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SUBCHAPTER 1. GENERAL PROVISIONS

Law Reviews and Journal Commentaries

Environmental Crimes: Considerations in Prosecutions. Ed Neafsey, Edward Bonanno, 159 N.J.L.J. 37 (1994).

7:26-1.1 Scope of rules

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

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

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

greater risk to human health or the environment than the use of the product or raw material it is replacing.

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

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

2. Container-pickup facilities as herein defined;

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

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

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

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

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

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

8. Recycling operations and recycling centers approved and operated pursuant to N.J.A.C. 7:26A; and

9. A small vehicle transfer area meeting the following requirements:

i. Solid waste is transferred from a collection vehicle not exceeding 16,000 pounds gross vehicle weight directly to a registered solid waste collection vehicle;

ii. Such solid waste is collected in the collection vehicle not exceeding 16,000 pounds gross vehicle weight because the point of generation is not accessible to a registered solid waste collection vehicle (that is,

down a narrow lane or private driveway, or on public property such as a park or beach);

iii. All waste collected at the small vehicle transfer area shall be removed by the end of each operating day (or next operating day if collected on a weekend or holiday);

iv. Waste received in the area shall not be processed, segregated, sorted, or handled in any fashion other than direct transfer from the collection vehicle not exceeding 16,000 pounds gross vehicle weight into the registered collection vehicle or other collection container;

v. Area operations shall not result in the generation of odors, litter, dust, leachate, or any other negative environmental impacts;

vi. Small vehicle transfer areas shall receive approval from the municipality in which they are located prior to commencing transfer operations. In addition, operators of small vehicle transfer areas shall notify the Department in writing and the respective county health department following municipal approval and prior to commencing operations; and

vii. The operator of a small vehicle transfer area is subject to compliance with all other applicable solid waste regulations.

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

(c) The exemptions set out at (a)1 through 9 above are not applicable to activities associated with hazardous waste or regulated medical waste.

As amended, R.1981 d.84, effective March 6, 1981.
See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

(b) added.
As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

(c) added.
As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

(a)6 added.
Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.
Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

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

Added "hazardous" to the description of waste facilities, replaced "collection and haulage" with "solid waste transportation"; specific listing of the fee schedule elements deleted and replaced with generalized statement.

Amended by R.1996 d.500, effective October 21, 1996.
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).
Amended by R.1996 d.578, effective December 16, 1996.

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

In (a), inserted reference to civil administration penalties; in (a)1, inserted text "which would otherwise . . . to this chapter" and added last sentence; added (a)1i to (a)1iii; substantially amended (a)3; in (a)4, substituted "depots" for "centers" and inserted N.J.A.C. reference; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; added (a)8; and, in (c), made conforming changes and inserted reference to regulated medical waste.

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

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

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (a)9.

Case Notes

New Jersey's waste flow control laws violated commerce clause. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, D.N.J.1996, 931 F.Supp. 341.

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

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

Recycling center operates as solid waste facility where it accepts and buries materials as landfill. New Jersey Department of Environmental Protection v. South Brunswick Asphalt, 96 N.J.A.R.2d (EPE) 289.

Solid waste disposal violations debarred collectors from owing and operating any solid waste or recycling business within state. Department of Environmental Protection v. Chad Lennon, 95 N.J.A.R.2d (EPE) 33.

7:26-1.2 Construction and severability

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

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

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

Formerly the Department and the Bureau of Solid Waste Management.

Amended by R.1992 d.100, effective March 2, 1992.
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).

Severability clarified that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

7:26-1.3 (Reserved)

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

Bureau Chief deleted.

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

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

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

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Section was "Practice where rules do not govern".

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

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.

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

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

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

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

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

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

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

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

i. (Reserved);

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

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

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

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

vi. Nonhazardous solid waste, paper mill fiber (fiber from either virgin pulp or recycled paper mills) or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) approved in advance by the Department for use or reuse as cover material, landfill liner, cap material, or other landfill design and management components;

vii. Coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as a component in the manufacture of roofing shingles or bituminous asphalt products;

viii. Coal combustion fly ash, gas scrubbing by-products or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as an ingredient to produce light-weight block, light-weight aggregate, manufactured gypsum or manufactured calcium chloride;

ix. Coal combustion fly ash, coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as a cement or aggregate substitute in structural concrete, structural concrete products, or a raw feedstock in the manufacture of cement or as a cement substitute for structural grade products, or subbase in roadway construction; or

x. Coal combustion fly ash, coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused to serve as an aggregate substitute in structural asphalt product.

5. The generator and/or owner who originally produced the material under consideration for use in a beneficial use project in the State of New Jersey shall submit an application to and receive a certificate of authority from the Department prior to any sale, distribution, shipment of the material to any person or implementation of the beneficial use project. The application shall include the following:

i. A description of the beneficial use project including:

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

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

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

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

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

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

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

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

(1) An evaluation of the general quality of the material including a contaminant profile of the material in relation to current Department soil cleanup criteria (SCC) guidance levels and other standards as specified by the Department on a case-by-case basis, and in accordance with the sampling, quality assurance, analytical and other technical requirements of N.J.A.C. 7:26E, and/or other guidance as specified by the Department;

(2) A narrative description of the characteristics of the material and all sampling conducted in relation to the material. Material Safety Data Sheets (MSDS), all studies or analytical characterizations performed by any person on the material, and any other material specification information shall be included;

(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used to monitor material produced in the future for use or reuse;

(5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and

(6) A determination of the waste classification of the material and the rationale used for that classification;

v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;

vi. A description of any treatment undertaken prior to the use of the material;

vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts;

viii. The schedule for initiation and completion of the beneficial use project; and

ix. The generator and/or owner who originally produced the material shall provide the Department with evidence that the material provides a beneficial use either as a raw material or directly as a product in the uses to which it is applied. The material must be able to meet the same general physical character and chemical composition that is consistently equivalent to or exceeds the character and composition of the intentionally-manufactured product that it is replacing unless the applicant demonstrates to the Department's satisfaction that the material will not pose a greater risk to human health or the environment than the use of the product or raw material it is replacing.

6. The Department may require additional information in order to ensure that the proposed in-State beneficial use project will meet the requirements of (g)1 and 2 above.

