 20 million British Thermal Units (BTU) per hour.

iv. The device has a minimum combustion efficiency of at least 99.9%, as determined by the following formula where carbon dioxide (CO_2) and carbon monoxide (CO) are measured in concentration by volume:

$$\text{Combustion efficiency} = CO_2/(CO_2 + CO) \times 100\%$$

v. The device is continuously monitored for O_2 and either CO or total hydrocarbons and the levels are continuously recorded.

vi. A full-time operator is present when the waste is burned. If the device is a boiler, the engineer-in-charge must possess a current, 1–C "blue-seal" third class engineers license.

vii. The device is located in an area zoned for industrial use and is not located in a residential building.

viii. The hazardous waste is burned no more than 90 days after it is generated and the following conditions are met:

(1) The waste is placed in containers which meet the standards of N.J.A.C. 7:26–7.2 and which are managed in accordance with N.J.A.C. 7:26–9.4(d);

(2) The date on which each period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection on each container;

(3) The generator complies with the requirements for owners and operators at N.J.A.C. 7:26–9.6 and 9.7 concerning preparedness and prevention, contingency plans and emergency procedures as well as N.J.A.C. 7:27–9.4(g) concerning personnel training.

(4) For waste which is placed in above ground tanks, the following requirements shall be met:

(A) Prior to placing the waste in the tank, written approval from the Department must be obtained;

(B) The waste shall be managed in conformance with N.J.A.C. 7:26–9.3(b)1 through 5, 7, 8, and 9, as well as N.J.A.C. 7:26–9.1(c)9viii(2) and (3); and

ix. The device is not a cement kiln.

x. The material being burned contains no PCB hazardous waste.

10. Generators who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26–1.4) provided:

i. Where the recycled hazardous waste is used as a fuel:

(1) The owner or operator shall submit the following information to the Department:

(A) A chemical and physical analysis of the material to be recycled and the quantities involved; and

(B) Schematic designs of the process equipment to be utilized, including the throughput capacity of the equipment and all flows to and from the equipment; and

(C) Explanation of the processes used to produce the fuel and demonstration of the capability of removing water and potential air contaminants including, but not limited to, halogens, metals, total ash, and sulfur from the waste; and

(D) Anticipated quality and quantity of the materials to be produced by the proposed processing of each waste from the process and a material balance; and

(E) A plot plan of the facility depicting the location of the recycling operation; and

(F) A description of the sampling, analytical and quality assurance procedures that will be used to ensure the quality of material being produced for use as fuel including, but not limited to, chemical testing frequency and record keeping procedures; and

(2) Written approval from the Department shall be obtained for the recycling facility prior to start-up of the recycling process; and

(3) Any material produced to be burned shall be utilized on the site where produced; and

(4) The burning of the material is accomplished in accordance with N.J.A.C. 7:26–9.1(c)9 and N.J.A.C. 7:27 (Rules of the Bureau of Air Pollution Control) and specifically a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and

(5) The recycled hazardous waste is used as a fuel only in an industrial boiler or industrial furnace.

ii. The generator submits an annual report by March 1 covering the recycling activities for the previous calendar year. The report shall be submitted on forms approved by the Department and shall include the following information:

(1) The generator's name, address, and EPA identification number;

(2) For each hazardous waste recycled, a description of the waste, DOT hazard class, EPA or State hazardous waste number, total annual amount, and unit of measure;

(3) The calendar year covered by the report;

(4) Waste minimization information, which shall include the following:

(A) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;

(B) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, and to the extent such information is available for years prior to 1984; and

(5) The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative;

iii. The owner or operator has obtained an EPA identification number and has notified the Department of the on-site recycling activities; and

iv. The hazardous waste is recycled no later than 90 days after it is generated and the following conditions are met:

(1) The hazardous waste is placed in containers which meet the standards of N.J.A.C. 7:26–7.2 and which are managed in accordance with N.J.A.C. 7:26–9.4(d);

(2) For each container, the date on which the period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection;

(3) The generator complies with the requirements for owners and operators at N.J.A.C. 7:26–9.4(g), 9.6, and 9.7 concerning preparedness and prevention, contingency plans, emergency procedures, and personnel training.

(4) For hazardous waste placed in above ground tanks, the following requirements shall be met:

(A) Prior to placing the hazardous waste in the tank, written approval shall be obtained from the Department; and

(B) The hazardous waste shall be managed in conformance with N.J.A.C. 7:26–9.3(b)1 through 5, 8 and 9.

11. The owner or operator of a gas cylinder facility provided the following conditions are satisfied:

i. If the hazardous waste residue in the gas cylinder is vented or otherwise released to the atmosphere, the owner or operator shall:

(1) Vent the hazardous waste gas residue into a stack or chimney, as defined in N.J.A.C. 7:27–16.1; and

(2) Comply with the requirements in N.J.A.C. 7:27–16; and

(3) Obtain a permit pursuant to N.J.A.C. 7:27–8 if such permit is required; and

ii. The owner or operator shall comply with all other applicable rules in N.J.A.C. 7:27 (Air Pollution Control), including but not limited to the prohibition of air pollution in N.J.A.C. 7:27–5; and

iii. The owner or operator shall comply with all applicable requirements in Title 7, Subtitle D, of the New Jersey Administrative Code (Rules of the Division of Water Resources).

12. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A–4.6.

13. The owner or operator of a waste reuse facility, provided the following conditions are met:

i. The owner and operator of the waste reuse facility has qualified for the permit exemption under N.J.A.C. 7:26–12.1(b)11;

ii. A waste reuse facility identification number has been received from the Department prior to accepting hazardous waste for use or reuse;

iii. Wastes intended for use or reuse are stored no longer than 90 days, and the requirements set forth for accumulation of wastes for less than 90 days at N.J.A.C. 7:26–9.3(a)3 or (b)5 are also met;

iv. Wastes are stored and managed in conformance with relevant requirements of N.J.A.C. 7:26–7.2(e), 7:26–9.4(d) and (e), 7:26–10.4 and 7:26–10.5;

v. The owner or operator of the waste reuse facility maintains a written operating record at the facility in accordance with the applicable provisions of N.J.A.C. 7:26–9.4(i) and, for hazardous waste stored in tanks, records are maintained which list the date that each shipment of hazardous waste enters the tank, the volume of that shipment, the date that each quantity of hazardous waste exits the tank, and the volume of the hazardous waste exiting the tank;

vi. Wastes accepted for use or reuse are accompanied by a properly completed manifest which the owner/operator handles in accordance with the requirements of N.J.A.C. 7:26–7.6(b);

vii. Wastes accepted for use or reuse originated from generators that are registered with the Department's waste reuse program pursuant to N.J.A.C. 7:26–7.4(j)1. (Out-of-state generators must also register with the Department's waste reuse program);

viii. Residues resulting from use or reuse are disposed of in accordance with the rules contained in N.J.A.C. 7:26–1 et seq.

ix. Information regarding all use or reuse activities at the site is included in an annual report, submitted to the Department by March 1 of the following calendar year. The annual report shall include the following information:

(1) Waste reuse facility name, mailing address, site address and telephone number;

(2) Waste reuse facility identification number;

(3) A list (by manifest number) of all manifests received in the last calendar year, generator's names and addresses, types and volumes of wastes received, and methods of use or reuse; and

x. If the owner/operator of the waste reuse facility ceases the process which reuses the waste, the owner/operator shall:

(1) Accept no additional waste through the waste reuse facility authorization;

(2) Remove all waste being stored on-site within 90 days of its receipt; and

(3) Dispose of any remaining waste as a hazardous waste in accordance with the rules in N.J.A.C. 7:26–1 et seq.

xi. This exemption shall not apply to commercial treatment, storage or disposal facilities.

14. The owner or operator of a facility whose sole hazardous waste-related activity, other than generation, or any activity exempted under this subsection is reclamation of precious metals from hazardous wastes, provided the owner/operator of the facility has complied with the requirements of N.J.A.C. 7:26–12.1(e) prior to accepting hazardous waste for precious metal reclamation.

15. The owner or operator of a treatment unit at an authorized facility, provided that the unit is dedicated solely to the reclamation of precious metals (as defined in N.J.A.C. 7:26–1.4) from hazardous wastes, and provided the owner/operator of the facility has complied with the requirements of N.J.A.C. 7:26–12.1(e) prior to accepting waste for precious metal reclamation.

16. Any generator accumulating waste on-site in compliance with N.J.A.C. 7:26–9.3(d).

17. The owner or operator of a facility which is used for the storage of PCB hazardous waste generated by the owner or operator of the facility, provided the following conditions are met:

i. The facility does not store, treat, or dispose of any other hazardous waste for which a hazardous waste facility permit is required and does not treat or dispose of PCB hazardous waste. If a facility does not meet the criteria of this paragraph, then it shall obtain a hazardous waste facility permit pursuant to N.J.A.C. 7:26–12 in order to store PCB hazardous waste; and

ii. The facility is constructed and operated in full compliance with the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, including the requirement at 40 C.F.R. § 761.65 as amended to dispose of the PCB hazardous waste within one year of placing it into storage; and

iii. The owner or operator of a facility which was in operation on May 21, 1990 and generates and stores its own PCB waste files the notice of his or her intent to store PCB hazardous waste, pursuant to this paragraph, with the Department on or before August 19, 1990; or

iv. The owner or operator of a new facility files notice of his or her intention to store PCB hazardous waste pursuant to this paragraph with the Department prior to the commencement of storage activities;

v. The notice required in (c)17iii and iv above shall be in writing and shall include:

(1) The facility name, address, I.D. number;

(2) The generator name, address, I.D. number, if different from (c)17v(1) above;

(3) The date the facility began or will begin operation;

(4) A description of the design and capacity of the facility;

(5) A description of the state, composition, waste code, and method of containment for all wastes stored and/or to be stored at the facility;

(6) A site plan, showing all necessary details of the storage facility; and

(7) An originally-signed certification stating the following:

I (insert name of owner or operator), certify that (insert facility name, address and I.D. number) is designed, constructed, and operated in compliance with all relevant regulations adopted pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (1976) and effective on (insert date on which certification is signed).

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate, or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true.

(Date) _____ (Name) _____
(Title) _____
(Signature) _____

; and

vi. The certification required by (c)17v above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(d) State and Federal facilities are exempt from the financial assurance and liability insurance requirements of N.J.A.C. 7:26–9.10–9.14.

(e) All generators and recycling or reclamation facilities that recycle or reclaim hazardous waste pursuant to any tolling agreement or agreements defined pursuant to N.J.A.C. 7:26–1.4 shall be included within the scope of this subchapter and shall be subject to all the requirements of this subchapter as applicable.

(f) The owner or operator of a facility which stores spent batteries before reclaiming them is not required to comply with N.J.A.C. 7:26–9.4(b).

Amended by R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(c)9: "device" was "boiler"; old i-iv replaced by current i-vii.
Amended by R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
(c)4: exception added.
Amended by R.1983 d.350, effective September 6, 1983.
See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).
(c)11 added.
Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(c)1ii and (d) added; (c)1i clarified.
Amended by R.1983 d.623, effective January 17, 1984.
See: 14 N.J.R. 1435(a), 16 N.J.R. 132(a).
(c)10 added.
Amended by R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(c)9i: "to be beneficially used or reused as a fuel . . .
(c)12 added.
Amended by R.1986 d.160, effective May 5, 1986.
See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).
(e) added.
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
(c)13 added.
Amended by R.1987 d.307, effective July 20, 1987.
See: 19 N.J.R. 441(a), 19 N.J.R. 1293(b).
(b)1 added.
Amended by R.1987 d.532, effective December 21, 1987.
See: 18 N.J.R. 2356(a), 19 N.J.R. 2424(a).
Substantially amended.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Typographical corrections.
Amended by R.1989 d.141, effective March 20, 1989.
See: 20 N.J.R. 1329(a), 21 N.J.R. 752(a).
(c)13iii and v specified contents of records to be maintained.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (c)9x and (c)17.
Amended by R.1992 d.78, effective February 18, 1992.
See: 23 N.J.R. 2855(a), 24 N.J.R. 584(b).
Clarified that generators in existence at the time of promulgation of the paragraph now amended (May 21, 1990), and storing their own PCB waste, do not have to meet the definition of "existing hazardous waste facility" at N.J.A.C. 7:26–1.4.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Clarified the requirement that containers holding hazardous waste to be burned in an industrial boiler or furnace be labelled with the words "Hazardous Waste" and clarified the requirement that such waste placed in above ground tanks must be managed in accordance with N.J.A.C. 7:26–9.3(b)1 through 5, 7, 8 and 9; clarified that only the generator of a hazardous waste is eligible for the on-site recycling exemption, added a cross-reference to the requirements for the use of on-site recycled hazardous waste as a fuel and a clarification of the requirement for generators who recycle on-site to submit an annual report to the Department; clarified the subparagraph that requires that hazardous waste recycled on-site be recycled no later than 90 days after it is generated and clarified standards for the management of the hazardous waste before it is recycled and added a correction to clarify the exemption from permitting requirements for owners or operators of industrial waste management facilities (IWMF's) that are constructed and operated in accordance with standards for wastewater treatment units.

Case Notes

Engineer hired to do required drawings of plant owed no duty to injured employee. Sykes v. Propane Power Corp., 224 N.J.Super. 686, 541 A.2d 271 (A.D.1988).

7:26–9.2 General prohibitions

(a) No person shall cause, suffer, allow or permit the acceptance, transfer, storage, processing, treatment, recovery, disposal or other handling of hazardous waste:

1. In such a manner as to violate the provisions of this subchapter or any other applicable Federal or State statute, code, rule or regulation; or

2. In a manner which causes or may cause an unauthorized discharge of pollutants onto or into the land, surface water, groundwater or air of this State.

(b) A person shall not cause, suffer, allow or permit:

1. The installation or other use of any new underground storage tank for the purpose of containing a liquid hazardous waste except that commercial service stations may install and use new underground storage tanks for storing waste oil provided the tank has a capacity of less than 1,001 gallons;

2. The conversion of any underground storage tank in use or ready for use on the effective date of this subchapter for the purpose of containing a liquid hazardous waste;

3. The use of any existing underground hazardous waste storage tank unless:

i. Monitoring in compliance with N.J.A.C. 7:14A–6 is performed;

ii. Such use is limited to the specified lifetime of the tank; and

iii. The tank is managed in compliance with N.J.A.C. 7:26–10.5(e)6;

4. The use of hazardous waste piles;

5. The application of waste oil or any other hazardous waste, or the application of any other material contaminated with dioxin or any other hazardous waste, to the land for the purpose of dust suppression or road treatment.

6. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, in any landfill, surface impoundment, or any hazardous waste facility by underground injection or by any other land disposal method;

7. The disposal of any drained or undrained PCB-containing electrical or other equipment, as specified at N.J.A.C. 7:26–8.20(b), New Jersey Hazardous Waste numbers X752 and X753, in landfills or by any other land disposal method; or

8. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, in any incinerator which does not meet the requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq. (1976), and Federal regulations promulgated pursuant thereto.

(c) No persons shall cause, suffer, allow or permit the discharge of any hazardous waste into a sewer system unless;

1. Final approval has been obtained from all appropriate State and local authorities; and

2. All conditions imposed prior to such discharge are met.

(d) As of September 25, 1986, final land disposal of acute hazardous waste (H), as listed in N.J.A.C. 7:26–8.15(a)5, and toxic waste (T), as listed in N.J.A.C. 7:26–8.15(a)6, is prohibited by any person unless;

1. The final disposal method is a land treatment unit, regulated in accordance with N.J.A.C. 7:14A–4, to treat and dispose of one or more of the wastes listed in N.J.A.C. 7:26–8.15(a)5 or (a)6;

2. The owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26–7.4(a)10 and 11.

(e) A person shall not cause, suffer, allow, or permit the placement, including disposal, of any hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave.

Amended by R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(b)3iii added.
Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(b)4 revised.
Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
(d) added.
Correction: Added operative date to annotation and rule.
See: 18 N.J.R. 1379(a).
Correction: (e) is now (a)5 and (f) is now (a)6.
See: 19 N.J.R. 2165(a).
Amended R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (b)5.–7.
Petition for rulemaking concerning (b)1. and 2.
See: 22 N.J.R. 1632(d).
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
Added (a)5 and (e) with stylistic changes in (b).
Recodified existing (a)5–7 as (a)6–8.

Case Notes

Trustee in bankruptcy does not have right to abandon estate property where abandonment contravenes state public health and safety laws; abandonment of smelting plant reversed; remand for determination of other assets to pay for clean-up. In the Matter of National Smelting of New Jersey, Inc., 49 B.R. 1012 (D.Colo.1985).

7:26–9.3 Accumulation of hazardous waste for 90 days or less

(a) A generator may accumulate hazardous waste on-site without a permit for 90 days or less provided that:

1. All such waste is, within 90 days or less, shipped off-site to an authorized facility or placed in an on-site authorized facility, as defined at N.J.A.C. 7:26–1.4.

2. The waste is placed in containers which meet the standards of N.J.A.C. 7:26–7.2 and are managed in accordance with N.J.A.C. 7:26–9.4(d).

3. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. While being accumulated on-site, each container shall be clearly labeled or marked with the words "Hazardous Waste" and labeled in accordance with 49 CFR 172.304.

4. The generator complies with the requirements for owners and operators of N.J.A.C. 7:26–9.6 and 9.7 concerning preparedness and prevention, contingency plans and emergency procedures as well as N.J.A.C. 7:26–9.4(g) concerning personnel training.

(b) A generator may accumulate hazardous waste on-site in an above-ground tank, for 90 days or less without a permit, after obtaining written approval from the Department, provided that the following requirements are met:

1. Each tank shall have sufficient shell thickness to ensure that the tank will not collapse or rupture. The Department shall specify a minimum shell thickness to be maintained as part of the approval;

2. Each tank shall be equipped with controls to prevent overfilling in accordance with N.J.A.C. 7:26–10.5(c);

3. Each tank or tank storage area shall have adequate secondary containment in accordance with N.J.A.C. 7:26–10.5(d);

4. Each tank shall be designed so that at least 99 percent of the volume of each tank can be readily emptied by direct pumping or drainage;

5. Each tank is rendered empty, as defined at N.J.A.C. 7:26–1.4, every 90 days or less;

6. All waste removed from the tank(s) shall be shipped off-site to an authorized facility or placed in an on-site, authorized facility, as defined at N.J.A.C. 7:26–1.4; and

7. The generator shall comply with the requirements for owners or operators of hazardous waste facilities under N.J.A.C. 7:26–9.4(g) concerning personnel training, and under N.J.A.C. 7:26–9.6 and 9.7 concerning preparedness and prevention, contingency plans and emergency procedures;

8. No part of the tank(s) is below grade unless the tank(s) is constructed to allow visual inspection of the tank, comparable to a totally above-ground tank, and to provide secondary containment for the below-grade part of the tank;

9. While being accumulated on-site, each tank shall be clearly labeled or marked with the words "Hazardous Waste".

(c) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to all applicable standards and requirements of this subchapter, and the permit requirements of N.J.A.C. 7:26–12.1 et seq. unless the accumulation is performed in accordance with (d) below or the generator has been granted a temporary extension to the 90 day period.

1. An extension established under this subsection may be granted in writing by the Department's Division of Hazardous Waste Management if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances.

2. An extension of up to 30 days may be granted at the discretion of the Division Director on a case-by-case basis.

3. Persons seeking such an extension shall contact in writing the Assistant Director for Enforcement prior to exceeding the 90 day storage period, in order to initiate the approval process.

(d) A generator may accumulate hazardous waste on-site without a permit and without complying with (a) above provided that:

1. The quantity of waste in each accumulation area is less than 55 gallons of hazardous waste or less than one quart of acutely hazardous waste listed in N.J.A.C. 7:26–8.15(e);

2. The waste is placed in containers which meet the standards of N.J.A.C. 7:26–7.2 and are managed in accordance with N.J.A.C. 7:26–9.4(d)2, 9.4(d)3, and 9.4(d)4i;

3. The accumulation area is at or near any point of generation where wastes initially accumulate in a process, which is under the control of the operator of the process generating the waste;

4. The generator marks the containers with the words "Hazardous Waste";

5. The generator marks the container with the date that the quantity of waste reaches the volume indicated in (d)1 above; and

6. Within three days after the quantity of waste reaches the volume identified in (d)1 above, the generator complies with one of the following:

i. Places the container in an accumulation area in accordance with (a) above; or

ii. Places the container in an on-site authorized facility, as defined at N.J.A.C. 7:26–1.4; or

iii. Transports the container to an off-site authorized commercial hazardous waste facility in accordance with N.J.A.C. 7:26–7.

Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(a)5 concerning "bulk accumulation of dry hazardous waste" deleted.
Amended by R.1985 d.620, effective June 17, 1985.
See: 17 N.J.R. 1501(a), 17 N.J.R. 2885(a).
(b) added. Old (b) renumbered (c).
Amended by R.1987 d.18, effective January 5, 1987.
See: 17 N.J.R. 2941(a), 19 N.J.R. 113(a).

(c)1, 2 and 3 added.
Amended by R.1987 d.307, effective July 20, 1987.
See: 19 N.J.R. 441(a), 19 N.J.R. 1293(b).
Added text to (a)3 "While being accumulated ..." and added (b)9.
Amended by R.1987 d.532, effective December 21, 1987.
See: 18 N.J.R. 2356(a), 19 N.J.R. 2424(a).
Added text "quantity of waste".
Petition for rulemaking concerning (b)8.
See: 22 N.J.R. 1632(d).
Notice of granting petition for rulemaking concerning (b)8.
See: 22 N.J.R. 3881(b).

7:26–9.4 General facility standards

(a) The owner or operator of a facility shall comply with the notice requirements of this subsection.

1. The owner or operator of a facility which receives a new hazardous waste stream from an off-site source (except where the owner or operator is also the generator) shall inform the generator in writing that, the owner or operator has the appropriate permit(s) for, and will accept, the waste that the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

2. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this subchapter (see also N.J.A.C. 7:26–12.5).

3. Before accepting an off-site waste stream for waste reuse, the owner/operator shall notify the Department and comply with the requirements of N.J.A.C. 7:26–9.1(c)13.

(b) The owner or operator of a facility shall comply with the waste analysis requirements of this subsection.

1. Before an owner or operator treats, stores, or disposes of any hazardous waste, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste.

i. At a minimum, this analysis shall contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this subchapter.

ii. The analysis may include data developed under N.J.A.C. 7:26–8.1 et seq. and existing publishing or documented data on the hazardous waste or on hazardous waste generated from similar processes.

iii. The analysis shall be repeated as necessary to insure that it is accurate and up-to-date. At a minimum, the analysis must be repeated when the owner or operator is notified, or knows or should know, that the process or operation generating the hazardous waste has changed.

iv. For off site facilities, the analysis shall be repeated when the results of the inspection required in N.J.A.C. 7:26–9.4(b)1v indicated that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

v. The owner or operator of an off site facility shall inspect each hazardous waste shipment received at the facility and analyze, unless not required by the approved waste analysis plan, to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

2. The owner or operator must develop and follow a written waste analysis plan which describes the procedures which the owner or operator will perform to comply with (b)1 above. The owner or operator must keep this plan at the facility. At a minimum the plan must specify:

i. The parameters for which each hazardous waste stream will be analyzed including constituents listed at N.J.A.C. 7:26–8.16, and the rationale for the selection of these parameters;

ii. The test methods which will be used to test for these parameters;

iii. The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

iv. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date;

v. For off-site facilities, the waste analysis that hazardous waste generators have agreed to supply; and

vi. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in N.J.A.C. 7:26–10 and N.J.A.C. 7:26–11;

vii. Procedures which will be used to identify changes in waste-stream characteristics.

3. The owner or operator shall submit the waste analysis plan as part of the permit application for the facility or sooner if so required by the Department.

i. The Department may require modifications to the plan when the proposed plan is inadequate to accomplish the purpose of this section.

ii. Until final approval by the Department of the plan developed pursuant to N.J.A.C. 7:26–9.4(b)2, the facility owner or operator shall conform the waste analysis with the provisions of the proposed plan.

iii. Upon approval of a waste analysis plan by the Department, the facility owner or operator shall conform the waste analysis to the plan as modified and approved by the Department.

4. For off site facilities, the waste analysis plan required in N.J.A.C. 7:26–9.4(b)2 shall also specify the procedures which will be used to inspect each shipment of hazardous waste received at the facility and analyze, unless not required by the approved waste analysis plan, to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

i. The procedures which will be used to determine the identity of each shipment of waste managed at the facility; and

ii. The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(c) The owner or operator shall comply with the requirements of this subsection for unauthorized waste shipments.

1. No owner or operator shall accept any material at a hazardous waste facility unless the material to be accepted is, in fact, a material which the facility is authorized to handle.

2. An owner or operator, if offered hazardous waste of a type which the facility is not authorized to handle, shall:

i. Not accept the waste from hauler;

ii. Instruct the hauler to contact the generator for further instructions;

iii. Telephone the generator, and inform the generator that the owner or operator is not authorized to accept the waste and that the owner or operator instructed the hauler to contact the generator for further instructions;

iv. Confirm the telephone call to generator, pursuant to N.J.A.C. 7:26–9.4(c)2iii, with a letter verifying the telephone conversation;

v. Contact the Hazardous Waste Enforcement Regional Field Office or Hazardous Waste Enforcement Element, at telephone number 609–633–0700, and report the unauthorized waste shipment; and

vi. Confirm the telephone call to the Department, pursuant to N.J.A.C. 7:26–9.4(c)2v with a letter verifying the telephone conversation.

(d) The owner or operator of a facility shall comply with the requirements for the use and management of containers in this subsection.

1. No owner or operator shall store containerized hazardous waste at the hazardous waste facility unless the containers meet the following requirements:

i. Containers shall be of sturdy, leak-proof construction of adequate wall thickness, of adequate weld, hinge and seam strength, and of sufficient material strength to withstand side and bottom shock, while filled, without impairment of the ability of the container to fully contain the hazardous waste.

ii. Lids, caps, hinges or other closure devices shall be of sufficient strength and construction so that when closed they will withstand dropping, overturning or other shock without impairment of the container's ability to contain the hazardous waste. Gasketed closures shall be fitted with gaskets of a material that is sufficient to prevent leakage and that will not be deteriorated by the contents.

2. If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from the container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this section.

3. The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

4. Management of containers shall conform to the following requirements:

i. Except during filling or emptying, the container shall be securely closed so that there is no escape of hazardous waste or its vapors;

ii. In the event that state or federal law or regulation requires a container to be vented, the container shall be equipped with a vapor control system;

iii. A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak;

iv. Containerized hazardous waste shall be segregated in storage by waste type;

v. Every container shall be arranged so that its identification label is visible;

vi. All cleaning to remove hazardous waste residues from containers or vehicles shall take place in a designated area identified in the approved engineering design;

vii. All rinse waters or cleaning agents resulting from the cleaning of containers or vehicles to remove hazardous waste residues shall be handled or disposed of in a manner consistent with N.J.A.C. 7:26–7.1 et seq. and N.J.A.C. 7:26–9.1 et seq.; and

viii. Reuse of containers in transportation must be in compliance with U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.

5. The owner or operator shall inspect areas where containers are stored, at least daily, looking for leaks and for deterioration caused by corrosion or other factors.

6. Containers holding ignitable or reactive waste shall be located at least 50 feet (15 meters) from the facility's property line.

7. Special requirements for incompatible wastes include the following:

i. Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same container, except in compliance with (e)2 below;

ii. Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, except in compliance with (e)2 below;

iii. A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(e) General requirements for ignitable, reactive, or incompatible wastes include the following:

1. The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste;

i. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, and radiant heat;

ii. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations;

iii. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

2. The treatment, storage, or disposal of ignitable or reactive waste, and the mixture of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

i. Generate extreme heat or pressure, fire or explosion, or violent reaction;

ii. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

iii. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

iv. Damage the structural integrity of the device or facility containing the waste; or

v. Threaten human health or the environment.

(f) General inspection requirements include the following:

1. The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to:

i. Discharge of hazardous waste constituents to the environment; or

ii. A threat to human health.

2. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

3. The owner or operator shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that are utilized for the prevention, detection, or response to environmental or human health hazards.

i. The owner or operator shall submit the written inspection schedule as part of the permit application for the facility or sooner if so required by the Department.

ii. The Department may require modifications to the plan if inadequate to accomplish the purpose of this section.

iii. The schedule shall be kept at the facility.

iv. The schedule shall identify the types of problems which are to be looked for during the inspection.

v. The frequency of inspection may vary for the items on the schedule, however, it shall be based on the rate of possible deterioration of the equipment and the probability of an environmental, or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use.

4. Until final approval by the Department of the schedule submitted pursuant to (f)3 above, the owner or operator shall conform the monitoring equipment inspection schedule with the provisions of the proposed inspection schedule. Upon approval of a monitoring equipment inspection schedule by the Department, the owner or operator shall conform the monitoring equipment inspections to the plan as modified and approved by the Department.

5. The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals, on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

6. The owner or operator shall record inspections in an inspection log or summary. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

(g) Hazardous waste facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the hazardous waste facility's compliance with the requirements of this subchapter.

1. The owner or operator shall ensure that this program includes all the elements described in the document required under N.J.A.C. 7:26–9.4(g)6iii.

2. This program shall be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3. At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:

i. Personnel safety equipment;

ii. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

iii. Key parameters for automatic waste feed cut-off systems;

iv. Communications or alarm systems;

v. Response to fires or explosions;

vi. Response to groundwater contamination incidents; and

vii. Shutdown of operations.

4. Facility personnel shall successfully complete the program required in N.J.A.C. 7:26–9.4(g)1–3 within six months after the effective date of this subchapter or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of this subchapter must not work in unsupervised positions until they have completed the training requirements of N.J.A.C. 7:26–9.4(g)1–3.

5. Facility personnel shall take part in an annual review of the initial training required in N.J.A.C. 7:26–9.4(g)1–3.

6. The owner or operator shall maintain the following documents and records at the facility:

i. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

ii. A written job description for each position listed under N.J.A.C. 7:26–9.4(g)6i. This shall be current at all times. This description may be consistent in its degree of specificity with descriptions of other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of employees assigned to each position.

iii. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under N.J.A.C. 7:26–9.4(g)6i.

iv. Records that document that the training required by (g)1 through 5 above has been given to, and completed by, facility personnel.

7. Training records on current personnel shall be kept until closure of the facility; training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

8. Semi-annual drills involving all employees and appropriate local authorities shall be conducted to test emergency response capabilities at the facility in accordance with the contingency plan and emergency procedures development pursuant to N.J.A.C. 7:26–9.7.

i. An owner or operator may petition the Department for an exemption from the semi-annual drill requirement.

ii. An owner or operator may petition the Department for an exemption from the involvement of some or all local officials in the semi-annual drills provided the specific local officials to be excluded have provided the Department with written approval of the exemption.

(h) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility.

1. A facility shall have:

i. A 24–hour surveillance system which continuously monitors and controls entry onto the active portion of the facility; or

ii. An artificial or natural barrier, which completely surrounds the active portion of the facility, and a means to control entry, at all times, through the gates or other entrances to the active portion of the facility.

2. The requirements of N.J.A.C. 7:26–9.4(h)1 are satisfied if the hazardous waste storage, treatment or disposal site is located in a facility which itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of N.J.A.C. 7:26–9.4(h)1i or 9.4(h)1ii.

3. The owner or operator shall post a sign with the legend, "Danger—Unauthorized Personnel Keep Out", at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English and in any other language prevalent in the area surrounding the facility and must be legible from a distance of at least 25 feet (7.6 meters). Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(i) The owner or operator shall keep a written operating record at the facility in which the following information shall be recorded, as it becomes available, and maintained until closure of the facility:

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility;

2. The location of each hazardous waste within the facility and the quantity of each hazardous waste must be recorded. For all facilities this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

3. Records and results of waste analyses performed as specified in N.J.A.C. 7:26–9.4(b), N.J.A.C. 7:26–9.4(e) and N.J.A.C. 7:26–10.1 et seq. as applicable;

4. Notation in the operating record of all incidents that require implementing the contingency plan as specified in N.J.A.C. 7:26–9.7(*l*)9;

5. Records and results of inspections as required by N.J.A.C. 7:26–9.4(f)6, N.J.A.C. 7:26–10.1 et seq. as applicable and N.J.A.C. 7:26–11.1 et seq. as applicable; and

6. For off-site facilities, notices to generators as specified in N.J.A.C. 7:26–9.4(a)1;

7. Monitoring, testing or analytical data where required by N.J.A.C. 7:14A–6.1 et seq.; and

8. All closure estimates required in N.J.A.C. 7:26–9.10(d) and, for hazardous disposal facilities, all post-closure cost estimates under N.J.A.C. 7:26–9.11(c);

9. Declinations by authorities, in accordance with N.J.A.C. 7:26–9.6(f);

10. Descriptions of resolved and unresolved significant manifest discrepancies pursuant to N.J.A.C. 7:26–7.6(a)4iii and iv. Each description shall include the following information:

i. The exact nature of the discrepancy;

ii. The reason(s) why the discrepancy occurred;

iii. How the discrepancy was resolved or why it remains unresolved; and

iv. Steps taken to prevent future similar discrepancies.

(j) The owner or operator shall prepare and submit two copies of an annual report to the Department by March 1 of each year in accordance with N.J.A.C. 7:26–7.6(f)2.

(k) Records shall be available according to the following requirements.

1. All records shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of the Department who is duly designated by the Department; and

2. The retention period for all records required in N.J.A.C. 7:26–9.1 et seq. is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department; and

3. A copy of waste disposal locations and quantities under N.J.A.C. 7:26–9.4(i)2 shall be submitted to the Department and local land authority upon closure of the facility.

(*l*) An owner or operator shall provide, when requested by the Department, working space at the facility for equipment, and an on-site inspector employed by the Department for the purpose of overseeing all groundwater monitoring and waste analysis activities at the facility.

(m) The Department and its authorized representatives shall have the right to enter and inspect any building or other portion of the facility for the purpose of:

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

2. Ascertaining compliance or non-compliance with statutes of the State of New Jersey or any rules or regulations of the Department.

(n) An owner or operator shall post a warning sign provided by the Department in all work areas in the facility.

(*o*) The owner or operator shall report to the Department:

1. Releases, fires and explosions as specified in N.J.A.C. 7:26–9.7(*l*);

2. Groundwater contamination and monitoring data as specified in N.J.A.C. 7:14A–6.1 et seq. (Rules of the Division of Water Resources); and

3. Facility closure as specified in N.J.A.C. 7:26–9.8(*l*).

Amended by R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(b)2vi: cross-reference to N.J.A.C. 7:26–10 added.
Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Amended by R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(i)9 added.
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
(a)3 added.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Changed "office" to "off-site" in (a)1.
Correction: Inserted (b) and renumbered (b) to (b)1.
See: 21 N.J.R. 56(a).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Specifies the office within the Department to contact to report an unauthorized shipment of hazardous waste, and changes the telephone number to be used for reporting.
Amended by R.1993 d.5, effective January 4, 1993.
See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a), 25 N.J.R. 98(a)).
Specified what manifest discrepancy information a facility operator must maintain as part of the facility's operating record.
Petition for Rulemaking: Changes regarding delay of closure rules requested by Exxon Corp.; petition denied.
See: 24 N.J.R. 4285(a), 25 N.J.R. 1893(c).

Case Notes

Small quantity generator exemption from regulation; application. U.S. v. Eastern of New Jersey, Inc., D.N.J.1991, 770 F.Supp. 964.

Evidence established violation of regulation requiring marine tank and vessel cleaning facility operator to hold semi-annual drills, to employ processes only as specified in permit, and to keep containers securely closed. Standard Tank Cleaning Corp. v. Department of Environmental Protection and Energy. 93 N.J.A.R.2d (EPE) 241.

7:26–9.5 Groundwater monitoring system

By December 6, 1982, the owner or operator shall design, construct, and implement a groundwater monitoring system in accordance with N.J.A.C. 7:14A–6 unless the owner or operator can demonstrate to the Department that all or part of the groundwater monitoring requirements may be waived, pursuant to 40 C.F.R. 265.90(c). The Department may, in its discretion, only grant waivers which satisfy the requirements of 40 C.F.R. 265.90(c). Modification of groundwater monitoring requirements under N.J.A.C. 7:14A–6.1(a)3 is not available to owners and operators of hazardous waste facilities to narrow or limit any requirement found in N.J.A.C. 7:14A–6. In no case shall all of the groundwater monitoring requirements for a hazardous waste management facility or an industrial waste management facility be waived.

Amended by R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
(a): waiver language added. (b) added.
Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(b) Concerning 180–day compliance deadline for EPA-excluded facilities deleted.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative corrections.

7:26–9.6 Preparedness and prevention

(a) Facilities shall be designed, constructed, maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment.

(b) All facilities shall be equipped with emergency equipment, unless it can be demonstrated to the Department that none of the hazards posed by waste handled at the facility could require a particular kind of equipment, including but not limited to:

1. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

2. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

3. Portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment; and

4. Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system must be maintained as follows:

1. Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Department has ruled that such a device is not required under N.J.A.C. 7:26–9.6(b); and

2. If there is ever only one employee on the premises while the facility is operating, that employee shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Department has ruled that such a device is not required under N.J.A.C. 7:26–9.6(b).

(e) The owner or operator shall maintain aisle space to allow unobstructed movement of personnel fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) The owner or operator shall make the following arrangements, in addition to the requirements of N.J.A.C. 7:26–9.4(g)8, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:

1. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

2. Where more than one police and fire department might respond to an emergency, agreement designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

3. Agreements with emergency response contractors, and equipment suppliers;

4. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or discharges at the facility; and

5. Arrangements to have the local fire department inspect the facility on a regular basis with at least two (2) inspections annually.

6. Where the authorities identified in (f)1 through 5, above, decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(a) "designed, constructed," added after "Facilities shall be".
As amended, R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a), 16 N.J.R. 2119(a).
(f) 6 added.

7:26–9.7 Contingency plan and emergency procedures

(a) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(c) The contingency plan shall describe the actions facility personnel shall take to comply with paragraphs 9.7(a), (b) and (e) and in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(d) If the owner or operator has already prepared a Spill Prevention, Control and Countermeasures (SPCC) plan in accordance with 40 CFR 112 or 40 CFR 300, or a Discharge Prevention, Containment and Countermeasure (DPCC) plan in accordance with N.J.A.C. 7:1E–4, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section.

(e) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to N.J.A.C. 7:26–9.6(f).

(f) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(g) The plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up-to-date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(h) The plan shall include an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternative evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(i) A copy of the contingency plan and all revisions to the plan must be:

1. Maintained at the facility; and

2. Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(j) The contingency plan shall be reviewed and immediately amended, if necessary, whenever:

1. Applicable regulations are revised;

2. The plan fails in an emergency;

3. The facility changes (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

4. The list of emergency coordinators changes; or

5. The list of emergency equipment changes.

(k) At all times, there shall be at least one employee either on the facility premises or on call with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, and location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(*l*) Emergency procedures are as follows:

1. Whenever there is an imminent or actual emergency situation, the emergency coordinator (or a designee when the emergency coordinator is on call) shall immediately:

i. Identify the character, exact source, amount, and areal extent of any discharged materials;

ii. Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

iii. Notify appropriate State or local agencies with designated response roles if their help is needed.

2. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the discharge, fire, or explosion. This assessment shall consider both direct and indirect effects of the discharge, fire, or explosion.

3. If the emergency coordinator determines that the facility has had a discharge, fire, or explosion which would threaten human health, or the environment, outside the facility, the emergency coordinator shall:

i. Immediately notify appropriate local authorities if an assessment indicates that evacuation of local areas may be advisable. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

ii. Immediately notify either the Department at (609) 292–5560 during business hours or (609) 292–7172 at all other times (if a call to the first number is not answered, the second number shall be called); and

iii. When notifying the Department pursuant to subsection 9.7(e)3ii, report the type of substance and the estimated quantity discharged, if known; the location of the discharge; actions the person reporting the discharge proposes to take to contain, clean up and remove the substance if any and any other information concerning the discharge which the Department may request at the time of notification.

4. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

5. If the facility stops operations in response to a fire, explosion, or discharge, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

6. Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility.

7. The emergency coordinator shall insure that, in the affected area(s) of the facility:

i. No waste that may be incompatible with the discharged material is treated, stored, or disposed of until cleanup procedures are completed; and

ii. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

8. The owner or operator shall notify the Department, and appropriate local authorities, that the facility is in compliance with subparagraph 9.7(1)7 before operations are resumed in the affected area(s) of the facility.

9. The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Department. The report shall include, but not be limited to:

i. Name, address, and telephone number of the owner or operator;

ii. Name, address, and telephone number of the facility;

iii. Date, time, and type of incident;

iv. Name and quantity of material(s) involved;

v. The extent of injuries, if any;

vi. An assessment of actual or potential hazards to human health or the environment, where this is applicable;

vii. Assessment of the scope and magnitude of the problem;

viii. Description of the immediate actions that have been taken and the estimated quantity and disposition of recovered material that resulted from the incident; and

ix. Provide implementation schedule for undertaking suggested measures to eliminate the problem.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Reference corrected.
Amended by R.1987 d.18, effective January 5, 1987.
See: 17 N.J.R. 2941(a), 19 N.J.R. 113(a).
(d) amended "1510" to "40 CFR 300".
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative corrections.

7:26–9.8 General closure requirements

(a) The requirements of this section apply as follows:

1. Except as N.J.A.C. 7:26–9.1 provides otherwise, this section applies to all hazardous waste facilities.

2. The owner or operator of an existing facility shall comply with the applicable provisions of this section by the effective date of this subchapter.

(b) The owner or operator shall close the hazardous waste facility or management unit in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or waste decomposition products to the groundwater, or surface waters, or to the atmosphere. In addition, the owner or operator shall comply with all other applicable closure requirements in this section and at N.J.A.C. 7:26–9.10, 7:26–9.12, 7:26–10, and 7:26–11 and, if applicable, the provisions of the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24–39 et seq. (1976).

(c) The owner or operator shall have a written closure plan. In addition, for surface impoundments at which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure, the owner or operator shall submit a contingent closure plan at the same time as submission of the closure plan. The contingent closure plan shall establish procedures for closing the surface impoundment as a landfill in the event that not all hazardous wastes can be removed or decontaminated at closure. The owner or operator shall keep a copy of the closure plan and all revisions to the plan at the facility until closure is completed in accordance with (1) below.

(d) The closure plan shall be submitted with the permit application in accordance with N.J.A.C. 7:26–12 and approved by the Department as part of the permit issuance proceeding. The approved closure plan will become a condition of any permit issued under N.J.A.C. 7:26–12. For facilities with existing facility status under N.J.A.C. 7:26–12.3, the plan shall be submitted in accordance with (h)1 below. The Department's decision shall ensure that the approved closure plan is consistent with the provisions of this section as well as all applicable provisions of N.J.A.C. 7:26–10 or 7:26–11. Until final closure is completed to the Department's satisfaction and certified in accordance with (1) below, a copy of the approved plan and all approved revisions shall be furnished to the Department upon request, including request by mail.

(e) The closure plan shall identify the steps necessary to completely or partially close the facility at any point during the facility's active life. The closure plan shall include at least:

1. A description of:

i. How each hazardous waste management unit will be closed in accordance with (b) above;

ii. The maximum extent of the operation which will be unclosed during the active life of the facility; and

iii. How the requirements of (b) above for final closure and all other applicable closure requirements of this section and N.J.A.C. 7:26–10, or N.J.A.C. 7:26–11 for existing facilities prior to final disposition of a permit application, will be met;

2. An estimate of the maximum inventory of solid waste, including hazardous waste, ever on-site at any given time during the active life of the facility, a detailed description of the methods to be used during partial and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable;

3. A detailed description of the steps needed to remove or decontaminate all hazardous waste and hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

4. A schedule for closure of each hazardous waste management unit and for final closure of the facility which shall include, at a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, the total time required to close each hazardous waste management unit, and intervening milestone dates which will allow tracking of the progress of partial and final closure, for example, the expected date for completing treatment or disposal of waste inventory, the time to place final cover on a landfill, the planned dates for storage facilities and treatment processes, and an estimate of the expected year of final closure of the facility; and

5. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closures satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control.

(f) The owner or operator may submit a written request for a permit modification in accordance with N.J.A.C. 7:26–12, or, for a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, a written request for a closure plan modification, to amend the approved closure plan at any time before the owner or operator notifies the Department of his or her intent to partially or finally close the facility. For existing facilities, a closure plan modification that is not minor according to the criteria at N.J.A.C. 7:26–12.8 shall be submitted and reviewed in accordance with procedures established at (h)3 below. The written request shall include a copy of the amended closure plan for approval by the Department.

1. The owner or operator shall submit a written request for a permit modification in accordance with N.J.A.C. 7:26.12, or for a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, a written request for a closure plan modification in accordance with paragraph (f) above, to amend the approved closure plan any time changes in operating plans or facility design affect the closure plan, whenever there is a change in the expected year of closure of the facility, or if unexpected events require a modification of the closure plan. The written request to modify the permit or to amend the closure plan shall be submitted at least 60 days prior to the proposed change in facility design or operation or no later than 60 days after the occurrence of an unexpected event which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification or plan amendment no later than 30 days after the unexpected event.

2. For facilities operating under a permit issued pursuant to N.J.A.C. 7:26–12, when the owner or operator requests a permit modification to authorize a change in operating plans or facility design, the owner or operator shall request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design because the change is a minor modification as defined at N.J.A.C. 7:26–12.8, the request for modification of the closure plan shall be made 60 days prior to the change in plans or design occurs.

3. The Department may request modifications to the plan if the owner or operator fails to comply with (f)1 or 2 above. The owner or operator shall submit the modified plan within 60 days of the Department's request, or within 30 days of the Department's request if the unexpected event or the change in facility conditions occurs during partial or final closure. Approval of modifications requested by the Department will be in accordance with the permit modification procedures at N.J.A.C. 7:26–12, or, for facilities with existing facility status under N.J.A.C. 7:26–12.3, if the modifications are not minor according to the criteria at N.J.A.C. 7:26–12.8, approval will be in accordance with h(3) below.

(g) The owner or operator shall notify the Department in writing at least 180 days prior to the date the owner or operator expects to begin partial or final closure, except in cases where the facility's permit or existing facility status is terminated or if the facility is otherwise ordered by judicial decree or administrative order to cease receiving wastes or to close. The date when the owner or operator "expects to begin closure" for the purposes of this notification shall be no later than 30 days after the date on which the hazardous waste facility or management unit receives the final volume of hazardous wastes, except as provided at g(2) below.

1. If the facility's permit or existing facility status is terminated, or if the facility is otherwise ordered by judicial decree or administrative order to cease receiving wastes or to close, then the facility shall be closed in accordance with the deadlines established at (i) and (j) below.

2. If the owner or operator demonstrates to the satisfaction of the Department that there is a reasonable probability that the hazardous waste management unit will receive additional hazardous waste, the date when the owner or operator "expects to begin closure" may be any date on or before one year after the date on which the unit last received hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the satisfaction of the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit or existing facility requirements, the Department may approve an extension of this one year limit.

(h) The owner or operator shall submit the closure plan according to the requirements of this subsection and the requirements of (d) above.

1. For a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, the owner or operator shall submit the closure plan to the Department at least 180 days before the date the owner or operator expects to begin partial or final closure. The Department may waive this requirement if the owner or operator had previously submitted the closure plan as part of a permit application and the Department finds that final disposition of the permit application is imminent and will result in an approved closure plan. Until final closure is completed and certified in accordance with this section, a copy of the most current plan shall be furnished to the Department upon request, including request by mail, and during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.

2. For all hazardous waste facilities subject to this section, the owner or operator shall submit the closure plan to the Department no later than 15 days after:

i. Termination of eligibility to operate an existing facility prior to final disposition of a permit application under N.J.A.C. 7:26–12.1 et seq. (except when a permit is issued simultaneously with termination of this status); or

ii. Issuance of a judicial decree or administrative order to cease receiving wastes or to close.

3. Upon submission of the closure plan by a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, the Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and to request modifications of the plan for 30 days after the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department disapproves the plan, it shall provide the owner or operator with a detailed written statement of reasons for the disapproval and the owner or operator shall modify the plan or submit a new plan for approval within 30 days of receiving the Department's statement of reasons for disapproval. The Department will approve, modify or disapprove this plan in writing within 60 days. If the Department modifies the original or resubmitted plan, this modified plan becomes the approved closure plan. The Department's decision shall assure that the approved closure plan is consistent with this section and all applicable requirements of N.J.A.C. 7:26–11. A copy of this modified plan and a statement of reasons for the modification shall be mailed to the owner or operator.

(i) Within 90 days after receiving the final volume of hazardous waste, or, for a facility with existing facility status under N.J.A.C. 7:26–12.3, within 90 days after the approval of the closure plan, if that is later, the owner or operator of a hazardous waste management unit or facility shall treat, remove from the unit or facility, or dispose of on-site all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator complies with all the applicable requirements for modifying the closure plan and demonstrates, at least 30 days prior to the expiration of the time allowed to treat, remove, or dispose of all hazardous wastes on-site under this subsection, that:

1. The activities required to comply with this paragraph will, of necessity, take him longer than 90 days to complete; or

2. The following requirements are met:

i. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes;

ii. There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year;

iii. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including, but not limited to, compliance with all applicable permit conditions and existing facility requirements.

(j) The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan within 180 days after receiving the final volume of wastes at the hazardous waste management unit or facility or, in the case of facilities operating prior to final disposition of a permit, 180 days after approval of the closure plan, whichever is later. The Department may approve a longer closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit or closure plan and demonstrates, at least 30 days prior to the expiration of the time allowed to complete closure under this subsection, that:

1. The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

2. The following requirements are met:

i. The hazardous waste management unit or facility has the capacity to receive additional hazardous waste;

ii. There is reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within the year;

iii. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including, but not limited to, compliance with all applicable permit or existing facility requirements.

