

(FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to a Direct Program Staff position. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Management).

LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program staff funded through the various fee programs.

BH = 1,428. The billable hours, which is the average number of hours each Direct Program staff position spends annually performing activities for which fees are assessed, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by seven hours per workday equals the 1,428 billable hours used for most calculations).

(h) The Department shall calculate hazardous waste facility compliance monitoring fees for the upcoming State fiscal year as of December 1 that precedes the upcoming State fiscal year, as follows:

1. Calculate task hours by determining the number of hours (determined from time coding and/or workload analysis) required to perform the specific program function for which the Direct Program staff is being employed.

2. Multiply the hourly rate derived pursuant to (g) above by the specific task hours for each type of activity for which a fee is listed pursuant to (h)1 above to determine the hazardous waste compliance monitoring fee.

(i) The Department shall annually determine during the month of October the hazardous waste transporter per ton fee, using the following formula:

$$\text{Per Ton Fee} = \frac{\text{Direct Program Staff} \times (\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{Total Tons Transported}}$$

Where:

Direct Program Staff = The Full Time Equivalent (FTE) level, projected to the nearest five percent, for all positions required to code time directly to any of the functions associated the hazardous waste transporter program, including but not limited to; issuance of transporter registration documents, transporter billing, compliance monitoring, inspections and any actions regulatory activity. The FTE, including but not limited to managers, clerical support, rule writers, administrative and information technology support staff, not attributable to specific program functions (including, but not limited to, hazardous waste transporter registration, solid waste transporter registration, Regulated Medical Waste, A901, recycling centers, solid waste permit fees, manifest and the biennial report programs in Solid Waste Management), shall be apportioned in proportion to those various program areas. Any FTE funded by alternative non-fee sources, such as Federal grants, shall not be included in the determination of the FTE.

AS, FB, IC, OE, and LS are as they are defined in at (h) above.

"Total Tons Transported" is the combined amount of hazardous waste that originates from or is delivered to New Jersey facilities by all registered transporters as reported on the hazardous waste manifest system for a given year of the registration period.

(j) Each year, the Department shall prepare a Hazardous Waste Fee Hourly Rate Report, a Hazardous Waste Compliance Monitoring Fee Report, and an Annual Hazardous Waste Transporter Tonnage Calculation Report detailing the factors used to calculate hourly rate, the compliance monitoring fee and the per ton rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of each report and the hourly rate, the compliance monitoring fee and the per ton rate. The notice shall state the reports are available, and shall direct interested persons to contact the Department for a copy of either report. The Department shall provide a copy of either report to each person requesting a copy and shall post a copy of each report on the Department's website at www.state.nj.us/dep.

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

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Rewrote section.

Amended by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Rewrote (c).

Amended by R.2007 d.350, effective November 5, 2007.

See: 39 N.J.R. 1953(a), 39 N.J.R. 4834(a).

Deleted former (f); and recodified former (g) as (f).

Amended by R.2008 d.16, effective January 7, 2008.

See: 38 N.J.R. 5227(a), 40 N.J.R. 133(a).

Rewrote (c)2, (c)3 and (c)4; added (c)5; rewrote (f); and added (g) through (j).

Public Notice: Adjusted FY 2008 Fees.

See: 40 N.J.R. 4358(a).

Case Notes

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

7:26G-3.4 Exemption from fee payment

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

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

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

7:26G-3.5 (Reserved)

Repealed by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Section was "Adjustment of fees".

SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7:26G-4.1 Incorporation by reference

(a) This subchapter incorporates by reference up to November 5, 2007 and prospectively incorporates by reference 40 C.F.R. Part 260, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 260 are not incorporated by reference: 260.1(b)(1), 260.2, the following

definitions at 260.10: "Act or RCRA," "Administrator," and "Regional Administrator"; and 260.20(b) through (e).

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

1. 260.1(a), after "chapter" add "and N.J.A.C. 7:26G";
2. 260.1(b)(3), after "chapter" add "and N.J.A.C. 7:26G";
3. 260.1(b)(4), after "chapter" add "and/or N.J.A.C. 7:26G"; and
4. 260.10 Definitions:
 - i. "Existing tank system or existing component," after "for which installation has commenced on or prior to July 14, 1986." add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.
 - ii. "New tank system or new tank component," at the end of the paragraph add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.
5. 260.20(a), after "parts 260 through 266" delete "and 268" and replace with ", 268 and N.J.A.C. 7:26A-7."; after "of this chapter" add "or N.J.A.C. 7:26G."; after "testing or analytical method to part 261, 264, or 265" add "of this chapter."; after "Section 260.22 sets forth additional requirements for petitions to exclude a waste" add "or waste-derived material."; after "the lists of hazardous wastes in subpart D of part 261" add "of this chapter. N.J.A.C. 7:26G-4.2 sets forth additional requirements for petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes for categories of hazardous waste as universal waste. All petitions for rulemaking will be subject to N.J.A.C. 1:30, Rules for Rulemaking. All petitions for rulemaking are governed by N.J.A.C. 1:30-3.6 and 7:1D-1.1.";
6. 260.21(b), delete "§ 260.20(b)" and replace with "N.J.A.C. 7:1D-1.1 and 1:30-3.6";