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

8. The New Jersey generator and/or owner who originally produced the material considered for a beneficial use project outside the State of New Jersey shall submit an application to the Department that includes the following:

i. Documentation in the form of a letter to the Department from the applicant certifying that the material has been analyzed or is known, in accordance with N.J.A.C. 7:26G-5, not to contain contaminants that would cause the material to be classified as hazardous waste;

ii. Documentation in the form of a letter to the Department from the receiving facility stating that its owner agrees to accept the specified amount of material and indicating the receiving facility owner's intention to beneficially use or reuse the material and the time frame for such activity from the date of receipt of the material at the facility;

iii. Documentation from the applicant that the information required at (g)8ii above has been sent to the Solid Waste Coordinator of the county of the material's origin;

iv. A letter from the appropriate regulatory agency of the state where the receiving facility is located verifying that the facility is operating in accordance with all applicable rules and regulations and can lawfully accept the material for the declared use or reuse purpose and a current copy of the receiving facility's authorization to operate (that is, a permit);

v. Evidence that the material provides a beneficial use either as a raw material or directly as a product in the uses to which it is applied. The material must be able to meet the same general physical character and chemical composition that is consistently equivalent or exceeds the character and composition of the intentionally manufactured product it is replacing. The beneficial use of the material shall not cause harm to human health and the environment; and

vi. Any additional information required by the Department to ensure that the proposed beneficial use project will meet the requirements of this section.

9. The Department shall either issue to the New Jersey generator and/or owner a certificate of authority to operate for an out-of-State beneficial use project or deny

a certificate of authority to operate for an out-of-State beneficial use project, in writing to the applicant, within 45 days of receipt of a complete application.

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

11. The Department shall order an immediate termination of all operations related to a beneficial use project if it determines that termination is necessary to protect human health and the environment. The generator and/or owner who originally produced the material for use in a beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

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

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

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

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

"Variance" not readopted.

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

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

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

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

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

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

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

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

(e) added.

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

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

Subsection (f) added.

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

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

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

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

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

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

Added (g).

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

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

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

Administrative change in (b)1.

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

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

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

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

Administrative change.

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

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

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

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

Amended by R.2002 d.181. effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

Case Notes

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

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

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

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

i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (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.

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

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

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

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

Old rule recodified to 7:26-1.9.

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

2. Notwithstanding any other provision of this chapter, the facility permittee shall submit the following in an application for a temporary permit modification approval:

i. Amendments to the approved environmental and health impact statement (if applicable) or a complete and detailed description of changes in environmental impacts that will result from the proposed modification(s) in facility engineering design and/or operation and additional mitigation measures being or proposed to address such impacts. Traffic impacts shall be re-evaluated if the proposed modification results in an increase in waste acceptance;

ii. Amendments to the approved Operations and Maintenance Manual for the facility, that reflect changes made necessary due to the proposed modification(s) in facility engineering design and/or operation; and

iii. Amended engineering design(s) for the facility, reflecting changes proposed that are the result of the proposed modification(s) subject to review.

(c) The owner or operator of any solid waste facility exempted pursuant to this section shall comply with all conditions set forth in its temporary permit modification approval. Noncompliance with a temporary permit modification approval shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to implement engineering design and/or operational modification(s).

1. The owner or operator of a facility for which temporary approval 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 submitted to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, NJ 08625-0402.

2. The granting of a temporary permit modification approval shall not be interpreted as entitling the holder to a solid waste facility permit modification.

Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Former section "Public access to information and requirements for Department determination of confidentiality" recodified as N.J.A.C. 7:26-1.12.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.10 Transfer station facility master performance permits

By June 16, 1997, every facility holding a transfer station master performance permit shall submit an application for a solid waste facility permit in accordance with the procedures set forth in N.J.A.C. 7:26-2.4 and 7:26-2B.

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

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 (Reserved)

Emergency recodification to N.J.A.C. 7:26-1.13 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Section was "Burden of Proof".

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.12 Public access to information and requirements for Department determination of confidentiality

(a) Any confidential information obtained or used in the administration of the State solid waste program shall be treated in accordance with N.J.A.C. 7:26-17.

(b) Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the reports submitted to the Department by transporters of regulated medical wastes pursuant to N.J.A.C. 7:26-3A.35(a) shall not be deemed to be public records and the public shall not have the right to inspect, copy, or obtain a copy of the same. Upon receipt of these reports, the Department shall keep these reports in a secure storage facility and take the appropriate measures to maintain these reports in confidence. Access to such reports shall be limited to agents, employees and attorneys of the Department, and, in the discretion of the Department, other governmental enforcement agencies with a legitimate need to know, to local health agencies certified by the Department pursuant to N.J.S.A. 26:3A-2, or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste.

1. In order to obtain access to these reports, a certified local health agency or local board of health shall submit a written request to the Department setting forth the information requested and the reasons for the request.

2. The Department in its discretion may deny a request for a release of a report if the Department determines for any reason that granting the request would not be in the public interest.

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).

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

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

Substituted "solid waste program" for "hazardous waste program".

Emergency recodification from N.J.A.C. 7:26-1.9 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Former N.J.A.C. 7:26-1.12, "Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)", was repealed by R.1996 d.578, effective December 16, 1996.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.

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

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

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

Previous paragraph recodified as (a); added new (b).

7:26-1.13 Burden of proof

(a) In an enforcement action, or on specific request of the Department, 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, or on specific request of the Department, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste.

(c) In an enforcement action, or on specific request of the Department, 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 that renders the material conditionally exempt from N.J.A.C. 7:26.

New Rule, R.1990 d.65, effective February 5, 1990.

See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).

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

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

Recodified from 7:26-1.13 and amended by R.1996 d.578, effective December 16, 1996.

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

Added references to specific request of the Department throughout; and in (c), substituted "an approved alternative use" for "a legal disposition". Section was "Exemption from SWF permitting—leaf composting facilities (leaves only)".

Emergency recodification from N.J.A.C. 7:26-1.11 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.

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

SUBCHAPTER 2. DISPOSAL

7:26-2.1 Scope and applicability

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

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26G. 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 the 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 subsection sets forth the specific criteria for exempting rail carriers:

1. This subchapter does not apply to a rail carrier that transfers containerized solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. §10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its behalf as part of its rail transportation services. However, a rail carrier that transfers containerized solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.

2. Rail carriers engaged in the business of solid waste transportation by rail or the transfer of containerized solid waste to or from rail cars, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:1E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16.3.

3. The exemptions set forth at (c)1 and 2 above shall not apply to a solid waste transporter that transports waste to a rail carrier via truck, barge or other nonrail modes. Such a transporter shall remain subject to all applicable solid waste regulations, including, but not limited to, registration and district plan solid waste flow control provisions.

(d) A rail carrier as defined at (c)1 above that transfers noncontainerized solid waste to or from rail cars that is in

compliance with N.J.A.C. 7:26-2D.1 as of November 2, 2009, shall submit the following documents by May 1, 2010:

1. The disclosure statements required under N.J.A.C. 7:26-16; and
2. A complete application for a solid waste facility permit to the Department.

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.

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

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

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

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

In (a), amended N.J.A.C. references; and deleted (c).

Amended by R.2004 d.408, effective November 15, 2004.

See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

In (a), substituted "N.J.A.C. 7:26A, 2B, 2C and 2D" for "N.J.A.C. 7:26A and 2B" preceding "shall constitute"; added (c).

Amended by R.2009 d.335, effective November 2, 2009.