(k) During the partial and final closure periods, all contaminated equipment, structures, and soils shall be properly disposed of or decontaminated. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste. A generator of hazardous waste shall handle that waste in accordance with N.J.A.C. 7:26–7.4, 7:26–8, and 7:26–9.3.

(*l*) Within 60 days after the completion of partial or final closure, the owner or operator shall submit to the Department by registered mail a two-part certification by both the owner or operator and a certification by an independent registered professional engineer that the hazardous waste management unit or facility, whichever is applicable, has been closed in accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request. If the owner and operator are not the same person, both parties shall separately submit two-part certifications. The owner's and/or operator's two-part certifications shall state and be signed as follows:

1. "I certify under penalty of law that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (*l*)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (*l*)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(m) No later than the submission by the owner or operator to the Department of the certification of closure for each hazardous waste management unit, the owner or operator shall submit to the local zoning authority or other authority with jurisdiction over local land use and to the Department a survey plat indicating the location and dimensions of hazardous waste management units with respect to permanently surveyed bench-marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or other authority with jurisdiction over local land use shall contain a note, prominently displayed, stating the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with all applicable closure and post-closure requirements at N.J.A.C. 7:26–9.

(n) Nothing in this section shall preclude the owner or operator from removing hazardous waste and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(e) "and at the end of" inserted after "at any point during".
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Amendments throughout substantially expanded the level of detail required in the closure plan including certification of closure by both owner and independent registered engineer and contingency plans if hazardous wastes are to remain on-site after closure.
Petition for Rulemaking: Changes regarding delay of closure rules requested by Exxon Corp.; petition denied.
See: 24 N.J.R. 4285(A), 25 N.J.R. 1893(c).

7:26–9.9 General post-closure care requirements

(a) Except as N.J.A.C. 7:26–9.1 or 9.9(g)2 provides otherwise, this section applies to all hazardous waste facilities where hazardous wastes will remain at the facility site after closure is completed.

(b) Post-closure care for each hazardous waste management unit or facility subject to this section shall begin immediately upon completion of closure of the unit or facility and continue for 30 years after the date of completing closure, and shall consist of at least the following:

1. Groundwater monitoring and reporting in compliance with N.J.A.C. 7:14A–6;

2. Maintenance of monitoring and waste containment systems as applicable; and

3. Compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26–9, 10, and 11.

(c) The Department may amend the post-closure plan for a hazardous waste management unit or hazardous waste facility in accordance with N.J.A.C. 7:26–12 for a facility operating under a permit issued pursuant to that subchapter, or in accordance with N.J.A.C. 7:26–9.8 for a facility with existing facility status under N.J.A.C. 7:26–12.3, in order to:

1. Reduce the post-closure care period to less than 30 years for a hazardous waste management unit, at any time before that unit is closed, or a facility, at any time before all disposal units at the facility have been closed, if the Department finds that the reduced period is sufficient to protect human health and the environment (for example, if leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

2. Extend the post-closure care period for a hazardous waste management unit or facility at any time during the active life or post-closure period of that unit or facility if the Department finds that the extended period is necessary to protect human health and the environment (for example, leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

(d) The Department may require, at partial or final closure, continuation of any or all of the security requirements at N.J.A.C. 7:26–9.4(h) during all or part of the post-closure period when:

1. Solid waste, including hazardous waste, may remain exposed after completion of partial or final closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(e) Post-closure use of property on or in which hazardous waste remains after partial or final closure shall not disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Department, either in the post-closure plan or by petition, that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. Is necessary to reduce a threat to human health or the environment.

(f) All post-closure care activities shall be performed in accordance with the provisions of the approved post-closure plan.

(g) The following plans are required:

1. Any hazardous waste facility or management unit subject to this section shall have a written post-closure plan.

2. Surface impoundments not otherwise subject to this section, as provided at (a) above, because the owner or operator intends to remove or decontaminate all hazardous wastes at partial or final closure, shall have a contingent post-closure plan submitted at the same time as submission of the closure plan. The contingent post-closure plan shall provide for compliance with this section in case not all hazardous waste or hazardous waste residues, including contaminated soil and groundwater, are removed at closure, and shall be approved and amended as necessary in accordance with procedures for approving and amending post-closure plans under this section.

(h) The post-closure plan shall be submitted with the permit application in accordance with N.J.A.C. 7:26–12 and approved by the Department as part of the permit issuance proceeding. The approved post-closure plan will become a condition of any permit issued under N.J.A.C. 7:26–12. For a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, the post-closure plan shall be submitted in accordance with (k) below. The Department's approval shall assure that the approved post-closure plan is consistent with the provisions of this section as well as all applicable provisions of N.J.A.C. 7:26–10.

(i) For each of the hazardous waste management units subject to the requirements of this section, the post-closure plan shall identify the activities which will be carried on after closure of each unit and the frequency of these activities and shall include at least:

1. A description of the planned groundwater monitoring activities and frequencies at which they will be performed;

2. A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

i. The integrity of the cap and final cover or other contaminant structures where applicable; and

ii. The function of the facility monitoring equipment; and

3. The name, address, and phone number of the person or office to contact about the hazardous waste facility or management unit during the post-closure period. This person or office shall keep an updated approved post-closure plan during the post-closure period. Until the end of the post-closure period, a copy of the current approved post-closure plan shall be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, a copy of the plan most recently submitted to the Department for approval shall be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.

4. Requirements for compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26–9, 10, and 11.

(j) The owner or operator may submit a written request to the Department for a permit modification to amend the approved post-closure plan in accordance with N.J.A.C. 7:26–12, for a facility operating under a permit pursuant to that subchapter, or, for a facility operating with existing facility status under N.J.A.C. 7:26–12.3, a written request for a plan modification, at any time during the active life or post-closure period of the hazardous waste facility or management unit included in the plan. The written request shall include a copy of the amended post-closure plan for approval by the Department.

1. The owner or operator shall submit a written request in accordance with paragraph (j) above to obtain Departmental authorization for a change in the approved post-closure plan whenever changes in operating plans or facility design or events which occur during the active life or post-closure period of the hazardous waste facility or management unit affect the post-closure plan or whenever there is a change in the expected year of final closure.

2. In the case of a facility owner's or operator's requesting a permit modification during the active life of the facility in order to obtain Departmental authorization for a change in operating plans or facility design, a written request for modification of the post-closure plan shall be submitted to the Department at the same time as submission of the request for the permit modification. For all facilities subject to this section, the request for modification of the post-closure plan under (j)1 above shall be made at least 60 days prior to the change in operating plans or facility design or no later than 60 days after an unforeseen event which affects the post-closure plan.

3. The Department may request modifications to a post-closure plan in accordance with this subsection. The owner or operator shall submit the modified plan to the Department no later than 60 days after the Department's request.

4. Modifications of post-closure plans which are not minor according to the criteria at N.J.A.C. 7:26–12.8 shall be reviewed by the Department as follows:

i. For hazardous waste facilities operating under a permit pursuant to N.J.A.C. 7:26–12, according to the permit modification procedures in that subchapter; and

ii. For hazardous waste facilities with existing facility status under N.J.A.C. 7:26–12.3, according to plan approval procedures at (k)2 below.

(k) For a hazardous waste facility with existing facility status under N.J.A.C. 7:26–12.3, the owner or operator shall submit the post-closure plan to the Department at least 180 days before the owner or operator expects to begin partial or final closure of the first unit subject to the requirements of this section. The date that the owner or operator expects to begin closure shall be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste, no later than one year after the date on which the unit receives or received the last volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable requirements under N.J.A.C. 7:26–11, and that there is in fact no possibility of a present or future release of hazardous waste or other threat to human health or the environment, then the Department may approve an extension to this one year limit.

1. The owner or operator shall submit the post-closure plan to the Department no later than 15 days after:

i. The termination of eligibility to operate an existing facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26–12.1 et seq. (except when a permit is issued simultaneously with termination of the status); or

ii. Issuance of a judicial decree or administrative order to cease receiving wastes or to close.

2. The Department will provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the post-closure plan and to request modifications of the plan, including modification of the 30 year post-closure period required in (b) above, for 30 days after the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department disapproves the plan, the Department will provide the owner or operator with a detailed written statement of reasons for the modification or disapproval and the owner or operator shall modify the plan or submit a new plan for approval within 30 days of receiving the Department's statement of reasons for disapproval. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the original or resubmitted plan, this modified plan becomes the approved post-closure plan. The Department bases its decision upon the criteria required of petitions under (*l*) below. The Department's decision will ensure that the approved post-closure plan is consis-

tent with this section. A copy of the modified plan and a statement of reasons for the modification will be mailed to the owner or operator.

(*l*) If an owner or operator has closed a facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26–12, the post-closure plan (or period) may be modified during the post-closure care period or at the end of the post-closure care period in either of the following ways:

1. The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period for the hazardous waste facility or management unit based on cause, or to alter the requirements of the post-closure plan based on cause.

i. The petition shall include evidence demonstrating that:

(1) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (for example, leachage or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate the facility is secure); or

(2) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment.

ii. The petitions will be considered by the Department only when they present new and relevant information not previously considered by the Department. Whenever the Department is considering a petition, it will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. The Department will also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, the Department will issue a final determination, based upon the criteria set forth in subparagraph 9.9(*l*)1.

iii. If the Department denies the petition, it will send the petitioner a brief written response giving the reason for the denial.

2. The Department may tentatively decide to modify the post-closure plan if the Department deems the modification necessary to prevent threats to human health and the environment. The Department may propose to extend the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure plan based on cause.

i. The Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in (*l*)1ii above. After considering the comments, the Department will issue a final determination.

ii. The Department will base its final determination upon the same criteria as required for petitions under (*l*)1i above.

(m) No later than 60 days after certification of closure of each hazardous waste management unit, the owner or operator shall submit to the local zoning authority or other authority with jurisdiction over local land use and to the Department a survey plat indicating the location and dimensions of each certified landfill cell or other hazardous waste management unit with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor.

1. The plat filed with the local land authority shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in (e) above.

2. In addition, within the timeframes and for the units specified in paragraph (m) above, the owner or operator shall submit to the Department and to the local zoning authority or other authority with jurisdiction over local land use a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste management unit of the facility.

i. For wastes disposed of before these regulations were adopted, the owner or operator shall identify the type, location, and quantity of the wastes as accurately as possible and in accordance with any facility records.

3. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or other hazardous waste management units of the facility that occur after the survey plat and record of wastes have been filed shall be reported to the local zoning authority or other authority with jurisdiction over local land use, and to the Department.

(n) Requirements for notice in deed to property are as follows:

1. Within 60 days after certification of closure of the first hazardous waste management unit and within 60 days after certification of closure of the last hazardous waste management unit, the owner of the property on which a hazardous waste facility is located shall record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

i. The land has been used to manage hazardous wastes;

ii. Its use is restricted under (e) above; and

iii. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste management unit of the facility required in (m) above have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department.

2. If at any time prior to certification of completed post-closure care under (p) below, the owner or operator or any subsequent owner of land upon which a hazardous waste facility is located wishes to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soil, the owner or operator shall request a modification to the post-closure plan in accordance with this section. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the requirements at (e) above. By removing hazardous wastes, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with N.J.A.C. 7:26–7.4, 8 and 9.3. If the owner or operator or subsequent owner of the land is granted a permit modification or is otherwise granted approval to conduct such removal activities, and does in fact remove the hazardous waste, hazardous waste residues, liner, and all contaminated structures, equipment, and soil, the owner or operator or subsequent owner may, upon approval by the Department, add a notation to the deed or instrument indicating the removal of the hazardous waste.

3. Within 60 days after certification of closure of the first and of the last hazardous waste management unit, the owner or operator shall in both cases submit to the Department a certification, signed by the owner or operator, that he or she has recorded the notation specified in (n)1 above. This certification shall include a copy of the document in which the notation has been placed.

(*o*) No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Department by certified mail a certification that the post-closure care obligations for the hazardous waste disposal unit were performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care. The certification shall be signed as follows:

1. "I certify under penalty of law that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the post-closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (*o*)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the post-closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (*o*)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
(a) language clarified.
(n)2: option to remove "the notation on the deed" deleted.
As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(m)3 added.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Substantial amendments requiring contingent post-closure plans, written request necessary to change such plans, requirement to estimate year of closure and deadline.

7:26–9.10 Financial requirements for facility closure

(a) This section applies to owners or operators of all hazardous waste facilities except as provided in this section or in N.J.A.C. 7:26–9.1.

(b) When used in this subchapter, the following terms have the meanings given below:

1. "Closure plan" means the plan for closure prepared in accordance with the requirements of N.J.A.C. 7:26–9.8.

2. "Compliance procedure" means any proceeding instituted by the Department which seeks to require compliance or which is in the nature of an enforcement action or an action to cure a violation.

i. A compliance procedure includes a compliance order or notice of intention to terminate a permit pursuant to N.J.A.C. 7:26–12 or an application in a court of competent jurisdiction for appropriate relief.

ii. A compliance procedure is considered to be pending from the time an order or notice of intent to terminate is issued or judicial proceedings are begun until the Department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

3. "Current closure costs estimate" means the most recent of the estimates prepared in accordance with (e) below.

4. "Current post-closure costs estimate" means the most recent of the estimates prepared in accordance with N.J.A.C. 7:26–9.11(c).

5. "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

6. "Post closure plan" means the plan for post-closure care prepared in accordance with the requirements of N.J.A.C. 7:26–9.9.

7. "Current plugging and abandonment cost estimate" means the most recent estimate prepared in accordance with N.J.A.C. 7:14A–5.12(e).

(c) The following terms are used in the specification for the financial tests for liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

1. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

2. "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

3. "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

4. "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

5. "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

6. "Net working capital" means current assets minus current liabilities.

7. "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

8. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(d) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

1. "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

2. "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

3. "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

4. "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(e) The owner or operator shall comply with the following provisions concerning the cost estimate for facility closure:

1. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in N.J.A.C. 7:26–9.8 and applicable closure requirements in N.J.A.C. 7:26.10 and 11. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan under N.J.A.C. 7:26–9.8. The cost estimate shall take the following into consideration:

i. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" and "subsidiary" at (b)5 above.) The owner or operator may use costs for on-site disposal if he or she can show that adequate on-site disposal capacity will exist at all times over the life of the facility.

(1) The closure cost estimate based on hiring a third party to close the facility shall reflect, but not be limited to:

(A) Labor costs that are calculated as specified by the New Jersey Department of Labor pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11–56.25 et seq., and rules adopted pursuant thereto;

(B) Contingency costs to cover any unanticipated discharges or adverse weather conditions; and

(C) Administrative costs including, but not limited to, the costs of bookkeeping and taxes.

ii. The closure cost estimate shall not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures, or equipment, land, or other assets associated with the facility at the time of partial or final closure.

iii. The owner or operator shall not incorporate a zero or negative cost for hazardous wastes that might have economic value.

2. During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 30 days prior to each anniversary of the date on which the financial instrument(s) used to comply with (f) below were established. The adjustment shall be made, as specified in (e)2i and ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

ii. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

3. During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the Department has approved a request to modify the closure plan, or, for an unapproved plan, no later than 30 days after a revision in the plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation, as specified in (e)2 above.

4. The owner or operator shall keep at the facility during the active life of the facility the latest closure cost estimate prepared in accordance with (e)1 and 3 above and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted closure cost estimate.

(f) The owner or operator of each hazardous waste facility shall establish financial assurance for closure of the hazardous waste facility. The owner or operator shall choose from the options specified in (f)1 through 5 below, except that the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit.

1. Closure trust fund requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Department.

(1) An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

ii. The wording of the trust agreement must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A), and the trust agreement must be accompanied by a formal certification of acknowledgement. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

iii. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility, as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." For existing facilities, the pay-in period shall be 20 years beginning October 8, 1981 or the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. The payments into the closure trust fund must be made as follows:

(1) For a new facility the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department before the

initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in (f)6 below, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{\text{CE-CV}}{\text{Y}}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(2) If an owner or operator establishes a trust fund as specified in (f)1 of this section and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period, as defined in (f)1iii. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to this section. The amount of each payment must be determined by this formula:

$$\text{Next payment} = \frac{\text{CE-CV}}{\text{Y}}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

iv. The owner of operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in (f)1iii above.

v. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in (f) of this section, his first payment must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of (f)1.

vi. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this section to cover the difference.

vii. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

viii. If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

ix. Within 60 days after receiving a request from the owner or operator for release of funds, as specified in (f)1vii and viii above, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

x. After beginning partial or final closure, an owner or operator or other person authorized to conduct partial or final closure may request reimbursement from the trust fund for partial or final closure expenditures by submitting itemized bills to the Department for approval by the Department. The owner or operator may request reimbursements for partial or final closure costs only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining active life.

(1) Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or are otherwise justified.

(2) If the Department has reason to believe that the maximum cost of closure at any time during the remaining active life of the facility will be significantly greater than the value of the trust fund, the Department may without reimbursement of such amounts as the Department deems prudent until the Department determines, in accordance with (f)8 below, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons.

xi. The Department will agree to termination of the trust when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (f)8 below.

2. Requirements for the surety bond guaranteeing payment into a closure trust fund are as follows:

i. An owner or operator may satisfy the requirements of the section by obtaining a surety bond which conforms to the requirements of (f)2 and submitting the bond to the Department.

(1) An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal.

(2) The bond must be effective before this initial receipt of hazardous waste.

(3) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

ii. The wording of the surety bond must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in (f)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(2) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Except for a nominal initial payment, agreed upon between the trustee and the owner or operator, payments into the trust fund, as specified in (f)1 above.

(B) Updating of Schedule A of the trust agreement (see N.J.A.C. 7:26–9, Appendix A) to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

iv. The bond shall guarantee that the owner or operator will:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(2) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction; or

(3) Provide alternate financial assurance, as specified in this paragraph, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform, as guaranteed by the bond.

vi. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in (f)6 below.

vii. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance, as specified in this section, to cover the increase.

(1) Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

viii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts nor may cancellation occur while a compliance procedure is pending, as defined in this section.

ix. The owner or operator may cancel the bond, if the Department has given prior written consent, based on his receipt of evidence of alternate financial assurance, as specified in this paragraph.

3. Requirements for the surety bond guaranteeing performance of closure requirements are as follows:

i. An owner or operator of a facility with a hazardous waste facility permit may satisfy the requirements of (f) of this section by obtaining a surety bond which conforms to the requirements of (f)3 and submitting the bond to the Department.

(1) An owner or operator of a new facility must submit the bond to the Department at least 60 days

before the date on which hazardous waste is first received for treatment, storage, or disposal.

(2) The bond must be effective before this initial receipt of hazardous waste.

(3) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

ii. The wording of the surety bond must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust must meet the requirements specified in (f)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(2) Unless the standby trust fund is funded pursuant to the requirements of this section the following are not required by these regulations:

(A) Except for a nominal initial payment, agreed upon between the trustee and the owner or operator, payments into the trust fund, as specified in (f)1 above;

(B) Updating of Schedule A of the trust agreement (see N.J.A.C. 7:26–9 Appendix A) to show current closure cost estimates;

(C) Annual valuations, as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

iv. The bond must guarantee that the owner or operator will:

(1) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility, whenever required to do so; or

(2) Provide alternate financial assurance as specified in this paragraph and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so under the terms of the bond, or if, within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the owner or operator fails to begin closure in accordance with the order, the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

vi. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

vii. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance, as specified in this section.

(1) Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

viii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt, nor may cancellation occur while a compliance procedure is pending as defined by this section.

ix. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this paragraph; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (f)8 below.

x. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with (f)8 below.

4. Closure letter of credit requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of (f)4 and by submitting the letter to the Department.

(1) An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(2) The letter of credit must be effective before this initial receipt of hazardous waste.

(3) The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

ii. The wording of the letter of credit shall be identical to the wording specified in N.J.A.C. 7:26–9 Appendix A, incorporated herein by reference.

iii. An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in (f)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(2) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Except for a nominal initial payment agreed upon between the trustee and the owner or operator, payments into the trust fund, as specified in (f)1 above;

(B) Updating of Schedule A of the trust agreement (see N.J.A.C. 7:26–9, Appendix A) to show current closure cost estimates;

(C) Annual valuations, as required by the trust agreement; and

(D) Notice of nonpayment, as required by the trust agreement.

iv. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

v. The letter of credit must be irrevocable and issued for a period of at least one year.

(1) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date.

(2) Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

vi. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in this section.

vii. Whenever the current closure cost estimate increases to an amount greater than the amount of credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance, as specified in this section, to cover the increase.

(1) Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

viii. Following a determination that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so or if the owner or operator has failed to begin closure in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the Department may draw on the letter of credit.

ix. If the owner or operator does not establish alternate financial assurance, as specified in (f) of this section, and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit.

(1) The Department may delay the drawing if the issuing institution grants an extension of the term of the credit.

(2) During the last 30 days of any such extension, the Department will draw on the letter of credit if the owner or operator has failed to provide alternate

financial assurance, as specified in (f) of this section, and obtain written approval of such assurance from the Department.

x. The Department will return the letter of credit to the issuing institution for termination when:

(1) An owner or operator substitutes alternate financial assurance, as specified in (f) of this section; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (f)8 below.

5. Closure insurance requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of (f)5 and by submitting a certificate of such insurance to the Department.

(1) An owner of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal.

(2) The insurance must be effective before the initial receipt of hazardous waste.

(3) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

ii. The wording of the certificate of insurance must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in (f)6 below. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

iv. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

v. After beginning partial or final closure, an owner or operator or other person authorized to conduct closure may request reimbursement from the insurer for closure expenditures by submitting itemized bills to the Department for approval by the Department. The owner or operator will receive reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining active life.

(1) Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make the reimbursements in such amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or are otherwise justified.

(2) If the Department has reason to believe that the maximum cost of closure at any time during the remaining active life of the facility will be significantly greater than the face amount of the policy, the Department may withhold reimbursement of such amounts as the Department deems prudent until the Department determines, in accordance with (f)8 below, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursement, the Department will provide the owner or operator with a detailed written statement of reasons.

vi. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in (f)5x below.

(1) Failure to pay the premium, without substitution of alternate financial assurances as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary.

(2) Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

vii. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

viii. The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must at a minimum provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The Department deems the facility abandoned; or

(2) The permit is terminated or revoked or a new permit is denied; or

(3) Closure or other compliance procedure is ordered by the Department, a State or Federal court or other court of competent jurisdiction; or

(4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(5) The premium due is paid.

ix. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance, as specified in this section, to cover the increase.

(1) Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

x. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (f)8 below.

6. Requirements for the use of multiple financial mechanisms are as follows:

i. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in (f)1, 2, 4 and 5 above, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate.

(1) If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms.

(2) The Department may use any or all of the mechanisms to provide for closure of the facility.

7. Requirements for the use of a financial mechanism for multiple facilities follows:

i. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility.

(1) Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for closures assured by the mechanism.

(2) The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(3) In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

ii. A letter of credit may not be used to assure funds for facilities outside New Jersey. If other financial mechanisms specified in this section cover facilities that are located in more than one state, the RCRA permitting authority for each jurisdiction in which the facilities are located shall be involved in all transactions, except when the transactions involve only those facilities in one state.

8. Release of the owner or operator from the requirements of this subsection shall be governed by the following requirements:

i. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he or she is no longer required to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason it has to believe that closure has not been in accordance with the approved closure plan.

Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Original text replaced.
Amended by R.1985 d.247, effective May 20, 1985.
See: 17 N.J.R. 241(a), 17 N.J.R. 1291(a).
(f)4v(3) deleted.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
More details added re: cost estimates; substantial amendments throughout.
Amended by R.1989 d.609, effective December 18, 1989.
See: 21 N.J.R. 823(a), 21 N.J.R. 3914(c).

Changed reference to usage from "section" to "subchapter" in (b).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative correction at (f)4ii.
Petition for Rulemaking: Changes regarding delay of closure rules requested by Exxon Corp.; petition denied.
See: 24 N.J.R. 4285(A), 25 N.J.R. 1893(c).

7:26–9.11 Financial requirements for facility post-closure care

(a) The requirements of this section apply to owners and operators of facilities where hazardous wastes are intended to remain at the facility site after closure is completed, except as otherwise provided in this section or in N.J.A.C. 7:26–9.1, and to those facilities which are required by N.J.A.C. 7:26–9.9(g)2 to prepare contingent post-closure plans.

(b) Terms defined at N.J.A.C. 7:26–9.10(b) above retain the same meanings for the purpose of this section.

(c) The owner or operator shall comply with the following provisions concerning the cost estimate for a hazardous waste facility or management unit post-closure care:

1. The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure rules in N.J.A.C. 7:26–9.9, 7:26–10, and 7:26–11. The post-closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct post-closure activities. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under N.J.A.C. 7:26–9.9.

2. During the active life of a facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days prior to each anniversary date of the establishment of the financial instrument(s) used to comply with N.J.A.C. 7:26–9.9. The adjustment shall be made as specified in (c)2i and ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

ii. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

3. The owner or operator shall revise the post-closure cost estimate during the active life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate shall be submitted within 30 days after the Department has approved the request to amend the post-closure plan, and shall be adjusted for inflation, as specified in (c)2 above. Facilities that have submitted a post-closure plan that has not yet been approved shall submit a revised post-closure cost estimate no later than 30 days after their post-closure plan has been revised. The plan shall be adjusted for inflation as specified in (c)2 above.

4. The owner or operator must keep the following at the facility during the operating life of the facility; the latest post-closure cost estimate prepared in accordance with (c)1 and 3 above, and when this estimate has been adjusted in accordance with (c)2 above, the latest adjusted post-closure estimate.

(d) The owner or operator of a hazardous waste management unit or facility subject to post-closure monitoring or maintenance requirements under N.J.A.C. 7:26–9.9 shall establish financial assurance for post-closure care in accordance with the post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or by June 16, 1989, whichever is later. The owner or operator shall choose from the following options except that the option in (d)3 is not available to owners or operators of existing facilities until they have received a permit.

1. Post-closure trust fund requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund which conforms to the requirements of (d)1 and by submitting an originally signed duplicate of the trust agreement to the Department.

(1) An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

ii. The wording of the trust agreement must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A), and the trust agreement must be accompanied by a former certification of acknowledgement. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

iii. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period". For existing facilities, the pay-in period shall be 20 years, beginning October 8, 1981 or the remaining operating life of the facility, as estimated in the closure plan, whichever period is shorter. The payments into the post-closure trust fund must be made as follows:

(1) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department before this initial receipt of hazardous waste. This first payment must be at least equal to the current post-closure cost estimate, except as provided in (d)6 below, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{CE\text{-}CV}{Y}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(2) If an owner or operator establishes a trust fund as specified in (d)1 of this section and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund must be paid in over the pay-in period, as defined in (d)1iii. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to this paragraph. The amount of each payment must be determined by this formula.

$$\text{Next payment} = \frac{CE\text{-}CV}{Y}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

iv. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in (d)1iii above.

v. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in (d) of this section, his first payment must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.

vi. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new release of the amount in excess of the current post-closure cost estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

vii. During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate.

viii. If an owner or operator substitutes other financial assurance, as specified in this section, for all or part of the trust fund, he may submit a written request to the Department for estimate covered by the trust fund.

ix. Within 60 days after receiving a request from the owner or operator for release of funds, as specified in (d)1vii and viii above, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

x. During the period of post-closure care, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

xi. An owner or operator or other person authorized to conduct post-closure care may request reimbursement from the trust fund for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or are otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for its decision.

xii. The Department will agree to termination of the trust when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (d)8 below.

2. Requirements for the surety bond guaranteeing payment into a post-closure trust fund are as follows:

i. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of (d)2 and submitting the bond to the Department.

(1) An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(2) The bond must be effective before this initial receipt of hazardous waste.

(3) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

ii. The wording of the surety bond must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in (d)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(2) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Except for a nominal initial payment agreed upon by the trustee and the owner or operator, payments into the trust fund as specified in (d)1 above;

(B) Updating of Schedule A of the trust agreement (See N.J.A.C. 7:26–9, Appendix A) to show current post-closure cost estimates;

(C) Annual valuations, as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

iv. The bond shall guarantee that the owner or operator will:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(2) Fund the standby trust fund in an amount equal to the penal sum if the owner or operator has not performed closure in accordance with the order within 15 days after an administrative order to begin partial or final closure issued by the Department becomes final or within 15 days after an order to begin partial or final closure is issued by a State or Federal court or other court of competent jurisdiction; or

(3) Provide alternate financial assurance, as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of notice of cancellation of the bond from the surety.

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform, as guaranteed by the bond.

vi. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in (d)6 below.

vii. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department or obtain other financial assurance as specified in this section, to cover the increase.

(1) Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

viii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt, nor may cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26–9.10(b).

ix. The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

3. Requirements for the surety bond guaranteeing performance of post-closure care are as follows:

i. An owner or operator of a facility with a hazardous waste facility permit may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of (d)3 and submitting the bond to the Department.

(1) An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(2) The bond must be effective before this initial receipt of hazardous waste.

(3) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

ii. The wording of the surety bond must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in (d)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(2) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations.

(A) Except for a nominal initial payment, agreed upon between the trustee and the owner or operator, payments into the trust fund, as specified in (d)1 above;

(B) Updating of Schedule A of the trust agreement to show current post-closure cost estimates;

(C) Annual valuations, as required by the trust agreement; and

(D) Notices of nonpayment, as required by the trust agreement.

iv. The bond must guarantee that the owner or operator will:

(1) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

(2) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days of the receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements under the terms of the bond, or if the owner or operator fails to begin post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by State or Federal court or other court of competent jurisdiction, the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

vi. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

vii. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance, as specified in this section.

(1) Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

viii. During the period of post-closure care, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

ix. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return

receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26–9.10(d).

x. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(2) The Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.

xi. The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.

4. Post-closure letter of credit requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of (d)4 and by submitting the letter to the Department.

(1) An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(2) The letter of credit must be effective before this initial receipt of hazardous waste.

(3) The issuing institute must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

ii. The wording of the letter of credit must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Upon the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in (d)1 above, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(2) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Except for a nominal initial payment agreed upon between the trustee and the owner or operator, payments into the trust fund, as specified in (d)1 above;

(B) Updating of Schedule A of the trust agreement (see N.J.A.C. 7:26–9, Appendix A) to show current post-closure cost estimates;

(C) Annual valuations, as required by the trust agreement; and

(D) Notices of nonpayment, as required by the trust agreement.

iv. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, the name and address of the facility and the amount of funds assured for post-closure care of the facility by the letter of credit.

v. The letter of credit must be irrevocable and issued for a period of at least one year.

(1) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date.

(2) Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

vi. The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in N.J.A.C. 7:26–9.11(d)6 below.

vii. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Department or obtain other financial assurance, as specified in this section, to cover the increase.

(1) Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

viii. During the period of post-closure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

ix. Following a final administrative determination that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, or if the owner or operator fails to perform post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the Department may draw on the letter of credit.

x. If the owner or operator does not establish alternate financial assurance, as specified in this section, and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit.

(1) The Department may delay the drawing if the issuing institution grants an extension of the term of the credit.

(2) During the last 30 days of any such extension, the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this section, and obtain written approval of such assurance from the Department.

xi. The Department will return the letter of credit to the issuing institution for termination when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this subsection; or

(2) The Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.

5. Post-closure insurance requirements are as follows:

i. An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of (d)5 and by submitting a certificate of such insurance to the Department.

(1) An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(2) The insurance must be effective before this initial receipt of hazardous waste.

(3) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

ii. The wording of the certificate of insurance must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

iii. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in (d)6 below. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

iv. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

v. An owner or operator or other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure or are otherwise justified. If the Department does not instruct the insurer to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for the decision.

vi. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in (d)5xi below.

(1) Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

vii. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

viii. The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The Department deems the facility abandoned; or

(2) The permit is terminated or revoked or a new permit is denied; or

(3) Closure or other compliance procedure is ordered by the Department, State or Federal court or other court of competent jurisdiction; or

(4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(5) The premium due is paid.

ix. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section, to cover the increase.

(1) Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

x. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26–week Treasury securities.

xi. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(1) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(2) The Department releases the owner or operator from the requirements of this section in accordance with (d)7 below.

6. Requirements for the use of multiple financial mechanisms are as follows:

i. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit and insurance. The mechanisms must be as specified in (d)1, 2, 4 and 5 above, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate.

(1) If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms.

(2) The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

7. Requirements for the use of a financial mechanism for multiple facilities are as follows:

i. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility.

(1) Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for post-closure care assured by the mechanism.

(2) The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(3) In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

ii. A letter of credit may not be used to assure funds for facilities outside New Jersey. If other financial mechanisms specified in this section cover facilities that are located in more than one state, the RCRA permitting authority for each jurisdiction in which the facilities are located shall be involved in all transactions, except when the transactions involve only those facilities in one state.

8. Release of the owner or operator from the requirements of this subsection is governed by the following requirements:

i. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period for a hazardous waste unit or facility has been completed to the satisfaction of the Department and in accordance with the approved post-closure plan, the Department will notify the owner or operator that he or she is no longer required to maintain financial assurance for post-closure care of that unit or facility, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator with a detailed written statement of the Department's reasons for believing that post-closure care has not been in accordance with the approved post-closure plan.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Original text replaced.
Amended by R.1985 d.247, effective May 20, 1985.
See: 17 N.J.R. 241(a), 17 N.J.R. 1291(a).
(d)4v(3) deleted.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Adjusted post-closure cost estimates must be made 60 days prior to each anniversary of financial instrument used to comply; other more stringent deadline required.

7:26–9.12 Use of a mechanism for financial assurance of both closure and post-closure care

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit or insurance that meets the specifications for the mechanism in both N.J.A.C. 7:26–9.10 and 11. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

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

7:26–9.13 Liability requirements

(a) Coverage for sudden accidental occurrences shall meet the following requirements:

1. An owner or operator of a hazardous waste treatment, storage or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of five ways, as specified in (a)1i, ii, iii, iv and v below:

i. An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in (a)1.

(1) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement and the wording of the certificate of insurance must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

(A) The owner or operator must submit a signed duplicate original of the endorsement or certificate of insurance and assigned duplicate original of the insurance policy to the Department.

(B) An owner or operator of a new facility must submit the signed duplicate original of the endorsement or the certificate and a signed duplicate original of the insurance policy to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or is eligible to provide insurance as an excess or surplus lines insurer in one or more states.

ii. An owner or operator may meet the requirements of this section by passing a financial test for liability coverage, as specified in (f) below.

iii. An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance, as these mechanisms are specified in this section. The amounts of coverage demonstrated must total at least the minimum amounts required by (a)1 above.

iv. An owner or operator may meet the liability requirements of this section by using the corporate guarantee for liability coverage, as specified in (g) below.

v. An owner or operator may demonstrate the required liability coverage through the use of both the

corporate guarantee and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated shall total at least the minimum amounts required by (a)1 above.

(b) Coverage for nonsudden accident occurrences shall meet the following requirements:

1. An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury or property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of five ways, as specified in (b)1i, ii, iii, iv and v below:

i. An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in (b)1.

(1) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement and the wording of the certificate of insurance must be identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A).

(A) The owner or operator must submit a signed duplicate original of the endorsement or the certificate and a signed duplicate original of the insurance policy to the Department.

(B) An owner or operator of a new facility must submit the signed duplicate original of the endorsement or the certificate and assigned duplicate original of the insurance policy to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in one or more states.

ii. An owner or operator may meet the requirements of this section by passing a financial test for liability coverage, as specified in (f) below.

iii. An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance, as these mechanisms are specified in this section. The amounts of coverage must total at least the minimum amounts required by (b)1 above.

iv. An owner or operator may meet the requirements of this section by using the corporate guarantee for liability coverage as specified in (g) below.

v. An owner or operator may demonstrate the required liability coverage through the use of both corporate guarantee and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated shall total at least the minimum amounts required by (b)1 above.

vi. For existing facilities brought under regulation pursuant to N.J.A.C. 7:26–12.3(j), liability coverage for nonsudden accidental occurrences shall be demonstrated within 180 days of the facility's becoming subject to N.J.A.C. 7:26–12.

vii. For existing facilities, the required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business in the fiscal year preceding the effective date of these regulations will determine which of the dates applies. If the owner or operator of a facility are two different parties, or if there is more than one owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:

(1) For an owner or operator with sales or revenues totaling $10 million or more, April 8, 1982.

(2) For an owner or operator with sales or revenues greater than $5 million but less than $10 million, April 8, 1983.

(3) All other owners or operators, April 8, 1984.

viii. An owner or operator who is within the category described in (b)1iv(3) above must, unless liability coverage has been demonstrated for nonsudden accidental occurrences, send a letter to the Department stating the date by which such coverage will be established.

(c) If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by (a) or (b) above are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department.

1. The request for a variance must be submitted to the Department as part of the permit application for Part B for a facility that does not have a permit, or pursuant to the procedures for permit modification under N.J.A.C. 7:26–12.13 for a facility that has a permit.

2. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.

3. The Department may require an owner or operator who requests a variance to provide such technical and engineering information, as is deemed necessary by the Department, to determine a level of financial responsibility, other than that required by (a) or (b) above.

4. Any request for a variance for a permitted facility will be treated as a request for a permit modification under N.J.A.C. 7:26–12.6 and 12.13.

(d) If the Department determines that the levels of financial responsibility required by (a) or (b) above are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under (a) or (b), as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.

1. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, he may require that an owner or operator of the facility comply with (b) above.

2. An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage.

3. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under N.J.A.C. 7:26–12.6 and 12.13.

(e) An owner or operator shall continuously provide liability coverage for a facility, as required by this section, until certifications of closure of the facility, as specified in N.J.A.C. 7:26–9.8(m), are approved by the Department. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Requirements for the use of the financial test for liability coverage are as follows:

1. An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test, as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either (f)1i or ii below:

i. The owner or operator shall have:

(1) Net working capital and tangible net worth each at least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage, not guaranteed by insurance, surety bonds, trust funds, or letters of credit; and

(2) Tangible net worth of at least $10 million; and

(3) Assets in the United States amounting to either:

(A) At least 90 percent of the owner's or operator's total assets; or

(B) At least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage, not guaranteed by insurance, surety bonds, trust funds, or letters of credit; or

ii. The owner or operator shall have:

(1) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A or BBB, as issued by Standard and Poor's, or Aaa, Aa, A or Baa, as issued by Moody's; and

(2) Tangible net worth of at least $10 million; and

(3) Tangible net worth at least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage, not guaranteed by insurance, surety bonds, trust funds, or letters of credit; and

(4) Assets in the United States amounting to either:

(A) At least 90 percent of the owner's or operator's total assets; or

(B) At least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage, not guaranteed by insurance, surety bonds, trust funds, or letters of credit.

2. The phrase "amount of liability coverage", as used in (f)1 of this section, refers to the annual aggregate amounts for which coverage is required under (a) and (b) of this section.

3. To demonstrate that this test is met, the owner or operator must submit the following three items to the Department:

i. A letter signed by the owner's or operator's chief financial officer worded as specified in N.J.A.C. 7:26–9 Appendix A, incorporated herein by reference.

ii. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

iii. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(1) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(2) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in (f)3 above to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal.

5. After the initial submission of items specified in (f)3 above, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in (f)3 above.

6. If the owner or operator no longer meets the requirements of (f)1 above, he must obtain insurance for the entire amount of required liability coverage, as specified in this section. Evidence of insurance must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see (f)3ii above). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis.

i. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage, as specified in this section, within 30 days after notification of disallowance.

(g) Requirements for the use of the corporate guarantee for liability coverage shall be as follows:

1. Subject to (g)2 below, an owner or operator may meet the liability coverage requirements by submitting for Department approval a written guarantee, hereinafter referred to as a "corporate guarantee," obtained from a guarantor. The guarantor shall be the parent corporation of the owner or operator, and the guarantor shall meet the requirements for an owner or operator in (f)1 through 7 above. The wording of the corporate guarantee shall be identical to the wording in N.J.A.C. 7:26–9 Appendix A(i). A certified copy of the corporate guarantee shall accompany the items sent to the Department as specified in (f)3 above. The terms of the corporate guarantee shall provide that:

i. If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of the facility(ies) covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to have arisen from such injury or damage, the guarantor shall pay the amount up to the limits of coverage.

ii. The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the owner or operator obtains and the Department approves alternate liability coverage complying with (a) and/or (b) above.

2. Every corporate guarantee submitted to the Department shall include a separate legal certification by outside counsel that the corporation has the power and authority to issue and abide by the corporate guarantee and that the guarantee does not conflict with any common law, statutes, rules, regulations, codes, certificates of incorporation, charters, bylaws or other legal or equitable requirements or prohibitions applicable to both the corporate parent guarantor and its subsidiary which is the subject of the corporate guarantee.

i. In the case of corporations incorporated in the United States, but not in New Jersey, a corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or Insurance Commissioner(s) of both the state in which the guarantor is incorporated and each state in which a facility is covered by any guarantee of the guarantor is located have submitted to the United States Environmental Protection Agency a written statement that a corporate guarantee executed as described in 40 C.F.R. §§ 264.147(g) and 264.151(h)(2) is a legally valid and enforceable obligation in the state(s). A copy of such statement(s) shall be furnished to the Department by the guarantor.

ii. In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if:

(1) The non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by any guarantee is located, including New Jersey, and in the state in which it has its principal place of business; and

(2) The Attorney General or Insurance Commissioner of each state in which a facility covered by any guarantee is located and the state in which the guarantor corporation has its principal place of business has submitted to the United States Environmental Protection Agency a written statement that a corporate guarantee executed as described in 40 C.F.R. §§ 264.147(g) and 264.151(h)2 is a legally valid and enforceable obligation in that state. A copy of such statement shall be furnished to the Department by the guarantor.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Original text replaced.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Requires that the owner/operator maintain coverage until notified in writing that they are released from obligation; revised requirement for financial test to include ... "closure costs, post-closure costs, UIC plugging and abandonment costs"....
Amended by R.1989 d.609, effective December 18, 1989.
See: 21 N.J.R. 823(a), 21 N.J.R. 3914(c).
Added the use of a corporate guarantee as an option to meet liability coverage.
Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).
Added (b)1vi.

7:26–9.14 Incapacity of owners or operators, guarantors or financial institutions

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee, as specified in N.J.A.C. 7:26–9.13(f), must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (N.J.A.C. 7:26–9, Appendix A).

(b) An owner or operator who fulfills the requirements of N.J.A.C. 7:26–9.10, 9.11 or 9.13 by obtaining a trust fund, surety bond, letter of credit or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

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

APPENDIX A

Appendix A: Wording of the Instruments

(a) The requirements concerning the wording of the trust agreement are as follows:

(1) A trust agreement for a trust fund, as specified in must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between name of the owner or operator, a (insert name of state) (insert "corporation" "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the New Jersey Department of Environmental Protection, "NJDEP," an agency of the State of New Jersey has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the EPA Identification Number, name, address and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of NJDEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B, attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for Closure and Post–Closure Care. The Trustee shall make payment from the Fund as the NJDEP Commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEP, from the fund for closure and post-closure expenditures in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts, as the NJDEP specifies in writing. Upon refund, such funds shall no longer constitute part of the fund, as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by any agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding asset by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without injury in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the NJDEP by certified mail within 10 days following the expiration of the 30–day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both,

from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of (insert name of state).

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A) as such regulations were constituted on the date first above written.

(Signature of Grantor)_____
(Title)_____

Attest:
(Title)_____
(Seal)_____
(Signature of Trustee)

Attest:
(Title)_____
(Seal)_____

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in this subchapter.

State of _____
County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

_____
(Signature of Notary Public)

(b) A surety bond guaranteeing payment into a trust fund, as specified in this subchapter, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond _____

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address of owner or operator)

Type of organization (Insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation: _____

Surety(ies): (name(s) and business address(es)) _____

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately):

Total penal sum of bond: _____

Surety's bond number: _____

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Solid Waste Management Act, to have a permit or existing facility status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or existing facility status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an administrative order to begin closure issued by the NJDEP becomes final or within 15 days after an order to begin final closure is issued by a state or federal court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance under N.J.A.C. 7:26–9, and obtain the written approval of the NJDEP of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26–9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A) as such regulations were constituted on the date the bond was executed.

Principal _____

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate seal) _____

Corporate Surety(ies) _____

(Name and address) _____

State of incorporation: _____

Liability limit: _____

(Signature(s)) _____

(Name(s) and title(s)) _____

(Corporate seal) _____

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: _____

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in this subchapter, shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Performance Bond

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address of owner or operator)

Type of organization: (insert "individual", "joint venture", "partnership", or "corporation")

State of incorporation: _____

Surety(ies): (name(s) and business address(es)) _____

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed

by this bond (indicate closure and post-closure amounts separately):

Total penal sum of bond: _____

Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of penal sum.

Whereas said Principal is required, under the New Jersey Solid Waste Management Act, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure and/or post-closure care as a condition of the permit or existing facility status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that, if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

And, if the Principal shall faithfully perform post-closure of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

Or, if the Principal shall perform final closure as guaranteed by the bond, or shall deposit the amount of the penal sum into the standby trust fund within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance as specified in N.J.A.C. 7:26–9 and obtain the written approval of the NJDEP of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP for the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NJDEP that the Principal has been found in violation of the closure requirements of N.J.A.C. 7:26–9 for a facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has been found in violation of the post-closure requirements of N.J.A.C. 7:26–9 for a facility for which this bond guarantees performance of post-closure, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund, as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has failed to provide alternate financial assurance as specified in N.J.A.C. 7:26–9 and obtain written approval of such assurance from the NJDEP during the 90 days following receipt by both the Principal and the NJDEP of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligations of this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the NJDEP, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined at N.J.A.C. 7:26–9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A) as such regulation was constituted on the date this bond was executed.

Principal _____

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate Seal) _____

Corporate Surety(ies) _____

(Name and address) _____

State of incorporation: _____

Liability limit: _____

(Signature(s)) _____

(Name(s) and title(s)) _____

Corporate seal: _____

(For every co-surety, provide signature(s), corporate seal and other information in the same manner as for Surety above.)

Bond premium: _____

(d) A letter of credit, as specified in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Commissioner (or authorized delegate)

New Jersey Department of Environmental Protection

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars _____, available upon presentation by you of (1) your sight draft, bearing reference to this letter of credit No. _____ and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the New Jersey Solid Waste Management Act".

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund or (owner's or operator's name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A), as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code").

(e) A certificate of insurance, as specified in this subchapter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure or Post–Closure Care

Name and Address of Insurer (herein called the "Insurer"): _____

Name and Address of Insured (herein called the "Insured"): _____

Facilities Covered: (list for each facility: The EPA Identification Number, name, address and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below.))

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure" or "closure and post-closure care" or "post-closure care") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of N.J.A.C. 7:26–9.10 and N.J.A.C. 7:26–9.11, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provisions of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

The Insurer agrees to furnish to the New Jersey Department of Environmental Protection, a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A) as such regulations were constituted on the date shown immediately below.

(Authorized Signature for Insurer) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

(Date) _____

(f) A letter from the chief financial officer, as specified in N.J.A.C. 7:26–9.13(f) and (g) shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter from Chief Financial Officer to demonstrate liability coverage.

(Address to the New Jersey Department of Environmental Protection.)

I am the chief financial officer of (firm's name and address). This letter is in support of (firm's name) use of the financial test (include "for the guarantee" if applicable) to demonstrate financial responsibility for liability coverage, as specified in N.J.A.C. 7:26–9.13(f) and (g).

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name and address).

(Include one of the two immediately following paragraphs. The first paragraph is for the financial test alone. The second paragraph is for the corporate guarantee.)

The firm identified above is the owner or operator of the following facilities in New Jersey for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in N.J.A.C. 7:26–9.13 (List each facility by EPA Identification Number, name, and address.)

This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under N.J.A.C. 7:14A–5.10(a)7. The current closure cost estimates as required by N.J.A.C. 7:14A–5.12(e) are shown for each facility:

The corporation identified above guarantees, through the corporate guarantee specified in N.J.A.C. 7:26–9.13(g), liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities in New Jersey owned or operated by the following subsidiaries of the corporation: (List each facility by EPA Identification Number, name, and address.)

In states where New Jersey is not administering the financial requirements for the closure or post-closure care, UIC plugging and abandonment costs, and liability coverage, this firm is demonstrating financial assurance responsibility for the following facilities through the use of a test equivalent to or substantially equivalent to the financial test specified in N.J.A.C. 7:26–9.13 or any guarantee(s) used in any state. The current closure or post-closure estimates, UIC plugging and abandonment costs and liability coverage covered by such a test are shown for each facility: (List each facility by EPA Identification Number, name, address, type of obligation, amount of obligation, mechanism used to meet the obligation, and citation of authority for the mechanism.)