See: 40 N.J.R. 6507(b), 41 N.J.R. 4105(a).

In (c)1, deleted "or noncontainerized" preceding "solid waste" twice; in (c)2, deleted "disposal or" preceding "transportation", substituted "or the transfer of containerized solid waste to or from rail cars," for a comma following "transportation by rail" and updated the N.J.S.A. reference; and added (d).

Case Notes

Disposing of solid waste in landfills other than those designated by state waste flow was warranted revocation of operating certificate. Matter of Allegations of Violations by Fiore and Sons, 95 N.J.A.R.2d (EPE) 88.

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

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

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

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.;

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

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

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

5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;

6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

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

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

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

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

1. For a small-scale thermal destruction facility:

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

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

(2) The waste is generated at the site of the thermal destruction operation, at other associated intra-company plants; or is regulated medical waste, or home self-care waste managed as regulated medical waste, that is received and managed by the operator of the small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;

(3) The small-scale thermal destruction unit is not a major facility as defined at N.J.A.C. 7:27-8.1;

(4) The facility has been included in the applicable district solid waste management plan; and

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

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

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

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

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

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

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

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

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

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

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

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

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

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

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

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

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

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

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

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

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

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

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

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

iii. The written authorization is submitted to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. The County Solid Waste Coordinator 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 the County Clerk of any county in which any portion of the facility is proposed to be located; District Solid Waste Advisory Committee of the Solid Waste Management District; Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs; and other affected states.

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

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

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

- i. The applicant's name;
- ii. The agency application number;
- iii. The type of facility proposed by the applicant;
- iv. The location of the proposed facility;
- v. The date and description of significant agency action on the application;
- vi. The locations where and when application materials are available for review; and
- vii. A statement that comments concerning the pending permit action may be submitted to the Department at the address specified in N.J.A.C. 7:26-2.4(b)8.

11. Not later than six months after the date upon the Department's letter notifying the applicant that the application is complete pursuant to (g)2 above, except in the case set forth in (g)3 above, the Department shall reject the SWF permit application, without prejudice, as technically incomplete, or deny or grant tentative approval of the application.

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

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

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

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

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

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

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

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

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

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

(1) The applicant;

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

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

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

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

(6) Any interested person requesting such notice.

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

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)14i and ii above. 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)14i and ii above.

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

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

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

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

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

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

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

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

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

ii. A description of the proposed facility;

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

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

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

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

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

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

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

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

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

the public comment period shall clearly set forth the closing date of such extension.

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

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

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

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

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

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

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

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

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

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

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

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

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

vi. The tentative approval and final permit documents; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule was "Submission of engineering designs".

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

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

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

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

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

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

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

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

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

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

Substantially amended section.

Administrative change.

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

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

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

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a)7, inserted "applicable district" prior to "solid"; in (b)8, substituted "Permitting and Technical Programs" for "Engineering"; rewrote (c)1i(2) through (4); in (g)6ii, substituted "borders" for "boarders" prior to "of which lie"; rewrote (g)7; in (g)11, substituted "(g)2" for "(g)6 in the introductory paragraph; in (g)14iii, amended the N.J.A.C. references.

Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

In (c), deleted "located within the State of New Jersey" following "intracompany plants" in 1i(2).

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

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

In (c)1v and (c)2v, deleted "and" from the end; in (c)1vi and (c)2vi, substituted "; and" for the period at the end; and added (c)1vii and (c)2vii.

Case Notes

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

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

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

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

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

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

7:26-2.5 Public hearing procedures

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

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

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

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

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

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

(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).

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

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

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 at (a)4 below for modification or revocation and reissuance exist.

1. If cause exists, the Department may modify, or revoke and reissue the SWF permit, subject to the limitations

of this section, and may require the SWF permittee to submit an updated or new application in accordance with (e) below, if appropriate. When a permit is modified, only the SWF permit 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 (c) below, the Department shall not modify or revoke and reissue the permit. The Department shall notify the person submitting the request that cause does not exist for a permit condition modification or a revocation and reissuance of the permit.

3. If a permit modification satisfies the criteria in (d) below for a minor modification, the permit may be modified without issuance of a tentative approval or public comment thereon. Otherwise, a tentative approval of the modified SWF permit conditions or of the revoked and reissued SWF permit shall be prepared pursuant to (e) below and the procedures in N.J.A.C. 7:26-2.4 (g) 11 through 25 followed.

4. The following may be cause for modification of permit conditions or revocation and reissuance of the SWF permit at the discretion of the Department.

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. For the purpose of this subchapter, a material and significant alteration or addition is defined as:

(1) A major alteration to or addition of a new structure to the facility, which is not deemed to be a minor modification as set forth at (d) below and which would result in a significant change in the approved environmental impacts of the facility;

(2) An increase in the approved capacity of the facility which would result in a significant change in the approved environmental impacts of the facility; and

(3) A major alteration in the operations of the facility which would result in a significant change in the approved environmental impacts of the facility;

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 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.

5. 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 during the permitted operations of the facility to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time, including a material and significant alteration or addition to the permitted facility;

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);

vii. A waste inspection plan, which shall include a program for detecting and preventing the disposal of all unauthorized waste types, including regulated hazardous wastes. This program shall include, at a minimum, but not be limited to, the following:

- (1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain unauthorized waste types, including regulated hazardous waste or TSCA waste;
- (2) Records of any inspections;
- (3) Training of facility personnel to recognize any unauthorized waste types, including regulated hazardous waste; and
- (4) Notification procedures to report to the Department any discovery of any unauthorized waste types, including regulated hazardous waste at the facility; and

viii. For ID 72 liquid waste transfer stations, a description of the methods to be employed to meet the waste analysis and incompatible wastes requirements of N.J.A.C. 7:26-2B.9(g)2 and 3.

10. The Department will review the O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a revised O and M manual. The revised O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but at least 60 days prior to initiating full-scale operations. Full-scale facility operations shall not be initiated before formal Department approval of the revised 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.

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

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

In (a), deleted two references to exemptions under N.J.A.C. 7:26-2.4(c) and amended the references made to 7:26-2B; rewrote (b)1; in (b)4i, amended N.J.A.C. reference; in (b)5vi, added reference to storm water drainage, sanitary sewer, water supply, and energy systems; in (b)6, substituted "North American Datum of 1983" for "New Jersey

Plane Coordinate Datum of 1927; deleted (b)7iii; in (b)9, amended reference to manual from preliminary manual; added (b)9ii(1); and in (b)10, amended reference to manual from preliminary manual.

Administrative change.

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

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

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

Rewrote (b).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), deleted "except for those facilities as specified in N.J.A.C. 7:26-2.4(c)" and inserted the fourth sentence; inserted (b)9viii.

7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities, except as noted in (e) below. Additional operational 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 operational 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 (c)2 below; for sanitary landfills, all areas where waste has been deposited shall be covered with the appropriate cover material except as permitted by (c)2 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 the emission of air contaminants in violation of N.J.A.C. 7:27-5.2(a);

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. 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 Federal or State authority. 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;

10. 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;

11. 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; and

12. 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.

(c) In addition to the requirements listed at (b) above, those solid waste disposal facilities that receive solid waste from off site shall also comply with the following:

1. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility. Solid waste vehicles exempt from registration pursuant to N.J.A.C. 7:26-3.3, or those which must be manually unloaded, 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 operat-

ed in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

2. 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 either exempt from the Registration requirements of N.J.A.C. 7:26-3.3 or which must be manually unloaded. Bulky items and recyclable materials may be provided for in this manner. The operator may establish a separate secure area, with the approval of the Department, for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM) separate and apart from the disposal areas described in this paragraph or in N.J.A.C. 7:26-2A.8(1)2i and ii. The operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer. The facility operator shall be responsible for the sanitary conditions and orderly operation of the designated areas. It shall be the operator's responsibility to remove the bulky items, recyclable materials, ACWM or other waste from the designated area at a frequency so as not to exceed the storage capacity of the areas;

3. 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;

4. 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. 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; and

5. 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.

(d) Department 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.

(e) Owners or operators of transfer stations who receive, store, treat or transfer only ID 72 liquid wastes are not required to comply with (b)1, (b)2, (b)3, (b)4, (c)2 and (c)5 above.

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, to expire March 26, 1996).

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

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

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

Added (b)19 and (c).

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

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

In (b)9, amended Division reference and inserted reference to a solid waste decal; in (b)10, inserted third through fifth sentences, inserted reference to ACWM waste in seventh sentence, and deleted last sentence prohibiting scavenging.

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

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

Deleted (b)19 and (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

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

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

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

Rewrote (b)5; in (b)13, deleted the last sentence.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted ", except as noted in (e) below" in the first sentence and added a fourth sentence; rewrote (b); added (c) through (e).

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 containing waste materials

(a) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the standards for waste disposal at 40 C.F.R. 61.149 and 40 C.F.R. 61.150.

(b) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the reporting requirements of the following agencies: United States Environmental Protection Agency, at 40 CFR 61.145 to 61.155; the New Jersey Department of Community Affairs, at N.J.A.C. 5:23-8; the New Jersey Department of Labor and Workforce Development, at N.J.A.C. 12:120-7.2; and the New Jersey Department of Health and Senior Services, at N.J.A.C. 8:60-7.2.

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).

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

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

In (a), inserted C.F.R. references and recodified a portion of (a) as (b); recodified former (b) through (d) as (d) through (f); inserted new (c); in (d)3, amended subsection references and inserted reference to telephone number and waste decal; and in (e), amended subsection references.

Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

Rewrote the section.

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 facility; 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 and solid waste decal number;
3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of three categories of wastes as follows:

- i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);
- ii. Septage and liquid sewage sludges: Waste ID 73 and 74 received (in gallons);

iii. 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, except in those instances where the waste is transported from a transfer station or materials recovery facility to a final disposal facility. In those instances, the facility ID of the transfer station or materials recovery facility shall be listed instead of the municipality, county and state as indicated above.

7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste materials shall maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

i. Date and time of delivery;

ii. Identification of the transporter by name and by the New Jersey Department of Environmental Protection registration number assigned to the transporter;

iii. Quantity in cubic yards and/or tons of the waste;

iv. Name and address of the generator; and

v. For rejected shipments, the reason for rejection and disposition of the shipment after rejection.

8. In addition to the requirements of (a)1 through 7 above, 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. Transfer stations and materials recovery facilities which do not have scales shall report data in accordance with N.J.A.C. 7:26-2.11(c)4.

9. In addition to the information required by (a)1 through 6 above, ID 72 liquid waste transfer stations shall include the following information in the daily record:

i. Records of waste analyses and/or waste determinations performed as specified in N.J.A.C. 7:26-2B.9(g)2 and 3; and

ii. A written description of any release or other incident which requires implementation of the cleanup procedures specified in N.J.A.C. 7:26-2B.9(g)4.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of the 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. 26:3A2-1 et seq. 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 the 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.

1. 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 host District Solid Waste Management Plan 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.

2. 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, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

3. 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 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.

(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 Quality;

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, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district where 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), transfer station, materials recovery facility or 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 at N.J.A.C. 7:26A;

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;

(f) Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. 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. 7:26H-5.9(c)5.

(g) Waste identification and definition of solids 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 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.

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. Deceased animals that are intended for cremation in an animal crematorium with the residual ashes either returned to the pet owner or interred in a burial plot at a legally recognized pet cemetery, or deceased animals intended for internment at a legally recognized pet cemetery are not considered solid waste pursuant to this chapter. (Carcasses which are cremated at a crematorium but whose final destination of the residual ashes is a solid waste facility are considered disposed of and are considered solid waste pursuant to this chapter.) 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. 7:26G. Also included are nonhazardous oil spill cleanup waste, dry nonhaz-

ardous pesticides, dry nonhazardous chemical waste, and residue from the operations of a scrap metal shredding facility.

viii. 27A Waste material consisting of asbestos or asbestos containing waste.

ix. 27I Waste material consisting of incinerator ash or ash containing waste.

(h) Waste identification and definition of liquids include the following:

1. Liquid wastes; waste ID number and definitions:

i. 72 Non-hazardous 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. Also included are non-hazardous pesticide liquids. 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) For all waste disposed of within or leaving the district for further transfer, materials recovery or disposal (either in-State or out-of-State), each waste district shall record at a minimum the following information: district of waste origin; the identity of the transfer facility (if applicable); the identity of the final destination facility; the tonnage or cubic yards of waste; the waste type; and the tonnage or cubic yards of any material recycled. This information shall be compiled into monthly summaries which shall be retained for a period of one year or longer in the event of an unresolved enforcement action. If a district chooses to impose an in-district weighing requirement consistent with N.J.A.C. 7:26-6.10(b)2, to institute a mechanism to ensure the payment of outstanding debt and other financial obligations, the district may gather this information through in-district weighing, but only for the period set forth in N.J.A.C. 7:26-6.10(b)2. Districts which do not conduct in-district weighing shall develop an alternate recordkeeping method to ensure that accurate information is collected on a monthly basis as set forth above.

(j) The operator of a designated district weighing facility shall ensure that all weighing is conducted in a manner that facilitates proper operation and minimizes systems interruptions.

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, to expire March 26, 1996).

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

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

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

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

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

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

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

In (a)2, added reference to solid waste decal number; in (a)7 and (e), amended Department and Division references; and added (g)viii and (g)ix.