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Amount of closure, post-closure, UIC plugging and abandonment costs, and liability coverage, in the United States not guaranteed by insurance, surety bonds, trust funds or letter of credit (excluding the liability coverage of Line 1)	$_____
*3.	Current assets	$_____
*4.	Current liabilities	$_____
5.	Net working capital (line 3 minus line 4)	$_____
*6.	Tangible net worth	$_____
*7.	If less than 90% of assets are located in the U.S. give total U.S. assets	$_____

		Yes	No
8.	Is line 6 at least $10 million?	___	___
9.	Is line 5 at least 6 times lines 1 + 2?	___	___
10.	Is line 6 at least 6 times lines 1 + 2?	___	___
*11.	Are at least 90% of assets located in the U.S.?	___	___
	If not, complete line 12	___	___
12.	Is line 7 at least 6 times lines 1 + 2?	___	___

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Amount of closure, post-closure, UIC plugging and abandonment costs, and liability coverage, in the United States not guaranteed by insurance, surety bonds, trust funds or letter of credit (excluding the liability coverage of Line 1)	$_____
3.	Current bond rating of most recent issuance and name of rating service	$_____
4.	Date of issuance of bond	$_____
5.	Date of maturity of bond	$_____
*6.	Tangible net worth	$_____
*7.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$_____

		Yes	No
8.	Is line 6 at least $10 million?	___	___
9.	Is line 6 at least 6 times lines 1 + 2?	___	___
*10.	Are at least 90% of assets located in the U.S.?	___	___
	If not, complete line 11	___	___
11.	Is line 7 at least 6 times lines 1 + 2?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in N.J.A.C. 7:26–9(f), as such regulations were constituted on the date shown immediately below:

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

(g) A hazardous waste facility liability endorsement, as required in N.J.A.C. 7:26–9.13, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under N.J.A.C. 7:26–9.13. The coverage applies at (list EPA Identification Number, name and address for each facility) for (insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences", if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of Insurer's liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage if demonstrated, as specified in N.J.A.C. 7:26–9.13.

(c) The Insurer agrees to furnish to the New Jersey Department of Environmental Protection (hereinafter, the "NJDEP") a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the NJDEP.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the NJDEP.

Attach to and forming part of policy No. ____ issued by (name of Insurer), herein called the Insurer, of (address of

Insurer) to (name of insured) of (address) this ____ day of _____, 19____. The effective date of said policy is ____ day of _____, 19_____.

I hereby certify that the wording of this endorsement is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A), as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer) ____

(Type name) _____

(Title), Authorized Representative of (name of Insurer)

_____

(Address of Representative) _____

(h) A certificate of liability insurance, as required in N.J.A.C. 7:26–9.13, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. (Name of Insurer), (the "Insurer"), of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of insured). (The "insured"), of (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under N.J.A.C. 7:26–9.13. The coverage applies at (list EPA Identification Number, name and address for each facility) for (insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number _____, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance, described in Paragraph 1.

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in N.J.A.C. 7:26–9.13.

(c) The Insurer agrees to furnish to the New Jersey Department of Environmental Protection (hereinafter, the "NJDEP") a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the NJDEP.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the NJDEP.

I hereby certify that the wording of this instrument is identical to the wording specified in N.J.A.C. 7:26–9 (Appendix A), as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer) ____

(Type name) _____

(Title), Authorized Representative of (name of Insurer)

_____

(Address of Representative) _____

(i) A corporate guarantee, as specified in N.J.A.C. 7:26–9.13, shall be worded as follows, except the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Liability Coverage

Guarantee is made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert "the State of ___" and insert name of state, if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the corporation's registered agent in the state of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of our subsidiary (owner or operator) of (business address), to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in N.J.A.C. 7:26–9.13(f) and agrees to comply with the reporting requirements for guarantors as specified in N.J.A.C. 7:26–9.13(g).

2. (Owner or operator) owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: EPA Identification Number, name, and address, and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each state where a facility covered by this guarantee is located.). This corporate guarantee satisfies the New Jersey Solid Waste Management Act third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named facility(ies), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the NJDEP Commissioner and to (owner or operator) that the guarantor intends to provide alternate liability coverage as specified in N.J.A.C. 7:26–9.13, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

5. The guarantor agrees to notify the NJDEP Commissioner by certified mail of a bankruptcy proceeding, voluntary or involuntary, under 11 U.S.C. § 101 et seq., naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by the NJDEP Commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in N.J.A.C. 7:26–9.13 in the name of (owner or operator), unless (owner or operator) has done so.

7. Guarantor reserves the right to modify this agreement only to address amendment or modification of, so as to remain in compliance with, the liability requirements set by the State of New Jersey for hazardous waste facilities as specified in N.J.A.C. 7:26–9.13. Any such modification of this agreement shall only become effective if and when it is approved by the Commissioner.

8. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall be subject to the applicable requirements of N.J.A.C. 7:26–9.13 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the NJDEP Commissioner and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the NJDEP Commissioner approves alternative liability coverage complying with N.J.A.C. 7:26–9.13.

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

12. Exclusions.

This corporate guarantee does not apply to:

i. Bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the owner or operator would be obligated to pay in the absence of the contract or agreement.

ii. Any obligation of the owner or operator under a worker's compensation, disability benefits, or unemployment compensation law or any similar law.

iii. Bodily injury to:

(A) An employee of the owner or operator arising from, and in the course of, employment by the owner or operator; or

(B) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of, employment by the owner or operator above.

This exclusion applies:

(1) Whether the owner or operator may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (A) and (B) above.

iv. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

v. Property damage to:

(A) Any property owned, rented, or occupied by the owner or operator;

(B) Premises that are sold, given away or abandoned by the owner or operator if the property damage arises out of any part of those premises;

(C) Property loaned to the owner or operator;

(D) Personal property in the care, custody or control of the owner or operator;

(E) That particular part of real property on which the owner or operator or any contractors or subcontractors working directly or indirectly on behalf of the owner or operator are performing operations, if the property damage arises out of these operations.

I hereby certify that the wording of this guarantee is identical to the wording specified in N.J.A.C. 7:26–9 Appendix A(i) and agree to be bound by the terms herein.

Effective date: _____

(Name of guarantor) _____

(Authorized signature of guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

13. Signature of Notary Public. (The following is an example of the certification of acknowledgement which must accompany the corporate guarantee as specified in this subchapter).

State of _____

County of _____

On this (date), before me personally came (name of officer representing the guarantor) known to me, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public) _____

R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
Amended by R.1985 d.247, effective May 20, 1985.
See: 17 N.J.R. 241(a), 17 N.J.R. 1291(a).
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Deleted address for reviewing appendix.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Requires that a surety bond state that the surety will perform final closure and/or post-closure or fund the standby trust fund if the owner or operator fails to begin closure within 15 days of final order; also require certification of whether firm is operator of UIC facility.
Amended by R.1989 d.609, effective December 18, 1989.
See: 21 N.J.R. 823(a), 21 N.J.R. 3914(c).
Added (g), corporate guarantee.
Administrative Correction; effective February 5, 1990: deleted text at (d).
See: 22 N.J.R. 383(a).

SUBCHAPTER 10. ADDITIONAL OPERATIONAL AND DESIGN STANDARDS FOR HAZARDOUS WASTE FACILITIES

Subchapter Historical Note

Adopted as R.1982 d.324, effective October 4, 1982. See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).

7:26–10.1 Applicability

(a) This subchapter applies to owners and operators of all facilities which treat, store or dispose of hazardous waste except:

1. As specifically provided otherwise in this subchapter; or

2. To owners or operators exempted by the provisions of N.J.A.C. 7:26–8; or

3. To owners and operators exempted from the provisions of N.J.A.C. 7:26–9.

7:26–10.2 Relationship to existing facilities

An owner or operator who has fully complied with the requirements for existing facilities as defined in N.J.A.C. 7:26–1.4 and 7:26–12 must comply with the regulations specified in N.J.A.C. 7:26–11 in lieu of the standards and requirements of this subchapter, until final disposition of the permit application is made.

7:26–10.3 Location standards for new hazardous waste facilities

(a) Floodplains consideration for the siting of new hazardous waste facilities include the following:

1. A facility located in a 100–year floodplain must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100–year flood unless the owner or operator can demonstrate to the Department that procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters.

2. As used in (a)1 above:

i. "100–year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source;

ii. "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding; and

iii. "100–year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

(b) Additional regulations concerning hazardous waste facilities subject to N.J.S.A. 13:1E–49, the Major Hazardous Waste Facilities Siting Act, are set forth in N.J.A.C. 7:26–13.

As amended, R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(b) clarified.

7:26–10.4 Use and management of containers

(a) This section applies to owners and operators of all hazardous waste facilities that store containers of hazardous waste, unless:

1. N.J.A.C. 7:26–10.1 or 10.2 provide otherwise; or

2. The container is "empty" pursuant to N.J.A.C. 7:26–8.4.

(b) Rules on containment in container storage areas include the following:

1. Container storage areas must have a containment system that is capable of collecting and holding spills, leaks, and precipitation. The containment system shall:

i. Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated rainfall until the collected material is detected and removed. The base shall have a permeability rating no greater than 10^{-7} centimeters per second (cm/sec), in addition to adequate structural integrity to withstand the maximum anticipated stress applied to the base due to activities or structures placed in the containment area. The thickness of the base shall be specified in the permit;

ii. Consist of material compatible with the wastes being stored;

iii. Be sloped, or the containment system must be otherwise designed and operated to efficiently drain and remove liquids resulting from leaks, spills or precipitation. Containers shall be protected from contact with accumulated liquids; and

iv. Have sufficient capacity to contain 10 percent of the volume of all of the containers; or the volume of the largest container whichever is greater; additional capacity shall be provided to compensate for any anticipated normal accumulation of rainwater;

2. Run-on into the containment system shall be prevented, unless the Department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (b)1iv above to accommodate any run-on which might enter the system;

3. Accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent blockage or overflow of the collection system; and

4. Spilled or leaked waste shall be removed from the sump or collection area daily.

i. If the collected material is a hazardous waste under N.J.A.C. 7:26–8.1 it shall be managed as a hazardous waste in accordance with all applicable requirements of N.J.A.C. 7:26 (Rules of the Division of Waste Management).

ii. If the collected material is discharged through a point source to waters of the State, the material is subject to the requirements of NJPDES in N.J.A.C. 7:26 and 7:14A (Regulations concerning the New Jersey Pollutant Discharge Elimination System).

(c) An owner or operator shall comply with the closure requirements of this subsection.

1. All hazardous waste and hazardous waste residues shall be removed from the containment system at closure. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed.

2. As throughout the operating period, unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26–8 that the solid waste removed from the containment system at closure is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of N.J.A.C. 7:26.

Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative correction.

7:26–10.5 Tanks

(a) This section applies to owners and operators of facilities that use tanks to treat or store hazardous waste except as N.J.A.C. 7:26–10.1 and N.J.A.C. 7:26–10.2 provide otherwise.

(b) An owner or operator shall comply with the design requirements of this subsection.

1. Tanks shall have sufficient shell strength and, for closed tanks, pressure controls (for example, vents) to assure that they do not collapse or rupture.

2. The Department will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The Department shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Shell thickness reports shall be kept at the facility for the whole life of the tank. Factors to be considered in establishing minimum thickness include the width, height and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and establishing a minimum thickness, the Department shall rely upon appropriate industrial design standards and other available information.

(c) General operating requirements for tanks include the following:

1. Wastes and other materials which are incompatible with the material of construction of the tank shall not be placed in the tank;

2. The owner or operator shall use appropriate controls and practices to prevent overfilling including, but not limited to:

i. Controls to prevent overfilling (for example, waste feed cutoff system or bypass system to a standby tank); and

ii. For uncovered tanks, maintenance of sufficient freeboard to prevent overtopping by wave or wind action or by precipitation; sufficient freeboard shall be defined as: at least 60 centimeters (two feet); or an amount of freeboard other than 60 centimeters based on documentation, acceptable to the Department, that the specified amount of freeboard will prevent overtopping.

(d) Rules on containment in tank storage areas include the following:

1. Above-ground tank storage areas must have a containment system that is capable of collecting and holding spills, leaks and precipitation. The containment system shall:

i. Have a base underlying the tank(s) which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated rainfall until the collected material is detected and removed. The base shall have a permeability rating of no greater than 10 centimeters per second, in addition to adequate structural integrity to withstand the maximum anticipated stress applied to the base due to activities or structures placed in the containment area. The thickness of the base shall be specified in the permit;

ii. Consist of material compatible with the wastes being stored;

iii. Be sloped or otherwise designed and operated to efficiently drain and remove liquids resulting from leaks, spills and precipitation. Tanks shall be protected from contact with accumulated liquids; and

iv. Have sufficient capacity to contain ten percent of the volume of all of the tanks or the volume of the largest tank, whichever is greater. Additional capacity shall be provided to compensate for any anticipated normal accumulation of rainwater.

2. Run-on into the containment system shall be prevented unless the Department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (d)1iv above to accommodate any run-on which might enter the system;

3. Accumulated precipitation shall be removed from the sump or collection area in a timely manner, to prevent blockage or overflow of the collection system; and

4. Spilled or leaked waste shall be removed from the sump or collection area daily.

i. If the collected material is a hazardous waste under N.J.A.C. 7:26–8, it shall be managed as a hazardous waste in accordance with all applicable requirements of this Chapter.

ii. If the collected material is discharged through a point source to waters of the State, it is subject to the requirements of N.J.A.C. 7:14A, regulations concerning the New Jersey Pollutant Discharge Elimination System.

5. Partially above ground tanks shall be constructed and operated in compliance with (d)1–4 above, except that the base required by (d)1 above shall surround the above-ground portion of the tank(s) and the volume of the containment system required in (d)4 above shall be calculated, based upon the above-ground portion of the tank(s).

(e) An owner or operator shall comply with the inspection requirements of this subsection.

1. The owner or operator shall inspect:

i. Overfilling control equipment (for example, waste feed cutoff systems and bypass systems) at least once each operating day to ensure that it is in good working order; continuous monitoring shall be mandatory, unless automatic alarm systems are used, during times when tanks are being filled/used for processing; for the purpose of this subchapter, and N.J.A.C. 7:26–9.4(d), inspection each "operating day" means once every calendar day unless no operations are occurring on-site during this period;

ii. Data gathered from monitoring equipment (for example, pressure and temperature gauges) where present, at least once each operating day to ensure that the tank is being operated according to its design;

iii. Monitoring equipment (for example, pressure and temperature gauges) shall be monitored continuously during use, where no operable automatic alarm system for such equipment exists;

iv. For uncovered tanks, the level of waste in the tank, at least once each operating day to ensure compliance with (c)2ii above;

v. The construction materials of the above-ground portions of the tank, at least each operating day, unless it is determined, and documented by the Department, that conditions warrant more frequent inspection, to detect corrosion or erosion and leaking of fixtures, pipes and seams; and

vi. The area immediately surrounding the tank, at least each operating day, unless it is determined, and documented by the Department that conditions warrant more frequent inspection, to detect obvious signs of leakage (for example, wet spots or dead vegetation).

2. As part of the inspection schedule required in N.J.A.C. 7:26–9.4(f) and in addition to the specific requirements of (e)1 above, the owner or operator shall develop and implement a schedule and procedure for assessing the condition of the tank. The schedule and procedure shall be adequate to detect cracks, leaks, or wall thinning to less than the thickness required under (b) above. Procedures for emptying a tank to allow entry and inspection of the interior shall be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments shall be based on the material of construction of the tank, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during previous inspections, and the characteristics of the waste being treated or stored;

3. As part of the contingency plan required under N.J.A.C. 7:26–9.7 the owner or operator shall specify the procedures to be used to respond to tank spills or leakage, including procedures and timing for immediate removal of leaked or spilled waste and replacement or repair of the tank;

4. As required in N.J.A.C. 7:26–9.4(f) the owner or operator shall remedy any leak, crack, or wall thinning in violation of (b) above or equipment or process malfunction in violation of (c) above which is discovered during inspection.

5. Above ground tanks shall be subjected to periodic integrity testing on a schedule which shall take into consideration the construction materials of the tank, substances stored in the tank, soil conditions, and other circumstances that affect the life of the tank. Acceptable testing methods include hydrostatic or liquid pressure testing, visual inspection, or a system of non-destructive shell thickness testing; and

6. Underground tanks shall be subjected to periodic integrity testing. Acceptable methods are hydrostatic or product pressure testing, or any alternative method acceptable to the Department which reflects the best practical technology standards. Acceptable integrity test accuracy will be specified in the permit.

(f) (Reserved)

(g) (Reserved)

(h) Rules for closure of tanks include the following:

1. At closure, all hazardous waste and hazardous waste residues shall be removed from tanks, discharge control equipment, discharge confinement structures and the containment system; and

2. At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26–8 that the solid waste removed from tank and containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this Chapter.

(i) Special requirements for ignitable or reactive wastes include the following:

1. Ignitable or reactive waste shall not be placed in a tank unless:

i. The waste is treated, rendered, or mixed before or immediately after placement in the tank so that:

(1) The resulting waste, mixture, or dissolution of material no longer meet the definition of ignitable or reactive waste under N.J.A.C. 7:26–8.9 or 8.11, respectively; and

(2) There is compliance with N.J.A.C. 7:26–9.4(e); or

ii. The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

iii. The tank is used solely for emergencies.

2. The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks shall comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2–1 through 2–6 of the "Flammable and Combustible Liquids Code" (1977 or 1981).

3. As required by N.J.A.C. 7:26–9.4(b) the waste analysis plan shall include analyses needed to comply with (i) of this section.

4. As required by N.J.A.C. 7:26–9.4(i), the owner or operator shall place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.

(j) An owner or operator shall comply with the special requirements for incompatible wastes in this subsection.

1. Incompatible wastes, or incompatible wastes and materials shall not be placed in the same tank, unless N.J.A.C. 7:26–9.4(e)2 is complied with.

2. Hazardous waste shall not be placed in an unwashed tank which previously held an incompatible waste or material, unless N.J.A.C. 7:26–9.4(e)2 is complied with.

3. As required by N.J.A.C. 7:26–9.4(b) the waste analysis plan shall include analyses needed to comply with (j) of this section.

4. As required by N.J.A.C. 7:26–9.4(i), the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.

Amended by R.1985 d.318, effective June 17, 1985.
See: 17 N.J.R. 152(a), 17 N.J.R. 1560(b).
(d) added.
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
"Immediate" substituted for "expeditious."

Case Notes

Underground storage tank containing X–726 waste oil; violation of hazardous waste regulations. Department of Environmental Protection and Energy v. Manchester Machinery Salvage Company, Inc., 92 N.J.A.R.2d (EPE) 151.

7:26–10.6 Surface impoundments

(a) General requirements applicable to all surface impoundments:

1. This section applies to owners or operators of facilities that store, treat or dispose of hazardous waste in surface impoundments as defined in N.J.A.C. 7:14A–1.9 or N.J.A.C. 7:26–1.4.

2. The requirements of this section apply to hazardous waste surface impoundments upon which a final disposition of a permit application has been made in accordance with N.J.A.C. 7:26–12.

3. Surface impoundments utilized for the purpose of treating, storing or disposing of hazardous waste shall be designed, operated and maintained in such a manner as to prevent discharges onto the land, into the ground and surface waters, and into the ambient air environment of this State, except for surface water discharges from the surface impoundment which are authorized by a NJPDES permit.

4. All surface impoundments, whether or not they treat, store or dispose of hazardous waste, require a permit issued in accordance with N.J.A.C. 7:14A.

5. Where N.J.A.C. 7:26–10.1 and 10.2 conflict with N.J.A.C. 7:14A, N.J.A.C. 7:26 will prevail.

6. Owners or operators of hazardous waste surface impoundments shall comply with all relevant and applicable provisions of N.J.A.C. 7:26–13.

7. The Department shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of subsections (b), (c) and (e), below, are satisfied.

(b) A surface impoundment that is used for storage, treatment or disposal of hazardous waste shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the surface impoundment to the adjacent subsurface soil or groundwater or surface water during the active life of the surface impoundment, including the closure period as described in N.J.A.C. 7:26–9.8(i), and any post-closure monitoring period as described in N.J.A.C. 7:26–9.9(b).

1. A new surface impoundment, a new surface impoundment at an existing facility, a replacement of an existing surface impoundment, or a lateral expansion of an existing surface impoundment or cell shall be designed with a liner system in accordance with the following:

i. A surface impoundment shall have two or more liners installed to cover all surrounding earth likely to be in contact with the waste or leachate and shall have a leachate collection system between such liners. The liners and leachate collection system shall protect human health and the environment;

ii. The primary or upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature so as to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iii. The secondary or lower liner shall consist of soil at least three feet (.091 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature so as to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iv. The lower liner shall be placed on a foundation capable of providing support;

v. Each liner shall be suitable for the purposes intended and shall be compatible with the hazardous waste placed in the surface impoundment;

vi. The liners shall be constructed of materials having appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure head, physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation;

vii. The distance between the primary and secondary liners shall be a minimum of 12 inches (30.5 centimeters) and shall be filled with a permeable material which will rapidly convey fluids;

viii. The bottom surface of the secondary liner shall be no less than five feet (2.28 meters) above the seasonally high groundwater table; and

ix. A surface impoundment shall have a secondary collection system (leak detection system) constructed between the primary and secondary liner that is designed to monitor for any failure of the primary liner and to collect and remove all leachate that may pass through as a result of primary liner failure;

x. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections present.

2. The owner or operator of an existing surface impoundment which is subject to section 3005(j)(*l*) of the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6925(j)(*l*), shall comply with the design standards of (b)1 above or have initiated closure by November 8, 1988 in accordance with section 3005 of RCRA. The owner or operator of an existing surface impoundment that is not subject to section 3005 of RCRA but is subject to this section of the State's hazardous waste management rules shall comply with the design standards of (b)1 above or shall submit a closure plan to the Department by May 18, 1993 and shall cease receiving hazardous waste by November 18, 1993 and initiate closure in accordance with N.J.A.C. 7:26–9.8.

(c) A surface impoundment that is used for treatment, storage or disposal of hazardous waste shall have the following design characteristics and shall be constructed in accordance therewith:

1. A surface impoundment shall be designed to prevent discharge into the land, the groundwater, and to the surface water (except discharges authorized by a permit issued in accordance with N.J.A.C. 7:14A) during the active life of the surface impoundment including the closure period;

2. A surface impoundment shall be designed and constructed to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave action, rainfall, run-on, human error, and malfunctions of level controllers, alarms, and other equipment and to provide at least 60 centimeters (two feet) of freeboard;

3. A surface impoundment shall be designed with dikes which have sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design;

4. Earthern dikes shall have a protective cover to minimize wind and water erosion and to preserve the structural integrity of the dike;

5. A surface impoundment shall be designed so that any flow of waste into the impoundment can be immediately shut off in the event of an unauthorized discharge to the environment; and

6. The surface impoundment shall be designed with a run-on control system capable of preventing flow onto the surface impoundment during peak discharge from at least a 24–hours, 25 year storm.

7. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections.

(d) The owner or operator of a surface impoundment shall implement a groundwater monitoring program under a NJPDES permit issued pursuant to N.J.A.C. 7:14A–1 et seq. which shall be carried out during:

1. The active life of the facility;

2. The closure period;

3. The post-closure period, except for those surface impoundments where the owner or operator has received approval from the Department to waive post-closure based on;

i. The removal of the following from the impoundment:

(1) Standing liquids;

(2) Hazardous and non-hazardous wastes and waste residues;

(3) Underlying and surrounding contaminated soils and subsoils;

(4) Contaminated system components; and

ii. The absence of actual or potential groundwater pollutants.

(e) Operational and maintenance standards for surface impoundments include the following:

1. A surface impoundment shall be operated and maintained to prevent any overtopping due to normal or abnormal operations, wind and wave action, run-on, overfilling, precipitation, human error, and malfunctions of equipment or any combination thereof to comply with (c)2, above;

2. A surface impoundment shall be operated to maintain at least the amount of freeboard specified by the Department in the permit issued in accordance with N.J.A.C. 7:26–12. The amount of freeboard shall be at least 60 centimeters (two feet);

3. Earthen dikes shall be operated and maintained in accordance with the design requirements of (c)3, above, and shall be kept free of:

i. Vegetation with root systems which could displace the earthen materials upon which the structural integrity of the dike is dependent; and

ii. Burrowing animals which could remove earthen materials upon which the structural integrity of the dike is dependent or which could create leaks through burrows in the dike;

4. Run-on shall be diverted away from a surface impoundment to comply with (c)6, above;

5. Ignitable or reactive waste shall not be placed in a surface impoundment unless either:

i. The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resultant waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26–8.9 and N.J.A.C. 7:26–8.11, respectively; and

(2) There is compliance with N.J.A.C. 7:26–9.4(e); or

ii. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(1) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his or her knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(2) The certification and the basis for it are maintained at the facility; or

iii. The surface impoundment is used solely for emergencies;

6. Incompatible wastes, or incompatible wastes and materials, as defined in N.J.A.C. 7:26–1.4, shall not be placed in the same surface impoundment.

7. Special requirements for ignitable and reactive wastes include the following:

i. As required by N.J.A.C. 7:26–9.4(b), the waste analysis plan shall include analysis needed to comply with (e)5, above; and

ii. The owner or operator shall include the results of each waste analysis and trial test and any documented information in the operating record of the facility required by N.J.A.C. 7:26–9.4(i);

8. Where there has been evidence that there has been contamination of soil or groundwater, the owner or operator shall conduct a groundwater decontamination program or other remedy consistent with the designed use of the aquifer as provided in N.J.A.C. 7:9–6 so that the owner or operator can comply with the limits specified in the NJPDES permit issues pursuant to N.J.A.C. 7:14A and with the groundwater quality standards in N.J.A.C. 7:9–6.

9. The operation of a hazardous waste surface impoundment shall not result in odors being detected offsite by sense of smell in any area of human use or occupancy.

10. The following shall not be placed in a hazardous waste surface impoundment for final disposal:

i. Acute hazardous waste (H), listed in N.J.A.C. 7:26–8.15(a)5, and toxic waste (T), listed in N.J.A.C. 7:26–8.15(a)6, unless:

(1) The surface impoundment is approved in accordance with N.J.A.C. 7:14A and N.J.A.C. 7:26 to treat and/or store one or more of the above listed waste types and will close in accordance with (h)1, below; or

(2) The owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26–7.4(a)10 and 11.

11. Specific requirements for hazardous waste F020, F021, F022, F023, F026, or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026 or F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring techniques.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

12. PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, shall not be placed in a surface impoundment.

(f) Inspection and testing requirements for surface impoundments include the following:

1. During construction and installation, liners and final covers (as required by (b), above, and (h) below) shall be inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots and foreign materials) and as follows, immediately after construction or installation:

i. Earth material liner systems and final covers shall be tested for compaction density, moisture content, and permeability after placement;

ii. Earth material liner systems and final covers shall be inspected for lenses, cracks, channels, root holes, and other structural non-uniformities; or

iii. Synthetic liner materials (for example, membrane, sheets, and coatings) shall be inspected to ensure tight seams and joints and the absence of tears and blisters;

2. At least once each operating day during the active life and on at least two days each week during the closure period, the owner or operator shall inspect:

i. A surface impoundment which contains free liquids to ensure compliance with (e)1 and 2, above, and to detect any leaks or other failure of the surface impoundment;

ii. Each surface impoundment to detect evidence of sudden drops in the level of the contents of the surface impoundment;

iii. Each surface impoundment, including dikes, berms, and vegetation surrounding the dike, to detect any evidence of, or potential for, leaks from the impoundment, erosion of dikes, and to ensure compliance with (e)3, above;

iv. The leak detection system for the presence of liquids; and

v. Equipment for malfunctions or improper operating of overtopping control systems to ensure compliance with (e)1 and 2, above;

3. The owner or operator shall remedy any deterioration or malfunction, or condition of permit non-compliance found as required by N.J.A.C. 7:26–9.4(f);

4. Upon completion of construction or installation, the liners shall be certified by a registered professional engineer stating that:

i. The liner(s) have been installed in accordance with the approved engineering designs; and

ii. The liner(s) have been inspected in accordance with N.J.A.C. 7:26–10.6(f)1 and there are no imperfections or damages; and

5. Prior to the issuance of a permit and after any extended period of time (at least six months) during which the surface impoundment was not in service, the owner or operator shall obtain a certification from a registered professional engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification shall establish that the dike:

i. Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

ii. Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(g) An owner or operator shall comply with the containment system repairs and contingency plan requirements as follows:

1. A surface impoundment shall be removed from service in accordance with (g)2, below, when:

i. The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

ii. The dike leaks.

2. If the surface impoundment is removed from service as required by (g)1, above, the owner or operator shall:

i. Immediately shut off the flow or stop the addition of wastes into the impoundment;

ii. Immediately contain any leakage which has occurred or is occurring;

iii. Immediately cause the leak to be stopped;

iv. If the leak cannot be stopped, empty the impoundment;

v. Notify the Department in writing within seven days after detecting a problem with the surface impoundment; and

vi. Take any other necessary steps to stop or prevent catastrophic failure;

3. If liquid leaks into the leak detection system, the owner or operator shall notify the Department of the leak in writing within seven days after detecting the leak and;

i. Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner and obtain a certification from a qualified engineer that, to the best of his or her knowledge and opinion, the leak has been stopped; or

ii. If a detection monitoring program pursuant to N.J.A.C. 7:14A–6.15(i) has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that detection monitoring program and any other applicable requirement of N.J.A.C. 7:14A–6.15 within a period of time specified in the permit.

4. As part of the contingency plan required in N.J.A.C. 7:26–9.7, the owner or operator shall specify:

i. A procedure for complying with the requirements of (g)2, above;

ii. A containment system evaluation and repair plan describing testing and monitoring techniques;

iii. Procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure;

iv. A schedule of actions to be taken in the event of a possible failure; and

v. A description of the method by which the materials which were previously stored in the surface impoundment will be stored while repairs to the impoundment are being performed;

5. No surface impoundment that has been removed from service in accordance with (g)1, above, may be restored to service, unless:

i. The containment system has been repaired;

ii. The containment system has been certified by a registered professional engineer as meeting the design specifications approved in the permit; and

iii. Written approval has been obtained from the Department;

6. A surface impoundment that has been removed from service in accordance with (g)1, above, and that is not being repaired shall be closed in accordance with (h)1 through 6, below; and

7. All wastes removed from the impoundment shall be managed as a hazardous waste unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26–8 that the solid waste removed from the surface impoundment is not a hazardous waste.

(h) An owner or operator of a surface impoundment shall comply with the following closure requirements:

1. Unless (h)2 below applies, at closure the owner or operator shall remove from the impoundment or decontaminate the following, except that existing surface impoundments closing in accordance with this paragraph shall also comply with (h)4 below:

i. Standing liquids;

ii. Hazardous waste and hazardous waste residues;

iii. Any contaminated containment system components including, among other things, the liner;

iv. Underlying and surrounding contaminated soil, contaminated subsoil, and contaminated groundwater; and

v. Structures and equipment contaminated with hazardous waste and leachate.

2. For existing surface impoundments, which do not comply with (b)1 above and which have not received acute hazardous waste (H) listed in N.J.A.C. 7:26–8.15(a)5 or toxic waste (T) listed in N.J.A.C. 7:26–8.15(a)6, the removal of the materials specified in (h)lii and liii above may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall occur during the post-closure period. In order to obtain such approval, the owner or operator shall:

i. Provide evidence that there has not been any contamination of soil or groundwater to date and that acute hazardous waste (H) listed in N.J.A.C. 7:26–8.15(a)5 or toxic waste (T) listed in N.J.A.C. 7:26–8.15(a)6 was not placed in the surface impoundment;

ii. Provide sufficient financial responsibility, as deemed necessary by the Department, to maintain the integrity of the entombment throughout the post-closure period.

iii. Eliminate free liquids by solidifying or removing liquid hazardous wastes and stabilize remaining hazardous waste and hazardous waste residues to a bearing capacity sufficient to support final cover;

iv. Cover the surface impoundment with a cover with a design in accordance with (h)3 below;

v. Maintain the integrity and effectiveness of the final cover, including making repairs to the liner (required at (h)3iii, below) as necessary to correct the effects of settling, subsidence, erosion and other events;

vi. Maintain and monitor the groundwater monitoring system and comply with all other requirements of (d), above;

vii. Design the final cover so as to promote drainage and prevent run-on and run-off from eroding or otherwise damaging the final cover; and

viii. Comply with the post-closure requirements of N.J.A.C. 7:26–9.9.

3. For existing surface impoundments that will be closed in accordance with (h)2 above, the owner or operator shall place final cover over the surface impoundment which will provide long-term minimization of migration of liquids into the closed impoundment. The final cover shall have a permeability less than or equal to the permeability of any bottom liner system present, natural or artificial, and function with minimum maintenance and consist of the following:

i. A vegetative top cover with the following design characteristics:

(1) A soil material with a minimum thickness of two feet (.6 meters);

(2) The soil shall compact well, not crack excessively when dry, and support a vegetative cover that will effectively minimize erosion; and

(3) Seed bed preparation and planting operations for the vegetative cover shall be done as soon as weather permits and seasonal conditions are suitable for the establishment of the type of vegetation to be used;

ii. A drainage layer with the following design characteristics:

(1) Consist of a material with a minimum thickness of one foot (.3 meters) with a maximum saturated hydraulic conductivity of 3.28×10^{-5} ft/sec (1×10^{-3} cm/sec); and

(2) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the liner system;

iii. A liner system constructed with the following design characteristics:

(1) Two liners:

(2) The upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility;

(3) The lower liner shall consist of a soil material at least three feet (.91 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum hydrostatic head or shall consist of a synthetic material at least 20 mils (.02 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility;

(4) The distance between the upper and lower liner shall be a minimum of six inches (15 centimeters) and shall be filled with a bedding material, which is free of foreign material which could damage the liner; and

(5) The lower liner shall be underlain by a minimum of six inches (15 centimeters) of bedding material which is free of foreign materials;

4. For existing surface impoundments that will be closed in accordance with (h)1 above, the following requirements shall also be complied with:

i. The closure plan for the impoundment under N.J.A.C. 7:26–9.8 must include both a plan for complying with (h)1, above, and a contingent closure plan for complying with (h)2, above, in case not all contaminated subsoils can be practicably removed at closure; and

ii. Owner or operator shall prepare a contingent post-closure plan under N.J.A.C. 7:26–9.9 for complying with this section in case not all underlying and surrounding contaminated soil, contaminated subsoils, contaminated groundwater and hazardous waste residue can be practicably removed at closure.

iii. The closure cost estimate required under N.J.A.C. 7:26–9.10 and N.J.A.C. 7:26–9.11 for closure and post-closure care of an impoundment must include the cost of complying with the contingent closure plan and contingent post-closure plan; and

5. During the post-closure care period, if liquids leak into the leak detection system, the owner or operator shall notify the Department of the leak in writing within seven days after the leak is detected. The Department shall modify the permit to require compliance with the requirements of N.J.A.C. 7:14A–6.15.

6. At closure, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of N.J.A.C. 7:26 unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26–8 that the solid waste removed from the surface impoundment is not a hazardous waste.

R.1984 d.198, effective May 21, 1984.
See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).

Section was "Reserved".
Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
Substantially amended.
Correction: Added operative date to annotation.
See: 18 N.J.R. 1379(a).
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(e)11 added.
Correction: (e) is now (a)5 and (f) is now (a)6 in N.J.A.C. 7:26–8.15.
See: 19 N.J.R. 2165(a).
Amended by R.1987 d.514, effective December 7, 1987.
See: 19 N.J.R. 1482(a), 19 N.J.R. 2278(a).
Added (e)5ii(1) and (2).
Amended by R.1989 d.608, effective December 18, 1989.
See: 21 N.J.R. 1054(a), 21 N.J.R. 3917(a).
Establish equivalency with the Federal surface impoundment closure requirements at 40 C.F.R. § 265.228.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (e)12.
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
In (b), (b)1ii and (b)1iii, added text concerning post-closure period.
In (b)1, added ", a new surface impoundment at an existing facility, a replacement of an existing surface impoundment, or a lateral expansion of an existing surface impoundment or cell".
In (b)1i, added "or more" and "and shall have a leachate collection system between such liners. The liners and leachate collection system shall protect human health and the environment".
In (b)2, substituted old text for new text. Deleted (b)2i and ii.

7:26–10.7 Hazardous waste incinerators

(a) This section applies to owners and operators of facilities that incinerate hazardous waste, except as N.J.A.C. 7:26–1.4, 10.1 and 10.2 provide otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

1. Owners or operators of hazardous waste incinerators as defined in N.J.A.C. 7:26–1.4; or

2. Owners or operators who burn hazardous wastes in boilers or in industrial furnaces, unless exempted under N.J.A.C. 7:26–9.1(c)9 or 10.

3. After consideration of the waste analysis included with Part B of the permit application, the Department, when establishing permit conditions may exempt the applicant from all requirements of this section except (b) and (1) below if the following conditions are met:

i. If the Department finds that the waste to be burned is:

(1) Listed as a hazardous waste in N.J.A.C. 7:26–8.13, 8.14 or 8.15 solely because it is ignitible, corrosive or both; or

(2) Listed as a hazardous waste in N.J.A.C. 7:26–8.13, 8.14 or 8.15 solely because it is reactive for characteristics other than those listed in N.J.A.C. 7:26–8.11(a)4 and 5 will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristics of ignitibility, corrosivity or both, as determined by the test for characteristics of hazardous wastes under N.J.A.C. 7:26–8.9, 8.10, 8.11 and 8.12; or

(4) A hazardous waste solely because it possesses any of the reactivity characteristics described by N.J.A.C. 7:26–8.11(a)1, 2, 3, 6, 7 and 8 and will not be burned when other hazardous waste are present in the combustion zone; and

ii. If the waste analysis shows that the waste contains none of the hazardous constituents listed in N.J.A.C. 7:26–8.16, which would reasonably be expected to be in the waste.

4. The owner or operator of a hazardous waste incinerator may conduct trial burns, subject to the requirement of the short term permit (trial burn permits), as provided in N.J.A.C. 7:26–12.9 and N.J.A.C. 7:27–8.

(b) An owner or operator shall comply with the waste analysis requirements for hazardous waste incinerators in this subsection.

1. The owner or operator shall include an analysis of the waste feed which is sufficient to provide all information as required by the short term permits (trial burn permits), as provided in N.J.A.C. 7:26–12.9.

2. Throughout normal operation the owner or operator must conduct sufficient waste analyses by methods acceptable to the Department to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in the permit (under (f)2 below). The frequency and method of analyses will be determined on a case by case basis and will be specified in the permit.

(c) Designation of principal organic hazardous constituents and hazardous combustion by-products is as follows:

1. Principal organic hazardous constituents (POHC'S) and hazardous combustion by-products shall be treated to the extent required by the performance standards specified in (d) below;

2. For each waste feed to be burned, one or more POHC'S and hazardous combustion by-products will be specified by the applicant and approved by the Department from among those constituents listed in N.J.A.C. 7:26–8.16.

i. This specification will be based on the degree of difficulty of incineration of the organic constituents of the waste feed and its combustion by-products, and their concentration or mass in the waste feed and emissions, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents or by-products which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHC'S or hazardous combustion by-products. Constituents are more likely to be designated as POHC'S or hazardous combustion by-products if they are present in large quantities or concentrations.

ii. Trial POHC'S will be designated for performance of trial burns in accordance with the procedure specified in N.J.A.C. 7:26–1.9 for obtaining trial burn permits. Trial hazardous combustion by-products may be designated under the same procedures.

(d) Performance standards for hazardous waste incinerators include the following:

1. Any person responsible for an incinerator burning hazardous waste shall ensure that it is designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under (f) and (g) below it shall meet the following performance standards:

i. Except as provided in vi below, an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99 percent for each principal organic hazardous constituent (POHC) designated (under (e) below) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(w_{in}-w_{out})\times 100}{w_{in}}$$

Where:

w_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

w_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

ii. An incinerator burning hazardous waste containing more than 0.5 percent chlorine by weight must remove at least 99 percent of the total hydrogen chloride from the exhaust gas; and

iii. The stack emissions of total hydrogen halides from any hazardous waste incinerator shall not exceed 50 parts per million (ppm) by volume adjusted to seven percent oxygen by volume in the wet flue gas using the formula:

$$PPM_7 = PPM_8(14/(21-\%O_2))$$

Where:

PPM_7 is the parts per million adjusted to seven percent oxygen

PPM_8 is the ppm by volume determined to be in the wet flue gas, and

O_2 is the percentage of oxygen determined to be in the wet flue gas.

iv. New hazardous waste incinerators shall not emit particulate matter exceeding 0.03 grains per dry standard cubic foot when corrected to seven percent oxygen using the procedures presented in the Clean Air Act regulations, "Standards of Performance for Incinerators", 40 C.F.R. 60.50, Subpart E except the percent oxygen obtained from stack gas analysis is to be used to correct particulate matter emissions to seven percent oxygen (O_2) using the following formula:

$$C_7 = C \times 14/(21-\%O_2)$$

Where:

C_7 is the concentration of particulate matter corrected to seven percent oxygen (O_2),

C is the concentration of particulate matter as measured by EPA Method 5, and

O_2 is the percentage of oxygen (O_2) in the dry flue gas as measured by EPA Method 3.

v. If auxiliary oxygen, other than that in air, is added to the incinerator, the correction factor shall be established by the Department during review of the Part B application.

vi. An incinerator burning hazardous waste listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under N.J.A.C. 7:26–10.7(e)) in its permit. This performance must be demonstrated on POHC's that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in N.J.A.C. 7:26–10.7(d)1i. In addition, the owner or operator shall provide 14 days prior written notification to the Department of its intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

2. For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under (f) below) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "informational" justifying modification, revocation, or reissuance of a permit under N.J.A.C. 7:26–12.

(e) An owner or operator shall comply with the trial burns or permit modifications requirements for wastes not already included in an effective State of New Jersey hazardous waste facility permit.

1. The owner or operator of a hazardous waste incinerator may burn only wastes specified in an approved permit and only under operating conditions specified for those wastes under (f) below, except in approved trial burns under N.J.A.C. 7:26–12.9. In order to conduct a trial burn for a new type of waste and/or operating condition, a new air pollution "Permit to Construct, Install, or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" pursuant to N.J.A.C. 7:27–8 shall be obtained prior to the trial burn.

2. Wastes, other than hazardous wastes specified in the permit, may be burned only after operating conditions

have been specified in a new permit or a permit modification as applicable. Operating requirements for a new type of waste may be based on either trial burn results or alternative data included with Part B of a permit application made under N.J.A.C. 7:26–12.

(f) Any person responsible for operating a hazardous waste incinerator shall comply with the following:

1. A hazardous waste incinerator shall be operated in accordance with operating requirements specified in the permit. Operating requirements will be specified by the department on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in (e) above and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards of (d) above;

2. Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirement of (d) above) to which the operating requirements apply. For each such waste feed, the permit application shall specify acceptable operating limits including the following conditions:

i. Carbon monoxide (CO) concentration by volume in the stack exhaust gas;

ii. Waste feed rate;

iii. Combustion temperature;

iv. Air feed rate to the combustion system;

v. Allowable variations in incinerator system operating parameters; and

vi. Such other operating requirements as are necessary to ensure that the performance standards of (d) above are met.

3. During start-up and shut-down of an incinerator, hazardous waste shall not be fed into the incinerator unless the incinerator is operating within the conditions of operation (such as temperature, air feed rate) specified in the permit.

4. Fugitive emissions from the combustion zone must be controlled by:

i. Keeping the combustion zone totally sealed against fugitive emissions; or

ii. Maintaining a combustion zone pressure lower than atmospheric pressure; or

iii. An alternative means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

5. A hazardous waste incinerator shall be operated with a functioning system that will automatically cut off all waste feed to the incinerator when critical operating conditions such as, but not limited to, combustion temperature and scrubber liquor pressure drop deviate from limits established under (f)1 above. Critical operating conditions requiring automatic waste feed cut-off systems shall be designated by the Department as part of the permit review process.

6. A hazardous waste incinerator shall cease operation if changes in waste feed, or operating conditions exceed limits designated in its permit.

7. In addition to the requirements of this subchapter, no person shall use or cause to be used any equipment or control apparatus unless:

i. All conditions and provisions of the "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" as required by N.J.A.C. 7:27–8 (Rules of the Bureau of Air Pollution Control) are fulfilled; and

ii. All components connected or attached to, or serving the equipment and/or control apparatus are functioning properly and are in use in accordance with the "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" as required by N.J.A.C. 7:27–8.

8. Specific standards for metals in the waste feed, and stack emissions of metals and acid gases will be specified by the applicant and approved by the Department and will be included as permit conditions.

9. In addition to compliance with all applicable New Jersey statutes and rules, incinerators used to dispose of waste containing PCB hazardous waste shall comply with all requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq. (1976), and Federal regulations promulgated pursuant thereto.

(g) Any person responsible for operating a new hazardous waste incinerator shall insure that the incinerator complies with the following design requirements:

1. The minimum temperature of combustion gases in a defined high temperature zone shall be at least 1800°F. Temperature shall be continuously monitored at point(s) designated by the Department, including the exit of the high temperature zone.

2. The minimum residence time of the combustion gases in the defined high temperature zone shall be at least two seconds, calculated by dividing the high temperature zone volume by the combustion gas volume flow rate at 1800°F.

3. If waste with a total halogen content exceeding 0.5 percent by weight is to be burned, the minimum temperature of combustion gases in a defined high temperature zone shall be at least 2000°F.

4. If waste with a total halogen content exceeding 0.5 percent by weight is to be burned, the minimum residence time of the combustion gases in the defined high temperature zone must be at least two seconds, calculated by dividing the high temperature zone volume by the combustion gas volume flow rate at 2000°F.

5. The design shall address the need for adequate turbulence in the high temperature zone.

6. The Department may grant a variance from the provisions of this subsection if the applicant demonstrates to the satisfaction of the Department that alternative design specifications will achieve the performance specifications of (d)1i above. Any variances issued pursuant to the provisions of this subsection shall be conditional on compliance with any requirements which the Department deems to be necessary.

(h) Monitoring and inspections requirements for hazardous waste incinerators include the following:

1. The owner or operator shall conduct, as a minimum, the following monitoring while incinerating hazardous waste:

i. Combustion temperature, waste feed rate, auxiliary fuel feed rate, and air feed rate shall be monitored on a continuous basis.

ii. Carbon monoxide (CO) and oxygen (O_2) shall be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

iii. Upon request by the Department, sampling and analysis of the waste and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the performance standards of (d) above.

iv. Upon request by the Department, monitoring on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere shall be conducted for sulfur dioxide, total organics, opacity, or any other contaminant or parameter specified by the Department.

2. This incinerator and associated equipment (such as pumps, valves, conveyors, pipes) shall be completely inspected at least daily for leaks, spills, and fugitive emissions. All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.

3. This monitoring and inspection data shall be recorded and the records shall be placed in the operating log required by N.J.A.C. 7:26–9.4.

(i) (Reserved)

(j) (Reserved)

(k) (Reserved)

(*l*) Closure requirements for hazardous waste incinerators include the following:

1. The owner or operator shall remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator site.

2. The scrubber water shall be tested and approval received from the Department before discharge to publicly owned treatment works (POTW) or to a navigable water.

3. Unless the owner or operator demonstrates to the Department that the residue removed from the incinerator is not a hazardous waste, then the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements of N.J.A.C. 7:26 (Rules of the Bureau of Solid Waste Management).

(m) The Department intends to propose modifications to this rule concerning hazardous waste incinerators, after evaluation of EPA's interim final amendments published in the Federal Register (Vol. 47, No. 122, pg. 27520).

Amended by R.1984 d.581, effective December 17, 1984.
See: 16 N.J.R. 2046(a), 16 N.J.R. 3432(a).
Deleted text for (a)1 and substituted new text.
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(d)1vi added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Renumbered (a)1 and 2 to (a)3 and 4 and inserted new text in (a)1 and 2.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (f)9.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Corrected the formula for destruction removal efficiency (DRE) at hazardous waste incinerators.

7:26–10.8 Hazardous waste landfills

(a) The requirements of this section apply to owners and operators of hazardous waste landfills upon which a final disposition of a permit application has been made in accordance with N.J.A.C. 7:26–12.

(b) A landfill that is used for the disposal of hazardous waste shall be in compliance with the applicable provisions of N.J.A.C. 7:14A, including the permit provisions contained therein, and shall also comply with all relevant and applicable provisions of N.J.A.C. 7:26–13.

(c) A landfill that is used for the disposal of hazardous wastes shall have a liner system that is designed, construct-

ed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water during the active life of the landfill, including the closure period as described in N.J.A.C. 7:26–9.8(i), and any post-closure monitoring period as described in N.J.A.C. 7:26–9.9(b).

1. A new landfill or cell, a new landfill or cell at an existing facility, a replacement of an existing landfill or cell, or a lateral expansion of an existing landfill or cell shall be designed, constructed, and installed with a liner system in accordance with the following:

i. The liner system shall consist of two or more liners which shall be installed to cover all surrounding earth likely to be in contact with waste or leachate and with a leachate collection system installed between such liners. The liners and leachate collection system shall protect human health and the environment;

ii. The primary or upper liner shall consist of a synthetic material at least 40 mils (0.04 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iii. The secondary or lower liner shall consist of soil at least five feet (1.5 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of synthetic material at least 40 mils (0.04 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iv. The secondary or lower liner shall be placed on a foundation capable of providing support to the liner;

v. Each liner shall be suitable for the purposes intended and shall be compatible with the hazardous waste placed in the landfill.

vi. The liners shall be designed, constructed and installed with materials having appropriate chemical properties and sufficient strength and of sufficient thickness to prevent failure due to pressure head, physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation;

vii. The distance between the primary and secondary liners shall be a minimum of 12 inches (30.5 centimeters) and shall be filled with a permeable material which will rapidly convey fluids;

viii. The bottom surface of the secondary liner shall be no less than five feet (1.5 meters) above the seasonally high groundwater table;

ix. A minimum of a two foot (61 centimeters) layer of sand/gravel, which shall to the maximum extent possible have a coefficient of uniformity equal to or less than 2.5 and shall have a permeability equal to or greater than 1×10^{-2} cm/sec, shall be placed over the primary liner to provide protection for the liner and to allow for an effective drainage path for the leachate; and

x. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections.

2. An existing hazardous waste landfill does not have to meet the specific liner requirements in (c)1i through x, above, but shall be underlain by a minimum of two liners.