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

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

Deleted (a)3ii; recodified existing (a)3iii and (a)3iv as (a)3ii and (a)3iii; rewrote (a)8; deleted (c)6; deleted (e)1vi through (e)1viii and (e)2; and added (k) and (l). Readopted provisions of Emergency Amendment R.1997 d.404 with changes effective December 1, 1997. Administrative change.

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

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

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

Rewrote the section.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote 6, substituted "Programs" for "Assistance" in 7ii, inserted 9; in (c), rewrote 2; in (e)1i, substituted ", transfer station, materials recovery facility or" for "and" following "(including municipality)"; rewrote (g)1vi; in (h)1i, substituted "Non-hazardous" for "Bulk" following "72" and added the second sentence; rewrote (i). Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

In (a), rewrote 7.

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

Licensed solid waste hauler violated regulatory recordkeeping requirements by transporting out of country waste to landfill and for failing to properly record origin of waste on an origin and disclosure form. *Middlesex County Dept. of Health v. Importico*, 315 N.J.Super. 397, 718 A.2d 727 (N.J.Super.L. 1998).

Waste hauler who had permit to haul its own self-generated construction waste, and who accepted and hauled others' construction waste in violation of that permit, would suffer permit revocation. *Division of Solid Waste Management v. Loughran*, 96 N.J.A.R.2d (EPE) 367.

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 Solid waste facility performance partnership agreements

(a) Any thermal destruction facility, materials recovery facility, transfer station, municipal solid waste composting or co-composting facility processing greater than 100 tons per day may negotiate a 15-year solid waste facility performance partnership agreement (SWFPPA) with the Department.

1. The eligibility requirements for a SWFPPA follow:

i. The solid waste facility shall have obtained all applicable permits and licenses required by the Department and shall have been in operation for at least one year;

ii. The solid waste facility shall be in substantial compliance with all permit conditions; and

iii. The solid waste facility shall not have a history of substantial noncompliance with environmental obligations as defined in (r) below.

2. The Department shall convene an informational meeting at least annually with the owners and/or opera-

tors of the facilities listed in (a) above to outline the SWFPPA planning process.

(b) The SWFPPA shall include the following:

1. A discussion of the operating conditions and requirements in the facility's existing permit, their associated environmental and/or agricultural impacts and the potential to improve operating conditions over those required by the permit. This discussion shall, at a minimum, address:

- i. Facility storage requirements;
- ii. Litter control;
- iii. Fugitive dust controls;
- iv. Odor controls;
- v. Noise controls;
- vi. Equipment and facility on-line availability;
- vii. On-site vehicle routing and traffic; and
- viii. Off-site vehicle routing;

2. A discussion of the long-term environmental goals and milestones selected by the applicant for inclusion in the SWFPPA. The applicant shall select those goals and milestones which will reduce the existing environmental and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals. The applicant shall select from the goals and milestones listed below and/or propose alternative goals and milestones:

i. An accounting of the inputs and outputs of materials at the facility, including estimates of the quantities of raw materials used and wastes generated at each source;

ii. Baselines to be utilized to measure progress towards achieving the goals and milestones established in the SWFPPA;

iii. Methods to increase the recovery of materials from solid waste through the addition of manual or mechanical materials recovery systems in furtherance of State and solid waste management district recycling goals;

iv. Methods to reduce levels of discarded products containing heavy metals, particularly those containing cadmium, lead and mercury from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

v. Methods to reduce levels of discarded products containing volatile organic compounds from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

vi. Methods to reduce energy usage by the facility, including both the facility equipment usage and vehicle transportation. This reduction shall be based on an energy balance for the facility and vehicle transportation;

vii. Methods to eliminate or reduce levels of hazardous substances used by facility through material or product substitution or other means;

viii. Methods to reduce the quantity of household hazardous waste, small quantity generator waste and/or universal waste disposed of by the solid waste facility;

ix. Formulation of a landfill mining plan to extract valuable resources for recycling, reduce the size of the landfill footprint, reclaim additional disposal capacity or otherwise improve resource management;

x. Methods to reduce the likelihood of accidental spills or releases of hazardous substances;

xi. Methods to reduce the level of the facility's process residue and/or the development of programs to more effectively treat or use residue as a product;

xii. Methods to reduce water usage by the facility;

xiii. Methods to reduce wastewater discharges by the facility; and

xiv. Methods to reduce direct and/or fugitive air emissions from the facility;

3. A schedule for improving operational conditions identified pursuant to (b)1 above and specific methodologies for effecting the improvements;

4. A schedule for achieving the goals and milestones established pursuant to (b)2 above;

5. A discussion of the policies and procedures established to create a compliance assurance program, including:

i. Internal inspection schedules to ensure that all site conditions and operations are in compliance with internal assurance policies and standard operating procedures and environmental obligations;

ii. Procedures for correcting actual noncompliance observed during inspections; and

iii. Procedures for reporting noncompliance to the appropriate facility official and tracking corrective actions;

6. A discussion explaining the facility specific data and information and direct measurement utilized to develop the goals and milestones established pursuant to (b)2 above. This discussion may also include information based on reasonable calculations and estimates from the best available data and/or experience and judgment; and

7. The SWFPPA shall be developed for a 15 year period, with major goals and milestones scheduled to be reviewed on a five-year basis in accordance with the procedure established at (l) below.

vi. The geomembrane shall be protected from below and above by a minimum thickness of six inches of bedding and cover which is no coarser than a poorly grade sand (SP), as determined in the Unified Soil Classification System (USCS), and which is free of rocks, fractured stones, debris, cobbles and solid waste. An equivalent geotextile may be utilized as approved by the Department; and

vii. The impermeable cap shall be located wholly below the average depth of frost penetration in the area as determined by United States Department of Agriculture and mapping.

11. A drainage layer shall be designed and constructed in accordance with the following:

i. The design testing of materials and the quality control testing of the drainage layer of the capping system shall be performed in accordance with (d)2ii, vii and viii above;

ii. The material used in the drainage layer shall be an open graded material of clean aggregate. The material shall be in accordance with the following criteria of the cumulative grain size distribution curves:

(1) $D_{85} < 4D_{15}$; and

(2) $D_2 < 0.1$ inch;

iii. The drainage layer shall be designed and constructed so that the discharge flows freely in the lateral direction to minimize the hydrostatic head on the impermeable cap, flows through the drainage layer, and provides a path for infiltrated liquids to exit the capping system;

iv. The drainage layer shall have a thickness and hydraulic conductivity capable of transmitting all percolation through the overlying soils under saturated conditions. For design purposes, the drainage capacity of the drainage layer shall be greater than the percolation under saturated conditions. The drainage layer shall be constructed, at a minimum, in accordance with the following:

(1) When located above a clay impermeable cap, the drainage layer shall be, at a minimum, six inches thick; and

(2) When located above a geomembrane impermeable cap, the drainage layer shall be, at a minimum, 12 inches thick.

v. Drainage pipes and/or synthetic drainage nets, where necessary to control the hydrostatic head on the impermeable cap, should be located within the drainage layers in accordance with the following:

(1) The drainage pipe should be installed at a distance sufficient to ensure that the hydrostatic head on the impermeable layer does not exceed the thick-

ness of the drainage layer during a 25 year, 24 hour storm;

(2) A coarse gravel envelope, within a geotextile fabric, shall be installed in accordance with N.J.A.C. 7:26-2A.5(e)3ix around the drainage pipe to minimize the movement of soil particles in the drainage pipe;

(3) Synthetic drainage nets shall comply with the test requirements set forth at (d)2x(l) above; and

(4) The synthetic drainage net shall satisfy the design requirements at (d)11iii and iv above when accounting for calculated design loads imposed on the drainage net. A properly designed synthetic drainage layer shall result in no seepage forces in the overlying cover soil.

vi. A soil filter or geotextile should be designed and constructed above the open graded aggregate in order to minimize the intrusion of fines into the drainage layer.