(d) Landfills that are used for the disposal of hazardous wastes shall have the following systems;

1. A leachate collection and removal system, which shall include a system for either the treatment or the disposal, or both, of collected leachate, to handle all leachate generated within the landfill and which shall be:

i. Designed to ensure that the leachate depth over the primary liner does not exceed one foot (30.5 cm);

ii. Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated;

iii. Constructed of material of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill;

iv. Designed and operated to function without clogging through the scheduled post-closure period; and

v. Constructed such that any leachate formed will flow by gravity into collection sumps from which the leachate will be removed, treated, and/or disposed;

2. A secondary collection system (leak detection system) constructed between the primary and secondary liner and designed to monitor for any failure of the primary liner and to collect and remove all leachate that may pass through as a result of primary liner failure;

3. A gas monitoring system, a gas monitoring program, and a gas venting program as specifically required by the Department. If gas is detected migrating outside the boundary of the landfill, the Department shall be notified immediately and an abatement program acceptable to the Department shall be submitted within 30 days of detection. The requirements of N.J.A.C. 7:27 are applicable;

4. A run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 24–hour, 25 year storm; and

5. A run-off management system to collect and control at least the water volume resulting from a 24–hour, 25 year storm.

6. Upon completion of construction or installation, the owner or operator shall obtain a certification by a New Jersey licensed professional engineer stating that the systems contained in this subsection have been constructed in accordance with approved engineering plans and specifications and there are no damages or imperfections present.

(e) Operational standards for hazardous waste landfills include the following:

1. Collection and holding facilities associated with run-on and run-off shall be managed after storms to maintain design capacity of the system;

2. Run-off from active points of a hazardous waste landfill shall be collected in the run-off management system and managed as a solid waste pursuant to N.J.A.C. 7:26 and as a discharge pursuant to 7:14A if discharged to surface waters or groundwaters of the State;

3. Leachate collected in the collection sumps required in (d)1v, above shall be removed, treated, and/or disposed of in accordance with the regulations concerning hazardous waste contained in N.J.A.C. 7:26 and in accordance with the regulations contained in N.J.A.C. 7:14A;

4. The owner or operator of a hazardous waste landfill shall prevent the migration of pollutants into the surface or groundwater;

5. A groundwater monitoring program shall be established to prevent the contamination of groundwater pursuant to N.J.A.C. 7:14A–6.15 and shall be carried out during the active life of the facility, the closure period, and during the post-closure period;

6. The owner or operator of a hazardous waste landfill containing hazardous waste which is subject to dispersal by wind shall:

i. Cover or otherwise manage the hazardous waste landfill so that wind dispersal of hazardous waste is eliminated; and

ii. Apply daily or intermediate cover, if determined to be necessary and required by the Department;

7. No waste disposal or disposal operation shall occur within 200 feet (60.6 meters) of the property boundary;

8. Ignitable, corrosive and reactive waste shall not be placed in a hazardous waste landfill, unless the waste is treated, rendered, or mixed before placement in the hazardous waste landfill so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable, corrosive or reaction waste under N.J.A.C. 7:26–8.10, and N.J.A.C. 7:26–8.11, respectively;

9. Incompatible wastes, or incompatible wastes and materials, as defined in N.J.A.C. 7:26–1.4, shall not be placed in the same hazardous waste landfill cell;

10. The following shall not be placed in a hazardous waste landfill:

i. Bulk liquids;

ii. Non-containerized liquid waste;

iii. Waste containing free liquid, whether or not absorbents have been added;

iv. Acute hazardous waste (H) as listed in N.J.A.C. 7:26–8.15(a)5 and toxic waste (T) as listed in N.J.A.C. 7:26–8.15(a)6, unless the owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26–7.4(a); or

v. PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4;

11. A container holding liquid waste or waste containing free liquids shall not be placed in a hazardous waste landfill, unless;

i. The container is very small, such as an ampule; or

ii. The container is a lab pack as described in (g), below, and is disposed of in accordance with (g), below;

12. Unless they are very small, such as an ampule, containers must be either:

i. At least 90 percent full when placed in a landfill; or

ii. Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of a hazardous waste landfill;

13. The owner or operator of a hazardous waste landfill shall neither accept nor dispose of hazardous wastes subsequent to the detection of any liquid in the secondary collection system unless the owner or operator has obtained written authorization from the Department for continued disposal.

i. The owner or operator shall comply with any conditions contained in said authorization; and

ii. The owner or operator shall again cease acceptance and disposal when the circumstances regarding the liquid in the secondary detection system change adversely;

14. If leachate is detected in the secondary collection system, it shall be pumped out and disposed of properly;

15. The leachate collection and removal system shall be operated so that the leachate depth over the primary liner does not exceed one foot (30 cm);

16. Except as otherwise provided by (e)11, above, containers may not be placed in a hazardous waste landfill unless:

i. The container is very small, such as an ampule; or

ii. The container is at least 90 percent full when placed in the landfill;

17. The operation of a hazardous waste landfill shall not result in odors being detected off-site by sense of smell in any area of human use or occupancy;

18. The owner or operator of a hazardous waste landfill shall control insects and rodents when necessary and when determined to be necessary and required by the Department; and

19. The owner or operator of a hazardous waste landfill shall prevent dust from interfering with landfill operation or from causing safety hazardous and nuisances.

20. Liquid waste or waste containing free liquids that have not been mixed with an absorbent material so that the resultant waste is not a liquid or does not contain free liquids shall not be placed in a hazardous waste landfill unless the absorbent material is approved by the Department for this use.

21. Specific requirements for hazardous waste F020, F021, F022, F023, F026 or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, and F027 shall not be placed in landfills unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring requirements.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

22. The owner or operator of a hazardous waste landfill shall, before accepting the waste, use the following test to determine the presence or absence of free liquids in either a containerized or a bulk waste: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW–846).

(f) The owner or operator of a landfill shall include the following items as part of the operating record required by N.J.A.C. 7:26–9.4(i):

1. A map showing the locations, dimensions, and depth of each cell, with respect to permanently surveyed benchmarks;

2. The contents of each cell;

3. The approximate location of each hazardous waste within each cell; and

4. The records and results of waste analysis performed as specified in N.J.A.C. 7:26–10.8(e)22.

(g) Small containers of hazardous waste in overpacked drums (such as lab packs) may be placed in a hazardous waste landfill if the following conditions are met:

1. Hazardous waste shall be packaged in non-leaking inside containers which shall be:

i. Designed and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste;

ii. Tightly and securely sealed; and

iii. Of the size and type specified in the federal Department of Transportation (U.S. DOT) hazardous materials regulations (49 C.F.R. Parts 173, 178, and 179);

2. The inside containers shall be overpacked in an open head U.S. DOT-specification (40 C.F.R. Parts 178 and 179) metal shipping container of no more than 416–liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers.

i. The metal outer container shall be full after packing with inside containers and absorbent material;

ii. The absorbent material shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with N.J.A.C. 7:26–9.4(e);

3. Incompatible wastes, as defined in N.J.A.C. 7:26–1.4, shall not be placed in the same outside container; and

4. Reactive waste, other than cyanide- or sulfide-bearing waste as defined in N.J.A.C. 7:26–8.11, shall be treated or rendered non-reactive prior to packaging in accordance with (g)1, 2 and 3, above. Cyanide- and sulfide-bearing reactive waste may be packed in accordance with (g)1, 2 and 3, above, without first being treated or rendered non-active.

(h) Inspection and testing requirements for hazardous waste landfills include the following:

1. During construction and installation, linears and final covers (as required by (c), above and (i)2111, below) shall be inspected for uniformity, damages, and imperfections (for example, holes, cracks, thin spots and foreign materials) and also as follows, immediately after construction or installation:

i. Earthen material liner systems and final covers shall be tested for compaction density, moisture content, and permeability after placement;

ii. Earthen material liner systems and final covers shall be inspected for imperfections including lenses, cracks, channels, root holes, and other structural non-uniformities; and

iii. Synthetic liner materials and final covers shall be inspected to ensure tight seams and joints and the absence of tears and blisters;

2. At least once each operating day during the active life of the landfill and at least once in two days each week during the closure period, the owner or operator shall inspect the hazardous waste landfill to detect evidence of any of the following:

i. Improper operation of the run-on and run-off control systems;

ii. Improper operation of wind dispersal control systems;

iii. The presence of liquids in the leak detection system; and

iv. The presence of leachate in the proper functioning of leachate collection and removal systems.

(i) Closure and post-closure requirements for hazardous waste landfills include the following:

1. At final closure of the landfill or upon closure of any cell, the owner or operator shall place final cover over the hazardous waste landfill to provide long-term minimization of migration of liquids through the closed landfill;

2. The final cover shall function with minimum maintenance and shall consist of the following:

i. A vegetative top cover with the following design characteristics:

(1) Consist of a soil material with a minimum thickness of two feet (.60 meters);

(2) The soil shall compact well, not crack excessively when dry, and support a vegetative cover that will effectively minimize erosion; and

(3) Seed bed preparation and planting operations for the vegetative cover shall be done as soon as weather permits and seasonal conditions are suitable for the establishment of the type of vegetation to be used;

ii. A drainage layer which will promote drainage and minimize erosion or abrasion of the cover, and which has the following design characteristics:

(1) Consist of a material with a minimum thickness of one foot (.3 meters) with a minimum saturated hydraulic conductivity of 3.28×10^{-5} ft/sec (1×10^{-3} cm/sec); and

(2) Be designed to allow for an effective drainage path for flow through the vegetative top cover to minimize head on the liner system;

iii. A liner system constructed with the following design characteristics:

(1) Two liners;

(2) The upper liner shall consist of a synthetic material at least 30 mil (.03 inches) thick which has a permeability less than or equal to the permeability of the bottom liner and is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility:

(3) The lower liner shall consist of soil at least three feet (.91 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec), under maximum hydrostatic head or shall consist of a synthetic material at least 20 mils (.02 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility;

(4) The distance between the upper and lower liner shall be a minimum of six inches (15 centimeters) and shall be

filled with a bedding material which is free of foreign material which could damage the liner; and

(5) The lower liner shall be underlain by a minimum of six inches (15 centimeters) of bedding material which is free of foreign materials; and

iv. The design of the final cover shall accommodate settling and subsidence so that the cover's integrity is maintained;

3. In the closure plans required in N.J.A.C. 7:26–9.8, the owner or operator shall address the following objectives and indicate how they will be achieved;

i. Prevention of pollution migration from the landfill via groundwater, surface water, air, and methane gas through the grounds;

ii. Prevention of surface water infiltration, including prevention of pooling; and

iii. Prevention of erosion.

4. The owner or operator shall consider at least the following factors in addressing the closure and post-closure objectives of (i)3i, ii, and iii, above.

i. Type and amount of hazardous waste and hazardous waste constituents in the landfill;

ii. The mobility and the potential rate of migration of the hazardous waste constituents;

iii. Site location, topography, and surrounding land use, with respect to potential effects of pollutant migration;

iv. Climate, including amount, frequency, and pH of precipitation;

v. Characteristics of the cover material including final surface contours, thickness, porosity and permeability, slope, length and run of slope, and type of vegetation on the cover;

vi. Geological and soil profiles of the site; and

vii. Surface and subsurface hydrology of the site.

5. In addition to the post-closure requirements of N.J.A.C. 7:26–9.9, the owner or operator of a hazardous waste landfill shall:

i. Maintain the function and integrity of the final cover, including making repairs to the liner as necessary to correct the effects of settling subsidence, erosion or other events;

ii. Continue to operate the leachate collection and removal system until the end of the post-closure period so that the leachate depth over the primary liner does not exceed one foot;

iii. Maintain and monitor the leak detection system and notify the Department within seven days if a leak is detected in the leak detection system and take all remedial action required by the Department;

iv. Prevent run-on and run-off from eroding or otherwise damaging the final cover;

v. Maintain and monitor the gas collection and control system to control the vertical and horizontal escape of gases;

vi. Maintain and monitor the ground water monitoring system and comply with the requirements of N.J.A.C. 7:14A–6.15;

vii. Protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26–10.8(f); and

viii. Restrict access to the hazardous waste landfill as appropriate for its post-closure use.

(j) The Department shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of (c), (d) and (e), above, are satisfied.

R.1984 d.198, effective May 21, 1984.
See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).
Section was "Reserved".
Amended by R.1986 d.135, effective April 21, 1986 (operative September 25, 1986).
See: 17 N.J.R. 779(a), 18 N.J.R. 841(b).
(e)10iv added.
Correction: Added operative date to annotation.
See: 18 N.J.R. 1379(a).
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(e)21 added.
Amended by R.1987 d.307, effective July 20, 1987.
See: 19 N.J.R. 441(a), 19 N.J.R. 1293(b).
Substantially amended.
Correction: (e) is now (a)5 and (f) is now (a)6 in N.J.A.C. 7:26–8.15.
See: 19 N.J.R. 2165(a).
Amended by R.1987 d.532, effective December 21, 1987.
See: 18 N.J.R. 2356(a), 19 N.J.R. 2424(a).
(e)22 added.
Notice of Petition.
See: 22 N.J.R. 862(b).
Notice of Action on Petition.
See: 22 N.J.R. 995(a).
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (e)10, v.
Administrative Correction to (e)20: Added "not"; added missing text "free liquids shall . . . waste landfill unless."
Public Notice: Withdrawal of Petition for rulemaking concerning operational requirements for hazardous waste landfills.
See: 22 N.J.R. 3165(b).
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
In (c), added text concerning post-closure monitoring period.
In (c)1, added "or cell, a new landfill or cell at an existing facility or cell, a replacement of an existing landfill or cell, or a lateral expansion of an existing landfill or cell".
In (c)1i, added "or more" and "and with a leachate collection system installed between such liners. The liners and leachate collection system shall protect human health and the environment".
In (c)1ii and iii, changed "0.4 inches" to "0.04 inches"; added ", and post-closure period of the facility".
In (e)10iii, added "whether or not absorbents have been added".

Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative corrections.

SUBCHAPTER 11. ADDITIONAL REQUIREMENTS FOR HAZARDOUS WASTE FACILITIES OPERATING UNDER EXISTING FACILITY STATUS

Subchapter Historical Note

Adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b).

7:26–11.1 Applicability

(a) The requirements of this subchapter apply to the owner or operator of an existing hazardous waste facility (as defined in N.J.A.C. 7:26–1.4) who is eligible to operate the facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26–12.3.

(b) The requirements of this subchapter do not apply to:

1. Owners and operators specifically exempted in this subchapter; or

2. Owners and operators exempted by the provisions of N.J.A.C. 7:26–8; or

3. Owners and operators exempted in N.J.A.C. 7:26–9.1.

(c) The following hazardous wastes shall not be managed at existing hazardous waste facilities subject to regulation under this subchapter:

1. Hazardous wastes which are listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026 or F027 unless:

i. The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

ii. The waste is stored in tanks or containers;

iii. The waste is burned in incinerators that are certified pursuant to the standards and procedures in N.J.A.C. 7:26–11.5; or

iv. The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in N.J.A.C. 7:26–11.6.

Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(c) added.

7:26–11.2 Tanks

(a) General operating requirements for tanks include the following:

1. Treatment or storage of hazardous waste in tanks shall comply with N.J.A.C. 7:26–9.4(e)(2);

2. Hazardous wastes or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life;

3. Uncovered tanks shall be operated to ensure at least two feet (60 centimeters) of freeboard, unless the tank is equipped with a containment structure, a drainage control system, or a diversion structure with a capacity that equals or exceeds the volume of the top two feet (60 centimeters) of the tank; and

4. Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow.

(b) Waste analysis and trial tests requirements for tanks include the following:

1. In addition to the waste analysis required by N.J.A.C. 7:26–9.4(b), whenever a tank is to be used to chemically treat or store a hazardous waste which is substantially different from waste previously treated or stored in that tank, or chemically treat hazardous waste with a substantially different process than any previously used in that tank, the owner or operator shall, before treating or storing the different waste using the different process:

i. Conduct waste analyses and trial treatment or storage tests; or

ii. Obtain written, documented information on similar storage or treatment of similar waste under similar operating conditions; to show that this proposed treatment or storage will meet all applicable requirements of (a)1 and (a)2 above; and

2. As required by N.J.A.C. 7:26–9.4(i), the owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

(c) The owner or operator of a tank shall inspect, where present:

1. Discharge control equipment, at least once each operating day, to ensure that it is in good working order;

2. Data gathered from monitoring equipment, at least once each operating day, to ensure that the tank is being operated according to its design;

3. The level of waste in the tank, at least once each operating day, to ensure compliance with (a)3 above;

4. The construction materials of the tank, at least weekly, to detect corrosion or leaking of fixtures or seams; and

5. The construction materials of, and the area immediately surrounding, discharge confinement structures, at least weekly, to detect erosion or obvious signs of leakage.

(d) At closure, all hazardous waste and hazardous waste residues shall be removed from tanks, discharge control equipment, and discharge confinement structures.

(e) Special requirements for ignitable or reactive waste include the following:

1. Ignitable or reactive waste shall not be placed in a tank, unless:

i. The waste is treated, rendered, or mixed before or immediately after placement in the tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26–8.9 or there is compliance with N.J.A.C. 7:26–8.11 and N.J.A.C. 7:26–9.4(e)(2); or

ii. The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

iii. The tank is used solely for emergencies; and

2. The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks shall comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2–1 through 2–6 of the "Flammable and Combustible Code–1977".

(f) Special requirements for incompatible wastes include the following:

1. Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same tank, except in compliance with N.J.A.C. 7:26–9.4(e)(2); and

2. Hazardous waste shall not be placed in an unwashed tank which previously held incompatible waste or material, except in compliance with N.J.A.C. 7:26–9.4(e)2.

7:26–11.3 Surface impoundments

(a) A surface impoundment shall maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or storm. There shall be at least two feet (60 centimeters) of freeboard.

(b) All earthen dikes shall have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

(c) Waste analysis and trial test requirements for surface impoundments include the following:

1. In addition to the waste analyses required by N.J.A.C. 7:26–9.4(b) whenever a surface impoundment is to be used to chemically treat a hazardous waste which is substantially different from water previously treated in that impoundment or chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator shall, before treating the different waste or using the different process:

i. Conduct waste analyses and trial treatment tests scale; or

ii. Obtain written, documented information on similar treatment of similar waste under similar operating conditions, to show that this treatment will comply with N.J.A.C. 7:26–9(e)2; and

2. As required by N.J.A.C. 7:26–9.4(i), the owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

(d) The owner or operator shall inspect:

1. The freeboard level at least once each operating day to ensure compliance with (a) above; and

2. The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

(e) At closure, the owner or operator shall comply with the requirements of N.J.A.C. 7:26–10.6(h)1 through 6.

(f) Ignitable or reactive waste shall not be placed in a surface impoundment, unless:

1. The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

i. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26–8.9 or N.J.A.C. 7:26–8.11; and

ii. There is compliance with N.J.A.C. 7:26–9.4(e)(2); or

2. The surface impoundment is used solely for emergencies.

(g) Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same surface impoundment, unless there is compliance with N.J.A.C. 7:26–9.4(e)2.

(h) PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, shall not be placed in a surface impoundment.

(i) The owner or operator of a surface impoundment shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26–10.6(b) for each new surface impoundment at an existing facility, replacement of an existing surface impoundment, or lateral expansion of an existing surface impoundment that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(j) The owner or operator of a surface impoundment referred to in (h) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of such notice.

Amended by R.1984 d.198, effective May 21, 1984.
See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).
(e)1–4 replaced by N.J.A.C. requirement.
Amended by R.1989 d.608, effective December 18, 1989.
See: 21 N.J.R. 1054(a), 21 N.J.R. 3917(a).
Established equivalency with the Federal impoundment closure requirements at 40 C.F.R. § 265.228.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (h).
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
Added (i) and (j).

7:26–11.4 Hazardous waste landfills

(a) Operational standards for hazardous waste landfills include the following:

1. Run-on shall be diverted away from all portions of a hazardous waste landfill;

2. Run-off from active portions of a hazardous waste landfill shall be collected and handled as a solid waste pursuant to N.J.A.C. 7:26–8;

3. The owner or operator of a hazardous waste landfill containing hazardous waste which is subject to dispersal by wind shall cover or otherwise manage the hazardous waste landfill so that the wind dispersal of the hazardous waste is eliminated;

4. No waste disposal or disposal operation shall occur within 200 feet (60.6 meters) of the property boundary;

5. Daily and intermediate cover shall be applied at the facility in accordance with N.J.A.C. 7:26–2;

6. Ignitable or reactive waste shall not be placed in a hazardous waste landfill, unless the waste is treated, rendered, or mixed before placement in the hazardous waste landfill so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable, corrosive or reactive waste under N.J.A.C. 7:26–8.9 through N.J.A.C. 7:26–8.11;

7. Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same hazardous waste landfill cell;

8. Bulk or non-containerized liquid waste or waste containing free liquids, whether or not absorbents have been added, shall not be placed in a hazardous waste landfill;

9. A container holding liquid waste or waste containing free liquids shall not be placed in a hazardous waste landfill, unless:

i. The container is designed to hold liquids or free liquids for a use other than storage, such as a battery; or

ii. The container is very small, such as an ampule;

10. Unless they are very small, such as an ampule, containers must be either:

i. At least 90 percent full when placed in the landfill; or

ii. Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of a hazardous waste landfill; and

11. The owner or operator of a hazardous waste landfill shall not continue to dispose of hazardous wastes subsequent to the detection of any liquid in the secondary collection system unless the owner or operator has obtained written authorization from the Department for continued disposal.

12. The owner or operator of a hazardous waste landfill shall, before accepting the waste, use the following test to determine the presence or absence of free liquids in either a containerized or bulk waste: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW–846).

13. PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4, shall not be placed in a hazardous waste landfill.

(b) The owner or operator of a hazardous waste landfill shall maintain in the operating record required in N.J.A.C. 7:26–9.4(i):

1. On a map, the exact location and dimensions, including depth of each cell with respect to permanently surveyed bench marks;

2. The contents of each cell and the appropriate location of each hazardous waste type within each cell; and

3. The records and results of waste analysis performed as specified in N.J.A.C. 7:26–11.4(a)12.

(c) The owner or operator of a hazardous waste landfill shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26–10.8(c) with respect to each new landfill or cell at an existing facility, replacement of an existing landfill or cell, or lateral expansion of an existing landfill or cell that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(d) The owner or operator of a landfill or cell referred to in (c) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of that notice.

(e) Closure and post-closure requirements for hazardous waste landfills include the following:

1. The owner or operator shall place final cover over the hazardous waste landfill as required by the Department.

i. The closure plan of N.J.A.C. 7:26–9.8 must specify the function and design of the cover.

ii. The post-closure care plan of N.J.A.C. 7:26–9.9 must include the post-closure care requirements of (c)4 below.

2. In the closure and post-closure plans, the owner or operator shall address the following objectives and indicate how they will be achieved:

i. Prevention of pollutant migration from the facility via ground-water, surface water, and air;

ii. Prevention of surface water infiltration, including prevention of pooling; and

iii. Prevention of erosion.

3. The owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of (c)2 above:

i. Type and amount of hazardous waste and hazardous waste constituents;

ii. The mobility and the potential rate of migration of the hazardous waste constituents;

iii. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;

iv. Climate, including amount, frequency, and pH of precipitation;

v. Characteristics of the cover material including, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

vi. Geological and soil profiles, and surface and subsurface hydrology of the site; and

4. In addition to the requirements of N.J.A.C. 7:26–9.9, the post-closure period, the owner or operator of a hazardous waste landfill shall:

i. Maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

ii. Maintain and monitor the leachate collection, removal, and treatment system (if there is one present in the hazardous waste landfill) to prevent excess accumulation of leachate in the system;

iii. Maintain and monitor the gas collection and control system (if there is one present in the hazardous waste landfill) to control the vertical and horizontal escape of gases;

iv. Protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26–10.4(b)1;

v. Restrict access to the hazardous waste landfill as appropriate for its post-closure use.

vi. Maintain and monitor the groundwater monitoring systems as per N.J.A.C. 7:26–9.5 and N.J.A.C. 7:14A–6; and

vii. Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(f) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

1. Provide long-term minimization of migration of liquids through the closed landfill;

2. Function with minimum maintenance;

3. Promote drainage and minimize erosion or abrasion of the cover;

4. Accommodate settling and subsidence so that the cover's integrity is maintained; and

5. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(c)1i and ii added.
Amended by R.1987 d.307, effective July 20, 1987.
See: 19 N.J.R. 441(a), 19 N.J.R. 1293(b).
Substantially amended.
Amended by R.1987 d.532, effective December 21, 1987.
See: 18 N.J.R. 2356(a), 19 N.J.R. 2424(a).
Added (a)12 and (b)3.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (a)13.
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
In (a)8 added "whether or not absorbents have been added".
Deleted (a)8i and ii.
Added (c) and (d).
Recodified existing (c)-(d) as (e)-(f).
Administrative Correction.
See: 25 N.J.R. 4595(b).

7:26–11.5 Hazardous waste incinerators

(a) This section applies to owners and operators of facilities that incinerate hazardous waste, except as N.J.A.C. 7:26–1.4, 10.1 and 10.2 provide otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

1. Owners or operators of hazardous waste incinerators as defined in N.J.A.C. 7:26–1.4; or

2. Owners or operators who burn hazardous wastes in boilers or in industrial furnaces, unless exempted under N.J.A.C. 7:26–9.1(c)9 or 10.

(b) An owner or operator shall comply with the general operating requirements of this subsection.

1. Before adding hazardous waste, the owner or operator shall bring the incinerator to steady state (normal) conditions of operation—including steady state operating temperatures and air flow—using auxiliary fuel or other means.

2. The total amount of mercury in the waste feed shall not exceed 2000 grams per day.

3. If the total amount of lead in the waste feed is to exceed 1000 grams per day, the owner or operator shall:

i. Determine by use of an air quality simulation model approved by the Department, whether the stack emissions of lead would jeopardize or contribute to a contravention of the National Ambient Air Quality Standards (NAAQS) for lead; and

ii. Institute a feed limitation for lead, approved by the Department, which protects the NAAQS for lead.

4. The stack emissions of sulfur dioxide shall not exceed 310 parts per million by volume adjusted to 12 percent carbon dioxide by volume in the wet flue gas.

5. The stack emissions of hydrogen halides shall not exceed 50 parts per million by volume adjusted to seven percent oxygen by volume in the wet flue gas. An incinerator burning hazardous waste containing more than 0.5 percent chlorine by weight shall be controlled to remove at least 99 percent of the hydrogen chloride from the exhaust gas.

6. If auxiliary oxygen, other than that in air, is added to the incinerator, the adjustment factor for adjusting concentration to 7 percent oxygen by volume shall be established by the Department during review of the part B application. When auxiliary oxygen is not added to the incinerator, the adjustment factor shall be $14(21 - \% O_2)$, where $\% O_2$ is the percentage oxygen in the wet flue gas.

(c) Waste analysis requirements for hazardous waste incinerators include the following:

1. In addition to the waste analyses required by N.J.A.C. 7:26–9.4(b), the owner or operator shall sufficiently analyze any waste which has not been previously burned in the incinerator to enable the owner or operator to establish steady state (normal) operating conditions and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine (unless the owner or operator has written, documented data that show that the element is not present):

i. Heating value of the waste;

ii. Halogen content and sulfur content in the waste; and

iii. Concentrations in the waste of lead and mercury; and

2. As required by N.J.A.C. 7:26–9.4(i), the owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

(d) The owner or operator shall conduct, as a minimum, the following monitoring and inspections when incinerating hazardous waste:

1. Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

2. The stack plume (emissions) shall be observed at least hourly for normal color and opacity, unless darkness or weather conditions prohibit. The operator shall immediately make any indicated operating corrections necessary to return visible emissions to their normal appearance. Based on the appearance of the plume during the trial burn, the Department may specify a maximum opacity standard as a condition of the operating permit.

3. The complete incinerator and associated equipment shall be inspected at least daily for leak, spills, and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

(e) At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues from the incinerator, including but not limited to ash, scrubber waters, and scrubber sludges.

(f) The Department intends to propose modifications to this rule concerning hazardous waste incinerators, after evaluation of EPA's interim final amendments published in the Federal Register (Vol. 47, No. 122, pg. 27520).

(g) Special requirements for hazardous wastes listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of incinerators subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department indicating that they can meet the performance standards of N.J.A.C. 7:26–10.7 when they burn these wastes.

2. The following standards and procedures will be used in determining whether to certify an incinerator:

i. The owner or operator will submit an application to the Department containing applicable information in N.J.A.C. 7:26–12.2(f)4 and 12.9(b) and demonstrating that the incinerator can meet the performance standards in N.J.A.C. 7:26–10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the incinerator can meet the performance standards in N.J.A.C. 7:26–10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Department will accept comment on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the incinerator.

As amended, R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(a)2 through 7 added; (c)2 clarified; (e) added.
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(f) added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
New (a); old (a)-(f) through (b)-(g).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Stylistic change only.

7:26–11.6 Thermal treatment

(a) This section applies to owners and operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except for those exempted under N.J.A.C. 7:26–10.1(a) or N.J.A.C. 7:26–11.1(b). Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of N.J.A.C. 7:26–10.7 or N.J.A.C. 7:26–11.5, if the device is an incinerator.

(b) Before adding hazardous waste, the owner or operator shall bring the thermal treatment process to steady state (normal) conditions of operation including steady state operating temperature, using auxiliary fuel or other means, unless the process is a noncontinuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

(c) Waste analysis requirements for thermal treatment include the following:

1. In addition to the waste analysis required by N.J.A.C. 7:26–9.4(b), the owner or operator shall sufficiently analyze any waste which has not been previously treated in the thermal process to establish steady state (normal) or other appropriate (for a non-continuous process) operating conditions and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

i. Heating value of the waste;

ii. Halogen content and sulfur content in the waste; and

iii. Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

2. As required in N.J.A.C. 7:26–9.4(i), the owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating of the facility.

(d) The owner or operator shall conduct, as a minimum, the following monitoring and inspections when thermally treating hazardous waste:

1. Existing instruments which relate to temperature and emission control (if an emission control device is present) shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions shall be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

2. The stack plume (emissions), where present, must be observed visually at least hourly for normal color and opacity. The operator shall immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

3. The complete thermal treatment process and associated equipment shall be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

(e) At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues from the thermal treatment process or equipment, including, but not limited to, ash.

(f) Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives and highly reactive wastes. For the purposes of this section, waste explosives and highly reactive materials includes wastes which has not only the potential to detonate but also wastes which display characteristics of both ignitability and reactivity to such a degree that they cannot be disposed of through other conventional modes of treatment without creating an eminent threat to human health and public safety. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound at sea level. Open burning is a controlled chemical transformation which consumes waste explosives, propellants, pyroforic, and peroxide forming materials without resulting in a detonation. Owners or operators choosing to open burn to detonate waste explosives and highly reactive materials shall do so in accordance with the following table and in a manner that does not threaten human health or the environment. Owners or operators employing such treatment methodology shall also obtain a current and valid permit from the New Jersey Bureau of Air Pollution Control in accordance with N.J.A.C. 7:27–2.8 and/or N.J.A.C. 7:27–2.12.

Pounds of Waste Explosives or Propellants	Minimum Distance from Open Burning or Detonation to the Property of Others	
0– 100	670 feet	(204 meters)
101– 1,000	1,250 feet	(380 meters)
1,001–10,000	1,730 feet	(530 meters)
10,001–30,000	2,260 feet	(690 meters)

(g) Special requirements for hazardous wastes listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of thermal treatment devices subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department indicating that they can meet the performance standards in N.J.A.C. 7:26–10.7 when burning these wastes.

2. The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

i. The owner or operator will submit an application containing the applicable information in N.J.A.C. 7:26–12.2(f)4 and 12.9(b) and demonstrating that the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26–10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26–10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment unit is located. The Department will accept comments on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the thermal treatment unit.

Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(f) added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 199 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added (a); renumbered old (a)-(f) renumbered (b)-(g).

7:26–11.7 Chemical, physical, and biological treatment

(a) General operating requirements for chemical, physical and biological treatment include the following:

1. Chemical, physical, or biological treatment of hazardous waste shall comply with N.J.A.C. 7:26–9.4(e)2.

2. Hazardous wastes or treatment reagents shall not be placed in the treatment process or equipment if they could cause the treatment process or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.

3. Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment shall be equipped with a means to stop this inflow.

(b) In addition to the waste analysis required by N.J.A.C. 7:26–9.4(b), whenever a hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or a substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste, the owner or operator shall, before treating the different waste or using the different process or equipment;

1. Conduct waste analyses and trial treatment tests; or

2. Obtain written, documented information on similar treatment of similar waste under similar operating conditions, to show that this proposed treatment will meet all applicable requirements of (a)1 and (a)2 above.

(c) The owner or operator of a treatment facility shall inspect, where present:

1. Discharge control and safety equipment at least once each operating day, to ensure that it is in good working order;

2. Data gathered from monitoring equipment, at least once each operating day, to ensure that the treatment process or equipment is being operated according to its design;

3. The construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams; and

4. The construction materials of, and the area immediately surrounding, discharge confinement structures, at least weekly, to detect erosion or obvious signs of leakage.

(d) At closure, all hazardous waste and hazardous waste residues shall be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures.

(e) Ignitable or reactive waste shall not be placed in a treatment process or equipment unless:

1. The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable, corrosive or reactive waste under N.J.A.C. 7:26–8.9 to N.J.A.C. 7:26–8.11 and in compliance with N.J.A.C. 7:26–9.4(e).

2. The waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

(f) Special requirements for incompatible wastes include the following:

1. Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same treatment process or equipment, except in compliance with N.J.A.C. 7:26–9.4(e); and

2. Hazardous waste shall not be placed in unwashed treatment equipment which previously held an incompatible waste or material, except in compliance with N.J.A.C. 7:26–9.4(e).

SUBCHAPTER 12. HAZARDOUS WASTE FACILITY PERMIT REQUIREMENTS

Subchapter Historical Note

Adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b).

7:26–12.1 Scope and applicability

(a) No person shall cause, suffer, allow or permit the construction, installation, modification or operation of a hazardous waste facility without having submitted Part A and B of a permit application including a Disclosure Statement and an Environmental and Health Impact Statement as required, and having received a finally effective permit issued by the Department pursuant to N.J.S.A. 13:1E and this subchapter unless such person is:

1. Authorized under N.J.A.C. 7:26–12.3 to operate an existing hazardous waste facility prior to final disposition of a permit application pursuant to this subchapter; or

2. Exempt from the requirement to have a permit pursuant to (b) below; or

3. Authorized under N.J.A.C. 7:26–12.9 to treat, store, or dispose of hazardous waste on a short term basis.

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1. A generator who accumulates hazardous waste at the site where generated for less than 90 days in accordance with N.J.A.C. 7:26–9.3;

2. A farmer who disposes of pesticide wastes generated by the farmer's own use in accordance with N.J.A.C. 7:26–9.1(c)5;

3. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A–4.6; and

4. The owner or operator of a totally enclosed treatment facility as defined at N.J.A.C. 7:26–1.4;

5. The owner or operator of a facility for storing less than 1,001 gallons of waste oil;

6. The owner or operator of a publicly owned treatment works (POTW) as defined at N.J.A.C. 7:26–1.4; and

7. The owner or operator of an industrial boiler or industrial furnace burning hazardous waste provided the following conditions, as well as those set forth at N.J.A.C. 7:26–9.1(c)9, are met:

i. The wastes to be burned in the device are to be beneficially used or reused as a fuel for the purpose of recovering useable energy and are limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said waste to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26–8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C. 7:26–7.

ii. A "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued in accordance with the provisions in N.J.A.C. 7:27–8. Such permit description must include a listing of each specific waste, the composition of each waste, and the process from which each waste was generated.

iii. The rate gross heat input of the device is greater than 20 million British Thermal Unit (BTU) per hour.

iv. The device has a minimum combustion efficiency of at least 99.9% as determined by the following formula where carbon dioxide (CO_2) and carbon monoxide (CO) are measured in concentration by volume:

$$\text{Combustion efficiency} = CO_2/(CO_2 + CO) \times 100\%$$

v. The device is continuously monitored for O_2 and either CO or total hydrocarbons, and the levels are continuously recorded.

vi. A full-time operator is present when the waste is burned, if the device is a boiler, the engineer-in-charge must possess a current 1–C "blue-seal" third class engineers license.

vii. The device is located in an area zoned for industrial use, and shall not be located in a residential building.

viii. The hazardous waste is burned no more than 90 days after it is generated and the following conditions are met:

(1) The waste is placed in containers which meet the standards of N.J.A.C. 7:26–7.2 and are managed in accordance with N.J.A.C. 7:26–9.4(d);

(2) The date on which each period of accumulation begins and the words "Hazardous Waste" are clearly marked and visible for inspection on each container;

(3) The generator complies with the requirements for owners and operators at N.J.A.C. 7:26–9.6 and 9.7 concerning preparedness and prevention, contingency plans and emergency procedures as well as N.J.A.C. 7:27–9.4(g) concerning personnel training.

(4) For waste which is placed in above ground tanks, the following requirements shall be met:

(A) Prior to placing the waste in the tank, written approval from the Department shall be obtained;

(B) The waste shall be managed in conformance with N.J.A.C. 7:26–9.3(b)1 through 5, 7 and 8 as well as N.J.A.C. 7:26–9.1(c)9viii(2) and (3);

ix. The device is not a cement kiln; and

x. The waste to be burned does not contain any PCB hazardous waste, as defined at N.J.A.C. 7:26–1.4.

8. Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations of this subchapter pursuant to the small quantity generator requirements of N.J.A.C. 7:26–8.3.

9. Generators who recycle hazardous waste on the site where such wastes are generated (see definitions of "recycling" and "on-site" at N.J.A.C. 7:26–1.4) provided:

i. Where the recycled hazardous waste is used as a fuel:

(1) The owner or operator shall submit the following information to the Department:

(A) A chemical and physical analysis of the material to be recycled and the quantities involved; and

(B) Schematic designs of the process equipment to be utilized, including the throughout capacity of the equipment and all flows to and from the equipment; and

(C) Explanation of the process used to produce the fuel and demonstration of the capacity of removing water and potential air contaminants including, but not limited to, halogens, metals, total ash, and sulfur from the waste; and

(D) Anticipated quality and quantity of the materials to be produced by the proposed processing of each waste from the process and a material balance; and

(E) A plot plan of the facility depicting the location of the recycling operation; and

(F) A description of the sampling, analytical, and quality assurance procedures that will be used to ensure the quality of material being produced for use as fuel including, but not limited to, chemical testing frequency and record keeping procedure; and

(2) Written approval from the Department shall be obtained for the recycling facility prior to start-up of the recycling process; and

(3) Any material produced to be burned shall be utilized on the site where produced; and

(4) The burning of the material is accomplished in accordance with N.J.A.C. 7:27. (Rules of the Bureau of Air Pollution Control) and specifically a "Permit to Construct, Install or Alter Control Apparatus or Equipment" has been issued that explicitly includes the recycled material to be burned; and

(5) The recycled hazardous waste is used as a fuel only in an industrial boiler or industrial furnaces.

ii. The generator complies with the annual reporting requirements of N.J.A.C. 7:26–9.1(c)10ii.

iii. The owner or operator has obtained an EPA identification number and has notified the Department of the on-site recycling activities.

iv. The accumulation of hazardous wastes prior to recycling shall comply with (b)7viii above.

10. The owner or operator of a gas cylinder facility provided the following conditions are satisfied:

i. If the hazardous waste residue in the gas cylinder is vented or otherwise released to the atmosphere, the owner or operator shall:

(1) Vent the hazardous waste gas residue into a stack or chimney, as defined in N.J.A.C. 7:27–16.1; and

(2) Comply with the requirements in N.J.A.C. 7:27–16; and

(3) Obtain a permit pursuant to N.J.A.C. 7:27–8 if such permit is required; and

ii. The owner or operator shall comply with all other applicable rules in N.J.A.C. 7:27 (Air Pollution Control), including but not limited to the prohibition of air pollution in N.J.A.C. 7:27–5; and

iii. The owner or operator shall comply with all applicable requirements in Title 7, Subtitle D, of the New Jersey Administrative Code (Rules of the Division of Water Resources).

11. The owner or operator of a waste reuse facility, provided all conditions and requirements of N.J.A.C. 7:26–9.1(c)13 are met, and the owner or operator submits the following information and documentation to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, N.J. 08625:

i. Waste reuse facility name, mailing address, site address, and telephone number;

ii. The facility EPA identification number. (All facilities that intend to operate as a waste reuse facility shall apply for and receive an EPA I.D. number from the United States Environmental Protection Agency. When applying to EPA, attach a letter to the notification form explaining that although not regulated by EPA, certain methods of use or reuse are regulated activities in New Jersey);

iii. A brief description of the waste reuse process including the waste to be reused, raw material to be substituted, and the end product of the industrial process;

iv. Name, mailing address, site address, and telephone number of generator(s) that will supply waste to the waste reuse facility;

v. Description of the volume of wastes to be reused;

vi. Description of the volume of raw material(s) used in the past 12 months for which the waste will be substituted, or other suitable time period as determined by the Department, verified by written documentation such as invoices, purchase orders, etc.;

vii. Statement of all potential environmental hazards of using the waste in lieu of a raw material and measures to be taken to mitigate potential hazards to the extent possible;

viii. The following certification, signed by the owner/operator of the waste reuse facility, or an authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(Date) (Print name and title)

(signature)

ix. For waste reuse facilities that intend to store waste in containers prior to reuse, all information required pursuant to N.J.A.C. 7:26–12.2(f)1; and

x. For waste reuse facilities that intend to store waste in tanks prior to reuse, all information required pursuant to N.J.A.C. 7:26–12.2(f)2.

xi. This exemption shall not apply to commercial treatment, storage, or disposal facilities.

12. Any generator accumulating waste on-site in accordance with N.J.A.C. 7:26–9.3(d).

(c) All generators and recycling or reclamation facilities that recycle or reclaim hazardous wastes pursuant to any tolling agreements defined pursuant to N.J.A.C. 7:26–1.4 shall be included within the scope of this subchapter and shall be subject to all the requirements of this subchapter as applicable.

(d) The owner or operator of an authorized facility shall not be required to obtain a permit pursuant to this subchapter for a treatment unit that is dedicated solely to reclamation of precious metals from hazardous waste or other materials, provided that all the conditions of (e) below are met.

(e) The owner or operator of a facility whose sole hazardous waste activity, other than generation or any activity exempted under N.J.A.C. 7:26–9.1(c), is reclamation of precious metals from hazardous wastes, shall not be required to obtain a permit pursuant to this subchapter provided all of the following conditions are met:

1. The owner or operator submits to the Department the facility name, mailing address, site address, telephone number, and a description of the types and volumes of wastes to be reclaimed;

2. The owner or operator receives an EPA identification number;

3. The owner or operator complies with the manifest requirements of N.J.A.C. 7:26–7.6;

4. The owner or operator submits a facility annual report in accordance with N.J.A.C. 7:26–7.6(f)2;

5. The owner or operator complies with the necessary precautions required by N.J.A.C. 7:26–9.4(e) and inspects the facility in accordance with N.J.A.C. 7:26–9.4(f);

6. The owner or operator complies with the closure requirements of N.J.A.C. 7:26–9.8(b);

7. For facilities that store hazardous waste, the hazardous waste is not stored for longer than 90 days;

8. For facilities that store in containers, the containers are placed in an area designed in accordance with N.J.A.C. 7:26–10.4 and the containers are managed in accordance with N.J.A.C. 7:26–9.4(d);

9. For facilities that store in tanks, the applicable requirements of N.J.A.C. 7:26–10.5 are met. Tanks must be emptied every 90 days in accordance with N.J.A.C. 7:26–9.3(b); and

10. Containers must be labeled with the date on which the facility received the material.

(f) Notwithstanding an owner's or operator's (of a facility or a treatment unit at an authorized facility) compliance with all conditions set forth in (d) and (e) above, the Department may terminate eligibility for a partial exemption and require that a permit pursuant to (a) above be obtained for the facility or treatment unit if the Department determines at any time that the facility or treatment operation poses a threat to the environment, or the owner or operator cannot be relied upon to operate the facility or treatment unit safely and in conformance with the applicable laws and regulations.

(g) No hazardous waste facility or operation is required to be included in a district solid waste management plan pursuant to the Solid Waste Management Act.

Amended by R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(b)7: "device" was "boiler"; old i-iv replaced by current i-vii.
Amended by R.1983 d.350, effective September 6, 1983.
See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).
(b)10 added.
Amended by R.1983 d.623, effective January 17, 1984.
See: 14 N.J.R. 1535(a), 16 N.J.R. 132(a).
(b)9 added.
Amended by R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(b)7i: "to be beneficially used or reused as a fuel ..." stipulation added.
Amended by R.1986 d.160, effective May 5, 1986.
See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).
(c) added.
Amended by R.1986 d.347, effective August 18, 1986.
See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
(b)11 added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Substantially amended.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Changed cross reference to section 9.1.
Amended by R.1989 d.141, effective March 20, 1989.
See: 20 N.J.R. 1329(a), 21 N.J.R. 752(a).
At (b)11. full address added; details required on description of waste reuse process.
Amended by R.1990 d.260, effective May 21, 1990.
See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
Added (b)7x.
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Clarified the cross-reference for operating requirements for industrial waste management facilities; clarified the requirement that hazardous waste containers must be appropriately marked and clarified a cross-reference to requirements for accumulation in above-ground tanks.

Case Notes

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

Underground storage tank containing X–726 waste oil; violation of hazardous waste regulations. Department of Environmental Protection and Energy v. Manchester Machinery Salvage Company, Inc., 92 N.J.A.R.2d (EPE) 151.

7:26–12.2 Public participation in the permit process

(a) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign and submit an application to the Department as described in this section. Procedures for applications, issuance and administration of emergency permits are found exclusively in N.J.A.C. 7:26–12.9. Procedures for claiming confidentiality are found in N.J.A.C. 7:26–17. Owners or operators of a facility eligible for a permit-by-rule under N.J.A.C. 7:14A–4.5 are not required to obtain a hazardous waste facility permit under this section for that facility.

(b) When a facility is owned by one person but is operated by another person, it is the operator's duty to obtain a permit except that the owner must also sign the permit application.

(c) The Department shall not issue a permit before a complete application is received. An application for a permit is complete when the Department receives an application form and such supplemental information as may be required.

(d) All applicants shall provide the following information to the Department in Part A of the Permit application:

1. The activities conducted by the applicant which required a permit pursuant to this subchapter;

2. Name, mailing address and location of the facility for which the application is submitted;

3. Name, address, and telephone number of the owner(s) of the facility;

4. Up to four Standard Industrial Classification (SIC) codes which best reflect the principal products or services provided by the facility;

5. The operator's name, address, telephone number, ownership status and status as a Federal, State, private, public or other entity;

6. Whether the facility is located on Indian lands;

7. A listing of all permits or construction approvals received or applied for which affect the subject of the current application under any of the following programs:

i. The hazardous waste management program under the Resource Conservation and Recovery Act (RCRA) or the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E);

ii. The Underground Injection Control (UIC) program under the Federal Safe Drinking Water Act (SDWA);

iii. The Prevention of Significant Deterioration (PSD) program under the Federal Clean Air Act;

iv. The nonattainment program under the Federal Clean Air Act or the New Jersey Air Pollution Control Act;

v. The National Emission Standards for Hazardous Air Pollutants (NESHAPs) program under the Federal Clean Air Act or the New Jersey Air Pollution Control Act;

vi. Ocean dumping permits under the federal Marine Protection Research and Sanctuaries Act;

vii. The New Jersey Pollutant Discharge Elimination System (NJDES) program under the New Jersey Water Pollution Control Act;

viii. Dredge or fill permits under section 404 of the Federal Clean Water Act or the New Jersey Water Pollution Control Act;

ix. Any other relevant environmental permits;

8. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies and drinking water wells listed in public records or as otherwise known to the applicant;

9. A brief description of the nature of the business;

10. The latitude and longitude of the facility;

11. An indication of whether the facility is new or existing and whether it is a first or revised application;

12. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas;

13. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and site of future treatment, storage, and disposal areas;

14. A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items; and

15. A specification of the hazardous wastes listed or designated under N.J.A.C. 7:26–8 to be treated, stored, or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(e) All applicants shall provide the following information in Part B of the permit application:

1. A general description of the facility and how it will operate to accept, treat, process, store and dispose of hazardous waste;

2. Chemical and physical analyses of hazardous waste to be handled at the facility containing, at minimum, all the information which must be known to treat, store, or dispose of the wastes properly in accordance with N.J.A.C. 7:26–9 and N.J.A.C. 7:26–10.

3. A description of the processes to be used for each waste type including:

i. Flow schematics;

ii. A material balance; and

iii. The general type of equipment to be used.