12. The vegetative layer shall be designed and constructed in accordance with the following:

i. The vegetative layer shall be thick enough to contain the effective root depth or irrigation depth for the type of vegetation planted;

ii. Fertilizer, mulch, and seeding applications shall be performed in accordance with Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90, for permanent vegetative cover for soil stabilization;

iii. The minimum thickness of uncompacted topsoil in the upper layer of the vegetative layer shall be five inches. The topsoil shall meet the Topsoil Standard specified in Section 909.10 of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction; and

iv. The application of sludge or the use of Sludge Derived Product (SDP) to the final grades of the vegetative layer shall be performed in accordance with the NJPDES rules, N.J.A.C. 7:14A.

13. A gas venting layer shall be designed and constructed in accordance with the following:

i. The gas venting layer shall be located directly below the impermeable layer and above the compacted waste layer.

ii. The gas venting layer shall be designed and constructed in accordance with the requirements set forth at (f) above.

14. The Hydrologic Evaluation of Landfill Performance (HELP) Model (EPA/600/R-94/168a, U.S. Environmental Protection Agency Risk Reduction Engineering Laboratory, Cincinnati, OH), incorporated herein by reference, as amended and supplemented, shall be used to

estimate leachate generation quantities of the sanitary landfill with the impermeable cap during closure and post-closure periods.

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

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

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

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

Substantially amended section.

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

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

In (h)6iii, amended the N.J.A.C. reference.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), added 14x, rewrote 19 and added 25; in (c), substituted "with (d) below" for "with N.J.A.C. 7:26-2A.5(d)" in 4iv(5) and rewrote 5; in (d), added 2x and 4; in (f), rewrote 2; in (i), rewrote the introductory paragraph of 11iv, substituted "synthetic drainage nets" for "geonets" in the introductory paragraph of 11v, added 11v(3) and (4), and added 14.

7:26-2A.8 Sanitary landfill operational and maintenance requirements

(a) All sanitary landfills shall be operated 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). For balefill operations, a vertical working face will be allowed at the disposal area where continued bale placement will take place within 24 hours.

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 daily cover consisting of six inches of compacted clean soil or alternate cover material subject to the approval of the Department;

8. Daily application of cover may be exempted if the solid waste meets the following criteria:

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;

9. 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;

10. Intermediate cover, a minimum of 12 inches of cover material, shall be applied to all surfaces to be exposed for any period exceeding 24 hours;

11. 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;

12. 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;

13. The daily and intermediate cover material should be of a quality that is manageable under all weather conditions. Heavy clays and very fine grain materials, such as fly ash, shall not be used as daily and intermediate cover. A sufficient quantity of cover material 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;

14. 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;

15. An alternate material other than clean soil proposed for use as daily, intermediate or final cover material at a sanitary landfill shall be subject to the approval of the Department provided the following criteria are met. Further guidance is set forth in the Department's Technical Manual prepared by the Department's Bureau of Landfill and Recycling Management for Cover Material Requests:

i. The alternate material impedes the entry of rodents and vectors into the waste fill;

ii. The alternate material controls malodorous emissions;

iii. The alternate material provides a firebreak;

iv. The alternate material resists or has limited erosion potential and is not easily windblown; and

v. The alternate material controls windblown litter;

16. The alternate cover material shall meet the following performance standards:

i. The volatile solids, or combustible content of the cover shall not exceed 12 percent by weight;

ii. No more than 20 percent of fine grained materials shall pass a No. 200 sieve;

iii. At least 40 percent by weight of the fragments in the soil admixture shall be capable of passing through a No. 10 mesh sieve; and

iv. Particle sizes shall not exceed six inches in diameter;

17. If possessing soil-like properties, the following laboratory testing for the alternate material shall be required depending on the material and its intended use:

i. For intermediate or daily cover, the following tests shall be required:

- (1) Solids content;
- (2) Percent volatile solids;
- (3) Grain size analyses; and
- (4) Moisture content;

ii. For final or temporary final cover, the following tests shall be required:

- (1) Atterburg limits;
- (2) Permeability testing;
- (3) Solids content;
- (4) Percent volatile solids;
- (5) Grain size analyses; and
- (6) Moisture content;

iii. In addition to the tests at (b)17ii above, materials intended for use in the topsoil layer in a final cover shall require the following tests:

- (1) Nitrogen;
- (2) Ammonia-n;
- (3) Nitrate-n;
- (4) Total kjeldahl nitrogen;
- (5) Phosphorus;
- (6) Calcium;
- (7) Magnesium;
- (8) Potassium; and
- (9) Organic content;

18. Analytical chemical tests may be required for the alternate material depending on the material and its intended use;

19. An evaluation program in accordance with the requirements for RD&D projects as set forth at N.J.A.C. 7:26-1.7(f) shall be conducted for non-traditional cover materials such as cover foams and geotextiles. The evaluation program shall evaluate the cover material in actual use at the landfill.

i. The owner and/or operator of a sanitary landfill with an RD&D authorization for non-traditional cover materials shall evaluate the effectiveness of the material in meeting the requirements by monitoring its use under varying operational and weather conditions.

20. 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;

21. 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;

22. 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;

23. 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;

24. Access to the sanitary landfill for solid waste disposal shall be permitted only during the operating hours set by the Division of Solid and Hazardous Waste Management and shall be restricted to 7:00 A.M. to 7 P.M. in areas within 1000 feet of a residential zone;

25. 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;

26. 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;

27. An all weather road shall be provided to the working face;

28. 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;

29. 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;

30. The sanitary landfill shall not cause any air contaminant to be emitted in violation of N.J.A.C. 7:27-5.2(a).

i. 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.

ii. Malodorous solid waste shall be covered immediately after unloading with a minimum of six inches of cover material or approved alternative material;

31. Mud, soil, and other materials shall not be tracked onto any public road by exiting vehicles. A rumble rack or wheel washing station may be used to control the off site tracking of mud, soil, and other material;

32. The sanitary landfill shall be operated in a manner which minimizes the propagation and harborage of insects, rodents, and birds;

33. 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 Bureau of Solid Waste Compliance and Enforcement at (609) 584-4180;

34. 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.