4. A copy of the waste analysis plan, required by N.J.A.C. 7:26–9.4(b);

5. A description of the security procedures and equipment required by N.J.A.C. 7:26–9.4(h);

6. A copy of the general inspection schedule required by N.J.A.C. 7:26–9.4(f) as well as any specific inspection schedule required by N.J.A.C. 7:26–10;

7. A description of the preparedness and prevention procedures and equipment required by N.J.A.C. 7:26–9.6;

8. A copy of the contingency plan, and a description of emergency procedures required by N.J.A.C. 7:26–9.7;

9. An engineering design including but not limited to:

i. Construction schedule and design capacity including:

(1) The stages and schedule of facility construction, operation and closure (where applicable);

(2) The maximum design capacity for the equipment used in each process; and

(3) The total capacity and estimated life expectancy of the facility; and

ii. Detailed drawings showing:

(1) Layout of all above-ground tanks, buildings and related structures, dikes, borings, surface water control systems, spill prevention and control system;

(2) All machinery and stationery equipment to be used, including type, number, capacity and layout location;

(3) Elevations and cross-sections of all subsurface tanks and pipings and of all fill-areas, lagoons, basins, drainage systems;

(4) Profile views of all dikes, berms, drainage channels or other structures;

(5) Location of all safety equipment, identification of emergency exit and evacuation routes, location of emergency shut-off valves, and any other related information;

(6) Location of all container and vehicle cleaning and rinse areas designed to handle the maximum use expected from facility operation and to collect all contaminants and rinse and cleaning agents, for treatment and disposal;

(7) Location of security and access control structures;

(8) Location of all air and water monitoring systems, including exact location, depth and construction details for groundwater monitoring wells and location of surface water sampling points;

(9) Identification of all storm and sanitary sewer inlets onsite and other projected points of discharge, methods to be used to monitor such points and proof that any required discharge permits or approvals have been applied for or obtained;

iii. A discussion of the manner in which the technical data and drawings indicate compliance with existing regulations of the Department, particularly N.J.A.C. 7:26–9 and N.J.A.C. 7:26–10;

iv. All engineering designs, reports, plans and other technical engineering documents shall be signed and sealed by a registered professional engineer;

10. A description of procedures, structures, or equipment used at the facility to:

i. Prevent hazards in unloading operation (for example, ramps, special forklifts);

ii. Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

iii. Prevent contamination of water supplies;

iv. Mitigate effects of equipment failure and power outages; and

v. Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

11. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with N.J.A.C. 7:26–9.4(e) including documentation demonstrating compliance with N.J.A.C. 7:26–9.4(e);

12. Two copies of the property deed, lease agreement, option or other contractual agreement providing the basis for ultimate ownership or leasehold of the proposed site by the applicant;

13. A topographic map showing a distance of 304.8 meters (1,000 feet) around the facility at a scale of 2.5 centimeters (one inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (five feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (two feet), if relief is less than 6.1 meters (20 feet). Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

i. Map scale and date;

ii. 100–year floodplain area;

iii. Surface waters including intermittent streams;

iv. Surrounding land uses (residential, commercial, agricultural, recreational);

v. A wind rose;

vi. Orientation of the map (north arrow);

vii. Legal boundaries of the hazardous waste management facility site as established by a New Jersey Licensed Professional Land Surveyor;

viii. Access control (fences, gates);

ix. Injection and withdrawal wells both on-site and off-site;

x. Buildings, treatment, storage, or disposal operations; or other structures such as recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities;

xi. Barriers for drainage of flood control;

xii. Location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas);

xiii. Location of all energy transmission equipment;

xiv. Identification of zoning restrictions, actual uses to which land is put and all public buildings within one mile of the proposed facility;

xv. Vehicle ingress and egress routes connecting the proposed site to major highways; and

xvi. Proposed final elevations, if applicable, at a maximum of five foot intervals;

14. (Reserved).

15. Identification of whether the facility is located within a 100–year floodplain.

i. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100–year flood level and any other special flooding factors (for example, wave ac-

tion) which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100–year flood.

ii. Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100–year floodplain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100–year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100–year floodplain, and if so located, what the 100–year flood elevation would be.

iii. Owners and operators of facilities located in the 100–year floodplain shall provide the following information:

(1) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100–year flood.

(2) Structural or other engineering studies showing the design of operational units (for example, tanks, incinerators) and flood protection devices (for example, floodwalls, dikes) at the facility and how these will prevent washout.

(3) If applicable, and in lieu of (e)15i and ii above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(A) Time of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility;

(B) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with N.J.A.C. 7:26;

(C) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use;

(D) The potential for accidental discharges of the waste during movement; and

(E) Existing facilities not in compliance with N.J.A.C. 7:26–10.3(a) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

16. A copy of the closure plan and, where applicable, the post-closure plan required by N.J.A.C. 7:26–9.8 and N.J.A.C. 7:26–9.9;

17. For existing facilities, documentation that a notice has been placed in the deed or appropriate alternative instrument as required by N.J.A.C. 7:26–9.9(n);

18. The most recent closure cost estimate for the facility prepared in accordance with N.J.A.C. 7:26–9.10(e) plus a copy of the financial assurance mechanism adopted in compliance with N.J.A.C. 7:26–9.10(f);

19. Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with N.J.A.C. 7:26–9.11(c) plus a copy of the financial assurance mechanism adopted in compliance with N.J.A.C. 7:26–9.11(d);

20. Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of N.J.A.C. 7:26–9.13. For a new facility, documentation showing the amount of insurance meeting the specification of N.J.A.C. 7:26–9.13(b) and, if applicable, N.J.A.C. 7:26–9.13(c), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in N.J.A.C. 7:26–9.13(f);

21. Any other information required to be submitted pursuant to (e) of this section.

22. Traffic patterns, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfaces and load bearing capacities; show traffic control signals).

23. An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with N.J.A.C. 7:26–9.4(g). A brief description of how training will be designed to meet actual job tasks in accordance with requirements in N.J.A.C. 7:26–9.4(g)3.

(f) The following additional information is required from an owner or operator of specific types of hazardous waste management facilities that are used or to be used for storage or treatment:

1. For facilities that store containers of hazardous waste, except as otherwise provided in N.J.A.C. 7:26–9.4(d).

i. A description of the containment system to demonstrate compliance with N.J.A.C. 7:26–10 showing at least the following:

(1) Basic design parameters, dimensions, and materials of construction;

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;

(3) Capacity of the containment system relative to the number and volume of containers to be stored;

(4) Provisions for preventing or managing run-on;

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

ii. Sketches, drawings, or data demonstrating compliance with N.J.A.C. 7:26–9.4(d) (location of buffer zone and containers holding ignitable, reactive or incompatible wastes).

iii. Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with N.J.A.C. 7:26–9.4(d).

2. For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in N.J.A.C. 7:26–10.5 et seq. a description of design and operation procedures which demonstrate compliance with the requirements of N.J.A.C. 7:26–10.5 et seq. including:

i. References to design standards or other available information used, or to be used, in design and construction of the tank;

ii. A description of design specifications including identification of construction materials and lining materials and pertinent characteristics such as corrosion or erosion resistance;

iii. Tank dimensions, capacity, and shell thickness;

iv. A diagram of piping, instrumentation and process flow;

v. Description of feed systems, safety cutoff, bypass systems, and pressure controls (for example, vents);

vi. Description of procedures for handling incompatible ignitable, or reactive waste, including the use of buffer zones;

vii. A description of the containment and detection systems to demonstrate compliance with N.J.A.C. 7:26–10 including at least the following:

(1) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system;

(2) Capacity of the containment system relative to the design capacity of the tank(s) within the system;

(3) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system;

(4) Description on how the design promotes drainage or how tanks are kept from contact with standing liquids in the containment system; and

(5) Description of how accumulated liquids can be analyzed and removed to prevent overflow.

3. For facilities that store or treat hazardous waste in surface impoundments, except as otherwise provided in N.J.A.C. 7:26–10.6(a), the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in N.J.A.C. 7:26–12.2(f)3i through xii. For new surface impoundments, the plans and specifications shall be in sufficient detail to provide complete information to a contractor hired to build the surface impoundment even if the owner or operator intends to construct the surface impoundment without hiring a contractor. For existing surface impoundments, comparable detail shall be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

i. A statement of the minimum freeboard to be maintained at the facility and the basis of the design to demonstrate compliance with freeboard requirements of N.J.A.C. 7:26–10.6. For flow through facilities a hydraulic profile shall be included.

ii. Detailed drawings of the structure which is or will be provided to immediately stop flow into the impoundment to comply with N.J.A.C. 7:26–10.6(c)5 or, if no structure is needed to comply with N.J.A.C. 7:26–10.6(h), a description of the means by which waste additions will be stopped.

iii. Detailed drawings of any dikes which exist or will be constructed.

iv. A basis of design and design analysis of any dikes to comply with N.J.A.C. 7:26–10.6(c)3 and N.J.A.C. 7:26–10.6(c)4. The design analysis shall show that any dike will meet the requirements of N.J.A.C. 7:26–10.6(f)5.

v. Detailed design drawings and specifications of the liner(s) and the leak detection, collection, and removal system and the basis of design and design analysis to comply with N.J.A.C. 7:26–10.6(b) and (c).

vi. Liner installation instructions to comply with the requirements of N.J.A.C. 7:26–10.6(f). For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used.

vii. Design plans and specifications and basis and design of any structures needed to comply with N.J.A.C. 7:26–10.6(c)6.

viii. A description of the maintenance and repair procedures proposed to comply with N.J.A.C. 7:26–10.6(e)3 and N.J.A.C. 7:26–9.4(f).

ix. A description of the operating procedures that will ensure compliance with N.J.A.C. 7:26–10.6(e)5, 6, and 7.

x. A certification by a licensed professional engineer which complies with N.J.A.C. 7:26–10.6(f)4. The owner or operator of a new facility shall submit a statement by a licensed professional engineer that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications.

xi. Site geology and hydrology information including but not limited to:

(1) All wells within one-half mile (0.8 kilometers) and all public water supplies within one mile (1.6 kilometers) shall be located and identified on an area map; a photostatic copy of the Well Record and Driller's Log shall be provided for each registered well;

(2) A geologic/hydrologic map showing groundwater elevations and flow direction(s), and seasonal variations for all groundwaters beneath the facility site and surrounding area within one mile (1.6 kilometers) of the facility boundary; the location and depth of all wells identified in N.J.A.C. 7:26–12.2(f)3.xii shall be plotted on this map;

(3) A map showing the drainage flow patterns within one mile (1.6 kilometers) of the facility property boundaries including all storm drains;

(4) A site plan showing surface and subsurface drainage system for the proposed facility;

(5) Soil borings of the site in accordance with the following minimums.

(All borings shall be to a minimum depth of ten feet (3.04 meters) below the groundwater table or twenty feet (6.08 meters) below the lowest elevation or excavation for the proposed facility, whichever is greater. Location and profiles for each boring shall be provided, giving the depth of each soil classification and the elevation of any groundwater or aquifer encountered, including the date each boring was taken. All samples shall be preserved and made available for inspection. Additional soil borings, or piezometers may be required by the Department);

(6) The design details of the water supply and domestic sewage disposal systems for the proposed facility.

xii. For existing surface impoundments, a summary of any groundwater monitoring data obtained during the interim status period pursuant to N.J.A.C. 7:14A–6.

xiii. For facilities that store or treat hazardous wastes which are listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, or F027 in a surface impoundment, a waste management plan describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26–10.6(e) is required. This submittal must address the following items as specified in N.J.A.C. 7:26–10.6(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

4. For facilities that incinerate hazardous waste, except as N.J.A.C. 7:26–10.7 provides otherwise:

i. The applicant shall submit results of a trial burn conducted in accordance with N.J.A.C. 7:26–12.9 including all the determinations required by N.J.A.C. 7:26–12.9; or

ii. In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(A) Heat value of the waste in the form and composition in which it will be burned;

(B) Viscosity, if applicable, or description of physical form of the waste;

(C) An identification of any hazardous organic constituents listed in N.J.A.C. 7:26–8.16, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in N.J.A.C. 7:26–8.16 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in EPA document SW–846 (referenced in 40 CFR Part 261, Appendix III);

(D) An approximate, quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in EPA document SW–846;

(E) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in N.J.A.C. 7:26–10.7(d)1.

(2) A detailed engineering description of the incinerator, including:

(A) Manufacturer's name and model number of incinerator;

(B) Type of incinerator;

(C) Linear dimension of incinerator unit including cross sectional area of combustion chamber;

(D) Description of auxiliary fuel system (type/feed);

(E) Capacity of prime mover;

(F) Description of automatic waste feed cutoff system(s);

(G) Stack gas monitoring and pollution control monitoring system;

(H) Nozzle and burner design;

(I) Construction materials; and

(J) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in (f)4ii(1) above. This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn date are provided.

(4) The design and operating conditions of the incinerator unit to be used compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(A) Sampling and analysis techniques used to calculate performance standards in N.J.A.C. 7:26–10.7(d).

(B) Method and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide;

(C) Identification of any hazardous combustion by-products detected;

(D) The certification and results required by (f)4i above.

(6) The expected incinerator operation information to demonstrate compliance with N.J.A.C. 7:26–10.7(d) and N.J.A.C. 7:26–10.7(f) including:

(A) Expected carbon monoxide (CO) level in the stack exhaust gas;

(B) Waste feed rate;

(C) Combustion zone temperature;

(D) Air feed rate;

(E) Expected stack gas volume, flow rate, and temperature;

(F) Computed residence time for waste in the combustion zone;

(G) Expected hydrochloric acid removal efficiency;

(H) Expected fugitive emissions and their control procedures; and

(I) Proposed waste feet cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Department finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted pursuant to (f)4ii(1) above, sufficient to allow the Department to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

iii. The Department shall approve a permit application without a trial burn if it finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the date from other trial burns are adequate to specify that the operating conditions in N.J.A.C. 7:26–10.7(f), and that the performance standards in N.J.A.C. 7:26–10.7(d) will be met by the incinerator.

5. For facilities that dispose of hazardous waste in a landfill, the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in (f)5i through xi below. For new hazardous waste landfills, the plans and specification shall be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intend to construct the facility without having a contractor. For existing hazardous waste landfills, comparable detail shall be provided, but the form or presentation need not assume contractor construction except to the extent that the facility will be modified.

i. Detailed design drawing and specifications of the liners and the leachate detection, collection, and removal system and leak detection system and the basis of design and design analysis to prevent pollution migration.

ii. Detailed plans and an engineering report describing how the landfill and control run-on and run-off.

iii. Detailed plans and an engineering report to show how the collection and holding facilities associated with run-on and run-off collection systems will be managed.

iv. Detailed plans and an engineering report to describe the control of wind dispersal of particulate, where applicable.

v. Liner installation instructions to be used. For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used.

vi. A list of hazardous wastes placed or to be placed in each landfill cell to comply with the requirements of N.J.A.C. 7:26–10.8(f).

vii. Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with N.J.A.C. 7:26–10.8(i), and a description of how each landfill will be maintained and monitored after closure in accordance with N.J.A.C. 7:26–10.8(i).

viii. If containers of hazardous wastes are to be landfilled, an explanation of how the requirements of N.J.A.C. 7:26–10.8(e)11 or 16, as applicable, will be complied with.

ix. The owner or operator of a new facility shall submit a statement by a licensed professional engineer that the engineer will provide a certification upon completion of construction that construction has been completed in accordance with plans and specifications.

x. For existing hazardous waste landfills, documentation showing the performance of the primary liner throughout the operating life of the landfill. This should include, at a minimum, a record showing all instances where liquid was detected in the secondary collection system.

xi. A statement regarding the need for a gas monitoring and gas venting system, including plans and specifications and any permit application required by N.J.A.C. 7:27–8, if appropriate.

xii. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26–8.13 as F020, F021, F022, F023, F026, or F027 in a landfill, a waste management plan describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26–10.8(e). This submittal must address the following items as specified in N.J.A.C. 7:26–10.8(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(g) The following additional information regarding protection of groundwater is required from owners and operators of all hazardous waste surface impoundments, land treatment units, landfills, underground storage tanks and all other hazardous facilities subject to groundwater monitoring requirements under N.J.A.C. 7:14A–6;

1. A summary of the groundwater monitoring data obtained during the interim status period under N.J.A.C. 7:14A–6 where applicable;

2. Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for such identification;

3. On the topographic map required under (e)13, above, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under N.J.A.C. 7:14A–6.15(a)1; the proposed location of groundwater monitoring wells as required under N.J.A.C. 7:14A–6.15(h); and, to the extent possible, the information required in 2 above.

4. A description of any plume of contamination that has entered the groundwater from the facility at the time that the application is submitted that:

i. Delineates the extent of the plume on the topographic map required under (e)13, above; and

ii. Identifies the concentrations of each hazardous constituent identified in N.J.A.C. 7:26–8.21 throughout the plume or identifies the maximum concentrations of each hazardous constituent identified in N.J.A.C. 7:26–8.21 in the plume.

5. Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of N.J.A.C. 7:14A–6.15(h).

6. If the presence of hazardous constituents has not been detected in the groundwater at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of N.J.A.C. 7:14A–15(i). This submission must address the following items specified under N.J.A.C. 7:14A–6.15(i):

i. A proposal list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the groundwater;

ii. A proposed groundwater monitoring system;

iii. Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

iv. A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

7. If the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of N.J.A.C. 7:14A–6.15(j). The owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of N.J.A.C. 7:14A–6.15(k). To demonstrate compliance with N.J.A.C. 7:14A–6.15(j), the owner or operator must address the following items:

i. A description of the wastes previously handled at the facility;

ii. A characterization of the contaminated groundwater, including concentrations of hazardous constituents;

iii. A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with N.J.A.C. 7:14A–6.15(h) and 6.15(j);

iv. Proposed concentration limits for each hazardous constituent, based on the criteria set forth in N.J.A.C. 7:14A–6.15(e) including a justification for establishing any alternate concentration limits;

v. Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of N.J.A.C. 7:14A–6.15(h); and

vi. A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

8. If hazardous constituents have been measured in the groundwater which exceed the concentration limits established under N.J.A.C. 7:14A–6.15(e) Table 1, or if groundwater monitoring conducted at the time of permit application under N.J.A.C. 7:14A–6.3 to 6.6 at the waste boundary indicates the presence of hazardous constituents from the facility in groundwater over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of N.J.A.C. 7:14A–6.15(k). However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Department that alternate concentration limits will protect human health and the environment after considering the criteria listed in N.J.A.C. 7:14A–6.15(d)2.i. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of N.J.A.C. 7:14A–6.15(j) and 6 above. To demonstrate compliance with N.J.A.C. 7:14A–6.15(k), the owner or operator must address, at a minimum, the following items:

i. A characterization of the contaminated groundwater, including concentrations of hazardous constituents;

ii. The concentration limit for each hazardous constituent found in the groundwater as set forth in N.J.A.C. 7:14A–6.15(e);

iii. Detailed plans and an engineering report describing the corrective action to be taken; and

iv. A description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action.

(h) In addition to the submittals required in Parts A and B of the permit application, all applicants shall submit to the Department the disclosure statement described in N.J.A.C. 7:26–16.4.

1. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26–16.3(d);

2. Any applicant exempted under N.J.A.C. 7:26–16.3(d) from the requirement of a disclosure statement shall submit to the Department an alternative information statement including, but not limited to:

i. The names and addresses of all officers, directors or partners of any business concern seeking a permit 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 permit.

ii. The names and addresses of all officers, directors or partners of any business concern disclosed pursuant to (h)2i 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 (h)2i above;

iii. The name and address of any company in the field of hazardous waste management in which the business concern seeking a permit 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 permit;

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 permit or against any key employee, officer, director, or partner of the business concern;

vi. A listing and explanation of any judgment of liability or conviction under any State or Federal statute or local ordinance concerning hazardous waste management against the business concern seeking a permit 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.

(i) Certain applicants will be required to submit an Environmental and Health Impact Statement (EHIS) in addition to Parts A and B of the permit application in accordance with the provisions set out below:

1. Applicants seeking the initial permit issued pursuant to this subchapter for a new facility unless:

i. The facility is an on-site pre-treatment facility which is directly connected to an industrial process and which is constructed pursuant to 40 CFR 403 or N.J.S.A. 58:11–49 et seq.; or

ii. The facility is to be solely engaged in the reprocessing, reuse or recycling of waste oil or waste solvents;

2. Applicants seeking modification or revocation and reissuance of a permit in order to increase the facility's capacity to treat, store or dispose of hazardous waste by greater than 50 percent.

3. Applicants seeking modification or revocation and reissuance of a permit in order to construct and operate a hazardous waste incinerator or hazardous waste landfill at a facility where no such process unit existed before.

4. The Environmental and Health Impact Statement shall include, but not be limited to a discussion of:

i. Executive summary:

(1) Proposed facility;

(2) Issues of major concern;

(3) Matters to be decided; and

(4) Major conclusions;

ii. Proposed facility:

(1) Facility sponsor:

(A) Owner; and

(B) Operator/lessee;

(2) Purpose and need for facility:

(A) Objectives; and

(B) Types of hazardous waste to be handled;

(3) Proposed site:

(A) Site location and description, pursuant to (e)12 above;

(B) History of site use;

(4) Existing and/or proposed hazardous waste management systems, including facility operation, pursuant to (e)1, 2, and 3 above;

(5) Project schedule; and

(6) Need for post-closure care of site after termination of operations, see N.J.A.C. 7:26–9.9 and N.J.A.C. 7:26–10.1 et seq., and N.J.A.C. 7:26–11.1 et seq. as applicable;

(7) Compatibility with state and regional hazardous waste management planning;

(8) Approvals necessary for implementation of proposed facility, pursuant to (d)7 above;

(A) Types of required permits;

(B) Status of required permits; and

(C) Permit applications;

iii. Environmental setting:

(1) Geology and soils;

(2) Hydrology;

(3) Climate and air quality;

(4) Ecology:

(A) Terrestrial;

(B) Aquatic; and

(C) Rare and endangered species;

(5) Land use;

(6) Socioeconomic:

(A) Population and housing;

(B) Local economic activity;

(C) Transportation facilities; and

(D) Emergency services, such as police, fire protection, ambulance service;

(7) Local government jurisdictions;

(8) Historical and archaeological resources;

(9) Aesthetics; and

(10) Noise.

iv. Environmental impact analysis:

(1) Geology;

(2) Water quality;

(3) Ecology;

(4) Air quality;

(5) Noise;

(6) Human Health;

(7) Aesthetics; and

(8) Socioeconomic.

v. Adverse environmental impacts which cannot be avoided resulting from:

(1) The construction and normal operation of proposed facility; and

(2) Foreseeable abnormal occurrences at the facility such as fires, spills, explosions, malfunction of control devices, natural disasters.

vi. Unusual conditions: Accidents/spills:

(1) Maximum credible accident;

(2) Accident/spill probability;

vii. Sources, references and basis documents supporting all factual information and conclusions;

viii. Additional pertinent published information relating to:

(1) The proposed facility;

(2) The proposed site; and

(3) The surrounding area.

ix. Co-authors of environmental and health impacts statement:

(1) Identification;

(2) Affiliation; and

(3) Qualifications.

5. The Department may waive the requirement for the applicant to submit data on any aspect of the proposed project's environmental setting and the analysis of the proposed project's impact on that aspect of the environmental setting when, in the opinion of the Department, such aspect of the environmental setting is not relevant to the proposed project.

(j) All permit applications and attachments or supplements thereto shall contain the following signatures and two-part certification which provides the following:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (j)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment."

i. The certification required by (j)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

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

(k) All reports required by permits and other information requested by the Department shall be signed by a person described in (j)2i above who shall make the certification set forth in (j)2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (j)2i above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department;

4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

5. A duly authorized person shall make the following certification:

i. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment, for violations."

(*l*) All costs to conduct a public hearing such as stenographer fees and notice of public hearing shall be paid by the applicant. The applicant will be billed by the Department prior to permit issuance. The Department has the right to withhold the issuance of the final permit until all applicable fees have been paid in full.

(m) If the Department, upon examination of a Part A application, has reason to believe that the application fails to meet the requirements of (d) above, the Department shall notify the owner or operator in writing of such apparent deficiency. Such notice shall specify the grounds for the Department's belief that the application is deficient. The owner or operator shall have 30 days from the receipt of the Notice of Deficiency to respond and to explain or remedy that deficiency. If, after such notification and opportunity for response, the Department determines that the application is deficient, the Department may terminate the facility's existing facility status pursuant to N.J.A.C. 7:26–12.3(f)3.

Amended by R.1982 d.97, effective April 5, 1982.
See: 13 N.J.R. 724(a), 14 N.J.R. 338(a).
(a): Added "Procedures for claiming ... 7:14A–11.1 et seq."
Amended by R.1982 d.324, effective October 4, 1982.
See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).
(e)14: text deleted. (e)15 and (f): Cross-reference corrected.
Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(d)8: "or as otherwise known to the applicant" inserted at end.
(d)16, (e)22 and 23, and (k) added. (f)3 and (j): cross-reference changes.
Amended by R.1984 d.198, effective May 21, 1984.
See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).
(f)3: "surface impoundment" was "facility"; N.J.A.C. references corrected; old vii deleted, viii-xii redesignated vii-xi, new xii added. (f)5 added.
Amended by R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(g): references to N.J.A.C. 7:26–16.4 and 16.3(d) and exemption language added.
Amended by R.1984 d.543, effective December 3, 1984.
See: 16 N.J.R. 2478(b), 16 N.J.R. 3308(a).
(f)5: x through 5x(3) deleted and x(4) became x; deleted x(5) and (6).
New (g) added and (g) through (k) renumbered as (h) through (*l*).
Amended by R.1986 d.387, effective September 22, 1986.
See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).
(f)2vii; 3xii and 5xii added.
Amended by R.1988 d.56, effective February 1, 1988.
See: 19 N.J.R. 11(b), 20 N.J.R. 276(a).
Repealed old (j); renumbered and amended (k)-(*l*) to (j)-(k).
Amended by R.1988 d.57, effective February 1, 1988.
See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).
Changed reference to 7:26–17.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Added (*l*).
Amended by R.1990 d.259, effective May 21, 1990.
See: 21 N.J.R. 3844(a), 22 N.J.R. 1558(a).
In (g)4ii, N.J.A.C. 7:26–8.21 was 7:26–8.16.
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
In (a), added text "owners or operators ... for that facility." Added (c).
Recodified existing (c)-(*l*) as (d)-(m).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative Correction.
Amended by R.1993 d.638, effective December 6, 1993.
See: 24 N.J.R. 4253(a), 25 N.J.R. 5664(a).

Case Notes

Operator of hazardous waste constructing new incinerator was required to submit Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Regulations establishing exemptions from Solid Waste Management Act (SWMA) were strictly construed. Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D. 1992).

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

Petitioner failed to submit information sufficient to process petitioner's hazardous waste facility permit application; revocation of petitioner's operating authority and denial of application for authority as preexisting facility proper. Noble Oil Co. v. Department of Environmental Protection and Energy, 98 N.J.A.R.2d 262.

7:26–12.3 Existing facilities

(a) Any person owning or operating a hazardous waste facility which conforms to the definition of an "existing hazardous waste facility" (N.J.A.C. 7:26–1.4) may continue to operate the facility prior to final disposition of a permit application pursuant to this subchapter provided the owner or operator:

1. Has notified the United States Environmental Protection Agency (USEPA) by August 18, 1980 as required by Section 3010 of the Federal Resource Conservation and Recovery Act (42 U.S.C. 3251 et seq.); and

2. Has filed a Part A application for the facility in accordance with 40 CFR 270.10; or

3. In the case of an owner or operator of a hazardous waste facility not required to notify USEPA or file a Part A application pursuant to 40 CFR 270.10 and 270.70–270.73, has submitted a Part A application to the Department and applied to the Department for an EPA identification number within 90 days of the effective date of this Subchapter; and

4. Operates the facility in accordance with standards set out at (e) below.

(b) Prior to final disposition of a permit application pursuant to this subchapter, no person owning or operating an "existing facility" shall:

1. Treat, store, or dispose of hazardous waste types not specified in the Part A application; or

2. Employ processes not specified in the Part A application; or

3. Exceed design capacities or operational limit specified in Part A of the permit application.

(c) Owners or operators making changes during operation prior to final disposition of a permit application shall comply with the requirements of this section.

1. New hazardous wastes not previously identified in Part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change (but see N.J.A.C. 7:26–9.4(b)—waste analysis) and the Department does not object to the inclusion of the new waste in the revised Part A application.

2. Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change, along with a justification explaining the need for the change, and the Department approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities.

3. Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change, along with a justification explaining the need for the change, and the Department approves the change because:

i. It is necessary to prevent a threat to human health or the environment because of an emergency situation; or

ii. It is necessary to comply with Federal regulations (including the interim status standards at 40 CFR Part 265) or State or local laws.

4. Changes in the ownership or operational control of a facility must be approved in advance by the Department.

i. The prospective new owner or operator shall submit a Part A permit application and a disclosure statement not less than 180 days prior to the contemplated change; provided, however, that if the new owner or operator is a person exempted from the requirement of a disclosure statement under N.J.A.C. 7:26–16.3(d) he shall submit a Part A permit application and an alternative information statement not less than 90 days prior to the contemplated change.

ii. The prospective new owner or operator shall also submit a notification of changes in ownership or operational control pertaining to the potential applicability of N.J.A.C. 7:1–3, regulations under the Environmental Cleanup Responsibility Act, P.L. 1983, c.330, N.J.S.A. 13:1K–6, to:

Department of Environmental Protection
Division of Waste Management
Bureau of Industrial Sites Evaluation (or its successor)
CN 028
Trenton, New Jersey 08625

iii. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the hazardous waste facility financial requirements of N.J.A.C. 7:26–9.10 through 9.14 until the new owner or operator has demonstrated to the Department that he or she is complying with those sections. All other duties are transferred effective immediately upon the date of approval by the Department of the change of ownership or operational control of the facility. The new owner or operator shall demonstrate compliance with N.J.A.C. 7:26–9.10 through 9.14 within six months of the date of change of ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26–9.10 through 9.14, the Department shall notify the former owner or operator in writing that the former owner or operator is no longer required to comply with those sections.

5. In no event shall changes be made to an existing hazardous waste facility operating prior to final disposition of a permit application pursuant to this subchapter which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new hazardous waste facility.

(d) When the department determines on examination or re-examination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to operate the "existing facility" pursuant to this section. The owner or operator will then be subject to departmental enforcement action for operating without a permit.

(e) Any person operating an existing hazardous waste facility prior to final disposition of a permit application pursuant to this subchapter shall comply with:

1. All applicable provisions of N.J.A.C. 7:26–7 through 11;

2. All conditions and requirements of any Temporary Operating Authorization (TOA), judicial or Administrative Order or Approved Registration and Engineering Design Plan issued to the owner or operator of the facility.

(f) Eligibility to continue operation of an existing hazardous waste facility under this section terminates when:

1. Final disposition of a permit application submitted pursuant to this subchapter is made; or

2. The owner or operator fails to furnish on time, or to furnish in full, information required pursuant to N.J.A.C. 7:26–12.2 to complete the application.

3. The Department finds that:

i. The Part A application for the facility is deficient; or

ii. The Department finds a misrepresentation on any part of the applications; or

iii. The facility owner or operator has not complied with any applicable provision of N.J.A.C. 7:26–7 through 11; or

iv. The facility owner has not complied with all conditions and requirements of any Temporary Operating Authorization (TOA), judicial or Administrative Order or Approved Registration and Engineering Design Plan issued to the owner or operator of the facility;

v. The continued operation of the facility constitutes a threat to human health or the environment.

4. The Department, after notice and opportunity for hearing, revokes the owner or operator's authorization to operate a hazardous waste facility for any of the disqualifying reasons set forth in N.J.A.C. 7:26–16.8 and 16.9.

5. For the purposes of P.L. 1983, c.392 (N.J.S.A. 13:1E–126 et seq.), any authorization to operate a hazardous waste facility, whether conferred by temporary operating authorization, judicial or administrative order, approved registration and engineering design plan or arising from the operation of this section, shall be deemed the equivalent of an approved registration statement.

(g) An owner or operator of an existing hazardous waste facility who is no longer eligible to continue operation of a facility prior to final disposition of permit application pursuant to this subchapter, except in the case where such permit has been issued, shall commence closure at the facility immediately. Closure shall be executed in accordance with an approved closure plan in accordance with N.J.A.C. 7:26–9 and 11.

(h) The owner or operator of an existing hazardous waste facility may be required at the Department's discretion to submit Part B of its permit application along with a disclosure statement and an Environmental and Health Impact Statement, where applicable.

1. Any owner or operator shall be allowed at least six months from the date of request to submit the requested information, except that a disclosure statement shall be filed within 90 days of the Department's request.

2. Any owner or operator of an existing hazardous waste facility may voluntarily submit Part B and other required information at any time.

(i) The amendments to N.J.A.C. 7:26–1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1 and 12.1, effective December 21, 1987, may bring under regulation certain facilities which were not previously regulated. These facilities, if they are to qualify as existing facilities, must have notified the USEPA by April 4, 1985, and have filed a Part A application with the USEPA or State of New Jersey by July 5, 1985. Those affected by these amendments, but not affected by the Federal rules published on January 4, 1985 (50 FR 614), shall, in order to qualify as existing facilities, notify the Department and file the Part A application by (90 days from the effective date of the amendments). The requirements for submitting the Part A application by March 21, 1988 are found at N.J.A.C. 7:26–12.2(d).

(j) A facility that is required to obtain a hazardous waste facility permit pursuant to this subchapter solely because of a State statutory or rule amendment effective after the facility initially commenced operation may be eligible for existing facility status provided the owner or operator of the facility complies, and thereafter remains in compliance, with all existing facility requirements under this section by the earlier date of:

1. Six months after the date of publication of the notice of adoption of the rule which first requires the facility to comply with this chapter; or

2. Thirty days after the date the facility first becomes subject to the standards of this chapter.

(k) The provisions of (j) above shall not apply to any facility that has been denied a hazardous waste treatment, storage, or disposal facility permit, whose existing facility status has been terminated, or to a facility subject to (i) above. To be eligible for existing facility status, an owner or operator of a newly regulated hazardous waste facility shall, within the applicable time period under (j) above:

1. Notify the United States Environmental Protection Agency as required by Section 3010 of the Federal Resource Conservation and Recovery Act (42 USC § 6901 et seq.);

2. File a Part A application for the facility in accordance with N.J.A.C. 7:26–12.2(d); and

3. Operate the facility in accordance with N.J.A.C. 7:26–9 and 11.

Amended by R.1983 d.403, effective September 19, 1983.
See: 15 N.J.R. 1063(a), 15 N.J.R. 1578(a).
(h): Deleted reference to administration of Phase II of RCRA pursuant to 40 CFR 123.
Amended by R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(c)4i and ii added; iii was part of old(c)4, under which Part A submission deadline was 90 days.
(f)4 and 5 added.
(h)1: 90–day filing requirement added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
Added (i).
Amended by R.1988 d.377, effective August 1, 1988.

See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Added sections 9.12 and 9.13 to cross reference.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
Set deadline of 6 months in which new owner/operator must demonstrate compliance.
Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).
Added (j).
Amended by R.1993 d.638, effective December 6, 1993.
See: 24 N.J.R. 4253(a), 25 N.J.R. 5664(a).

Case Notes

Small quantity generator exemption from regulation; application. U.S. v. Eastern of New Jersey, Inc., D.N.J.1991, 770 F.Supp. 964.

Evidence established violation of regulation requiring marine tank and vessel cleaning facility operator to hold semi-annual drills, to employ processes only as specified in permit, and to keep containers securely closed. Standard Tank Cleaning Corp. v. Department of Environmental Protection and Energy. 93 N.J.A.R.2d (EPE) 241.

7:26–12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this subchapter. Each hazardous waste facility permit shall include permit conditions necessary to protect human health and the environment and to achieve compliance with State rules, including all applicable requirements at N.J.A.C. 7:26–9 through 12, as well as any other applicable rules. To satisfy this requirement, the Department may directly incorporate applicable requirements of these or other subchapters into the permit or may establish other permit conditions that are based on these or other subchapters. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter and/or other subchapters shall be given in the permit.

1. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the appropriate Solid Waste Management Act (N.J.S.A. 13:1E–1.1 et seq.) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permittee shall take all steps to minimize or correct any adverse impact on human health and the environment and shall carry out all measures to prevent any adverse impacts on human health and the environment resulting from noncompliance with this permit.

5. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

6. This permit may be modified, revoked, and reissued or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

7. This permit does not convey any property rights of any sort, or any exclusive privilege.

8. The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

9. The permittee shall allow an authorized representative of the Department upon the presentation of credentials to:

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of this permit;

ii. Have access to and copy any records that shall be kept under the conditions of this permit;

iii. Inspect any facilities, equipment (including monitoring control equipment), practices, or operations regulated or required under this permit; and

iv. Sample or monitor for the purpose of assuring permit compliance or as otherwise authorized by the Solid Waste Management Act (N.J.S.A. 13:1E–1 et seq.), any substances or parameters at any location.

10. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

i. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a

period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

ii. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

11. All applications, reports, or information submitted to the Department shall be signed and certified.

12. The permittee shall comply with the reporting requirements in (a)12 of this section.

i. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

ii. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

iii. This permit is not transferable to any person. The Department will require revocation and reissuance of the permit in accordance with this subchapter whenever ownership or operational control of a facility changes.

iv. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

v. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date, unless otherwise specified elsewhere in this permit.

vi. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

vii. The permittee shall report all instances of noncompliance not reported under (a)12iv, v, or vi above, at the time monitoring reports are submitted. The reports shall contain the information listed in (a)12vi above.

viii. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

ix. The permittee shall submit significant manifest discrepancy reports in accordance with N.J.A.C. 7:26–7.6(a)4iv.

13. The permittee need not comply with the conditions of this permit to the extent and for the duration such compliance is authorized in an emergency permit (see: N.J.A.C. 7:26–12.9).

14. In addition to (a)10 above, the permittee shall maintain records from all required ground monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

15. For a new hazardous waste facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility until:

i. The permittee has submitted to the Department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

ii. The Department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or within 15 days of the date of submission of the letter in (a)15i above, the permittee has not received notice from the Department of intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

16. The information in (a)16 of this section shall be reported orally within 24 hours pursuant to (a)12vi above:

i. Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

ii. Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste facility which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident;

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident. The Department may waive the five day written notice requirement in favor of a written report within 15 days.

17. The following reports required by N.J.A.C. 7:26–7, 9 and 10 shall be submitted in addition to those required by (a)12 above:

i. (Reserved)

ii. An unmanifested waste report shall be submitted to the Department within 15 days of receipt of unmanifested waste.

iii. An annual report shall be submitted covering facility activities during the previous calendar year.

iv. An annual certification shall be submitted by the permittee that the permittee has a program in place to reduce the volume and toxicity of hazardous waste generated by the permittee, and that the method of treatment, storage, or disposal of the generated hazardous waste is that method currently available to the permittee that minimizes the present and future threat to human health and the environment.

v. An annual report covering facility activities during the previous calendar year shall be submitted as required at N.J.A.C. 7:26–7.6(f)2.

18. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, the certification required by (a)17(iv) above, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application.

(b) In addition to conditions required in all permits pursuant to (a) above, the Department shall establish conditions, as required on a case-by-case basis, to achieve compliance with the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E–1 et seq.) and N.J.A.C. 7:26 (Rules of the Division of Waste Management).

(c) Permits issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years. The Department may issue any permit for a duration less than the full five year term.

(d) The permit may, when appropriate, specify a schedule of compliance leading to compliance with N.J.S.A. 13:1E–1 et seq. and N.J.A.C. 7:26 provided the following standards are applied:

1. Any schedule of compliance under this paragraph shall require compliance as soon as possible;

2. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement;

i. The time between interim dates shall not exceed one year;

ii. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of interim requirements and indicate a projected completion date; and

iii. Nothing herein shall be construed so as to prohibit the Department from setting interim requirements for schedules of compliance running less than one year.

3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if (d)2 above is applicable.

(e) All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in N.J.A.C. 7:26–9 or 10; reporting shall be no less frequent than specified in the above regulations.

(f) Compliance with a permit, issued consistent with all the provisions of N.J.S.A. 13:1E–1 et seq. and N.J.A.C. 7:26, during its term constitutes compliance for purposes of enforcement, with the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E–1 et seq.). However, a permit may be modified, revoked and reissued or terminated during its

term for cause as set forth in N.J.A.C. 7:26–12.6 and N.J.A.C. 7:26–12.7.

(g) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(h) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of applicable State or local law or regulations.

(i) Each permit shall be reviewed by the Department upon expiration. The Department shall modify the permit as necessary to ensure that the facility continues to comply with the currently applicable regulatory requirements.

Amended by R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(a)17i: "manifest discrepancies" clarified.
Amended by R.1989 d.217, effective April 17, 1989.
See: 21 N.J.R. 108(a), 21 N.J.R. 1010(a).
At (a)4, deleted reference to "reasonable" steps and strengthened requirements to prevent adverse impacts on human health and environment.
Administrative Correction: Added (a)17ii and iii.
See: 23 N.J.R. 1432(c).
Amended by R.1991 d.562, effective November 18, 1991.
See: 22 N.J.R. 3186(a), 23 N.J.R. 3450(a).
In (a), added text "Each hazardous waste facility ... are based on these or other subchapters."
Added (a)17ii; (a)18; (i).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Addition of a cross-reference.
Amended by R.1993 d.5, effective January 4, 1993.
See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a), 25 N.J.R. 98(a).
Brought the trigger amount into agreement with changes at N.J.A.C. 7:26–7.6 and reiterated the permittee's requirement to report unresolved manifest discrepancies.

7:26–12.5 Transfer of ownership or operational control

(a) Permits issued pursuant to this subchapter are not transferable directly to a new owner or operator.

(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26–16.3(d)). The notice shall include:

1. A disclosure statement or alternative information statement prepared by the prospective new permittee meeting the requirements of N.J.A.C. 7:26–12.2(h);

2. A written agreement between the existing permittee and the proposed new permittee containing a specific future date for transfer of permit responsibilities, coverage and liabilities between them;

3. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26–9.10 through 9.14 will be met by the proposed new permittee within six months of the date of change of ownership or operational control of the facility.

(c) A new owner or operator may commence operations at the facility only after the existing permit has been revoked and reissued pursuant to N.J.A.C. 7:26–12.6(c).

(d) The Department reserves the right to terminate the existing permit for cause pursuant to N.J.A.C. 7:26–12.7.

(e) The permittee of record remains liable for ensuring compliance with all conditions of the permit unless and until the existing permit is reissued in the name of the new owner or operator.

(f) Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26–9.10 through 9.14, the Department shall notify the former owner or operator in writing that the former owner or operator is no longer required to comply with those sections.

Amended by R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(b): 180 days was 90 days.
(b)1: "alternative information statement" inserted.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Cross reference added sections 9.12 and 9.13.
Amended by R.1989 d.206, effective April 17, 1989.
See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
(b)3 established 6 month deadline and added (f).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Administrative correction.

Case Notes

Entry upon and use of debtor's property by State Department of Environmental Protection personnel for purposes of implementing necessary remedial action or remove dioxin and minimize public exposure was not contemptuous action as a violation of the automatic stay or consent order in force. In the matter of Hildemann Industries, Inc., 53 B.R. 509 (BK.Ct. N.J. 1984).

7:26–12.6 Modification or revocation and reissuance of permits

(a) When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under this section or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in (b) and (c) below, for modification or revocation and reissuance or both exist.

1. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

2. If cause does not exist under this section or N.J.A.C. 7:26–12.8, the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in N.J.A.C. 7:26–12.8 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise a draft permit shall be prepared and other procedures in N.J.A.C. 7:26–12 followed.

(b) The following are causes for modification but not revocation and reissuance of permits, and the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. Permits may be modified during their terms only if the Department has received information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. This shall include any information indicating that cumulative effects on the environment are unacceptable.

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

i. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a requirement of N.J.A.C. 7:26.

(2) The Department has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and

(3) A permittee requests modification in accordance with N.J.A.C. 7:26–12.13 within 90 days after New Jersey Register notice of the action on which the request is based; and

ii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Department promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with N.J.A.C. 7:26–12.13 within 90 days of judicial remand.

4. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

5. The Department may modify a permit:

i. When modification of a closure plan is required under N.J.A.C. 7:26–9.8 or N.J.A.C. 7:26–9.9.

ii. After the Department receives the notification of expected closure under N.J.A.C. 7:26–9.8 when the Department determines that extension of the 90 or 180 day periods under N.J.A.C. 7:26–9.8 modification of the 30–year post-closure period under N.J.A.C. 7:26–9.9(b), continuation of security requirements under N.J.A.C. 7:26–9.9(b), or permission to disturb the integrity of the containment system under N.J.A.C. 7:26–9.9(c) are unwarranted.

iii. When the permittee has filed a request under N.J.A.C. 7:26–9.13(f) for a variance to the level of financial responsibility or when the Department demonstrates under N.J.A.C. 7:26–9.13(g) that an upward adjustment of the level of financial responsibility is required.

(c) The Department may modify or alternatively revoke and reissue a permit if cause exists for termination under N.J.A.C. 7:26–12.7 and the Department determines that modification or revocation and reissuance is appropriate.

(d) The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

7:26–12.7 Termination of permits

(a) The following are causes for terminating a permit during its term or for denying a permit renewal application:

1. Noncompliance with any condition of the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

4. A change in ownership or operational control of a permitted hazardous waste facility; or

5. Any of the reasons for disqualification set forth in N.J.A.C. 7:26–16.8 or 16.9.

(b) The Department shall follow the applicable procedures in N.J.A.C. 7:26–12.13(c) in terminating any permit under this section.

(c) For the purpose of license revocation under N.J.S.A. 13:1E–12 and P.L. 1983, c.392 (N.J.S.A. 13:1E–126 et seq.), a "permit" issued pursuant to this subchapter shall be deemed the equivalent of an approved registration statement.

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
New (a)5 replaced former text concerning conviction for a criminal offense.
(c) added.

7:26–12.8 Minor modifications of permits

(a) Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of N.J.A.C. 7:26–12.6. Any permit modification not processed as a minor modification under this section shall be made for cause and with draft permit and public notice as required in N.J.A.C. 7:26–12.6.

(b) Minor modifications may only:

1. Correct typographical errors; or

2. Require more frequent monitoring or reporting by the permittee; or

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

4. Change the lists of facility emergency coordinators or equipment in the permit's contingency plan; or

5. Change estimates of maximum inventory under N.J.A.C. 7:26–9.8(e)2; or

6. Change estimates of expected year of closure or schedule for final closure under N.J.A.C. 7:26–9.9(h); or

7. Approve periods longer than 90 days or 180 days under N.J.A.C. 7:26–9.8.

7:26–12.9 Short term permits

(a) Notwithstanding any other provision of this subchapter, in the event the Department finds an imminent and substantial endangerment to human health or the environment, the Department may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste for a non-permitted facility with an effective permit. This emergency permit:

1. May be oral or written, but if oral, it shall be followed in five days by a written emergency permit;

2. Shall not exceed 90 days duration;

3. Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

4. May be terminated by the Department at any time without process if it is determined that termination is appropriate to protect human health and the environment;

5. Shall be accompanied by a public notice published pursuant to N.J.A.C. 7:26–12.12 including:

i. Name and address of the office granting the emergency authorization;

ii. Name and location of the permitted facility;

iii. A brief description of the wastes involved;

iv. A brief description of the action authorized and reasons for authorizing it; and

v. Duration of the emergency permit;

6. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of N.J.A.C. 7:26–7 through 11.

(b) For the purpose of determining feasibility of compliance with the incinerator performance standard of N.J.A.C. 7:26–10.7(d) and of determining adequate incinerator operating conditions under N.J.A.C. 7:26–10.7(f) the Department may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to (b)1 through 8 below.

1. The trial burn shall be conducted in accordance with a trial burn plan prepared by the applicant and approved by the Department. The trial burn plan shall then become a condition of the permit. The trial burn plan shall include the following information:

i. An analysis of each waste or mixture of wastes to be burned which includes:

(1) Heat value of the waste in the form and composition in which it will be burned;

(2) Viscosity (if applicable), or description of physical form of the waste;

(3) An identification of any hazardous organic constituents listed in N.J.A.C. 7:26–8.16 which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in N.J.A.C. 7:26–8.16 which would reasonably not be expected to be found in the waste; the constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in EPA document SW–846 (referenced in 40 CFR Part 261, Appendix III), or their equivalent;

(4) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in EPA document SW–846;

(5) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in N.J.A.C. 7:26–10.7(d).

ii. A detailed engineering description of the incinerator for which the trial burn permit is sought including:

(1) Manufacturer's name and model number of incinerator (if available);

(2) Type of incinerator;

(3) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber;

(4) Description of the auxiliary fuel system (type/feed);

(5) Capacity of prime mover;

(6) Description of automatic waste feed cut-off system(s);

(7) Stack gas monitoring and pollution control equipment;

(8) Nozzle and burner design;

(9) Construction materials; and

(10) Location and description of temperature, pressure and flow indicating and control devices;

iii. A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

iv. A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Department's decision under (b)4 above;

v. A detailed test protocol, including, for each waste identified the ranges of temperature, waste feed rate, air feed rate, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

vi. A description of, and planned operating conditions for, any emission control equipment which will be used;

vii. Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction;

viii. Such other information as the Department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in (b)4 below.

2. The Department in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purpose of this paragraph.

3. Based on the waste analysis data in the trial burn plan, the Department will specify as trial Principal Organic Hazardous Constituents (trial POHC's), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the Department based on its estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in N.J.A.C. 7:26–8, the hazardous waste constituent or constituents identified in Appendix VII of 40 CFR 261 or documents prepared by the Department pursuant to N.J.A.C. 7:26–8 as the basis for listing.

4. The Department shall approve a trial burn plan if it finds that:

i. The trial burn is likely to determine whether the incinerator performance standards required by N.J.A.C. 7:26–10.7(d) can be met;

ii. The trial burn itself will not present an imminent hazard to human health or the environment;

iii. The trial burn will help the Department to determine operating requirements to be specified under N.J.A.C. 7:26–10.7(f); and

iv. The information sought in (b)4i and iii above cannot reasonably be developed through other means.

5. During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

i. A quantitative analysis of the trial POHC's in the waste feed to the incinerator;

ii. A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC's, carbon dioxide, oxygen and hazardous combustion by-products;

iii. A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the trial POHC's;

iv. A total mass balance of the trial POHC's in the waste;

v. A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in N.J.A.C. 7:26–10.7(d).

vi. If the waste feed contains more than 0.5 percent chlorine a computation of chlorine removal efficiency, in accordance with N.J.A.C. 7:26–10.7(d);

vii. A computation of particulate emissions, in accordance with N.J.A.C. 7:26–10.7(d);

viii. An identification of sources of fugitive emissions and their means of control;

ix. A measurement of average maximum, and minimum temperatures and air feed rates;

x. A continuous measurement of carbon monoxide (CO) in the exhaust gas;

xi. Such other information as the Department may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in N.J.A.C. 7:26–10.7(d) and to establish the operating conditions required by N.J.A.C. 7:26–10.7(f) as necessary to meet that performance standard.

6. The applicant shall submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all the determinations required in (b)5 above. To the extent possible, this submission shall be made 30 days after the completion of the trial burn or sooner if the Department so requests.

7. All data collected during any trial burn shall be submitted to the Department following the completion of the trial burn. The results of the trial burn shall be included with Part B of the permit application, if a permit application is submitted.

8. All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report pursuant to N.J.A.C. 7:26–12.2.

(c) The Department may issue a research, development and demonstration ("RD and D") permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which separate permit standards for such innovative and experimental activity have not been promulgated under N.J.A.C. 7:26–12. In addition to the requirements of (c)1 below, any such permit shall include such terms and conditions as will assure protection of human health and the environment.

1. Such permits shall contain the following provisions:

i. Provision for the construction of such hazardous waste facilities (after permit issuance) as necessary, and for operation of the facility for not longer than one year unless renewed as provided in (c)6 below;

ii. Provision for the receipt and treatment by such hazardous waste facilities of only those types and quantities of hazardous waste specified in the permit which the Department deems necessary for purposes of determining the effectiveness and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

iii. Such requirements as the Department deems necessary to protect human health and the environment including, but not limited to:

(1) Monitoring;

(2) Operation;

(3) Financial responsibility;

(4) Closure;

(5) Remedial action;

(6) Testing; and/or

(7) Submission of information to the Department with respect to the operation of such hazardous waste facility.

2. To expedite RD and D permit eligibility determinations and to minimize delays in the processing of applications, the permit applicant may, in addition, submit a letter to the Department which briefly describes the RD and D proposal. The letter should provide the following:

i. The purpose of the research;

ii. An explanation of why the proposed activity is experimental and innovative including reference to other similar or approved processes or technologies for treating hazardous or non-hazardous waste and an indication of the differences between them and the activities for which the permit is sought; and

iii. A detailed description of the research.

3. Information submitted by the permit applicant to the Department may be claimed as confidential in accordance with N.J.A.C. 7:26–17.

4. The Department may, consistent with the protection of human health and the environment, modify or waive the permit requirements under N.J.A.C. 7:26–12 except that there shall be no modification or waiver of requirements regarding financial responsibility (including insurance) as per N.J.A.C. 7:26–9 or of procedures regarding public participation as per N.J.A.C. 7:26–12.

5. The following are causes for which the Department may order an immediate termination of all operations at the facility;

i. A determination that the permitted activity endangers human health or the environment;

ii. Noncompliance with any condition of the permit;

iii. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

iv. A change in ownership or operational control of a permitted hazardous waste facility; or

v. Any of the reasons for disqualification set forth in N.J.A.C. 7:26–16.8 or 16.9.

6. An RD and D permit may be initially issued for a period not to exceed one year. No less than 60 days prior to expiration of any initial permit issued under this section, a permittee may request the Department to renew said permit for a period not to exceed one year. An RD and D permit may be renewed no more than three times for a maximum duration of one year for each renewal, provided, however, that the maximum length of time a hazardous waste treatment facility will be allowed to operate under an RD and D permit is three years from the date of issuance of the initial RD and D permit.

Correction: Cross reference in (b) refers to 7:27 instead of 7:26 and "above" changed to "below".
See: 17 N.J.R. 2794(a).
Amended by R.1989 d.11, effective January 3, 1989.
See: 20 N.J.R. 462(a), 21 N.J.R. 56(b).
Added (c).
Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
Corrected a citation and clarified the timeframe for applicant to submittal of a certification that a hazardous waste incinerator trial burn has been carried out in accordance with the approved trial burn plan.
Administrative Correction.
See: 25 N.J.R. 4595(b).

7:26–12.10 Permit application procedures

(a) Any person who requires a permit to this subchapter shall complete, sign, and submit to the Department an application in accordance with this section unless exempted by reason of N.J.A.C. 7:26–12.9 (short term permits).

(b) Permit applications shall comply with the signature and certification requirements of N.J.A.C. 7:26–12.2.

(c) Except as otherwise set forth in (d) below, the Department shall not begin processing of a permit until the applicant has fully complied with the application requirements of N.J.A.C. 7:26–12.2 and the process set out in this paragraph.

1. Not less than 180 days prior to filing a Part B application (90 days in the case of an applicant exempted from the requirement of a disclosure statement under N.J.A.C. 7:26–16.3(d)), as required by N.J.A.C. 7:26–12.2(e) and an Environmental and Health Impact Statement, as required by N.J.A.C. 7:26–12.2(e), the applicant shall submit to the Department:

i. A letter of intent to apply for a permit which shall include a brief description of the facility; and

ii. A disclosure statement or alternative information statement meeting the standards set forth at N.J.A.C. 7:26–12.2(g).

(d) Within 150 days of receipt of the disclosure statement or within 60 days of receipt of the alternative information statement, the Department shall inform the applicant whether the disclosure statement or alternative information statement shows sufficient indication of competency and reliability in the area of hazardous waste management to warrant the submission of a Part B application and an Environmental and Health Impact Statement (EHIS). Such indication shall include a preliminary evaluation of the character of the applicant and the applicant's history of compliance with or violation of all relevant laws, rules and regulations concerning hazardous waste management in this State or elsewhere. This evaluation shall be finalized to the extent practicable by the time the Part B application review is completed. It is the Department's intent to continue this evaluation process during the term of the permit if issued.

1. An applicant may voluntarily submit a Part B application and EHIS to the Department earlier than set forth above, and request that the Department review the application concurrently with the background investigation and disclosure statement review required under N.J.A.C. 7:26–16.1 et seq. The Department in its discretion may begin reviewing the application.

2. The Department shall not be bound in any way to continue review of the application should an investigative report from the Attorney General or review of the disclosure statement indicate that the applicant may be subject to one of the causes for disqualification set forth in N.J.A.C. 7:26–16.8.

(e) Upon completing a review of the application, the Department will notify the applicant whether the application is complete. If the application is incomplete, the Department shall list the information necessary to make the application complete. When the application is for an existing hazardous waste facility, the Department shall specify in the notice of deficiency a date for submitting the necessary information. The Department shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Department may request additional information but only when necessary to clarify, modify or supplement previously submitted material, unless information received during the public hearing process (see N.J.A.C. 7:26–12.12) in the Department's opinion warrants a request for additional submittals by the applicant.

(f) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken.

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
In (c), exception of (d) added; in (c)1, 180 days was 90 days.

In (d), 150 days was 60 days, "disclosure statement or ... alternative information statement" was "letter of intent"; (d)1 and 2 added.

7:26–12.11 Decision making process for completed permit applications

(a) Once an application is complete, the Department shall, within six months of that date, tentatively decide whether to prepare a draft permit or to deny the application.

1. If the Department tentatively decides to deny the permit application, a notice of intent to deny shall be issued. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Department's final decision is that the tentative decision to deny the permit application was incorrect, the notice of intent to deny shall be withdrawn and the Department will proceed to prepare a draft permit under (a)2 below.

2. If the Department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

i. All conditions under N.J.A.C. 7:26–12.4;

ii. All compliance schedules under N.J.A.C. 7:26–12.4(d);

iii. All monitoring requirements under N.J.A.C. 7:26–12.4(a);

iv. Standards for treatment, storage and/or disposal and all other permit conditions under N.J.A.C. 7:26–12.4.

3. All draft permits shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record and made available for public comment. The Department shall after notice, hold a public hearing, issue a final decision and respond to comments.

(b) The Department shall prepare a statement of basis for every draft permit for which a fact sheet under (c) below is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them, or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) A fact sheet shall be prepared for every draft permit of a hazardous waste facility, for every expansion at a major hazardous waste facility which would increase its treatment, storage or disposal capacity by more than 50 percent, and for any other draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. In cases where an EHIS was required as part of the application, a brief summary as to how the statement demonstrates that the proposed facility, subject to such conditions made part of the draft permit, would not create a significant adverse impact upon the public health or environment;

5. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

6. A description of the procedures for reaching a final decision on the draft permit including:

i. The beginning and ending dates of the comment period under N.J.A.C. 7:26–12.12 and the address where comments will be received; and

ii. The date, time and location of a public hearing on the draft permit pursuant to N.J.A.C. 7:26–12.12; and

7. Name and telephone number of a person to contact for additional information.

As amended, R.1984 d.202, effective May 21, 1984.
See: 16 N.J.R. 306(a), 16 N.J.R. 1261(a).
(c): in first sentence, "hazardous waste facility" was "new major hazardous waste facility"; "and for any other draft permit" was "and for every draft permit".
Amended by R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Added "within six months of that date" to (a).

7:26–12.12 Public participation in the permit process

(a) The Department shall give public notice that the following actions have occurred:

1. A permit application has been tentatively denied pursuant to N.J.A.C. 7:26–12.11(a);

2. A draft permit has been prepared pursuant to N.J.A.C. 7:26–12.11(a); and

3. A hearing has been scheduled pursuant to (i) below;

(b) Public notices may describe more than one permit or permit action.

(c) Public notice of the preparation of a draft permit, including notice of intent to deny, shall allow at least 45 days for public comment.

(d) Public notice of a public hearing shall be given at least 30 days before the hearing and may be combined with public notice of a draft permit. The public hearing shall be held within 45 days of the date of issuance of the draft permit.

(e) Public notice of the activities described above shall be given in the following methods:

1. By mailing a copy of a notice of the following persons (any person otherwise entitled to receive notice under this paragraph may waive the rights to receive notice for any classes and categories of permits):

i. The applicant;

ii. The United States Environmental Protection Agency;

iii. Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities;

iv. The Board of Freeholders of the County in which the facility is or is proposed to be located;

v. The municipality(ies) where the facility is or is proposed to be located.

vi. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals;

2. By notice in a daily or weekly newspaper within the area affected by the facility in a manner constituting legal notice under State law and by broadcast over local radio station; and

3. By any other method reasonably calculated to give actual notice of the action in question to persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(f) All public notices issued under this section shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

3. A brief description of the business conducted at the facility or activity described in the permit application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures required by (h) and (i) below and the date, time, and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other applicable rules and procedures by which the public may participate in the final permit decision.

6. Reference to the date of previous public notices relating to the permit.

(g) In addition to the notice described above, all persons identified in (e)1i, ii and iii above shall be mailed a copy of the fact sheet or statement of basis, the permit application and the draft permit.

(h) During the public comment period provided under (c) above, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in (1) below.

(i) The Department shall hold a public hearing:

1. On every draft permit for a new hazardous waste facility; or

2. On any draft permit modification or revocation and reissuance which would result in an increase of greater than 50 percent in the capacity of an existing facility to treat, store, or dispose of hazardous waste; or

3. Whenever it finds, on the basis of requests, a significant degree of interest in a draft permit; or

4. Whenever, in the Department's discretion, such a hearing might clarify one or more issues involved in the permit decision.

5. Whenever the Department receives written notice of opposition to a draft permit and a request for hearing within 45 days of public notice under this section.

(j) Any person may submit oral or written statements and data concerning the draft permit at a public hearing. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under this section shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(k) The applicant for a permit shall appear at the public hearing and be available to answer questions regarding the proposed facility or facility expansion. Failure of the applicant to appear at the public hearing and answer questions may result in denial of the application. In the event that a response cannot be given at the hearing, a written response shall be prepared by the Department or the applicant after the hearing.

(*l*) A tape recording or written transcript of each public hearing shall be made available to the public.

(m) At the time that any final permit is issued the Department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(n) The response to comments shall be available to the public.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).
(e)2: "and by broadcast over local radio stations" inserted.
(i)5 added.
Amended by R.1987 d.235, effective June 1, 1987.
See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
Amended (d) by adding text, added new (k) and (*o*); renumbered existing numbers to codify correctly.
Amended by R.1988 d.377, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Amended cross reference to "12.11" from "12.119".
Amended by R.1988 d.375, effective August 1, 1988.
See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
Deleted (*o*).

7:26–12.13 Procedures for modification, revocation and reissuance, or termination of permits

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in N.J.A.C. 7:26–12.6 or N.J.A.C. 7:26–12.7 all requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Department tentatively decides to modify or revoke and reissue a permit under N.J.A.C. 7:12–12.6 it shall:

1. Prepare a draft permit pursuant to N.J.A.C. 7:26–12.11 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceedings the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. "Minor modifications" as defined in N.J.A.C. 7:26–12.8 are not subject to the requirements of this section.

(c) If the Department tentatively decides to terminate a permit under N.J.A.C. 7:26–12.7(a)1 through (a)4, it shall issue a notice of intent to terminate. This form of notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under N.J.A.C. 7:26–12.11.

(d) If the Department decides to terminate a permit under N.J.A.C. 7:26–12.7(a)5, it need issue a notice to the permittee only. In this case, the notice shall not be considered a form of draft permit, but the permittee shall have the same right to a hearing as in any other proceeding to revoke an approved registration under N.J.S.A. 13:1E–12 and N.J.A.C. 7:26–16.

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(c): termination reference clarified.
(d) added.

7:26–12.14 (Reserved)

SUBCHAPTER 13. SITING CRITERIA FOR NEW MAJOR COMMERCIAL HAZARDOUS WASTE FACILITIES

Subchapter Historical Note

Adopted as R.1983 d.276, effective July 5, 1983. See: 15 N.J.R. 113(a), 15 N.J.R. 1096(a).

7:26–13.1 Scope and authority

Subchapter 13 of this chapter (N.J.A.C. 7:26–13); adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E–49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., establishes the Department of Environmental Protection's criteria for the siting of new major commercial hazardous waste facilities. These criteria, adopted after consultation with the Hazardous Waste Advisory Council, shall be the minimum standards for siting of new major commercial hazardous waste facilities by the Hazardous Waste Facilities Siting Commission and the Department.

Case Notes

Designation of properties as potential site for hazardous waste facility did not constitute "taking". Littman v. Gimello, 115 N.J. 154, 557 A.2d 314 (1989), certiorari denied 110 S.Ct. 324, 493 U.S. 934, 107 L.Ed.2d 314.

7:26–13.2 Construction

(a) N.J.A.C. 7:26–13 shall be liberally construed to permit the Department to discharge its statutory functions pursuant to N.J.S.A. 13:1E–49 et seq.

(b) The Commissioner may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq.

7:26–13.3 Purpose of the regulations

(a) The purpose of N.J.A.C. 7:26–13 is to establish criteria for the siting of any new major commercial hazardous waste facility which shall prevent any significant threat to human health or the environment. When used in siting new major commercial hazardous waste facilities, the criteria shall:

1. Protect the residents of the State;

2. Ensure structural stability for the new major commercial hazardous waste facility;

3. Protect surface water;

4. Protect groundwater;

5. Provide for the safe transportation of hazardous waste to new major commercial hazardous waste facilities;

6. Protect environmentally sensitive areas; and

7. Protect air quality.

7:26–13.4 Applicability

(a) N.J.A.C. 7:26–13 shall apply to:

1. The Commission in the development of the major hazardous waste facilities plan and the siting of new major commercial hazardous waste facilities; and

2. The Department and the Council in the review of environmental and health impact statements, registration statement, and engineering designs for new major commercial hazardous waste facilities submitted by applicants.

7:26–13.5 Severability

If any section, subsection, provision, clause, or portion of N.J.A.C. 7:26–13 is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26–13.6 Definitions

The following words and terms, when used in N.J.A.C. 7:26–13, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E–49 et seq.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring.

"Coastal flood plain" means the area subject to high velocity waters, including, but not limited to, hurricane wave wash.

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

"Commission" means the Hazardous Waste Facilities Siting Commission established by the Act.

"Containment structure" means a land emplacement or impoundment facility.

"Council" means the Hazardous Waste Advisory Council established by the Act.

"Criteria" means the standards adopted by the Department in this subchapter for the siting of new major commercial hazardous waste facilities.

"Department" means the New Jersey Department of Environmental Protection.

"Existing major hazardous waste facility" means any major hazardous waste facility which was legally in operation, or upon which construction had legally commenced prior to September 10, 1981.

"Facility" means a new major commercial hazardous waste facility.

"Formation" means a grouping of rock units or sediments of the earth's crust that are more or less distinct from other rock units or sediments because of composition or structure.

"Generator" means any person, by site, whose act or process produces hazardous waste as defined by this subchapter.

"Groundwater" means that water below the ground, the static pressure of which is equal to or greater than the prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

"Hazardous waste" means, for the purposes of N.J.A.C. 7:26–13, any waste or combination of wastes which pose a present or potential threat to human health, living organisms or the environment including, but not limited to, waste material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive or flammable, and

any waste so designated by the United States Environmental Protection Agency or as more specifically defined in N.J.A.C. 7:26–8. Hazardous waste does not include radioactive waste.

"Hazardous waste facility" means any area, plant or other facility for the treatment, storage or disposal of hazardous waste, including loading and transportation facilities or equipment used in connection with the processing of hazardous wastes.

"100–year flood event" means a flood of such severity that it would statistically occur only once every 100 years, although it may occur in any year.

"Hydrologic barrier" means a feature which restricts the movement of groundwater across it, such as a fault, groundwater divide, confining bed, discharge area, drainage divide, etc. It is characterized by different directions of groundwater flow or by a difference in the level of groundwater on opposite sides.

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

"Land emplacement facility" means a controlled facility for the permanent disposal of hazardous waste into or onto the land and which is designed and operated to contain waste so that any migration of pollutants shall not create a health hazard. Such facilities include but are not limited to secure landfills, landfarms, and aboveground perpetual storage facilities.

"Major hazardous waste facility" means 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 hazardous waste facility which would otherwise be considered a major hazardous waste facility pursuant to these regulations solely as the result of recycling or rerefining 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 subchapter.

"Mean sea level" means the plane about which the tide oscillates; the average height of the sea for all stages of the tide. At any particular place (for example, Sandy Hook), it is derived by averaging the hourly tide heights over a 19 year period. The current level used in surveying is based on the National Geodetic vertical datum of 1929.

"New major hazardous waste facility" means any major hazardous waste facility other than an existing major hazardous waste facility.

"Nonattainment area" means any area determined by the Department as one in which the ambient air concentrations of a criteria pollutant exceeds a national ambient air quality standard (NAAQS).

"Plan" means the Major Hazardous Waste Facilities Plan adopted by the Commission pursuant to the Act.

"Potable water" means any water used, or intended to be used, for drinking and culinary purposes.

"Public water supply" means a water supply providing piped water to the public for human consumption, if such system has at least 15 service connections or regularly services at least 25 individuals.

"Reservoir" means any impoundment, whether naturally created or created in whole or in part by the building of structures for the retention of surface water.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, or brook.

"Saturated zone" means that part of the water-bearing material in which all voids are ideally filled with water under pressure greater than atmosphere. The top of the saturated zone is the water table.

"Seasonally high water table" means the highest elevation of the water table during the wettest season in a year of above average precipitation. Whenever soil mottling occurs the seasonally high water table shall be considered as the highest level at which mottling occurs if there is no other approved means of determination.

"Site" means the area of plot of land being considered for use as a new major commercial hazardous waste facility plus any contiguous lands reserved to meet the requirements of N.J.A.C. 7:26–13.12.

"Subsidence" means the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from material causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Surface waters" means any waters of the State which are not groundwaters.

"Uppermost saturated unit" means the saturated hydrogeologic unit (unconsolidated or bedrock) nearest the ground surface that is separated from deeper aquifers by confining beds.

"Watershed" means the region or area drained by a river, or stream.

"Water supply well" means a well or well field completely or partially supplying potable water for human consumption or for irrigation of crops intended for direct human consumption.

"Water table" means the upper surface of the saturated zone. For the purpose of N.J.A.C. 7:26–13.12, a perched water table may be considered the water table.

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Well field" means a ground of water supply wells for which the Department has issued one water supply allocation permit.

7:26–13.7 Protection of the population of the State

(a) For the purpose of protecting the population of the State:

1. No land emplacement or impoundment type of new major commercial hazardous waste facility shall be sited within 2,000 feet of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day;

2. No new major commercial hazardous waste facility other than land emplacement or impoundment type facilities shall be sited within one-half mile of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day; and

3. No new major commercial hazardous waste facility shall be cited in any area within a 20–mile radius of a nuclear fission plant at which spent nuclear fuel rods are stored on site.

4. The measurement of distances required in (a)1 and 2 above shall be taken from structures which are legally occupied, in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D–1 et seq. and any ordinance adopted by the municipality pursuant thereto, six months prior to the Commission's formally proposing to designate the site.

(b) No new major commercial hazardous waste facility shall be sited in any area so as to cause an unreasonable risk of harm to the health, safety, and welfare of the population. In determining whether such risk would be presented, the Department and the Commission shall take into consideration, at every step of the siting process, the following factors:

1. The density of population in proximity to the facility;

2. The size and type of the facility;

3. The type of waste expected to be present at the facility;

4. The transportation means and routes available to evacuate the population at risk in a maximum credible accident, including both spills and fires;

5. The size and types of other hazardous waste facilities and facilities that handle hazardous materials in the adjacent area; and

6. The availability of fire, police, and other emergency management personnel and medical facilities in the area.

R.1983 d.406, eff. September 19, 1983.
See: 15 N.J.R. 1064(a), 15 N.J.R. 1579(a).

7:26–13.8 Structural stability

(a) For the purpose of ensuring structural stability of new major commercial hazardous waste facilities:

1. No new major commercial hazardous waste facility shall be sited in a riverine flood hazard area delineated by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A. 58:16A–50 et seq., or the 100–year flood hazard area identified under the flood insurance studies prepared for the Federal Emergency Management Agency, or in other areas shown to be within the area subject to inundation by the 100–year design flood of a nondelineated stream as determined pursuant to N.J.S.A. 58:16A–55.2.

2. No type of new major commercial hazardous waste facility other than a land emplacement or impoundment type of facility shall be sited in:

i. A coastal flood hazard area identified by the Federal Emergency Management Agency or delineated by the Department or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain, unless it can be demonstrated to the satisfaction of the Department that the facility design will prevent the physical transport of any hazardous waste by the 100–year coastal flood event;

ii. Areas underlain by cavernous limestone, cavernous dolomite, or cavernous marble; or

iii. Areas overlying subsurface mining activities, past or present, unless the applicant can demonstrate to the satisfaction of the Department that the facility design fully compensates for the risk of surface subsidence.

3. No land emplacement or impoundment type of new major commercial hazardous waste facility shall be sited in:

i. A coastal flood hazard area identified by the Federal Emergency Management Agency or delineated by the Department or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain;

ii. Areas underlain by limestone, dolomite or marble; or

iii. Areas overlying past or present subsurface mining activities.

7:26–13.9 Protection of surface water

(a) For the purpose of protecting surface water, no new major commercial hazardous waste facility shall be sited within:

1. The upstream portion of the watershed draining to an on-stream reservoir;

2. Those watershed areas that drain directly into an off-stream reservoir;

3. The watersheds for waters classified by the Department as FW–1, or FW–2 Trout Production Waters in the Surface Water Quality Standards, N.J.A.C. 7:9–4.

7:26–13.10 Protection of environmentally sensitive areas

(a) For the purpose of protecting environmentally sensitive areas, no new major commercial hazardous waste facility shall be sited in or on:

1. Wetland areas inundated by surface or groundwater with a frequency to support, under normal circumstances, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction;

2. Areas where the placement of the facility would adversely affect a habitat of an endangered or threatened wildlife or vegetative species as defined by the New Jersey Endangered and Non–Game Species Conservation Act, N.J.S.A. 23:2A–1 et seq., or the Federal Endangered Species Act of 1973, P.L. 93–205, unless a habitat adequate to assure the survival of the species within the region surrounding or on the site is preserved.

i. These areas preserved as habitats shall be appropriately managed in accordance with a plan approved by the Endangered and Non–Game Species Project within the Division of Fish, Game and Wildlife.

3. Areas designated as wild, scenic, recreational, or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C.A. 1271 et seq., or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8–45 et seq.;

4. Lands in municipally approved farmland preservation programs or on lands which have been dedicated to agricultural use by the purchase of their development rights pursuant to the provisions of the "Agriculture Retention and Development Act," P.L. 1983, c.33 or equivalent independent county/municipal programs, provided that such designation and dedication was officially adopted by municipal ordinance and the development rights have been purchased at least six months prior to the Commission's proposing the site or an applicant submitting to the Department and the municipality a letter stating the intention to apply for registration and engineering design approval;

5. The Pinelands Area as established by N.J.S.A. 13:18A–11a of the Pinelands Protection Act, N.J.S.A. 13:18A–1 et seq.; or

6. Within 6.25 miles (10 kilometers) of any mandatory Federal Class 1 Prevention of Significant Deterioration of Air Quality area.

7:26–13.11 Ensuring safe transportation

(a) For the purpose of ensuring the safe transportation of hazardous waste from generators to new major commercial hazardous waste facilities.

1. Hazardous waste should be transported on Interstate, State or county highways or other roads which are well maintained, well-constructed, free of obstructions and with a high degree of visibility;

2. The Department and Commission should consider requiring private, direct access roads from those specified in (a)1 above to the facility; and

3. No hazardous waste shall be transported on roads where weight restrictions for the road or any bridge on the road will be exceeded in the selected route or travel, unless engineering upgrades, undertaken and financed by the facility operators, are provided which conform to all appropriate Federal, State, county and local laws and regulations.

7:26–13.12 Protection of ground water

(a) For the purpose of protecting ground water:

1. New major commercial hazardous waste facilities may only be sited in areas where, prior to facility construction, the flow of ground water in the uppermost saturated unit is predominantly parallel to or upwards toward the water table and the predominant ground water flow direction is toward a nearby surface water body without any intermediate withdrawals from the uppermost saturated zone for public or private water supply and there is no significant recharge to deep aquifers; and

2. All new major commercial hazardous waste facilities shall be prohibited in areas where the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface; and

3. Land emplacement and impoundment type of new major commercial hazardous waste facilities shall be prohibited in the following areas:

i. In areas where the ground water travel time within the uppermost saturated unit from the outermost edge of the containment structure to the site boundary, or to a surface water body or wetland within the site boundary, is less than 10 years;

ii. In areas within one mile of a water supply well or well field producing over 100,000 gallons per day, unless it can be demonstrated to the satisfaction of the Department or Commission, as appropriate, that natural hydrologic barriers isolate the site from the aquifer being pumped;

iii. In the case of partially in-ground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within five feet of the bottom of the containment structure; and

iv. In the case of wholly aboveground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface.

7:26–13.13 Protection of air quality

(a) For the purpose of protecting the air quality of the State:

1. No new major commercial hazardous waste facility shall be sited in a nonattainment area unless the facility demonstrates that emission offsets will be obtained prior to operation, pursuant to the requirements of the Department's air pollution Control regulation entitled, "control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas", N.J.A.C. 7:27–18 et seq., subject to the following more stringent requirements:

i. The annual significant emission increase for volatile organic substances shall be 10 tons per year;

ii. The annual significant emission increase for total suspended particulate matter shall be 25 tons per year;

iii. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27–18.4(b) for volatile organic substances (VOS) shall be at least 2:1 and the offsets shall be obtained at a distance not to exceed 50 miles from the proposed new facility; and

iv. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27–18.4(b) for total suspended particulate matter (TSP) shall be as follows:

Distance of TSP Offsets from Facility (miles)	Minimum Offset Ratio
0–0.5	1.0:1
0.5–1.0	1.5:1
1.0–2.0	2.01:1

SUBCHAPTER 13A. HAZARDOUS WASTE FACILITIES SITING COMMISSION: POLICIES AND PROCEDURES

Subchapter Historical Note

Adopted as R.1984 d.304, effective July 16, 1984. See: 16 N.J.R. 408(b), 16 N.J.R. 1989(a).

7:26–13A.1 Scope and authority

Unless otherwise provided by statute, Subchapter 13A of this Chapter (N.J.A.C. 7:26–13A) adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E–49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., establishes the Hazardous Waste Facilities Siting Commission's policies and procedures applicable to the siting of new major commercial hazardous waste facilities and to the conduct of other business which comes before the Commission.

7:26–13A.2 Construction

(a) N.J.A.C. 7:26–13A shall be liberally construed to permit the Hazardous Waste Facilities Siting Commission to discharge its statutory functions pursuant to N.J.S.A. 13:1E–49 et seq.

(b) The Hazardous Waste Facilities Siting Commission may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq.

7:26–13A.3 Purpose

The purpose of N.J.A.C. 7:26–13A is to provide the public with information as to the policies and procedures adopted by the Hazardous Waste Facilities Siting Commission in regard to the siting of new major commercial hazardous waste facilities and in regard to the discharge of other duties of the Commission.

7:26–13A.4 Severability

If any section, subsection, provision, clause, or portion of N.J.A.C. 7:26–13A is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the subchapter shall not be affected thereby.

7:26–13A.5 Definitions

The following words and terms, when used in N.J.A.C. 7:26–13A shall have the following meanings, unless the context clearly indicates otherwise. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the Department of Environmental Protection rules, N.J.A.C. 7:26–13.

"Alternate or additional site" means a site for a facility which is proposed and adopted by the commission at the request of a hazardous waste industry, pursuant to N.J.S.A. 13:1E–59b.

"Applicant" means the applicant for a registration statement and engineering design for a major hazardous waste facility.

"Application" means the application for a registration statement and engineering design for a major hazardous waste facility.

"Disclosure statement" means a statement submitted to the department by an applicant, which statement shall include:

1. The full name, business address and social security number of the applicant, or, if the applicant is a business concern, of any officers, directors, partners, or key employees thereof and all persons or business concerns holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

2. The full name, business address and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the applicant holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any State or federal authority, in the 10 years immediately preceding the filing of the application, which are pending or have resulted in a finding or a settlement of a violation of any law or rule and regulation relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by the applicant, or if the applicant is a business concern, by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or federal statute or local ordinance, against the applicant, or, if the applicant is a business concern, against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes;

7. A listing of all labor unions and trade and business associations in which the applicant was a member or with which the applicant had a collective bargaining agreement during the 10 years preceding the date of the filing of the application;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant in connection with his collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

9. Any other information the Attorney General or the department may require that relates to the competency, reliability or good character of the applicant.

"Engineering design" means the specifications and parameters approved by the department for the construction and operation of a major hazardous waste facility.

"Environmental and health impact statement" means a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility, and includes an inventory of existing environmental conditions at the site, a project description, an assessment of the impact of the project on the environment and on public health, a listing of unavoidable environmental and public health impacts, and steps to be taken to minimize environmental and public health impacts during construction and operation.

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

"Plan" means the Major Hazardous Waste Facilities Plan adopted by the commission pursuant to N.J.S.A. 13:1E–58.

"Registration statement" or "registration" means the operating license approved by the department, for a major hazardous waste facility; "registrant" means the person to whom such approval was granted.

"Respondent" means, for the purposes of this subchapter, the party, or parties, to a dispute regarding payment of the gross receipts tax which is not the petitioning party.

"Site suitability study" means a study conducted to determine whether a proposed site is suitable for a particular type and size major hazardous waste facility when the siting criteria, N.J.A.C. 7:26–13, are applied to that site.

7:26–13A.6 Procedure for designating a facility site at the request of any hazardous waste industry pursuant to N.J.S.A. 13:1E–59

(a) The commission may, after adoption of the Siting Criteria for New Major Commercial Hazardous Waste Facilities, N.J.A.C. 7:26–13, by the department, and the adoption of a Major Hazardous Waste Facilities Plan by the commission, accept for consideration proposals for alternate or additional site designations at the request of any hazardous waste industry.

1. The requester shall have the burden of proof concerning suitability of the site in the proceedings provided for in this section.

(b) The requester shall submit a written request for the site designation, a letter of intent to apply for registration and engineering design approval and description of the nature of the proposed facility, and a disclosure statement on a form to be supplied by the commission.

1. The form may be obtained from and shall be mailed, by certified mail, to the commission at CN 406, Trenton, New Jersey 08625 and to the governing body of the affected municipality or municipalities and county.

2. The commission shall acknowledge receipt of the request and disclosure statement and, at its discretion, require the requester to supplement the form with additional information which the commission reasonably deems necessary.

(c) Within 90 days of the receipt of a completed request for site designation, letter of intent and disclosure statement, the commission shall either:

1. Deny the request in writing, without prejudice, upon a determination by the commission that the proposed site does not comply with the siting criteria and/or the proposed facility is not of the number and type determined to be necessary in the plan; or

2. Transmit notice of the accepted request, by certified mail, to the requester, the governing body, board of health, planning board and environmental commission of the affected municipality or municipalities and to the governing body and any county health department of the affected county;

3. Forward the letter of intent to the department;

4. Forward the disclosure statement to the Office of the Attorney General; and

5. Publish, in a newspaper of general circulation in the affected jurisdiction, notice of the accepted request.

(d) As soon as is practicable, but no later than 45 days after providing notice as required in (c)2. above, the governing body of the affected municipality or municipalities shall be offered a grant for conducting suitability studies for the proposed facility site from the commission, in an amount to be determined by the commission.

(e) Upon receiving notice of transmittal of the request as required in (c)2 above, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26–12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26–4A to the Department. The requester may also, at its discretion, authorize the Commission to prepare at the requester's expense, an environmental and health impact statement, which meets the requirements of N.J.A.C. 7:26–12.2, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:

1. Consult with the commission and the department in the preparation of a request for proposals; and

2. Recommend consultants to be provided with a request for proposals.

(f) In no way shall the commission's preparation of an environmental and health impact statement be construed as an endorsement of the proposed site and/or facility by the commission or the department.

(g) Within six months of the receipt of a grant, as provided for in (d) above, the governing body of the affected municipality or municipalities shall complete and transmit to the commission the site suitability studies on the proposed site.

1. Upon receipt of the site suitability studies, or upon the completion of the time period for such studies, whichever is sooner, the commission shall publish, in a newspaper of general circulation in the affected jurisdiction, a notice of the scheduling of an adjudicatory hearing to consider the proposed site.

(h) Within 45 days of the receipt by the commission of the site suitability studies, or upon completion of the time period for such studies, whichever is sooner, an adjudicatory hearing concerning the proposed site shall be conducted by an administrative law judge.

1. The affected municipality or municipalities and the requester shall be parties of interest to the adjudicatory hearing, and shall have the right to present testimony and cross-examine witnesses.

2. Intervention in the adjudicatory hearing by any other person shall be as provided in N.J.A.C. 1:1–12.

3. Within 30 days of the close of the adjudicatory hearing, the administrative law judge shall transmit his initial decision including recommendations for action on the proposed site to the commission.

(i) Within 30 days of the receipt of the administrative law judge's recommendations, the commission, whose membership shall be expanded for this purpose as provided for in N.J.S.A. 13:1E–52c, shall affirm, conditionally affirm or reject the recommendations. Such action by the commission shall:

1. Be based upon the potential for significant impairment of the environment or the public health; and

2. Be considered to be final agency action thereon for the purposes of the Administrative Procedure Act and shall be subject only to judicial review in the Appellate Division of the Superior Court pursuant to R.2–1.

3. If the commission fails to act upon the recommendations of the administrative law judge within 30 days, as required in this subsection, the failure shall constitute commission affirmance of those recommendations in accordance with the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1–1.

(j) If the requester's proposed site is adopted by the Commission, the requester, if it has not previously exercised its discretion to do so, shall:

1. Authorize the commission to prepare an environmental and health impact statement as provided for in (e) above;

2. Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in N.J.S.A. 13:1E–60 and the applicable rules of the Department; and

3. Submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26–12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26–4A to the Department.

(k) Any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 percent or more of the capacity of that facility shall be reviewed and approved by the Department according to the procedure in N.J.S.A. 13:1E–60 and any applicable rules pursuant thereto.

(*l*) The commission may, upon its own motion or at the request of the governing body of any affected municipality, repeal or withdraw any adopted site for a facility if, in the discretion of the commission, such action is consistent with the purposes and provisions of the Act.

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

7:26–13A.7 (Reserved)

7:26–13A.8 Procedure for resolving disputes regarding payment of the gross receipts tax

(a) To resolve a controversy or dispute regarding the payment of the five percent gross receipts tax pursuant to N.J.S.A. 13:1E–80, an interested person shall initiate a proceeding before the commission by:

1. Obtaining a form petition at the address given in (a)3. below from the commission.

2. Completing the petition, including a sworn statement as to its truth;

3. Filing the original petition with the commission in person at 28 West State Street, Room 614, Trenton, New Jersey 08625, or by mail to CN–406, Trenton, New Jersey 08625; and

4. At the time of filing, providing to the commission proof of service of a copy of the petition on the respondent or respondents.

(b) Within 30 days after service of the petition upon them, the respondent or respondents shall file an answer with the commission together with proof of service of a copy thereof upon the petitioner.

1. The answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the allegation of the petition.

2. A respondent may not generally deny all the allegations, but shall make denials as specific denials which meet the substance of designated allegations or paragraphs of the petition.

3. Allegations in any answer setting forth an affirmative defense shall be taken as denied.

4. The time for filing an answer with the commission may be extended beyond 30 days upon written request to the commission.

(c) After an answer has been filed or the time for doing so has expired, the commission may summon counsel for the parties to appear at a conference for the following purposes:

1. Eliminate or simplify issues;

2. Obtain admissions of fact or of documents that will avoid unnecessary proof;

3. Arrive at an agreement of facts; and

4. Come to an amicable resolution of the controversy without requiring a hearing.

(d) In order to resolve the controversy at a settlement conference, the commission may require the parties to:

1. Submit written statements, verified by oath, as to the facts involved in the controversy; and

2. Submit certified copies of all documents necessary to a full understanding of the issues.

(e) For failure to appear at a settlement conference or to participate therein or to take action required by the commission, the commission in its discretion may make such order with respect to the continued prosecution of the matter or an objection thereto, as it deems just and proper.

(f) In the event that the parties and the commission are unable to resolve the controversy at a settlement conference, as referred to in (c) above, the commission shall refer the matter to the Office of Administrative Law as a contested case for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., N.J.S.A. 52:14F–1 et seq., and N.J.A.C. 1:1–1.

1. Upon receipt of the initial decision from the Office of Administrative Law, the commission shall affirm, reject or modify the decision within 45 days.

2. The commission's decision shall be considered to be the final agency action from which any party may take an appeal to the Appellate Division of the Superior Court.

SUBCHAPTER 14. RESOURCE RECOVERY GRANTS OR LOANS

Subchapter Historical Note

Adopted as R.1981 d.184, effective June 4, 1981. See: 13 N.J.R. 9(a), 13 N.J.R. 340(d).

7:26–14.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations pursuant to the Natural Resources Bond Act, P.L. 1980, c.70 for the development and implementation of resource recovery projects as described within the approved District Solid Waste Management Plans developed under N.J.S.A. 13:1E–1 et seq. Any loan agreement which is executed pursuant to P.L. 1985, c.220, c.331 and c.335 prior to the effective date of N.J.A.C. 7:26–14A shall be in accordance with this subchapter, 7:26–14. Any loan agreement executed pursuant to P.L. 1985, c.330, c.331 and c.335 after the effective date of N.J.A.C. 7:26–14A shall be in accordance with that subchapter, 7:26–14A.

Amended by R.1988 d.268, effective June 20, 1988.
See: 19 N.J.R. 828(a), 20 N.J.R. 1346(a).
Added text "Any loan agreement . . ."

7:26–14.2 Construction

(a) This subchapter shall be construed so as to permit the Department and its various agencies to discharge its statutory functions and to effectuate the purposes of the law.

(b) The Commissioner may, from time to time, amend, (b)expand or repeal this subchapter in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq.

7:26–14.3 Practice where these rules do not cover

The Commissioner of the Department of Environmental Protection and the Director of the Division of Environmental Quality shall exercise his or her discretion in respect to any matters not covered by this subchapter.

7:26–14.4 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70.

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Act for the purpose of making resource recovery construction grants or loans to Solid Waste Management Districts within the State.

3. To protect the interests of the citizens of this State by insuring that funds appropriated are disbursed in a manner consistent with the purpose and intent of the Natural Resources Bond Act and with the laws and policies of the State of New Jersey.

7:26–14.5 Authority

This subchapter is promulgated pursuant to Section 5 of the Natural Resources Bond Act of 1980, (P.L. 1980, c.70).

7:26–14.6 Definitions

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

"Act" means the Natural Resources Bond Act, P.L. 1980, c.70.

"Awardee" means any solid waste management district or its designated implementation agency which has been determined eligible to receive a grant or loan pursuant to the terms of this subchapter.

"Commissioner" means the Commissioner of Environmental Protection.

"Cost" means the cost of acquisition or construction of all or any part of an approved and authorized project and of all or any real or personal property, agreements and franchises deemed by the Department to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds, cost of geological and hydrological services, administrative costs, engineering and inspection costs and legal expenses, costs of financial, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such project or part thereof and the placing of the same in operation, and also such provision for a reserve fund, or reserves for working capital, operating maintenance or replacement expenses and for payment or security of principal of or interest on bonds

during or after such acquisition or construction as the State Comptroller may determine.

"Department" means the Department of Environmental Protection.

"Grant or loan modification" means any written alteration of the grant or loan terms or conditions, budget or project method or other administrative, technical or financial terms of the award document.

"Implementation agency" means the agency(ies) designated by the Solid Waste Management District to implement the approved District Solid Waste Management Plan.

"Preliminary funding" means such funding which may, at the discretion of the Department, be provided to the applicant, prior to its satisfaction of all grant eligibility conditions to cover the cost of certain initial activities such as planning and design.

"Project" means any work relating to the acquisition and/or construction of resource recovery facilities.

"Real property" means land, within or without the State, and improvements thereof or thereon, any and all rights-of-way, water, riparian and other rights, and any and all easements, and privileges in real property, and any right or interest of any kind or description in, relating to or connected with real property.

"Resource recovery facilities" means the plants, structures, machinery, equipment, real and personal property acquired, constructed or operated or to be acquired, constructed or operated in whole or in party by or on behalf of a political subdivision or subdivisions of the State or any agency thereof of the Hackensack Meadowlands Development Commission and other personal property, and appurtenances necessary or useful and convenient for the collection, separation, removal and reuse of materials in the stream of wastes presently going to landfills, including those materials which are capable of recycling and direct delivery to manufacturers for use as raw materials as well as the conversion of waste for energy production.

"Solid Waste Management District" means each county in the State of New Jersey and the Hackensack Meadowlands District.

"Solid Waste Management Plan" means the approved district solid waste management plan formulated, adopted and approved according to the Solid Waste Management Act (N.J.S.A. 13:1E–1 et seq.).

7:26–14.7 Eligibility

(a) Each Solid Waste Management District or its designated implementation agency is eligible to apply for funding pursuant to the Act.

(b) Eligible costs include the costs of acquisition or construction of all or any part of an approved and authorized resource recovery facility and of all or any real or personal property, agreements, franchises deemed by the Department to be necessary or useful and convenient, including interest or discount on bonds, cost of issuance of bonds, cost of geological and hydrological services, administrative costs, engineering and inspection costs and legal expenses, costs of financing, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all other such expenses as may be necessary or incident to the financing, acquisition, construction, completion, and placing of the project into operation.

(c) Approved and authorized costs may, at the discretion of the Department, be reimbursed from November 5, 1980.

7:26–14.8 Application procedures

(a) Each application for a resource recovery grant or loan shall be submitted to the Department on forms provided by the Department for that purpose.

(b) Each application shall include the following information:

1. A full description of the project including but not limited to project goals and objectives, budget identification of consultants and contractors, if known, scheduling and proposed public participation activities.

2. Certification by the appropriate District that the project is in conformance with the Approved District Solid Waste Management Plan developed under the Solid Waste Management Act (N.J.S.A. 13:1E–1 et seq.), as amended.

3. A written statement describing project's readiness to proceed, including but not limited to status of waste steam evaluation, facility sizing, engineering design, site selection and design, marketing commitments, permits, environmental assessments, and provisions for emergency back-up and residue disposal.

4. A written statement describing the technical feasibility of the project, including but not limited to the history of the development and utilization of the specific technologies involved, the likely ability of the project to meet environmental requirements, the ability of the proposed facility to meet the specifications and needs of material and energy users and the compatibility of the proposed project with other existing or proposed material and energy recovery programs.

5. A written statement describing the financial feasibility of the project including but not limited to a description of the manner in which the applicant will finance its share of the project, a written statement indicating the schedule and steps taken or intended to be taken to implement such financing and indicating the status of each step, and a written statement from an investment banking firm certifying that the proposal has been developed with such firm's assistance and that such firm is prepared to proceed with the marketing, by the local agency, of such bonds as may be necessary to finance the applicant's share of the project.

6. A written statement describing the applicant's need for grant funding.

(c) Applications shall be signed for the applicant by a person authorized to obligate the applicant to the terms and conditions of the grant or loan.

(d) Each application shall be submitted to the Department on or before July 31 of the year in which grant funding is requested.

(e) Each application shall be accompanied by a resolution of the applicant authorizing the filing of an application for a resource recovery construction grant or loan for funding.

(f) All applications shall be sent to:

Chief
Bureau of Planning
Solid Waste Administration
32 East Hanover Street
Trenton, New Jersey 08625

(g) It is the responsibility of the applicant to insure that the Department has received all necessary documentation on or before the closing date.

7:26–14.9 Evaluation of application

(a) The Department will evaluate each application in relation to all applications submitted to it for the year in question.

(b) In determining which applicants will receive resource recovery funding, the amount of such funding, and whether it will be in the form of a grant or a loan or a combination thereof, the Department will consider the following factors:

1. The degree to which each project conforms with the Solid Waste Management Plan.

2. The degree to which the applicant has indicated a commitment to proceed with the project and the degree of readiness of project to proceed with actual land acquisition and facility construction.

3. The degree of feasibility of the specific technology and its fitness for the purpose for which it is intended.

4. The degree to which funding is available to the applicant so that it is able to provide its share of resource recovery construction costs pursuant to the Act and able to maintain and operate the resource recovery facility upon completion.

5. The degree to which the success of the project depends upon funding pursuant to the Act.

7:26–14.10 Determination by the Department

(a) Upon completion of its evaluation of each application, the Department will take one of the following actions:

1. Conditional approval for funding;

2. Disapproval without prejudice.

7:26–14.11 Approval by the Department

(a) The Department will send a Notice of Conditional Funding Award to those approved applicants and submit its recommendations regarding funding along with the basis for its recommendations to the Legislature within 90 days of the application closing date.

(b) Each applicant receiving a Notice of Conditional Funding Award shall obtain and submit certified copies of all necessary Federal, State and local permits to the Department before any grant or local payment other than preliminary funding will be made by the Department for construction activities. Failure to obtain and submit the requisite permits within one year of the date of issuance of the Notice of Conditional Funding may make the project ineligible for a grant for additional payment under the grant or loan award.

(c) The Department will award a grant or a loan to those applicants sent a Notice of Conditional Funding Award upon appropriation of the grant funding by the Legislature.

7:26–14.12 Amount and terms of the grant or loan funding

(a) The amount and term of the grant or loan other than preliminary funding shall be determined at the time of the grant. The amount of the funding shall be based upon allowable project costs as defined in the Act and in this subchapter and upon cost and budget estimates made at the time of the application.

(b) State funding shall be contingent upon the successful marketing of bonds by the applicant to cover the cost of its share of the project.

7:26–14.13 State share

The State share shall be set forth in the funding award document expressed both as a dollar amount and as a percentage of allowable project costs. This dollar amount shall represent the funding ceiling. The State share shall be no more than 33-1/3 percent nor less than 20 percent of the cost of the resource recovery project.

7:26–14.14 Grant award document

(a) The Department will prepare and transmit four copies of the award document to the applicant. The applicant shall execute the award document and return it with a resolution of its appropriate governing body authorizing the signing of the document, naming the person authorized to sign the document and committing the local unit to complete the project in accordance with the terms and conditions of the award document, within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The award document shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

(b) The award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(c) After the Department has completed its processing of the award document, it will transmit a copy of the executed award document to the grantee.

7:26–14.15 Effect of grant award

(a) At the time of execution of the award document by the Department and the applicant, the grant or loan shall become effective and shall constitute an obligation of the Natural Resources Fund in the amount and for the purposes stated in the award document.

(b) The award of the grant or loan shall not commit or obligate the Department to award any continuation grant to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the awardee.

(c) A determination of eligibility by the Department shall not be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:26–14.16 Allowable project costs

(a) Projected costs shall be allowed to the extent permitted by this subchapter and the award document.

(b) All project contracts shall be awarded in accordance with Local Public Contracts Law (N.J.S.A. 40A:11–1 et seq.) and the rules and regulations adopted pursuant thereto (N.J.A.C. 5:30–14).

(c) Awardees shall be paid the actual costs incurred and properly documented for the project up to the maximum specified in the award document. The salaries of regular governmental employees and expenses for governmentally owned equipment shall not be allowable project costs.

7:26–14.17 Unused funds

When the actual total project cost is less than the amount allowed as total project cost in the award document, the grant or loan shall be reduced so that the State pays the same percentage of the actual project cost as it was scheduled to pay of the total estimated allowable project cost as described in the award document. The difference between the actual total project cost and allowed total project cost shall be retained by the State and applied to new resource recovery projects pursuant to the Natural Resources Bond Act, P.L. 1980, c.70 and this subchapter.

7:26–14.18 Fraud and other unlawful or corrupt practices

(a) The awardee shall administer grants, acquire property pursuant to the award document, award contracts and subcontracts under those grants free from bribery, graft, and other corrupt practices. The awardee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.

(b) The awardee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The awardee shall notify the Chief, Bureau of Planning of the Department's Solid Waste Administration immediately when such allegation or evidence comes to its attention, and shall periodically advise the Chief, Bureau of Planning of the status and ultimate disposition of any matter.