35. 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;

36. 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;

37. A supervisor shall be at the sanitary landfill during all operating hours to ensure 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. 13:1 E-1 et seq., this chapter, and the conditions of the SWF permit;

38. 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.

39. The sanitary landfill facility personnel shall complete the initial training program required by (b)38 above within six months after the date of their employment;

40. The sanitary landfill facility personnel shall take part in an annual update of the initial training program;

41. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the sanitary landfill;

42. 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 1-877-WARNDEP; 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 ensure 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.

43. 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.

44. 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;

45. The control monuments shall be tied into the national or State geodetic survey network and keyed into the North American Datum of 1983; and

46. 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 ensure 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 and/or operator shall record the results of the inspections in a log book or by means of an electronic records storage system approved by the Department which shall be maintained at the sanitary landfill office and be accessible, 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 (b)³⁴ above and as listed in the approval final O and M manual.

(g) The sanitary landfill shall be maintained and inspected by the owner and/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 ensure a free flow of leachate;

8. The structural integrity of the manholes or clean-out risers shall be maintained to ensure 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;

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;

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 at N.J.A.C. 7:14A;

4. In addition to the requirement of (h)3 above, the flow of leachate in the primary and secondary leachate collection and detection systems shall be recorded on a daily basis;

5. The daily leachate monitoring results shall be compiled on a quarterly basis and submitted 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 Technical Assistance for class identification 30 days prior to disposal;

8. The hydrostatic pressure of the cut-off wall and the liner system shall be monitored on a monthly basis, unless otherwise directed by the Department, and the results shall be submitted to the Division;

9. Sanitary landfill gases shall be sampled and analyzed 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(f)3 and 4 on an as needed basis as determined by the Division and the Bureau of Air Quality Engineering, 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 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. If repeated methane gas surveys consistently detect no methane gas around the perimeters of the buffer zone of an active landfill area or at any location around the entire perimeter of the buffer zone of the sanitary landfill, the maximum interval between sampling points shall be increased and/or the sampling frequency shall be decreased, as approved by the Department, based on negative results at a particular location;

10. The daily precipitation data from the meteorologic monitoring system shall be compiled and submitted on a quarterly basis to the Division.

11. The settlement and slope data shall be compiled and submitted on a quarterly basis 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 between January 1 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 all be located utilizing Third Order, Class I for property survey and Third Order, Class II from 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. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Coordinate Datum (Mean Sea Level Datum) and keyed into the New Jersey Plane Coordinate Datum, 1983;

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 piezometer 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;

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; and

ix. Information from previous annual topographic surveys may be reproduced in a current annual topographic submission provided that no change to any of (i)3i through vii above has occurred.

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.

5. Closed sanitary landfills are exempt from the requirements of this subsection. For the purposes of this exemption, "closed" means the termination of all operations at the landfill and initiation of closure activities pursuant to N.J.A.C. 7:26-2A.9.

(j) Approval of and standards for disruption of landfills shall be in accordance with the following:

1. Written approval for disruptions shall be obtained from the Department prior to any excavation, disruption, relocation or removal of any deposited material, which may or may not involve solid waste, from either an active, terminated, or closed sanitary landfill. Specific guidance for the preparation of an application for disruption approval is provided in the Department's Technical Manual for the Division of Solid and Hazardous Waste, Bureau of Landfill, Compost and Recycling Management, Landfill Permits. For the purposes of this section, disruptions are defined as follows:

i. Minor disruption means the performance of a site investigation at a landfill for the purpose of gathering and evaluating information about the landfill's environmental or physical properties. Minor disruptions include, but are not limited to, the performance of soil borings and test pits, methane gas surveys, and installation of piezometers and observation wells.

ii. Major disruption means the construction of buildings, roadways, parking areas and other site improvements on top of a landfill.

iii. In cases where the landfill owner and/or operator has submitted documentation and received prior approval from the Department in the form of a revised or renewed solid waste facility permit, closure and post-closure plan approval or other approval for specific construction activities, a separate disruption approval shall not be required.

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 1-877-WARN-DEP;

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 material in sanitary landfills follow:

1. The owner and/or operator of a sanitary landfill shall only accept and dispose of asbestos and asbestos-containing waste materials which have been managed in accordance with N.J.A.C. 7:26-2.12(a).

2. All asbestos and asbestos-containing waste materials accepted for disposal at a sanitary landfill shall be disposed of in the following manner:

i. Owners and/or operators of new landfills accepting asbestos or asbestos-containing waste materials shall meet the following requirements:

(1) The owner and/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 materials. 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 materials 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 materials shall be immediately covered with daily cover. To prevent disturbance of the buried asbestos and asbestos containing waste, truck traffic shall be excluded from the active asbestos disposal area.

(3) In areas in which asbestos and asbestos-containing waste materials 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 materials 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 materials shall be immediately covered with a minimum of three feet of daily cover.

(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 materials. 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 materials.

ii. Owners and/or operators of existing landfills shall comply with one of the following two options for disposal of asbestos and asbestos-containing waste materials:

(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 materials 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 materials deposited in the disposal areas described in (l)2i and ii 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 (l)2v below. This description shall also include the depths of asbestos and asbestos-containing waste materials and cover material and shall remain in the record in perpetuity.

v. For disposal areas identified in (l)2i and ii 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 regulations and 40 C.F.R. Part 61 governing the removal, disposal or other handling of asbestos or asbestos-containing waste materials.

vi. No person may enter an asbestos disposal area at a landfill during the unloading and covering of asbestos and asbestos-containing waste materials 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 and/or operator for its employees.

vii. With the approval of the Department, the owner and/or operator of the landfill may establish a secured drop-off and/or transfer area for the acceptance of asbestos and asbestos containing waste materials (ACWM) separate and apart from the disposal areas described in (l)2i and ii above. The owner and/or operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or asbestos-containing waste materials into the container used for drop-off and/or transfer.

3. Either there shall be no visible air emissions during or after acceptance and disposal to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of (l)3i or ii below shall be met.

i. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill shall ensure that the asbestos or asbestos-containing waste material that has been deposited at the site shall:

(1) Be covered with at least six inches of compacted non-asbestos-containing material; or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Department. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

ii. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill may use an alternative emissions control method that has received prior written approval by the Department.

4. The requirements in this subsection do not apply to asbestos and asbestos containing waste materials generated in a renovation or demolition project 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).

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

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

Substantially amended section.

Administrative change.

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

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

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

Rewrote section.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

Case Notes

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. *VA Associates v. Department of Environmental Protection and Energy*, 95 N.J.A.R.2d (EPE) 120.