7:26–14.19 Grant or loan conditions

(a) Notwithstanding the applicability of any other statutes and rules the following shall apply to each grant or loan and shall become conditions precedent to each payment under an award document.

1. The project or phase of the project shall be initiated and completed in accordance with the time schedule specified in the award document.

2. The awardee shall submit proof of its compliance and its contractor's and subcontractor's compliance with all hazard insurance requirements of the award document and certify that the insurance is in full force and effect and that the premiums have been paid.

3. The awardee shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with standard accounting procedures.

4. The awardee shall certify that it and its contractor and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2–1 through 10:2–4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5–1 et seq.) and the rules and regulations promulgated pursuant thereto.

5. The awardee shall include in all its construction contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed.

6. The awardee shall certify that it is in compliance with all other requirements and conditions of the award document.

7. The awardee shall certify that, in the construction of the project, including letting of contracts in connection therewith, it has conformed to all applicable requirements of Federal, State and local laws, ordinances, rules and regulations.

8. The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Natural Resources Bond Act.

7:26–14.20 Administration and performance of grant

The awardee shall bear primary responsibility for the administration and success of the project including any subagreements made by the awardee for accomplishing grant objectives. Although awardees are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department.

7:26–14.21 Access

(a) The awardee and its contractor and subcontractors shall provide access to the Department personnel and any authorized representatives of the Department to the facilities, premises and records related to the project.

(b) The awardee shall submit to the Department such documents and information as requested by the Department.

(c) All awardees, contractors and subcontractors may be subject to a financial audit.

(d) Records shall be retained and available to the Department for a minimum of three years after submission of the final requests for payment.

7:26–14.22 State payment

The Department may release funds to the awardee upon satisfactory completion of the entire project or on an interim basis in accordance with the terms of the award document. In each case, 10 percent of the total payment shall be withheld until the entire project has been completed to the extent that the facility is operating at 3/4 of its designed capacity or greater.

7:26–14.23 Assignment

The right to receive payment from the State under a grant or loan may not be assigned, nor may payments due under a grant or loan be similarly encumbered.

7:26–14.24 Publicity and signs

(a) Press releases and other public dissemination of information by the awardee concerning the project work shall acknowledge State funding support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State funding support.

7:26–14.25 Debarment

(a) No awardee shall enter into a contract for work on a resource recovery project with any person debarred, suspended or disqualified from State Contracting pursuant to N.J.A.C. 7:1–5.1 et seq.

(b) Awardees shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1–5.2.

(c) Bid specifications prepared by the awardee shall require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department of Environmental Protection.

(d) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a grant or loan under this subchapter may present information to the Department why this section should not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1–5.9. In the alternative the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1–5.

7:26–14.26 Project changes and grant modifications

(a) There shall be no grant or loan modification increasing the funding amount. Increased costs resulting from a grant or loan modification shall be the responsibility of the awardee.

(b) The awardee shall promptly notify the Chief, Bureau of Planning within the Solid Waste Administration in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant or loan modification including but not limited to:

1. Rebudgeting beyond 10 percent in any item funded pursuant to these regulations.

2. Changes in approved technical plans or specifications for the project.

3. Construction change orders in excess of $2,500.

4. Major changes in project concept or scope.

5. Major changes in the time or manner of performance of the project or any major phase thereof.

6. Changes which may increase or substantially decrease the total cost of a project.

7. Changes in key personnel identified in the award document or a reduction in time or effort devoted to the project by such personnel.

(c) If the Department decides a formal award document amendment is necessary, it shall notify the awardee and a formal award document amendment shall be prepared by the awardee in accordance with N.J.A.C. 7:26–11.27.

7:26–14.27 Formal award document amendments

(a) The awardee shall prepare a formal award document amendment to change principal provisions of a grant upon a determination by the Department that project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) All award document amendments shall be in writing.

7:26–14.28 Administrative changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the awardee, constitute changes to the award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the awardee. The Department may issue such changes unilaterally. Such changes shall be in writing and shall be effected by a letter (certified mail, return receipt requested) to the awardee.

7:26–14.29 Other changes

All other project changes, which do not require a formal award document amendment shall be undertaken only upon written approval of the Chief, Bureau of Planning.

7:26–14.30 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any award condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:26–14.31;

2. Withhold grant funds pursuant to N.J.A.C. 7:26–14.32;

3. Order suspension of project work pursuant to N.J.A.C. 7:26–14.33;

4. Terminate a grant or loan pursuant to N.J.A.C. 7:26–14.34.

7:26–14.31 Notice of noncompliance

When the Department determines that the awardee is in noncompliance with any condition or requirement of the Act, or any provision, term, condition or requirement of the Grant Award Document, or any other applicable State laws and regulations, it shall notify the awardee, its engineer, and/or the contractor of the noncompliance. The Department may require the awardee, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the awardee, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop-work order or withhold payment pursuant to N.J.A.C. 7:26–11.32 without issuing a notice pursuant to this section.

7:26–14.32 Withholding of funds

The Department may withhold, upon written notice to the awardee, a grant or loan payment or any portion thereof when it determines that an awardee has failed to comply with any grant condition, provision of this subchapter, or grant award document specification or requirement.

7:26–14.33 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not limited to, default by the awardee or noncompliance with the terms and conditions of the grant. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the awardee an opportunity to confer with Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;

2. A clear description of the work to be suspended.

(c) Upon receipt of a stop-work order, the awardee shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allowable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

1. Rescind the stop-work order, in full or in part;
2. Terminate the work covered by such order;
3. Authorize resumption of work.

(d) If a stop-work order is cancelled or the period of the order of any extension thereof expires, the awardee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project, or both of these, and the award document shall be modified accordingly within discretion of the Department.

7:26–14.34 Termination of grants or loans

(a) Termination by the Department:

1. The Department may terminate a grant or loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to:

i. Substantial failure to comply with the terms and conditions of the award document;

ii. Default by the awardee; or

iii. A determination that the grant was obtained by fraud.

2. The Department shall give written notice to the awardee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part at least 10 days prior to the intended date of termination.

3. The Department shall afford the awardee an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the grant or loan in whole or in part.

(b) Project termination by the awardee: The awardee shall not terminate the project work except with the consent of the Department. The awardee shall show good cause and give prompt written notice to the Department of any proposed complete or partial termination of the grant project by the awardee. The awardee shall make no new commitments without Department approval.

1. The awardee shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

7:26–14.35 Administrative hearing

(a) The Commissioner shall decide all disputes arising under a grant or loan. When an awardee so requests, the Department shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the awardee.

(b) An awardee may request a hearing within 15 days of a decision by the Commissioner. Such hearing requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402. Where required by law the Department shall grant a hearing based upon such request.

(c) The Commissioner shall grant and conduct such hearings in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq. and N.J.S.A. 52:14F–1 et seq., and any rules promulgated pursuant to those acts.

Administrative change in (b).
See: 23 N.J.R. 3325(b).

7:26–14.36 Severability

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

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

Subchapter Historical Note

Adopted as R.1988 d.268, effective June 20, 1988. See: 19 N.J.R. 828(a), 20 N.J.R. 1346(a).

7:26–14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. Additionally P.L. 1985, c.335 appropriated to the Resource Recovery and Solid Waste Disposal Facility Fund $50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction of resource recovery facilities and environmentally sound sanitary landfill facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq. Any loan agreements which are executed pursuant to P.L. 1985, c.330, c.331 and c.335 after June 20, 1988, shall be in accordance with this subchapter. Loan

agreements entered pursuant to P.L. 1985, c.330, c.331 and c.335 and which are executed prior to June 20, 1988, shall be in accordance with N.J.A.C. 7:26–13.

7:26–14A.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:26–14A.3 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;

2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing resource recovery facilities and environmentally sound sanitary landfill facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;

3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:26–14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

"1985 Act" means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his designee.

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid Waste Management in the Department of Environmental Protection.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E–1, et seq.

"Escrow account" means the account established with the escrow bank for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Local government unit" means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

"Project" means any work relating to the construction of a resource recovery facility or an environmentally sound sanitary landfill facility by a local government unit.

"Project cost" means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;

2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;

3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;

4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;

5. The issuance of bonds, or any interest or discount thereon;

6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary landfill facility services;

7. The establishment of a reserve fund or funds for working capital, operating, maintenance or replacement expenses and for the payment or security, principal or interest on bonds, as the State Treasurer may determine; and

8. Reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by the 1985 Act, or of any moneys which may have been expanded therefrom for or in connection with any project authorized by the 1985 Act.

"Residual landfill" means an environmentally sound sanitary landfill facility which is designed primarily for the disposal of residuals from resource recovery facilities, nonprocessable wastes for an emergency backup disposal when resource recovery facilities are shut down for repair or maintenance.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse, or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq.

"Vendor" means a private or public entity qualified and selected by a local government unit in accordance with any applicable law resulting in an agreement whereby the vendor agrees to design, construct, and/or operate a resource recovery facility and/or an environmentally sound sanitary landfill facility or to provide resource recovery facility and/or environmentally sound sanitary landfill facility services to the local government unit.

7:26–14A.5 Eligibility for project loans

(a) Any local government unit is eligible to apply for and receive a loan for a resource recovery facility or environmentally sound sanitary landfill facility from the Fund provided it satisfactorily completes and submits the local application, meets the criteria set forth in this subchapter and ranks high enough on the priority list to obtain available funding. Only a county governing body, however, is eligible to receive a loan from moneys transferred to the Fund pursuant to P.L. 1985, c.335 from the Natural Resources Fund which was established pursuant to P.L. 1980, c.70.

(b) To receive a loan, the project shall meet the following criteria to the satisfaction of the Department:

1. The project for which the loan application is being made has been included (by lot and block number, by type of technology, for example, landfill, mass burn, composting, etc.) in the appropriate district solid waste management plan adopted and approved in accordance with N.J.S.A. 13:1E–1 et seq.;

2. If applicable, the project shall have received the approvals required under N.J.S.A. 13:1E–26; and

3. The local government unit shall not be in current default on any State loan. If a local government unit is in current default on a State loan, a Fund loan pursuant to this subchapter will not be executed between the Department and the local government unit unless the Department determines that repayment of the defaulted loan will be received.

(c) Those projects for which appropriations have been approved prior to the effective date of this subchapter are exempt from the requirements of N.J.A.C. 7:26–14A.7, 14A.9, and 14A.10. The Department, however, reserves the right to request materials and information as otherwise required by those sections necessary to review and develop the loan agreement for these projects.

7:26–14A.6 Preapplication procedures

(a) Prior to the close of the application period and scheduled so as to allow sufficient time to develop and submit a project application, the Division shall conduct a resource recovery facility and environmentally sound sanitary landfill facility financing seminar. The purpose of the seminar shall be to describe to public agencies the resource recovery and solid waste disposal loan program established pursuant to P.L. 1985, c.330 and the loan application process set forth in this subchapter. Notice of the seminar shall be published in the New Jersey Register and further provided through mailings and public notices. The seminar

shall not be part of the formal application procedure and, therefore, verbal statements made during the seminar shall not be binding upon the Department.

(b) Questions concerning the financial seminar referenced at (a) above and the loan application process should be directed to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

7:26–14A.7 Application procedures

(a) Each application for a resource recovery or environmentally sound sanitary landfill facility loan shall be submitted to the Department on forms available from the Department for that purpose.

(b) Each application submitted to the Department shall include the following information:

1. A full description of the project, including, at a minimum, the type of resource recovery or sanitary landfill facility, project goals and objectives, budget, identification of consultants and contractors (if known), scheduling of major project construction phases and related costs, proposed disbursement schedule and public participation activities;

2. Certification by the appropriate Solid Waste Management District that the project is in conformance with the approved District Solid Waste Management Plan developed under the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq.;

3. A written statement describing the project's readiness to proceed, including, at a minimum, and if appropriate for the project status of waste stream evaluation (quantity and composition), facility sizing, engineering design, site selection and acquisition, marketing commitments, Federal, State and local permits required for the project, environmental assessments, environmental mitigation measures, host community benefit agreement(s), the contracts the local government unit enters into for the design, construction, acquisition and/or operation of the facility and, in the case of a resource recovery facility, provisions for emergency back-up and residue disposal;

4. A written statement describing the technical feasibility of the project, including, at a minimum, the history of the development and utilization of the specific technologies/procedures involved, the likely ability of the project to meet environmental requirements, the ability of the proposed facility to meet the specifications and needs of material and energy users, if applicable and the compatibility of the proposed project with existing or proposed material and energy recovery programs within the solid waste management district;

5. A written statement describing the financial feasibility of the project, including, at a minimum, a cost/revenue analysis, a description of the applicant's financial plan to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan. The statement shall describe the roles and responsibilities of all participants in the project, including the vendor, and all contracts entered into or contemplated for the project. The Department reserves the right to review all such contracts for purposes of prioritizing applications. This description shall include a detailed outline of the contractual commitments which will ensure project completion, as well as contingencies in the event of non-completion or completion at less than full capacity. Sources and uses of all funds to be used in the project, including the potential State loan, shall be fully described;

6. A written estimate of all project and construction costs;

7. A written statement describing the applicant's need for loan funding and how the receipt of a loan will impact the project; and

8. All other information, forms, agreements and subagreements the Department may require to assign priority points.

(c) Applications shall be signed for the applicant by a person authorized by resolution or ordinance to file an application for a State loan, and to represent the applicant in all matters relating to the application process.

1. Each resolution or ordinance shall constitute an undertaking to accept the requirements of this subchapter.

2. A copy of the signed resolution or ordinance shall be submitted with the application.

(d) Complete applications shall be submitted in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year, which application period shall be announced in the New Jersey Register sufficiently in advance of the application period to enable all eligible local government units to apply.

1. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

2. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(e) The Division shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives; and

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable.

(f) No loan shall be awarded until an appropriation is made by the Legislature for the project to be financed.

(g) All applications shall be sent to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

(h) It is the responsibility of the applicant to insure that the Department has received all necessary documentation in a timely manner and in advance of the closing date for receipt of applications. If a submitted application is determined by the Department to be incomplete because not all necessary documentation has been received by the Department as of the application closing date, then that application will not be considered for funding for that loan period.

7:26–14A.8 Use and disclosure of information

All loan applications and other submissions, when received by the Division, are public records pursuant to N.J.S.A. 47:1A–1 et seq. The Division shall make them available to persons who so request, to the extent required by New Jersey and/or Federal law and consistent with the confidentiality provisions therein.

7:26–14A.9 Criteria for project loan priority

(a) Each year, project loan applications shall be assigned priority points by the Department in accordance with the provisions outlined in this section. A project shall be ranked according to the number of priority points it receives. Loan awards, depending on the amount of funds available in the Fund, shall be offered to projects in order of ranking unless the Legislature appropriates funds otherwise. This subchapter provides the terms and conditions under which application will be evaluated and prioritized and funding awards will be recommended by the Department. It is possible that the provisions of this subchapter will be superseded by legislation appropriating funds to specific projects. The Priority Criteria and corresponding Priority Points shall be as follows:

Priority Criteria	Priority Points
1. Project is already under construction. (NOTE: A project already into the construction phase is also entitled to priority points for activities such as permitting and procurement which were completed prior to the construction phase.)	50
2. The project has received all permits and approvals as determined by the Department, necessary to proceed with construction and operation.	20
3. The procurement process for the project has been successfully completed in accordance with appropriate statutes and a contract has been awarded for the design and construction of the project.	20
4. Long term (minimum 20 years) contracts/arrangements have been executed for the disposal of process residues, non-processable wastes and emergency backup disposal.	20
5. The site for the project has been obtained by purchase or long term (minimum 20 years) lease.	20
6. Long term (minimum 20 years) contracts have been awarded for the sale of materials and/or energy recovered by the project.	20
7. The project has the capability of recovering or reducing the weight of the solid waste stream directed to the project by the following percentages via material and energy recovery processes (includes solid waste types 10, 13, 23, 25 and 27):	
i. Material Recovery:	
(1) 25 percent or more	50
(2) 20 percent to 24 percent	40
(3) 15 percent to 19 percent	30
(4) 10 percent to 14 percent	20
(5) 5 percent to 9 percent	10
ii. Energy Recovery:	
(1) 70 percent or more	50
(2) 60 percent to 69 percent	40
(3) 50 percent to 59 percent	30
(4) 40 percent to 49 percent	20
(5) 30 percent to 39 percent	10
8. The project is a residuals landfill designed primarily to service a resource recovery facility by providing for the disposal of process residues and non-processable and emergency by-pass solid wastes.	25
9. The project is a sanitary landfill designed primarily to serve as a solid waste disposal facility for non-processable wastes. (Note: A sanitary landfill project combined with a comprehensive source separation/recycling program can also receive priority points under priority criteria (a)6 above.)	15
10. The percentage of the county's solid waste stream that will be serviced by the project:	
i. 80 percent or more	40
ii. 60 percent to 79 percent	20
iii. 40 percent to 59 percent	20
iv. 20 percent to 39 percent	10

Priority Criteria	Priority Points
11. The degree of technical feasibility and fitness of the project for its intended purpose as measured by the number of total years a commercial facility(ies), excluding sanitary landfills, of similar size and design has successfully operated from an economic and environmental view point in the United States:	
i. 25 or more years	50
ii. 20 to 24 years	40
iii. 15 to 19 years	30
iv. 10 to 14 years	20
v. 5 to 9 years	10

(b) In the event that two or more projects are assigned an equal number of priority points, the Department shall determine which project(s) will be recommended for funding. This determination shall be based on the Department's assessment of the need for the project as it relates to the State's overall solid waste management needs. Also, the Department may, at its discretion, award a portion of the priority points for a particular priority criteria. For example, if a materials and energy recovery project applicant has executed a materials recovery sales contract, but not an energy recovery sales contract, the Department may award a portion of the priority points assigned to priority criteria (a)6 above.

(c) Applicants can apply for and receive funding for project costs which have been incurred on or after November 5, 1985. Such applicants must follow the procedures, meet the requirements and maintain all the records required by this subchapter.

7:26–14A.10 Determination by the Department

(a) Upon completion of a full review, evaluation and prioritization of each application received during each application period, the Department shall take one of the following actions:

1. Approve the application as meeting the application requirements;

2. Disapprove the application.

(b) The Department shall then review the list of projects and requested loan amounts, and shall determine which projects it will recommend for funding based upon the financial condition and projections of the Fund and previous legislative appropriations. The Department shall then establish a priority rank list, which list, and any amendments thereto, shall be published in the New Jersey Register.

(c) The Department shall send a Notice of Intent to Award to those approved applicants for which it recommends funding. Such notice shall state the intent of the Department to recommend the passage of legislation appropriating funds for the loan. Without passage of a specific legislative appropriation, the project will not receive funding.

(d) The Department shall notify applicants whose applications meet minimum application requirements but which are not recommended for funding in that particular application/funding period. Applicants may file for reconsideration in future funding periods pursuant to (i) below.

(e) The Department shall notify applicants in writing of any disapproval. A disapproval of an application shall not preclude reconsideration of the application by the Department following revision and resubmission by the applicant provided that the resubmission or revision is completed in advance of the closing date for applicants. If the application period has already closed, the applicant shall not be precluded from re-applying for a loan in the next annual application period.

(f) The applicants receiving a Notice of Intent to Award a loan shall obtain all necessary Federal, State and local permits and approvals within one year of receipt of the Notice of Intent to Award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Division.

(g) If subsequent to the issuance of a Notice of Intent to Award, the applicant discovers any circumstances which affect the award of priority points, the applicant shall immediately notify the Department. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted, adjust the ranking of the application, and assess its impact on the Department funding recommendation.

(h) Any applicant receiving a Notice of Intent to Award who decides not to proceed with a project shall notify the Department as soon as this decision is made.

(i) Applicants with approved projects on a priority list that are not awarded loans in any application period, as applicable, who wish to apply for a position on any subsequent priority list in any subsequent application period, may apply by a timely filing of a letter, signed by the appropriate party, notifying the Department that the applicant requests a renewal of its application for a resource recovery or environmentally sound sanitary landfill facility loan. Where there are changes in the original application, the applicant shall update the appropriate documents required by N.J.A.C. 7:26–14A.7. The application shall be treated as a new application for a resource recovery or sanitary landfill loan and evaluated in accordance with this subchapter.

7:26–14A.11 Loan terms and administration of disbursements

(a) The following requirements apply to the amount of, interest rate on and maturity period of the loan:

1. (Reserved)

2. Loan proceeds may be used to pay any project costs authorized in the loan agreement, which agreement shall be consistent with the provisions of the 1985 Act and this subchapter.

i. Loan proceeds may be used for project costs associated with the construction of resource recovery facilities and/or environmentally sound sanitary landfill facilities to service the needs of local government units.

ii. Loan proceeds may be used directly by the local government unit to undertake project costs associated with the development of a resource recovery and/or environmentally sound sanitary landfill facility.

iii. Loan proceeds may be used by the local government unit to defray project costs associated with an agreement it has entered into with a vendor.

3. The proposed interest rate on the loans for each application period shall be set forth in the notice setting forth the priority list, which list is to be published in the New Jersey Register pursuant to N.J.A.C. 7:26–14A.10(b). The interest rate shall be dependent upon legislation and/or the financial condition of the Fund. The loan interest rate shall be established annually by the State Treasurer.

4. The loan maturity period shall be for a period of 23 years from the date the funds are delivered to the escrow agent by the Department. Repayment shall begin no later than the sixth year of the loan maturity period or one year following the full scale operation of the facility, whichever comes first. Equal semi-annual loan repayments shall be made starting on or before the first of February and August for every year that repayments are due. The Department may, at its discretion, negotiate an individual repayment schedule. Principal and accrued interest, if applicable, may be prepaid without penalty prior to the end of the loan maturity period.

5. There shall be due and owing by the local government unit to the Fund a late fee of five percent of any payment when such payment is 15 calendar days or more past due, 10 percent of any payment when such payment is 30 calendar days or more past due. Failure of the local government unit to make any repayment within 45 calendar days of the scheduled repayment date shall constitute default of the loan agreement and all outstanding principal, interest and penalty amounts shall become immediately due and owing to the State.

(b) The following terms of the loan shall be incorporated into the loan agreement to be executed by the Department and the borrower:

1. Execution of the loan agreement constitutes an irrevocable agreement to repay the loan on the part of the borrower;

2. Counties and municipalities shall place general obligation bonds with the State in order to receive the loan proceeds. Other local government units lacking general taxing powers shall secure their loans with service/deficiency agreements with a local government unit having the ability to levy taxes, a surety bond, or other security acceptable to the Department;

3. A list of the required contents of the county or municipal bond resolution, which list shall be subject to Department approval;

4. Loans may be released by the Department on a single or multiple sum basis at the discretion of the Department. Release of the loan funds may be based upon adherence to the project schedule which shall be included in the loan agreement;

5. Release of the loan funds may only be made to an escrow agent selected by the borrower and approved by the Department. In the case of comparatively small loans or where the local government unit, after using its best efforts, cannot retain an escrow agent which will act in accordance with this subchapter, the Department shall act as the escrow agent. The borrower shall enter into an agreement with the escrow agent specifying the escrow agent's duties and responsibilities, which agreement shall be consistent with the terms and conditions of the loan agreement and the requirements of this subchapter. Any escrow agent shall only disburse loan funds in accordance with the executed loan agreement, the escrow agreement and this subchapter;

6. Where there is an escrow agent other than the State, the escrow agent shall submit an annual report to the Department which includes a disbursement report for the previous year, a certified statement by the licensed project engineer for the local unit or the vendor in accordance with N.J.A.C. 7:26–14A.24, confirming the percentage of project construction which is completed, and an estimate of expenditures for the upcoming fiscal year;

7. Interest earned on the funds in the borrower's loan escrow account shall accrue to the benefit of the project and may only be used for project costs as defined in N.J.A.C. 7:26–14A.4; and

8. The borrower shall be responsible for paying for the services of the escrow agent.

(c) The borrower shall promptly notify the Division of Solid Waste Management in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the project which shall require such notification shall include but are not limited to:

1. Rebudgeting;

2. Changes in approved technical plans or specifications for the project;

3. Changes which may affect the approved scope or objective of a project;

4. Significant changed conditions at the project site;

5. Deceleration in time for the performance of the project, construction schedule, or any major phase thereof; and

6. Changes which may increase or substantially decrease the total cost of the project. There shall be no loan modification increasing the funding amount.

(d) If, on the basis of information submitted pursuant to (c) above, the Department determines that a formal loan amendment is necessary, it shall notify the borrower and a written amendment to the loan agreement will be prepared in accordance with this subchapter.

(e) Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, constitute changes to the loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such change unilaterally. Such changes shall be in writing and shall be effected by a letter (certified mail, return receipt requested) to the borrower.

7:26–14A.12 Payment procedures

(a) The escrow agent shall only make payments in accordance with the escrow agreement which shall be consistent with the loan agreement and this subchapter. A retainage may be held in accordance with the loan agreement.

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within five years of the loan closing date of the loan agreement, all monies in the escrow account, including all investment earnings from the monies in the escrow account, shall revert to the Fund and be credited as repayment of the principal of the loan by the borrower.

(i) In those cases in which the Department is to act as escrow agent pursuant to N.J.A.C. 7:26–14A.11(b)5, all requirements of this section shall apply to the Department except that (c) above, shall not apply. Whenever in this section reference is made to an escrow agent as a separate entity from the Department, the same term shall mean and refer to the Department which shall then carry out all functions of the escrow agent.

7:26–14A.13 State share of the project cost

The State share of the total project cost shall be expressed as a dollar amount and set forth in the loan agreement. This dollar amount shall be the maximum amount awarded to the applicant for the project.

7:26–14A.14 Loan agreement

(a) The Department may impose conditions precedent to each payment under the loan agreement as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 which conditions shall include but not be limited to the following:

1. The borrower shall submit proof that it and its contractors and subcontractors will comply with any hazard insurance requirements of the loan agreement and that it will be able to certify that the insurance is in full force and effect and that the premiums have been paid;

2. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles;

3. The borrower shall certify that it and its contractors and their subcontractors will comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2–1 through 10:2–4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5–1 et seq.), and the rules promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27–1 et seq.; the New Jersey Prevailing Wage Act, N.J.S.A. 34:11–56.25 through 34:11–56.46; the Civil Rights provisions of N.J.S.A. 10:1–1 et seq. and the rules promulgated pursuant thereto; and

4. The borrower shall certify in accordance with N.J.A.C. 7:26–14A.24 that it is in compliance with all other requirements and conditions of the loan agreement and this subchapter.

(b) The Division shall prepare and transmit four copies of the loan agreement to the borrower.

1. The borrower shall execute all four copies of the loan agreement and return them within 45 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The loan agreement shall be signed by a person authorized by resolution or ordinance to obligate the borrower to the terms and conditions of the loan agreement and this subchapter. A copy of the resolution or ordinance shall be forwarded immediately to the Department.

2. The loan agreement shall set forth the terms and conditions of the loan, which may include but not be limited to, as applicable: approved project scope including construction plans and specifications where applicable, budget, approved project costs, escrow agent requirements, construction and disbursement schedules, and the approved commencement and completion dates for the project or major phases thereof.

3. After the Department has completed its internal processing of the loan agreement, it shall transmit a copy of the executed loan agreement to the borrower.

7:26–14A.15 Effect of loan agreement

(a) At the time of execution of the loan agreement by the Department and the borrower, the loan shall become effective and shall constitute an obligation of the Resource Recovery and Solid Waste Disposal Facility Fund in the amount and for the purposes stated in the loan agreement.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns of the project. The Department shall not in any way be held responsible for cost overruns.

(c) A determination of eligibility by the Department shall not be used as a defense, by the borrower, to any action by any agency for the borrower's failure to obtain all requisite permits, licenses and operating certificates.

7:26–14A.16 Repaid funds

(a) All loan repayments and any interest on loans shall be deposited into the Fund. Upon a specific legislative appropriation, the Department may lend all moneys deposited in the Fund to local government units to finance other approved resource recovery or environmentally sound sanitary landfill facility projects in accordance with P.L. 1985, c.330.

7:26–14A.17 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer loans, acquire property, award contracts and subcontracts pursuant to the loan agreement from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall immediately notify in writing the Division of Solid Waste Management when such allegation or evidence comes to its attention, and shall periodically advise the Division of the status and ultimate disposition of any related matter.

7:26–14A.18 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the borrower to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan agreements to achieve loan objective and to insure that the purposes set forth in the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 are fully executed.

7:26–14A.19 Access

(a) The borrower and its contractors and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project. The borrower shall submit to the Department such documents and information as requested by the Department. The borrower, and all contractors and subcontractors which contract directly with the borrower or receive a portion of the State funds under the Acts, may be subject to a financial audit as to the use of the State funds. Records shall be retained and be made available to the Department for a minimum of three years after submission of the final requests for payment.

(b) The loan agreement shall contain provisions which set forth the access requirements of (a) above.

7:26–14A.20 Assignment

The rights and obligations of the parties to the loan agreement shall not be assigned.

7:26–14A.21 Publicity and signs

(a) Press releases and other public dissemination of information by the borrower concerning the project work shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:26–14A.22 Debarment

(a) No borrower shall enter into a contract related to the development of a project for work with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1–5.1 et seq.

(b) Borrowers shall insert in every contract related to the development of a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1–5.2.

(c) The borrower, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's List of Debarred, Suspended and

Disqualified Bidders as a result of action by a State agency other than the Department.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1–5, the borrower may take into account the loss of Department loan funds under these rules which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List of Debarred, Suspended or Disqualified Bidders as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this subchapter, may present information to the Department on why this section should not apply to such person. The Commissioner, pursuant to N.J.A.C. 7:1–5, may grant an exception from the application of this section with respect to a particular contract. The Commissioner may only take this action following a determination that such an exception is essential to the public interest and after filing a finding thereof with the Attorney General. In the alternative, the Department, pursuant to N.J.A.C. 7:1–5, may suspend or debar any such person, or take such action as may be appropriate.

7:26–14A.23 Termination of loans

(a) Termination of loans by the Department shall be as follows:

1. The Department may terminate a Fund loan in whole or in part for events of default which shall include but not be limited to:

i. Failure to comply with any of the terms and conditions of the loan agreement;

ii. A determination that the loan was obtained by fraudulent practices;

iii. Gross abuse or corrupt practices in the administration of the project have occurred;

iv. Funds have been expended for non-allowable costs; and/or

v. Failure to comply with a corrective action/correction schedule entered into pursuant to (a)4 below.

2. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate the loan in whole or in part. Such notice shall be given to the borrower at least 30 days prior to the intended date of termination.

3. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation the Department may, in writing, terminate the loan in whole or in part. Upon termination, the full amount of the outstanding balance of the loan shall be immediately repaid in full.

4. Where the Department deems it appropriate, the following procedures may be used following an event of non-performance pursuant to (a)1 above:

i. The Department shall notify the borrower of the event of non-performance pursuant to (a)1 above. Within 30 days of receipt of such notification of non-performance, the borrower shall submit to the Department a compliance schedule which schedule shall require approval by the Department. The schedule shall identify how and when the borrower will remedy the non-compliance identified by the Department.

ii. If the borrower fails to remedy the non-performance in accordance with the approved schedule or fails to submit the compliance schedule pursuant to (a)4i above, the Department shall notify the borrower (certified mail, return receipt requested) of such failure, which failure shall itself be considered an event of non-performance pursuant to (a)1 above and shall then trigger the termination procedure in (a)2 and 3 above.

5. The Department shall maintain sole discretion to determine the appropriate remedy for non-performance. Within that discretion the Department may invoke remedies which include, but are not limited to, the following:

i. Withholding of loan disbursement;

ii. Acceleration of loan agreement;

iii. Conversion to an interest-bearing loan; and

iv. Immediate loan repayment in accordance with procedures outlined in (a)2 and 3 above.

(b) Project termination by the borrower shall be conducted in accordance with the following provisions:

1. The borrower shall not unilaterally terminate the project work for which a loan has been awarded. Where the borrower terminates the project, the loan shall be repaid in accordance with a schedule approved by the Department.

2. The borrower shall promptly give written notice to the Department of its intent to wholly or partially terminate the project work.

3. The Department, upon receipt of the borrower's written notice of intent to wholly or partially terminate the project, may enter into a repayment agreement with the borrower, which agreement shall establish the effective date of termination of the project work and the schedule for repayment of the entire loan. If the Department determines that a borrower has ceased to work on a project and has not complied with the notification and repayment provisions outlined in (b)1 and 2 above, or has failed to take all available steps to ensure project completion consistent with all agreements entered into, the Department may unilaterally terminate the loan pursuant to this section.

(c) The Department and borrower may enter into a mutual agreement to terminate the loan agreement at any time pursuant to terms which are consistent with this subchapter. The termination agreement shall establish the effective date of termination of the project and the schedule for the repayment of the entire loan.

(d) The effect of termination of the loan, in whole or in part, shall be as follows:

1. Upon termination, the borrower may be required to immediately refund or repay the entire amount of the loan to the Fund. If the loan is guaranteed by a security/deficiency agreement, the agreement shall be brought into effect to ensure the entire repayment of the loan. At the Department's discretion, it may authorize the immediate repayment of part of the loan and allow the remaining balance to be repaid in accordance with the loan agreement repayment schedule.

2. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

(e) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

7:26–14A.24 Certifications

Whenever in this subchapter a certification is required pursuant to this section, such certification shall include the following statement:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

7:26–14A.25 Administrative hearings

(a) The Department shall decide in writing all disputes arising under a loan.

(b) A borrower may request an administrative hearing within 15 days of a written decision by the Department. Such hearing requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625–0402. The borrower shall be required to specify in writing and in detail the basis for its appeal.

(c) Following receipt of a complete request for a hearing pursuant to (b) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the Department determines the matter to be a contested case, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq. and N.J.S.A. 52:14F–1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1–1 et seq.

7:26–14A.26 Severability

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

SUBCHAPTER 15. RECYCLING GRANTS AND LOANS PROGRAM

Subchapter Historical Note

Adopted as R.1982 d.32, effective February 16, 1982. See: 13 N.J.R. 865(a), 14 N.J.R. 206(b).

7:26–15.1 Scope

This subchapter shall constitute the joint rules of the Departments of Energy and Environmental Protection governing the disposition of grants and loans pursuant to the Recycling Act, P.L. 1981, c.278.

7:26–15.2 Construction

(a) This subchapter shall be liberally construed as to permit the NJDEP and NJDOE to discharge their statutory functions and effectuate the purposes of the law.

(b) The Commissioners may, from time to time, jointly amend, expand or repeal this subchapter in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq.

7:26–15.3 Practice where these rules do not govern

The Commissioners shall exercise discretion in respect to any matters not explicitly covered by this subchapter.

7:26–15.4 Definitions

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

"Act" means the Recycling Act, P.L. 1981, c.278.

"Collection" means any of a number of procedures by which recyclable materials are collected from residential or commercial sources.

"Commercial source" means apartment buildings with 10 or more dwelling units, farms and wholesale, retail or service establishments including but not limited to restaurants, markets, retail and wholesale outlets, theaters, hotels, warehouses, schools, hospitals, institutions, research facilities, public and private offices, and gas stations.

"Commissioners" means the Commissioners of the Department of Environmental Protection and the Department of Energy.

"Conversion" means the physical or chemical process by which recyclable materials are made into an economically valuable raw material or product other than fuel.

"County" means any of the 21 counties in New Jersey.

"Departments" means the New Jersey Department of Energy and New Jersey Department of Environmental Protection.

"EDA" means the New Jersey Economic Development Authority. "Education Fund" means the portion of the State Fund specified by Section 5(b)(5) of the Act.

"Education Grant" means grants awarded by the Departments from the Education Fund.

"Market" means a purchaser of recyclable materials.

"Municipality" means any of the forms of local government subdivisions below the county level, including cities, townships, towns, boroughs, or villages located in New Jersey.

"NJDOE and NJDEP" means the New Jersey Departments of Energy and Environmental Protection.

"Planning and Program Fund" means the portion of the State Fund specified by Section 5(b)(4) of the Act.

"Planning and Program Grant" means any grant awarded by the Departments from the Planning and Program Fund.

"Processing" means preparing recyclable materials so as to conform to market specifications, including but not limited to such steps as separating materials by type, grade or color, crushing, grinding, shredding or baling, or removing contaminants.

"Recyclable materials" means materials generated by residential and commercial sources which can be separated from the solid waste stream for the purpose of recycling.

"Recycling" means a process or processes by which materials which would otherwise enter the solid waste stream are collected, separated or processed for conversion into economically valuable raw materials or products.

"Recycling business and industry" means a for-profit business which collects, processes, sells, purchases or converts recyclable materials.

"Recycling Business Loan" means a loan or loan guarantee made from the Recycling Business Loan Fund.

"Recycling Business Loan Fund" means the portion of the State Fund specified by Section 5(b)(2) of the Act.

"Recycling coordinator" means a person designated to organize, supervise or coordinate recycling programs and activities within a county.

"Recycling Grant" means any grant awarded by the Departments from the Recycling Grant Fund.

"Recycling Grant Fund" means the portion of the State Fund specified by Section 5(b)(1) of the Act.

"Recipient" means any person to whom monies have been identified or allocated by the Departments from any of the Funds established pursuant to the Act, whether or not said person has actually received monies.

"Regional recycling coalition" means an intermunicipal recycling coordinating agency organized under the InterLocal Services Act (N.J.S.A. 40:8A–1 et seq.) or through a joint purchasing agreement under the Local Public Contracts Law (N.J.S.A. 40A:11–10), or a county-sponsored recycling program serving two or more municipalities within the county.

"Residential source" means houses and apartment buildings with nine or fewer dwelling units, yards and vehicles used for personal transportation.

"State Fund" means the State Recycling Fund established by Section 5(a) of the Act.

"State Program Fund" means the portion of the State Fund specified by Section 5(b)(3) of the Act.

7:26–15.5 Application and award procedures for Recycling Grants

(a) Eligible applicants for Recycling Grants shall be limited to municipalities, except that a municipality may, upon vote of the appropriate governing body, authorize a regional recycling coalition to apply on its own behalf, provided that:

1. All materials recycled within a municipality and claimed for the purposes of this Act shall be submitted on one application form;

2. The municipality has conformed to all restrictions, prohibitions and obligations of the Act as set forth therein and in this subchapter, including but not limited to the following:

i. Grant funds shall not be used for the purchase, construction or operation of equipment or machinery that will be used to bale waste paper or to shear, bale or shred ferrous or non-ferrous metals.

ii. No municipality shall enact an ordinance which requires that recyclable materials already collected and recycled under a contract between a commercial source and a recycling business or industry be collected instead by the municipality or its agent, if such contract is in existence on the effective date of such ordinance.

iii. The first time an applicant applies for a Recycling Grant, it shall demonstrate that one or more types of materials specified in (c) 1 below were recycled during the previous year.

iv. The second and subsequent times an applicant applies for a Recycling Grant it shall demonstrate that at least two types of materials specified in (c) below are currently recycled, or will be recycled during the calendar year in which the grant is awarded, and that the following minimum quantities shall be recycled:

(1) All paper products: 15 pounds per capita per year;

(2) All glass products: 15 pounds per capita per year;

(3) All other products: one pound per capita per year per product.

(b) Applications for Recycling Grants shall be accepted by the Departments between January 1 and March 15 of each grant year beginning in 1983 and ending in 1987. Applications shall be made on such forms as provided by the Departments and shall be submitted in triplicate to:

NJDEP and NJDOE
Office of Recycling
Grant and Loan Officer
101 Commerce Street
Newark, New Jersey 07102

(c) Eligible municipalities shall be entitled to receive Recycling Grants based on the tonnage of recyclable material generated by and recovered for recycling from residential and commercial sources within the municipality.

1. Recyclable material generated by residential and commercial sources shall include:

i. All types and grades of paper and paperboard products;

ii. All types and grades of glass;

iii. Ferrous and non-ferrous metals;

iv. Textiles;

v. Food;

vi. Yard materials;

vii. Plastics;

viii. Rubber products;

ix. Used oil; and

x. Additional solid or liquid materials which are non-hazardous and which are approved by the Departments upon application by the municipality.

2. Only recyclable material which is collected in accordance with all applicable regulations and permit procedures, and documented in accordance with (d) below using one or more of the following procedures shall be considered to be generated within the municipality and eligible for the purposes of this grant.

i. Curbside pick-up: When the recyclable materials are separated by the source and collected at the curbside or on the premises by a public agency or its contractor, a commercial recycling business, or a volunteer agency, the material shall be credited to the municipality in which the collection occurs.

ii. Drop-off centers: When the recyclable materials are separated by the source and delivered to a municipal or volunteer drop-off center, the material shall be credited to the municipality in which the center is located. However, when the center is sponsored by a county or other regional agency and is specifically designated to serve more than one municipality, the operator(s) of the center shall allocate the quantity of material recycled among the participating municipalities based on the best available data.

iii. Transfer stations and resource recovery facilities: In order for materials separated from mixed solid waste at a transfer station or resource recovery facility to qualify, the approved county solid waste district management plan shall specifically designate such facility to be the recipient of a municipality's solid waste, and shall specifically require that the separation and recovery of recyclables shall occur prior to incineration, fuel production or disposal. In these instances, the municipalities which generate the material shall be proportionally credited for recycling tonnage based on the best available data.

iv. Markets: When recyclable materials are separated and delivered by the source directly to a market, the municipality in which such materials are generated shall receive credit for the tonnage recycled.

3. Recyclable material which is generated and collected as specified in (c)1 and (c)2 above shall not be eligible for the purposes of this grant if it is:

i. Landfilled;

ii. Dumped;

iii. Burned or otherwise used for direct energy recovery;

iv. Converted to a fuel or fuel product, except as specifically permitted by the Departments upon application by a municipality; or

v. Subject to a deposit or tax imposed by the county or municipality to ensure its return to a collection center.

(d) The tonnage of recycled materials claimed by the municipality shall be accurately reported to the Departments. Records verifying tonnage claimed shall be maintained by the applicant for a minimum of five years following each grant period. For the purpose of this grant, the following records shall be acceptable subject to review and approval by the Departments on a case-by-case basis:

1. Copies of sales or weight slips showing the type and quantity of recyclable materials delivered, the name of the collector, processor or converter to whom the materials were sold or delivered and the date of sale or delivery of the material;

2. A written statement from the commercial generator supported by verifiable information including the type and quantity of material sold to the collector or market for recycling during the grant period, the name and address of the collector or market and the date of the sale of the material;

3. A written statement from a market, transfer station or resource recovery facility declaring the amount of recyclable material originating in and obtained from each municipality and explaining the procedure used to allocate materials among contributing municipalities; or

4. In the case of food and yard materials converted to and used for feed, compost, mulch or fertilizer, a written estimate of the quantity of materials collected and recycled and an explanation of the procedure used by the municipality to estimate the tonnage.

(e) The size of the Recycling Grants to be awarded to each municipality shall be determined in the following manner:

1. In the calendar year 1983, grants awarded shall be based on the number of tons of eligible recyclable material sold or distributed in accordance with (c) and (d) above during the calendar year 1982 and shall be calculated in accordance with the following formula, provided that no municipality shall receive more than $25.00 per ton:

$$\text{Municipal Award} = R \times Tm/TS$$

where Municipal Award = Dollar value of award to a given municipality for calendar year 1982

R = Total dollar amount allocated to the Recycling Grant Fund as of January 1, 1983

Ts = Total tonnage of eligible recyclable material collected within the State during the calendar year 1982 and claimed by all municipalities

Tm = Total tonnage of eligible recyclable material recycled within a given municipality during calendar year 1982.

2. In the calendar year 1984 to 1987, inclusive, the Recycling Grant Fund shall be divided into three equal parts. Grants awarded shall be based on the increase in municipal tonnage over the previous year in each of three categories: paper products, glass and all other materials and shall be calculated in accordance with the following formula, provided that no municipality shall receive more than $25.00 per ton for any of the three categories:

$$\text{Municipal Award} = (Pm/(3 \times R \times Ps)) + (Gm/(3 \times R \times Gs)) + (Om/3 \times R \times Os))$$

where R = Total dollar amount in the Recycling Grant Fund in each of the calendar years 1984 to 1987, inclusive

PS = Increase in State paper tonnage recycled

Pm = Increase in municipal paper tonnage recycled

Gs = Increase in State glass tonnage recycled

Gm = Increase in municipal glass tonnage recycled

Os = Increase in State other tonnage recycled

Om = Increase in municipal other tonnage recycled.

(f) Applications shall be made on forms provided by the Departments and shall include the following:

1. The name and address of applicant;

2. The name of municipality for which application is made;

3. A description of the recycling program(s), including:

i. Name(s) and address(es) of recycler(s) (collectors or sellers as appropriate);

ii. Date of commencement of the recycling program;

iii. Type of material(s) collected;

iv. Quantity collected by type of materials in year prior to grant year;

v. Quantity collected by type, in previous years;

vi. Method of collection;

vii. Manner of disposal of material(s) (e.g., name of purchaser);

viii. Value of material recycled (if available); and

ix. Enforcement procedures, if program is mandatory.

4. A short description indicating the manner in which the grant shall be used.

5. Municipal certifications regarding:

i. Tonnage recycled;

ii. Origin of materials; and

iii. Non-diversion from a pre-existing commercial recycling program.

6. Other information as required by the Departments.

(g) Recycling Grants may be credited to the general treasury of the municipality and may be used for recycling activities or other municipal purposes subject to the restrictions in (a)2 above.

As amended, R.1984 d.75, effective March 19, 1984.
See: 16 N.J.R. 6(a), 16 N.J.R. 535(b).
Jointly adopted with the Department of Energy. (b): March 15 was February 15.

7:26–15.6 Application and award procedures for Recycling Business Loans

(a) This portion of the Act shall be administered jointly by the Departments and the EDA.

(b) Eligible applicants for Recycling Business Loans shall be limited to recycling businesses and industries located in New Jersey. Applicants shall conform to all restrictions, prohibitions, and obligations of the Act, applicable EDA regulations and guidelines, and all other relevant acts as set forth therein and in this subchapter.

(c) Applications may be made at such times as announced and on such forms as provided by the Departments and shall be submitted in triplicate to:

NJDEP and NJDOE
Office of Recycling
Grant and Loan Officer
101 Commerce Street
Newark, New Jersey 07102

(d) Loans and loan guarantees may be used for the creation or expansion of any legitimate commercial activity involved with the collection, separation, transportation, processing or conversion of recyclable materials as determined by the Departments and EDA.

(e) Loans and loan guarantees shall be awarded in accordance with such terms and conditions as set forth by the Departments and EDA. No single applicant or project may receive a loan or loan guarantee which commits more than 20 percent of the total annual balance of the fund.

(f) Loans and loan guarantees shall be awarded on a competitive basis. The criteria used to evaluate applications may include but not be limited to a determination that:

1. The project promotes the goals and objectives set forth in the State Recycling Plan and applicable county solid waste management plans;

2. All necessary permits have been obtained or applied for;

3. The goals, objectives and implementation strategy of the project are clearly stated;

4. The type, quantity and value of recyclable material to be recovered by the project are reasonable in relation to the investment required;

5. The applicant is able to repay the loan;

6. The applicant has previous experience in recycling;

7. The applicant has the ability to manage the project; and

8. The project substantially increases the quantity of recyclable material removed from the waste stream for recycling.

(g) Applications shall be made on forms provided by the Departments and EDA and shall include but not be limited to the following:

1. The name and address of the applicant;

2. The names and addresses of the applicant's principal owners and officers;

3. A detailed description of how and where the funds are to be used;

4. A description of the type and quality of material to be recycled as a result of the loan or loan guarantee;

5. A detailed budget;

6. An estimate of the quantity and value of the materials to be recovered over the life of the equipment or project to be financed; and

7. A description of any pre-existing or pending arrangement between the applicant and a municipal or county recycling program.

(h) Applicants receiving loans or loan guarantees shall file an annual status report with the Departments for as long as the loan is outstanding, describing the progress being made towards the goals and objectives set forth in the application.

(i) The applicant for the loan or loan guarantee shall pay the following fees:

1. Loan Application Review—$125.00 per application, payable at the time of the application.

2. Loan Closing and Technical Review—$1,441 per loan, payable at closing.

3. Loan Management—$626.00 per loan, payable at the time of closing.

Amended by R.1991 d.368, effective July 15, 1991 (operative July 15, 1991).
See: 22 N.J.R. 3079(a), 23 N.J.R. 2166(b).
Added (i).

7:26–15.7 Application and award procedures for Planning and Program Grants and Education Grants

(a) Subject to further restrictions contained in (c) below the following shall be eligible to apply for and receive either or both Program and Planning Grants and Education

Grants, unless specifically limited to Program and Planning Grants alone or Education Grants alone:

1. Counties, provided that the county has a recycling coordinator during the grant period;

2. Municipalities, provided that the project is not inconsistent with the appropriate county solid waste district management plan(s);

3. Regional recycling coalitions, provided that an ordinance or resolution, as appropriate authorizing application and funding has been approved by the appropriate governing bodies of the coalition members, and that the project is not inconsistent with the appropriate county solid waste district management plan(s);

4. Non-profit groups involved directly with the implementation of recycling or litter abatement programs, provided that the project is not inconsistent with the appropriate county solid waste district management plan(s). Non-profit groups shall be eligible to apply only for Education Grants.

(b) Applications for Planning and Program Grants and Education Grants shall be made at such time as announced on such forms provided and in accordance with any guidelines issued by the Departments. Applications shall be submitted in triplicate to:

NJDOE AND NJDEP
Office of Recycling
Grant and Loan Officer
101 Commerce Street
Newark, New Jersey 07102

(c) Planning and Program Grants and Education Grant applications shall be subject to the following minimum amounts. The Departments shall issue such guidelines as are necessary to encourage counties to include provisions in the applications that will allocate grant monies to municipalities which require less than the minimum amounts.

1. For Planning and Program Grant applications, $5,000;

2. For Education Grant applications, $2,000.

(d) Planning and Program Grants may be used for any legitimate administrative, planning or operating expenses associated with publicly sponsored recycling programs, including but not limited to:

1. Staff salaries and fringe benefits;

2. Office expenses;

3. Equipment purchases;

4. Enforcement; and

5. Construction of facilities.

(e) Education Grants may be used for any legitimate expenditures associated with recycling and litter abatement publicity, information and education programs, including:

1. The project will further the goals and objectives of the State Recycling Plan;

2. The project's goals, objectives and implementation strategy are clearly stated;

3. The project is practical and has a high probability of success;

4. The value of the materials to be recovered will be comparable to the size of the grant; and

5. The project substantially increases the quantity of recyclable materials removed from the waste stream and actually recycled.

(f) Planning and Program Grants and Education Grants shall be awarded competitively based on the Departments' assessments of factors which shall include but not be limited to the following:

1. The ability of the applicant to successfully implement the proposed project;

2. The relative contribution that the proposal will make toward achieving the State's recycling goals; and

3. The cost effectiveness and innovativeness of the proposed projects.

(g) Applicants receiving either Planning and Program Grants or Education Grants shall file annual progress reports with the Departments during the grant year and for two years following receipt of the grant. Applicants who receive a municipal recycling grant pursuant to N.J.A.C. 14A:6–1.5(7:26–15.5) shall be deemed to have satisfied this requirement.

As amended, R.1984 d.75, effective March 19, 1984.
See: 16 N.J.R. 6(a), 16 N.J.R. 535(b).
Jointly adopted with the Department of Energy substantially amended.

7:26–15.8 Application and award procedure for Supplementary Projects

(a) The Departments may, in their discretion, make available any or all of the monies in the Program and Planning Fund and in the Education Fund which are not used for the grants specified in N.J.A.C. 7:26–15.7(14A:3–15.7) for Supplementary Projects involving recycling research, program development, program implementation and other related activities. Supplementary Projects may be developed by the Departments on their own initiative or in response to proposals submitted by public or private entities.

(b) Awards for Supplementary Projects shall be made giving due consideration to the qualifications of the applicants in view of the nature of the projects. Awards may be made by the Departments as grants, contracts, or other forms of disbursement as appropriate for the particular Supplementary Project.

R.1983 d.119, eff. April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

7:26–15.9 Execution of award documents

(a) As concerns Recycling Grants, Planning and Program Grants and Education Grants, the Departments shall prepare and transmit an original and three copies of the award document to the applicant. The applicant shall execute the award document and return it to the Departments with an ordinance or resolution of the appropriate governing body, authorizing the signing of the document, naming the person authorized to sign the document and committing the applicant to use the funding in accordance with the terms and conditions of the award document, this subchapter and the Act.

(b) As concerns loans or loan guarantees made pursuant to the Act, the applicant shall execute the award document and return it to the EDA with the signature of the person(s) having authority to commit the entity receiving the monies to the terms and conditions of the loans or loan guarantees.

(c) The award document shall be deemed to incorporate all requirements, provisions, and information in this subchapter, the Act and all documents and papers submitted to the Departments in the application process.

(d) At the time of execution of the award document by the Departments and the applicant, the grant, loans or loan guarantees shall become effective and shall constitute an obligation on the Recycling Fund in the amount and for the purposes stated in the award document.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.8.

7:26–15.10 Unused monies

(a) All monies which remain unused or unexpended by the Departments at the close of the calendar year or which have been withheld or rescinded by the Departments shall remain with or be returned to the Fund.

1. Unused monies derived or allocated from the Recycling Grant Fund, Recycling Business Fund or Education Fund shall be added to their respective Funds.

2. Unused monies derived or allocated from the State Program Fund and Planning and Program Fund may be added to their respective funds or to any of the funds in (a)1 above, as the Departments in their discretion deem appropriate.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.9.

7:26–15.11 Debarment

(a) Any person or corporation who is debarred, suspended or disqualified from State contracting pursuant to N.J.A.C. 7:1–5 shall be ineligible to receive State grants, loans or loan guarantees under this subchapter, whether directly or through a contract with a recipient of the State Fund monies.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the recipient if the contractor commits any of the acts listed in N.J.A.C. 7:1–5.2.

(c) Bid specifications prepared by the recipient shall require submission of a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Departments.

(d) Any person included on the Treasurer's List as a result of action by a State agency other than the Departments, who is or may become a bidder, or any contractor who is or will be funded by a grant or loan under this subchapter may present information to the Departments, indicating why this section should not apply to such person. If the Commissioners determine that an exception is essential to the public interest and file a finding thereof with the Attorney General, the Commissioners may grant such exceptions in keeping with the provisions of N.J.A.C. 7:1–5.9.

(e) The Departments may suspend or debar any such person, or take such other action as may be appropriate pursuant to N.J.A.C. 7:1–5.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.10.

7:26–15.12 Discriminatory practices

The applicant shall certify that its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2–1 to 10:2–4 and the rules and regulations promulgated pursuant thereto.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.11.

7:26–15.13 Procedure for withholding or rescission of grants

(a) The Departments may, in addition to any other rights or remedies available pursuant to law, withhold a grant or

any portion thereof, for good cause. The term "good cause" shall include, but not be limited to the following:

1. Failure to comply with the provisions of this subchapter, the Act or other applicable State laws or regulations;

2. Failure to meet any condition or specification of the grant;

3. Submission of false or misleading information to the Departments.

(b) The Departments shall give written notice to the recipient of its intent to withhold or rescind the grant in whole or in part.

(c) The Departments shall afford the recipient an opportunity for consultation prior to withholding or rescission of the grant.

(d) The Departments, may, after affording the recipient opportunity for consultation, withhold or rescind the grant in whole or in part. The withhold or rescission shall be in writing and effective on the date such action is taken.

(e) The determination to withhold or rescind a grant shall be solely within the discretion of the Departments.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.12.

7:26–15.14 Return of grants

(a) The recipient of a grant which has been withheld or rescinded by the Departments shall refund or credit to the Departments the amount of grant monies withheld or rescinded.

(b) The Departments shall, upon receipt of the monies, return same to the appropriate Fund in accordance with the provisions of N.J.A.C. 7:26–15.10.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.13.

7:26–15.15 Procedure for termination of loans and loan guarantees

(a) Loans and loan guarantees authorized or created by the Act may be terminated by the EDA according to the procedures and guidelines established by that agency in the event of default by the holder of the loan. The term default shall include but not be limited to:

1. Non-payment or failure to make timely repayment of the loan;

2. Bankruptcy by the holder of the loan;

3. Use of loan or items financed by the loan for purposes other than those stated in the application;

4. Failure to comply with the provisions of this subchapter, the Act or other applicable State laws or regulations; or

5. Submission of false or misleading information to the Departments or EDA.

(b) In the event that a loan or loan guarantee is terminated the monies shall be returned to the Recycling Business Loan Fund.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26–15.14.

7:26–15.16 Severability

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

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

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

7:26–16.1 Scope and authority

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

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

7:26–16.2 Definitions

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

"Applicant" means any person seeking a license.

"Application" means the forms and accompanying documents filed in connection with the applicant's request for a license.

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

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

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

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

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

"Licensee" means any person who has received a license.

Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Substituted "transporter" for "hauler" in the definition for "license".

7:26–16.3 Filing of disclosure statement

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

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

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

1. The Department will transmit copies to the Attorney General for purposes of the investigative report.

2. Additional conformed copies of disclosure statements, or any portions thereof, shall be supplied upon the request of the Department or the Attorney General.

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

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

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

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

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

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

2. Any person whose application or license is solely for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste generated by that person; provided, however, that this exemption shall not apply where the waste generated is from a facility requiring a license and not itself exempted under this subsection.

i. Example—a corporation that operates a hazardous waste treatment facility organizes a hauling subsidiary to transport its "own" waste from the facility. If the facility must file a disclosure statement, the hauling subsidiary must do so as well;

3. Any person whose application or license is for the operation of a hazardous waste facility, if at least 75

percent of the total design capacity of that facility is utilized to treat, store or dispose of hazardous waste generated by that person;

4. Any person whose application or license is for the operation of a hazardous waste facility which is considered as such solely as the result of the recycling or refining of hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, irridium, rhodium, ruthenium, or copper;

5. Any person whose application or license is solely for the collection, transportation, treatment, storage or disposal of granular activated carbon used in the absorption of hazardous waste.

(e) Where an applicant or licensee owns or operates more than one facility or operation requiring a license, or is one of two or more business concerns requiring licenses which are under common ownership or management, the business concerns may file disclosure statements concurrently as a group. In the case of such a group filing:

1. Disclosure statements covering all members of the group must be filed in a single submission;

2. A cover letter must be supplied indicating the intent to file disclosure statements as a group and identifying the members of the group and their relationships;

3. A single set of Personal History Disclosure Forms for any individual identified in any of the group's disclosure statements will be accepted, even though the name appears on more than one statement;

4. The Department in its discretion may authorize departures from the disclosure statement forms so as to minimize duplicate reporting of information;

5. For the purposes of fee calculation under N.J.A.C. 7:26–16.13, the group shall be treated as a single applicant or licensee; and

6. A group filing may be made even if one or more members of the group have previously filed disclosure statements separately. However, those members will not be regarded as part of the group filing and no refund of fees or credit for fees paid shall be allowed on account of the earlier separate filings.

As amended, R.1984 d.541, effective December 3, 1984.
See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).
(a): Address changed.
(b): Substantially amended and (b)3 added.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
Address changed.
Notice of Action on Petition.
See: 22 N.J.R. 2364(b).
Notice of Receipt of Petition for Rulemaking.
See: 22 N.J.R. 2606(b).

7:26–16.4 Content of disclosure statement

(a) The disclosure statement shall be filed on forms supplied by the Department, and shall include the following information:

1. The full name, business address, home address, date of birth, social security number and/or Federal Employer Identification Number of the applicant, or, if the applicant is a business concern, of any officers, directors, partners, or key employees thereof and all persons or business concerns holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

2. The full name, business address, home address, date of birth and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the applicant holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any state or federal authority, in the 10 years immediately preceding the filing of the application, which are pending or have resulted in a finding or a settlement of a violation of any law or regulation relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by the applicant, or if the applicant is a business concern, by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or Federal statute or local ordinance, against the applicant, or, if the applicant is a business concern, against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes (N.J.S.A.) or comparable motor vehicle offenses in jurisdictions other than New Jersey;

7. A listing of all labor unions and trade and business associations in which the applicant was a member or with which the applicant had a collective bargaining agreement;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant in connection with its collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

9. A listing of all persons employed by the applicant in its solid or hazardous waste operations in New Jersey and not otherwise required to be listed, and as to each, the full name, home address, date of birth and social security number;

10. As to every person required to be listed in the disclosure statement (other than holder of debt liability or non-supervisory employee required to be listed under N.J.A.C. 7:26–16.4(a)9), a completed Personal History Disclosure Form on forms supplied by the Department, including information about family, education and employment history;

11. Any other information the Attorney General or the Department may require that relates to the competency, reliability or good character of the applicant.

(b) The disclosure statement shall be sworn to or affirmed and subscribed and dated by the applicant or the author before a person legally competent to take an oath or affirmation, who shall himself subscribe and date the signature of the affiant and indicate the basis of his authority to take oaths and affirmations. Personal History Disclosure Forms shall be sworn to or affirmed and subscribed in the same manner, by the individual and the oath-taker. The following statement shall immediately precede the signature of the affiant: "I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

(c) Disclosure statements shall be signed by each of the following:

1. If of a corporation, by its president, its chairman of the board, any other chief executive officer thereof, its secretary and its treasurer.

2. If of a partnership, by each of its partners; if of a limited partnership, only by each of its general partners.

3. If of any other business concern, by its chief executive officer, its secretary and its treasurer.

4. If of a natural person, by the person himself or herself.

(d) Personal History Disclosure Forms shall be signed by the individual described thereon.

(e) All signatures shall be signed in ink and dated on original papers, but may be photocopied, typed, stamped or printed on copies. The name and address of the signatory shall be typed, stamped or printed beneath each signature.

7:26–16.5 Investigative Report by Attorney General

(a) The Department shall not issue any license to an applicant until it has received and reviewed an investigative report from the Attorney General.

(b) The departmental review of the application shall include a review of the disclosure statement and investigative report.

(c) In its discretion, the Department may issue a temporary registration for not more than six months at a time to an applicant if such issuance is necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body; or the issuance of a temporary registration otherwise serves some interest of the general public. The issuance of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

(d) In its discretion, the Department may renew a temporary registration for incremental periods of six months at a time prior to its receipt and review of an investigative report from the Attorney General if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary registration otherwise serves some interest of the general public. The renewal of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

Amended by R.1989 d.586, effective November 20, 1989.
See: 21 N.J.R. 2275(a), 21 N.J.R. 3658(b).
Changed length of time for which a temporary approval is issued from 1 year to 6 months and established discretion of department to renew.

Case Notes

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

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

7:26–16.6 Change of information on disclosure statement

(a) Where an applicant has an application pending before the Department and any of the information required to be included in a disclosure statement changes, or any additional

information should be added after the filing of the statement, the applicant or licensee shall provide that information to the Department and the Attorney General in writing within 30 days of the change or addition.

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

1. The name of the licensee;

2. The names or identities of any officers, directors, partners or key employees of the licensee;

3. The names or identities of any holders of equity in or debt liability of the licensee, if they would have been required on the original disclosure statement; except that holders of less than five per cent of the debt liability of the licensee need only be reported on the annual update described in (c) below;

4. The name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the licensee acquires an equity interest;

5. A listing and explanation of any notices of violation, administrative orders or license revocations issued by any State or Federal authority, except that notices issued by the Department and notices demanding a penalty of less than $5,000 and not involving an intent to revoke a license need only be reported annually;

6. Any judgement of liability or conviction rendered against the licensee or against any key employee, officer, director or partner thereof, other than for a motor vehicle offense;

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

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

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

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

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

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

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

As amended, R.1984 d.541, effective December 3, 1984.
See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).
"Department" substituted for "Division of State Police"; "Attorney General" substituted for "Department".

7:26–16.7 Additional information; Duty to cooperate

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

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

7:26–16.8 Disqualification criteria

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

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

1. Murder;
2. Kidnapping;
3. Gambling;
4. Robbery;
5. Bribery;
6. Extortion;
7. Criminal usury;
8. Arson;
9. Burglary;
10. Theft and related crimes;
11. Forgery and fraudulent practices;
12. Fraud in the offering, sale or purchase of securities;
13. Alteration of motor vehicle identification numbers;
14. Unlawful manufacture, purchase, use or transfer of firearms;
15. Unlawful possession or use of destructive devices or explosives;
16. Violation of section 19 of the "New Jersey Controlled Dangerous Substances Act," N.J.S.A. 24:21–19, except possession of 84 grams or less of marijuana;
17. Racketeering, N.J.S.A. 2C:41–1 et seq.;
18. Violation of criminal provisions of the "New Jersey Antitrust Act," N.J.S.A. 56:9–1 et seq.
19. Any purposeful, knowing, willful or reckless violation of the criminal provision of any federal or state environmental protection laws, rules, or regulations;
20. Violation of N.J.S.A. 2C:17–2;
21. Perjury, false swearing or any other offense set forth in Chapter 28 of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:28–1 et seq.
22. Any violation of the criminal provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A–1 et seq.

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

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

(d) No license shall be approved by the Department if the Attorney General determines that there is a reasonable suspicion to believe that a person required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or the licensee other than an equity interest or debt liability by the investigation thereof, does not possess a reputation for good character, honesty and integrity, and that person or the applicant fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity.

(e) No license shall be approved by the Department with respect to the approval of an initial license, if there are current prosecutions or pending charges in any jurisdiction against any person required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or the licensee other than equity interest or debt liability by the investigation, for any of the offenses enumerated in (b) above, provided, however, that at the request of the applicant or the person charged, the department shall defer decision upon such application during the pendency of such charge.

(f) No license shall be approved by the Department if any person required to be listed in the disclosure statement, or shown to have a beneficial interest in the business of the applicant or the licensee other than an equity interest or debt liability by the investigation thereof, has pursued economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, where such pursuit creates a reasonable belief that the participation of that person in any activity required to be licensed under this chapter would be inimical to the policies of N.J.S.A. 13:1E–126 et seq. For purposes of this section, "occupational manner or context" means the systematic planning, administration, management, or execution of an activity for financial gain.

(g) No license shall be approved by the Department if the applicant refuses to comply with inquiries as required under N.J.A.C. 7:26–16.7.

(h) No license shall be approved by the Department if the applicant in its application, disclosure statement or any other materials supplied to the Department or the Attorney General shall supply information which is untrue or misleading as to a material fact pertaining to the disqualification criteria.

Case Notes

Application for license to collect solid and hazardous waste; insufficient showing of integrity, reliability, expertise and competence. Sasso's Sea–Gull Disposal, Inc. v. DEPE, 94 N.J.A.R.2d (EPE) 67.

7:26–16.9 Cause for License Revocation

(a) In addition to any other cause set forth in this Chapter, any license may be revoked by the Department for any of the following causes:

1. Any cause which would require disqualification, pursuant to N.J.S.A. 7:26–16.8, from receiving a license upon original application;

2. Fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;

3. Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of N.J.S.A. 13:1E–1 et seq., N.J.S.A. 13:1E–126 et seq., or of any other law relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste, or of any rule or regulation adopted pursuant thereto;

4. Coercion of a customer by violence or economic reprisal or the threat thereof to utilize the services of any licensee;

5. Preventing, without authorization of the Department any licensee from disposing of solid waste or hazardous waste at a licensed treatment, storage or disposal facility.

Case Notes

Commissioner of Department of Environmental Protection and Energy was obliged to impose civil administrative penalties against generator and transporter. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Each truckload of hazardous waste, which was not accompanied by written manifest was separate offense; penalty against generator was warranted despite generator's claim that it was victim of transporter's fraud and the department's negligence in enforcing its regulations. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Hazardous waste generator or transporter is strictly liable for violation of regulations governing transportation and disposal of hazardous waste. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Penalty for each truckload of hazardous waste that transporter accepted from generator was warranted. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D. 1993).

Oil trading company not corporation in good standing; no basis to oppose proposed revocation and denial of application for hazardous waste license. Department of Environmental Protection and Energy v. N.O.C. Enterprises, Inc. 93 N.J.A.R.2d (EPE) 227.

Dumping of hazardous wastes; mislabeled manifests; penalties. Department of Environmental Protection v. Rollins Environmental Services, Inc. 92 N.J.A.R.2d (EPE) 67.

7:26–16.10 Administrative hearing; requests

(a) Any applicant who is denied an initial license pursuant to this subchapter shall, upon a written request transmitted to the Department within 30 days of that denial, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the "Administrative Procedure Act", N.J.S.A. 52:14B–1 et seq.

(b) Any licensee who receives a notice of intent to revoke or refuse to renew a license shall have 15 days from receipt of the notice to transmit to the Department a request for a hearing.

(c) Requests for hearings shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625–0402.

Administrative correction heading and change in (c).
See: 23 N.J.R. 3325(b).

7:26–16.11 Severance of disqualifying individuals

(a) Notwithstanding the disqualification of any applicant or licensee pursuant to N.J.A.C. 7:26–16.8 or 16.9, the department may issue or renew a license if the applicant or licensee severs the interest of or affiliation with the person who would otherwise cause that disqualification.

(b) Where the disqualifying individual is the owner of an equity interest or interest in the debt liability of the licensee or applicant, he must completely divest himself of that interest. Where immediate sale of the interest would work an economic hardship on the individual, the licensee or applicant, the Department may, in its discretion, allow for divestiture over a period of time not to exceed one year.

(c) Arrangements such as blind trusts will be acceptable only as part of a divestiture arrangement under which the trustee is obliged to sell the disqualifying individual's interest within a period not to exceed two years.

(d) Before the Department will issue or renew a license to an applicant or licensee which has severed a disqualifying individual, the applicant or licensee must submit to the Department an affidavit, sworn to by the chief executive officer, attesting to the severance of the disqualifying individual and describing the terms, circumstances and conditions of that severance. Any instruments pertaining to that severance (such as a trust agreement) shall be submitted with the affidavit.

7:26–16.12 License revocation; Ineligibility for reapplication

(a) The Department will not issue a license to any person who has had an application denied, or a license revoked, for any of the reasons set forth in N.J.A.C. 7:26–16.8 or 16.9, for a period of 5 years following such denial or revocation.

(b) A person that is a business concern shall be considered as the same person if the management structure of the concern includes the person or persons that were the cause of the original disqualification.

7:26–16.13 Fees charged by the Attorney General and the Department

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E–128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E–18.

(a) Every business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (N.J.S.A. 13:1E–126 et seq.) shall submit, upon initial filing and annually thereafter, a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E–126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements, contracting with the Attorney General for post-licensing compliance checks, including special investigations, conducting investigations to verify claims of exemption from A–901, securing confidential documents, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.392 (N.J.S.A. 13:1E–126 et seq.). The fee for the Attorney General shall be $100.00 per each individual and the fee for the Department shall be $500.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26–16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest), in addition to a per-company fee to be calculated as follows:

1. Business concerns with one individual required to be listed pursuant to N.J.A.C. 7:26–16.3 and 16.4 shall pay an annual per-company fee of $635.00;

2. Business concerns with two or three individuals required to be listed pursuant to N.J.A.C. 7:26–16.3 and 16.4 shall pay an annual per-company fee of $1,775;

3. Business concerns with four to seven individuals required to be listed pursuant to N.J.A.C. 7:26–16.3 and 16.4 shall pay an annual per-company fee of $5,150; and

4. Business concerns with more than seven individuals required to be listed pursuant to N.J.A.C. 7:26–16.3 and 16.4 shall pay an annual per-company fee of $15,650.

(b) The applicant shall calculate the amount of each fee due and submit to the Department a check for the total fee amount, made payable to "New Jersey Department of Environmental Protection". The Department shall forward the Attorney General's fee to the Attorney General. An application or disclosure statement will not be accepted as complete for filing unless accompanied by the appropriate fee payment.

(c) If on the basis of investigation the Department or the Attorney General determines that a person not listed on the disclosure statement should have been listed thereon, the Department and Attorney General may require the payment of additional separate fees along with the submission of additional information pertaining to that person. The applicant shall pay such additional separate fees promptly upon demand. Nothing in this subsection shall be construed as limiting the power of the Department to deny or revoke a license if the Department finds the omission of a person from the disclosure statement was intended to mislead or conceal information from the Department.

(d) If a business concern subject to P.L. 1983 c.392 (N.J.S.A. 13:1E–126 et seq.) files a change of information pursuant to N.J.A.C. 7:26–16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the business concern shall pay additional separate fees of $100.00 to the Attorney General and $500.00 to the Department per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26–16.4(a)9). Individuals disclosed pursuant to N.J.A.C. 7:26–16.6 shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.

(e) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26–16.4(a) 1 and 2 as holding any equity in or debt liability of the original business concern filing the disclosure statement shall be considered

to be additions to the original business concern filing the disclosure statement for the purpose of calculating the per-company portion of the fee. The original business concern filing the disclosure statement shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals or business concerns bring the total number of disclosed individuals and business concerns to a level requiring a higher fee pursuant to (a) above.

(f) Where business concerns file disclosure statements concurrently as a group pursuant to N.J.A.C. 7:26–16.3(e), for the purposes of fee calculation under this section the group shall be treated as a single applicant or licensee, and fees shall be calculated on the basis of the total number of individuals required to be listed in all of the disclosure statements filed by members of the group. Individuals whose names appear on more than one disclosure statement shall be counted only once for purposes of fee calculation.

As amended R.1984 d.541, effective December 3, 1984.
See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).
(b) substantially amended.
Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Required fee of $100 for Attorney General and $500 fee for the Department.
Amended by R.1989 d.586, effective November 20, 1989.
See: 21 N.J.R. 2275(a), 21 N.J.R. 3658(b).
Additional per-company fee established.
Notice of Receipt of Petition for Rulemaking concerning fees.
See: 22 N.J.R. 2364(a).
Notice of Action on Petition concerning fees.
See: 22 N.J.R. 3403(c).

7:26–16.14 Confidential information

(a) As used in this section, the following terms shall mean:

1. "Authorized personnel" means any employee of the Department or the Attorney General authorized to act in the enforcement of P.L. 1983, c.392, N.J.S.A. 13:1E–126 et seq.

2. "Confidential information" means

i. Any information required to be furnished to the Department or the Attorney General by an applicant, licensee or an individual required to be listed on a disclosure statement, which pertains to private financial matters of the applicant, licensee or individual which are not otherwise subject to public disclosure by any statute or regulation;

ii. Any information which pertains to the criminal record, family or personal background of an applicant, a licensee or an individual required to be listed on a disclosure statement;

iii. Any information obtained by the Department or the Attorney General pursuant to an interrogatory issued pursuant to N.J.S.A. 13:1E–129 or a subpoena issued pursuant to N.J.S.A. 13:1E–130; and

iv. Any other information which is confidential pursuant to applicable statutory provision, judicial decision or rule of court.

3. "Secure storage facility" means any area, room, furniture, equipment, machinery or other device used for the storage of confidential information, access to which is limited to authorized personnel at all times by locks, alarms, codes or other appropriate security precautions.

(b) Confidential information shall not be released or disclosed to any person except in accordance with the provisions of this section.

(c) Except as otherwise provided in (k) below, access to confidential information within the possession of the Department or the Attorney General shall be restricted to authorized personnel who require such information in the performance of their official duties.

(d) Confidential information not currently being used by authorized personnel shall be stored in secure storage facilities. Every such facility shall be under the direct supervision of a supervisor designated by the Commissioner or Director. The said supervisor shall periodically review for their effectiveness all security measures. Measures determined to be ineffective shall be immediately corrected or improved.

(e) The Commissioner or Director shall designate in writing all Department personnel authorized to have access to confidential information.

(f) Authorized personnel shall not remove confidential information from designated secure storage facilities unless such removal is necessary to the fulfillment of their official duties. Confidential information which is not presently being utilized by authorized personnel shall be promptly returned to its secure storage facility.

(g) A record shall be maintained of all confidential information which is removed from secure storage facilities. This record shall include:

1. The names of the person removing the information;

2. The name of the person for whom the information is being obtained;

3. The date of removal;

4. A description of the information removed or the number of the file which has been removed; and

5. The date the information is returned.

(h) Confidential information shall not be removed from the offices of the Department without the prior approval of an appropriate supervisor. Such approval shall only be granted where removal of the confidential information is necessary to the performance of the official duties of authorized personnel.

(i) The integrity of confidential information in the possession of authorized personnel shall be preserved at all times. It shall be the personal responsibility of any individual granted temporary custody of confidential information to insure that the information is not shown, released or disclosed to any unauthorized person or to any otherwise authorized person who does not require such information in the performance of their official duties. Confidential information temporarily stored outside designated secure storage facilities shall be maintained in a locked desk or filing cabinet, or protected by other appropriate security precautions.

(j) A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the Department shall only be made where absolutely necessary to the administration of N.J.S.A. 13:1E–126 et seq., or where an authorized release of the confidential information is made pursuant to the provisions of (k) and (*l*) below.

1. Where confidential information is stored on a computer or 1magnetic medium to which access is physically restricted to authorized personnel, a record shall be kept of the persons who access the data, including the time and date of the access.

2. If confidential information is stored on a computer system or on magnetic media, access to which is shared with users who are not authorized personnel, access to the confidential information shall be restricted to authorized personnel by means of secure access codes, code names and other appropriate software safeguards. In addition, the computer shall be programmed so as to maintain a list of all requests for display or printout of confidential information, identifying the user who made the request.

(k) Confidential information within the possession of the Department shall not be released or disclosed in whole or in part to any person except:

1. Upon lawful order of a court of competent jurisdiction; or

2. In the course of the necessary administration of N.J.S.A. 13:1E–126 et seq.; or

3. With the approval of the Attorney General, to a duly authorized law enforcement agency; or

4. Upon presentation of proper identification, to the applicant, licensee or individual who furnished the confidential information to the Department or the Attorney General; or

5. Upon presentation of a duly executed and notarized release authorization by the applicant, licensee or individual who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(*l*) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (k)2 through 5 above, written notice shall be given to any applicant, licensee or individual affected prior to the release or disclosure, whenever possible, unless such notice would otherwise imperil the administration of N.J.S.A. 13:1E–126 et seq. To the extent known, the notice shall include:

1. The name and address of the person to whom the information was released or disclosed;

2. A description of the information released or disclosed; and

3. The date of the release or disclosure.

(m) Any confidential information disclosed in the course of any proceeding in the administration of N.J.S.A. 13:1E–126 et seq., or in the course of a judicial proceeding in which disclosure has been made pursuant to lawful order of the court, shall cease to be confidential information to the extent the record of the proceeding becomes a public record.

(n) Any knowing or willful disclosure of confidential information by personnel of the Department, other than a disclosure authorized under this section, shall be a violation of the Department's code of ethics and shall subject the violator to the penalties proved by N.J.S.A. 52:13D–23(d), following notice and the right to a hearing before the Executive Commission on Ethical Standards. The violator may also be subject to disciplinary action, including suspension or dismissal. Unauthorized disclosure of information obtained pursuant to interrogatory or subpoena may subject the violator to criminal penalties under N.J.S.A. 13:1E–131.

Case Notes

Statute disqualifying certain persons from solid and hazardous waste disposal licensure. Trade Waste Management Assn., Inc. v. Hughey, 780 F.2d 221 (3rd Cir.1985).

7:26–16.15 through 7:26–16.19 (Reserved)

7:26–16.20 Policies on disqualification

(a) To guide in the exercise of its discretion under N.J.A.C. 7:26–16.8 and 16.9, the Department from time to time shall promulgate policies and publish them as regulations in this subchapter.

(b) Where no published policy applies, the Department shall evaluate applicants and licensees in light of the policies expressed in N.J.S.A. 13:1E–126.

7:26–16.21 Convicted persons generally

(a) No licensee shall knowingly hire as an officer, director or key employee, nor knowingly allow to acquire an equity interest on debt liability interest, any person who has been convicted of any of the crimes enumerated in N.J.A.C. 7:26–16.8(b), without first obtaining the approval of the Department. This provision does not apply to persons who were employed or held their interests before June 11, 1984.

(b) In connection with any such request, the licensee shall file with the Department and the Attorney General an amended disclosure statement, containing the necessary information about the person, including any evidence the licensee wishes to bring forth demonstrating the person's rehabilitation.

(c) The Department shall request a recommendation from the Attorney General as to whether the person has affirmatively demonstrated rehabilitation, and shall consider the factors set forth at N.J.A.C. 7:26–16.8(c) in determining whether to grant permission to the licensee to employ the individual or allow him to acquire an interest in the licensee.

(d) Any licensee that violates (a) above may be subject to having its license revoked, notwithstanding the rehabilitation of the individual in question.

7:26–16.22 Persons convicted of environmental crimes

(a) In the case of persons convicted of violating the criminal provisions of any federal or state environmental protection laws, rules or regulations, including N.J.S.A. 2C:17–2, N.J.S.A. 13:1E–9(e) or (f) and N.J.S.A. 58:10A–10(f), or persons convicted of any crime which involved the violation of such laws, rules or regulations, the Department will not consider such person rehabilitated unless he has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities for which he was convicted, and to make restitution to any victims injured thereby; and

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that such a conviction warrants a finding of "unreliability" under N.J.A.C. 7:26–16.8(a) if the date the conviction became final (including the exhaustion of any appeals) is less than ten years preceding the filing of the application or notice of intent to revoke a license.

(c) Notwithstanding (a) and (b) above, the Department may still deny or revoke a license because of a conviction more than ten years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

7:26–16.23 "Independent contractors" or "consultants"

(a) Applicants and licensees may not avoid the effects of N.J.A.C. 7:26–16.8 and 16.9 by designating an employee as an "independent contractor" or "consultant". The Department will look beyond the form of such contracts, and if it finds that a person designated as an "independent contractor", "consultant" or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant or licensee, the Department will regard that person as an employee.

(b) The Department may deny or revoke a license if it finds that an applicant or licensee has entered into an "independent contractor" arrangement, "consultant" agreement or similar arrangement for the purpose of avoiding disqualification under N.J.A.C. 7:26–16.8 or 16.9.

7:26–16.24 "Brokerage" by convicted persons

(a) It is the policy of the Department to discourage persons who would be disqualified from obtaining licenses under N.J.A.C. 7:26–16.8(b) from acting as brokers in the solid waste or hazardous waste industries.

(b) The Department may examine an applicant or licensee's relationship with a broker in order to determine whether the broker is or has acted as an employee. In making this determination the Department may consider the following factors:

1. Whether the broker was formerly employed by the licensee or a business concern owned, controlled or under the same ownership as the licensee or applicant.

2. Whether the broker is under retainer to the applicant or licensee, or receives any compensation that is not dependent on producing sales.

3. Whether the commissions paid to the broker are disproportionate to those paid to other brokers similarly situated in the industry.

4. Whether the broker derives the bulk of his income from one licensee, or from licensees under common ownership.

5. Whether the broker performs functions customarily performed by employees, such as signing manifests, supervising the loading of trucks, instructing drivers on routes to follow, etc.

6. Whether the broker has an agreement (written or oral) with a licensee to "steer" business to the licensee rather than to competitors, such that the broker is not exercising independent judgment in his choice of licensed operators.

(c) If the Department finds that a broker who would be disqualified from obtaining a license is or has acted as an employee, it may result in the applicant or licensee being disqualified under N.J.A.C. 7:26–16.8 or 16.9.

(d) The Department may deny or revoke a license if it finds that an applicant or licensee has set up or maintained a relationship with a broker for the purpose of avoiding disqualification under N.J.A.C. 7:26–16.8 or 16.9.

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

Subchapter Historical Note

Adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

7:26–16A.1 Scope and applicability; Conflicts

(a) This subchapter implements section 3.a. of L. 1983, c.392, N.J.S.A. 13:1E–128.a., which states that "Every licensee who is not otherwise required to file a disclosure statement within two years of the effective date of this act shall file a disclosure statement with the department and the Attorney General within that period."

(b) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing licensees.

(c) Except where the context would require otherwise, the provisions of N.J.A.C. 7:26–16 are applicable to this subchapter.

(d) In case of any conflict between a provision of this subchapter and any other provision of this chapter, the provision of this subchapter shall govern.

(e) The Commissioner or Director may relax the application of any part of this subchapter if necessary to prevent unreasonable delay in the processing of any application that was pending before the Department prior to July 2, 1984.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R.
Deleted text from (b) "so as to . . . two year period."

7:26–16A.2 Schedule for submitting disclosure statements

(a) All persons who had received a license from the Department prior to July 2, 1984 shall submit a disclosure statement to the Department and the Attorney General on or before May 1, 1987. Disclosure statements shall be submitted according to the procedures and requirements set forth in N.J.A.C. 7:26–16.3 and 16.4.

(b) A person shall be deemed to have "received a license" if he had received from the Department final approval to operate a solid or hazardous waste collector-hauler business or treatment, storage or disposal facility, or was actually operating pursuant to any authorization equivalent to an approved registration, such as a temporary operating authorization, judicial order or administrative consent order, or the authorization conferred by "existing facility" status pursuant to N.J.A.C. 7:26–12.3.

(c) The Department may require any applicant or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

(d) Any licensee may voluntarily submit a disclosure statement earlier than demanded.

(e) The applicant or licensee shall have 90 days from the time of receipt of the demand to file a disclosure statement with the Department and the Attorney General. Refusal to file the disclosure statement shall be deemed a refusal to comply under N.J.A.C. 13:1E–128.c. and N.J.S.A. 7:26–16.7.

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R.
Substantially amended.

7:26–16A.3 Applications pending on July 2, 1984

(a) Persons with applications pending before the Department on the effective date of these rules (July 2, 1984) shall submit a disclosure statement to the Department and the Attorney General no later than September 30, 1984.

(b) It is the Department's intention that applicants whose applications were pending before the department prior to the proposal date of subchapter 16 (May 7, 1984) shall have the licensing process delayed as little as possible by reason of the new licensing requirements imposed by L. 1983, c.392. When it finds that it is in the public interest to do so, or to prevent unreasonable economic hardship, the Department may conditionally issue a license to an applicant whose application was pending on May 7, 1984 before it has received a full investigative report from the Attorney General, provided that:

1. The disclosure statement has been filed, and a preliminary review by the Department indicates no reason for disqualification;

2. The Attorney General has conducted a check of applicable criminal history information and reported to the Department that such check indicates no reason for disqualification; and

3. The applicant has signed a statement indicating its understanding that its license may be revoked if the full investigative report or subsequent investigation indicate reasons for disqualification.

(c) Applicants who filed their applications after May 7, 1984 may not be issued licenses until completion of the investigative report. However, the Department will attempt to expedite processing of such applications by requesting the Attorney General to accord highest priority to completing investigative reports on applicants whose applications are pending before the Department prior to July 2, 1984. Also, in appropriate cases, the Department will continue technical review of such applications concurrent with the disclosure statement review and investigative report.

SUBCHAPTER 17. AVAILABILITY OF INFORMATION; CONFIDENTIAL BUSINESS INFORMATION

Subchapter Historical Note

Adopted as R.1988 d.57, effective February 1, 1988. See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).

7:26–17.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the hazardous waste program under N.J.A.C. 7:26–1, 4 and 7 through 12 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with hazardous waste regulatory activities under N.J.A.C. 7:26–1, 4, and 7 through 12 shall be generally available to the public except as provided otherwise in this subchapter. This requirement shall also include information regarding hazardous waste facilities regulated by N.J.A.C. 7:14A–1 et seq.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for interagency or intraagency memoranda or letters, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. 552(b)(5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 USC § 552(b)(7) or N.J.S.A. 47:1A–3.

(f) Any information obtained or used in the administration of the hazardous waste program under N.J.A.C. 7:26–1, 4, or 7 through 12, shall be available to EPA upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information to EPA under this subchapter.

(g) When EPA supplies information to the Department which was submitted to EPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from EPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

7:26–17.2 Definitions

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

"Act" means the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq.

"Business" means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure, or may lawfully inure, to the benefit of any private shareholder or individual.

"Hazardous waste" means those solid wastes identified as hazardous wastes in accordance with N.J.A.C. 7:26–8.

"Person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governing bodies and agencies and their employees.

7:26–17.3 Classes of information

(a) The classes of information to be made available to the public and to EPA shall include, but not be limited to, the following:

1. Permits, permit applications and modifications;
2. Annual reports;
3. Closure plans;
4. Notification of a facility closure;
5. Contingency plan incident reports;
6. Delisting petitions and other petitions for variances or waivers;
7. Financial responsibility instruments;
8. Environmental monitoring data;
9. International shipment records;
10. Manifests and manifest exception, discrepancy and unmanifested waste reports;
11. Facility EPA identification numbers;
12. General correspondence with the facility;
13. Orders, consent orders, notices of violations, penalty settlement offers, civil and administrative penalty assessments, and other enforcement documents;
14. Inspection reports;
15. Results of corrective action investigations, undertaken pursuant to § 3004 (u) and (v) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and
16. Analytical data submitted to the Department.

7:26–17.4 Administrative procedures and appeals for requests for information

(a) The scope of records maintained by the Department that are subject to requests for information shall be as broad as the scope of records as provided by the United States Environmental Protection Agency at 40 CFR 2.100(b).

(b) Materials which are routinely available to the general public are not confidential information and shall be supplied within a reasonable time upon written request by interested parties. Such materials include, but are not limited to final orders in case adjudications, press releases, copies of speeches, pamphlets and educational materials.

(c) A requester of non-confidential and confidential records including, but not limited to, records defined in (b) above shall not be required to supply any justification for the information request.

(d) All requests for information shall identify with specificity the information requested. The Department, in responding to requests containing incomplete identification of records, shall make reasonable efforts to assist a requester in identifying the records being sought. The Department's designated information officer shall contact the requester by telephone if possible or in writing to assist the requester to formulate his or her request. The Department's designated information officer shall also aid the requester in locating the office maintaining the records he or she seeks.

(e) If a request is formulated in general terms covering a large quantity of records, the Department's designated information officer shall assist the requester in narrowing the scope of the request to minimize the fees payable by the requester. This type of assistance shall not be used as a means to discourage requests, but to help narrow the scope of investigation when possible.

(f) Information concerning the fees in regard to both information requests and confidentiality claims is set forth in N.J.A.C. 7:26–17.11 and 17.12.

(g) Requests for information shall be answered in writing within 20 working days of receipt by the designated information officer. The written response shall designate which records will be released, which will not be released, and the reasons for denial.

1. If the request for information is incomplete or insufficient, the time span covering the State's request for clarification to the requester's reply shall not be counted in the 20 working days in (g) above.

2. Failure of the Department to issue a determination within the 20 day period shall be considered a denial. This shall authorize the requester to pursue further legal recourse and apply for an order to release the requested information pursuant to (h) below.

(h) If the Department denies a request for information, it shall inform the requester of the reasons for denial and shall advise the requester that he may appeal the denial to the Superior Court of New Jersey as provided in N.J.S.A. 47:1A–1 et seq.

(i) The Department may require prepayment of the fees set forth at N.J.A.C. 7:26–17.11 and 17.12. When prepayment of a fee is required, the Department will release the information to the requester upon payment of the fee.

(j) The Department may allow the public to inspect and to make copies of any non-confidential information at the per copy fee set forth at N.J.S.A. 47:1A–2, which is as follows:

First to tenth page	$0.50 per page
Eleventh page to 20th page	$0.25 per page
All pages over 20	$0.10 per page

(k) Requests for information should be addressed to:

Information Officer
Hazardous Waste Regulation Element
401 East State Street
CN 028
Trenton, New Jersey 08625.

Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
New (k) added; address for requests for information.

7:26–17.5 Claims of confidentiality

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:26–17.6.

(b) When the Department requires the submission of information which may be confidential, it shall advise the submitter of the information concerning departmental procedures which govern application for a confidentiality claim. If confidentiality is not requested upon submission to the Department, the Department will place the information in the files which are available to the public.

(c) The following procedures apply to confidentiality claims:

1. Claims of confidentiality for permit application information and any other information shall be substantiated in accordance with the criteria set forth in N.J.A.C. 7:26–17.6 at the time the information is submitted. Any applicable fees shall be enclosed with the submittal. Failure to request confidentiality or failure to pay the confidentiality fee shall be grounds for denial of the confidentiality claim.

2. If a submitter does not provide substantiation which satisfies the criteria of N.J.A.C. 7:26–17.6, the Department will notify the submitter by certified mail, return receipt requested of the requirement to do so. If the Department does not receive the substantiation within 10 days after the submitter receives the notice, the confidentiality claim is waived and the Department may make the information available to the public.

3. Within the Department, Division Directors or their appropriate designees shall determine, based on the criteria listed in N.J.A.C. 7:26–17.6, whether or not information is entitled to confidential treatment.

4. If, in accordance with the criteria listed in N.J.A.C. 7:26–17.6, the Department determines that the information is entitled to confidential treatment, it shall maintain the information in confidence (subject to court order, any

applicable court rules or other provisions of this subchapter which authorizes disclosure in specific circumstances), and the Department shall so inform the business. If any other person's request for the release of the information is then pending under N.J.S.A. 47:1A–1 et seq., the Department shall state the basis for the denial and that it constitutes final agency action.

5. If, in accordance with the criteria listed in N.J.A.C. 7:26–17.6, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the business. Such notice of denial of a confidentiality claim shall be in writing and shall be furnished by certified mail, return receipt requested.

i. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidential claim, and that the Department shall make the information available to the public 10 days after the date of the business's receipt of the notice.

6. Documents, in whole or in part, may be determined by the Department to be confidential.

(d) When a request is made for access to confidential information, the request shall be denied and the Department shall notify the submitter of the information of the request by certified mail, return receipt requested.

7:26–17.6 Criteria for confidentiality determinations

(a) Where the following criteria are satisfied by the business in regard to a claim of confidentiality under N.J.A.C. 7:26–17.5, information shall be kept confidential:

1. The business has asserted a confidentiality claim, when it submits the information to the Department;

2. The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

3. The information is not, and has not been, reasonably obtainable, without the business's consent, by other persons (other than governmental bodies) using legitimate means (other than discovery based on showing of social need in a judicial or quasi-judicial proceeding);

4. No statute requires disclosure of the information;

5. The business has satisfactorily shown that disclosure of the information would be likely to cause substantial harm to the business's competitive position; and

6. The business has paid all fees required by this subchapter when it submits the information to the Department.

7:26–17.7 Confidential files

(a) If the Department approves a claim of confidentiality, the submitter shall submit two copies of the documents.

1. One copy shall be stamped "confidential" on each page and shall contain all the information requested by the Department. This copy shall be maintained in a separate locked file and shall be accessible to State employees only as necessary for regulatory purposes, or as otherwise provided in the subchapter.

2. A second copy with the confidential information deleted shall be placed in the files available to the public. The second copy shall carry a notation that confidential material has been deleted.

7:26–17.8 Exception to granted confidentiality claims

(a) If the Department finds that disclosure of information covered by a confidentiality claim would serve to alleviate an emergency situation posing an imminent and substantial danger to public health or safety, it may:

1. Disclose confidential information to any person whose role in alleviating the danger to public health or safety or the environment necessitates that person's knowing the information. Any such disclosure shall be limited to the minimum information necessary to enable the person to whom it is disclosed to carry out that person's role in alleviating the dangerous situation.

2. Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim nor shall it, by itself, be grounds for any determination that the information is no longer entitled to confidential treatment.

(b) Information required for legal proceedings that is protected by confidentiality claims will be released only when properly subpoenaed for a court proceeding or an investigative committee impaneled by the Federal or State Legislature.

7:26–17.9 Access to and safeguarding of confidential information

(a) Unless specifically provided for by Federal law, State law, court order, or applicable court rule, no person shall have access to information which has been determined to be entitled to confidential treatment, other than:

1. The designated Department personnel;

2. Federal or other State agencies; or

3. Authorized representatives of the Department, subject to the provisions of this subchapter.

(b) Each departmental officer or employee who has custody or possession of confidential information shall take appropriate measures to properly safeguard such information and to protect against its improper disclosure.

(c) No departmental officer or employee may disclose, or use for his or her private gain or advantage, any confidential information which comes into his or her possession, or to which he or she gains access, by virtue of his or her official position of employment, except as authorized by this subchapter.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a departmental employee shall constitute grounds for dismissal, suspension, fine, or other adverse personnel actions.

7:26–17.10 Class determinations

(a) The Department may, through the promulgation of amendments in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B–1 et seq., make a determination that a certain class of information is or is not entitled to confidential treatment if it finds that:

1. The Department possesses, or is obtaining, related items of information; and

2. One or more characteristics common to all such items of information will necessarily result in identical treatment for each such item, and that it is therefore proper to treat all such items as a class.

(b) A class determination shall clearly identify the class of information to which it pertains.

(c) A class determination shall state that all of the information in the class:

1. Fails to satisfy one or more of the applicable criteria in N.J.A.C. 7:26–17.6 and is therefore ineligible for confidential treatment; or

2. Satisfies the applicable criteria in N.J.A.C. 7:26–17.6 and is therefore eligible for confidential treatment.

7:26–17.11 Procedure regarding fees for information requests

(a) Except as provided in (b) below, requesters shall pay for all expenses incurred by the Department in identifying and copying requested records.

(b) No payment is required for the following services:

1. The cost of reviewing requests for information and preparing and reviewing written responses thereto;

2. For furnishing documents requested by USEPA;

3. For furnishing documents requested by and for the official use of other State agencies; or

4. For furnishing documents needed by a State contractor or grantee to perform the work required by a State contract or grant.

(c) All fee payments shall be in the form of a check or money order payable to the "Treasurer, State of New Jersey" and shall be submitted to the designated information officer.

(d) If the Department estimates that the fee for information requests will exceed $25.00 and the requester has not submitted payment in advance to cover the estimated fees, the Department shall notify the requester of the amount of the estimated fees or such portion thereof as can readily be estimated. In such cases, the Department shall not release the information to the requester until it receives the total amount of fees due or estimated to become due. Such notice shall be transmitted to the requester within 10 working days after the Department has made the initial determination that the records are available.

(e) Where an estimate fee paid by the requester in advance exceeds the fee chargeable under the fee schedule for services actually performed, the Department shall refund the balance. Where the actual fees due for the services exceed the estimate, the requester shall remit the amount of the actual fees before the copies are released. In such cases, the Department shall not release the information to the requester until payment has been received.

(f) The fee for information requests may be reduced or waived by the Department if the public interest would be served thereby. The Department shall consider, but is not required to grant reduction or waiver of fees in connection with each request from a representative of the press or other communications medium, or from a public interest group.

1. A request for reduction or waiver of fees shall be addressed to the appropriate Division or Bureau which is responding to the request for records.

2. The Division or Bureau shall initially determine whether the fee shall be reduced or waived, and shall so inform the requester.

3. The requester may appeal the determination of the Division or Bureau by letter addressed to the appropriate Assistant Commissioner. The Assistant Commissioner shall decide such appeals.

(g) In the event that a requester who is in arrears for previous requests makes a request for documents, whether requested under this subchapter or any other Department rule, the Department may deny the request until the arrears have been paid in full.

1. Any request made by an individual who specifies an affiliation with, or representation of, a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization can show that the person who made the request for which payment is overdue did not make the request on behalf of the organization, the organization will not be considered in arrears, but the individual shall be.

7:26–17.12 Fee schedule for confidentiality claims

Any person submitting documents to the Department under a claim of confidentiality under N.J.A.C. 7:26–17.5, shall submit a check in the amount of $250.00 for the first 50 confidential pages and $1.00 for each page thereafter, to cover the costs of evaluating the confidentiality claim.

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