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 accounts 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 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 Savings Association Insurance Fund (SAIF) or the Federal Deposit Insurance Corporation (FDIC); or limited purpose trust company that meets the requirements set forth in N.J.S.A. 17:9A-28 and 17:9A-31 with its principal office located in the State of New Jersey maintaining assets in excess of \$50,000,000.

“Closure” means 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” means that availability of funds for draw-downs 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 landfill was in use and all such other information as may be of interest to potential landowners, and shall remain in the record in perpetuity. The deed shall also provide notice that any future disruption of the closed landfill shall require prior approval from the Department in accordance with N.J.A.C. 7:26-2A.8(j).

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 permit.

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. Within six months of closure of the sanitary landfill, the owner and/or operator of the sanitary landfill shall obtain and submit to the Department an "as-built" certification by a New Jersey licensed professional engineer, certifying that each provision of the Closure and Post-Closure Plan has been implemented as designed and approved, subject to the following requirements:

i. A New Jersey licensed professional engineer shall certify, in writing, to the Department that he or she has supervised the inspection of the construction of each major phase of the sanitary landfill's closure. He or she shall further certify that each phase has been prepared and constructed in accordance with the closure design approved by the Department. The certification shall include as-built drawings.

ii. A New Jersey licensed professional engineer shall certify that the materials utilized in the closure of the sanitary landfill are in conformance with and meet the specifications of the approved closure design.

iii. There shall be no deviation from the approved closure design without the prior written approval of the design engineer and, at a minimum, prior verbal approval by the Department.

iv. All certifications shall bear the raised seal of the New Jersey licensed professional engineer, his or her signature, and the date of certification.

v. The certification shall include the following statement: "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 under my supervision, 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. I understand that, in addition to criminal penalties, I may be liable for civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(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 rules, N.J.A.C. 7:14A, 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 or waive any of the above requirements, should specific health and/or environmental circumstances justify such action; and

4. The Closure and Post-Closure Care Plan shall include a schedule for the implementation of all the provisions of this section.

(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 an estimate which details the general and administrative costs, including but not limited to, fees for engineering, legal, accounting, auditing and banking services, property and sales taxes, environmental impairment and general liability insurance, Department permits and review fees, and utility costs.

i. The costs in (f)3 above for non-construction and/or maintenance services are allowable for reimbursement from the escrow accounts provided that:

(1) The costs are necessary and attendant to further the closure and post-closure requirements of the sanitary landfill;

(2) The Closure and Post-Closure Plan includes provisions for these costs and they are fully funded; and

(3) The projected costs are the same as or comparable to the costs for similar services.

ii. If there are insufficient funds available to complete the sanitary landfill's closure and post-closure requirements, as set forth in the Closure and Post-Closure Plan, reimbursement of costs for environmentally necessary construction and/or maintenance activities will take priority over general and administrative costs, unless otherwise approved in advance by the Department.

iii. The Department shall not disburse money from the escrow account for the expenses incurred by the owner and/or operator of the sanitary landfill in an effort to challenge, contest or defy the Department's rules and regulations, and any permits or orders issued pursuant thereto.

4. 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.

5. 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 Domestic 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 Domestic Product Implicit Price Deflators, for example, 1987 compared with 1997 or 83.1 compared with 112.4 which yields a 3.06 percent average annual percentage change. The adjusted annual closure cost estimate shall equal the latest closure cost estimate times the adjusted inflation factor.

6. 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 and/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 \$1.00 per ton 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 "ton" or "gallon" is used by the owner and/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 Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Solid Waste Regulation, PO Box 414, Trenton, NJ 08625-0414, Attention: Landfill Closure Escrow Account.

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 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:

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 and/or operator submits to the Department, pursuant to (e)4 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; and

iii. 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 may withhold disbursements for closure or post-closure work performed if the amount to be expended in any calendar year exceeds or is projected to exceed the amount budgeted for any line item provision in the closure plan, by more than 10 percent of the line item, as updated biennially in accordance with (f)5 above. The owner and/or operator shall seek and obtain

Department approval prior to expending funds which exceed or are projected to exceed budgeted costs, by letter, including revised financial schedules, identifying the overage or projected overage, the reasons for the overage and the source of the funds to cover the overage. The Department shall approve or deny disbursements based on the rationale provided by the owner and/or operator and the long term impact on closure or post-closure.

16. 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;

17. 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;

18. 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;

19. 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.

20. The owner and/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, Bureau of Solid Waste Regulation, Department of Environmental Protection, PO Box 414, Trenton, New Jersey 08625-0414, Attention: Landfill Closure Escrow Account; provided, however, the Department may at its discretion upon written petition from the owner and/or operator relieve the owner and/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;

21. 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;

22. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Solid Waste Regulation, PO Box 414, Trenton, New Jersey 08625-0414, Attention: Landfill Closure Escrow Account, 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).

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

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

Substantially amended section.

Petition for Rulemaking.

See: 30 N.J.R. 2304(b), 30 N.J.R. 2525(b).

Administrative change.

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

Amended by R.2002 d.181. effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

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).

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. VA Associates v. Department of Environmental Protection and Energy, 95 N.J.A.R.2d (EPE) 120.

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 SOLID WASTE 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 non-hazardous solid waste;
2. Thermal destruction facilities which dispose of non-hazardous 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. 7:26G.

Amended by R.1996 d.500, effective October 21, 1996.
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

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 solid waste 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.

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

In (a)1, inserted text "solid waste" preceding "composting".

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 protocol to be established that will allow for the measurement of the rate of waste charging to the individual combustion unit(s), averaged for each over a discrete 24-hour period. In the case where the thermal destruction facility recovers energy for use by means of steam production, the boiler system and its auxiliaries shall be used as a calorimeter, and the following shall be factored into the method of determination:
 - i. Direct measurement of salient variables shall be employed where such means are available;
 - ii. Adjustments shall be made to account for variability in unit thermal efficiency as equipment is cycled

for maintenance and as a result of equipment aging; and

iii. Seasonal variability of the higher heating value (HHV) of the waste subject to combustion shall be derived analytically using standard laboratory methods. At a minimum, the method chosen shall provide for quarterly reassessments of the HHV of the waste subject to combustion. Waste samples collected for HHV determination shall be representative of the nature and type of waste to be received at the facility for processing. The protocol shall also provide for a means of cross referencing the accuracy of the method of determination chosen by employing the use of the facility waste delivery weight scale records in a comparative analysis;

3. Projected average and peak daily deliveries of waste to the facility and charging rates to the combustion unit(s) (given in tons and estimated volumes). Quantify seasonal trends when anticipated;

4. The designation of normal loading, unloading and storage areas to be employed in the facility's handling of incoming wastes to be processed and residual materials generated by facility operations, including capacities in cubic yards and tons. Describe the time such areas can be practically used, based on average and peak facility operating conditions. At no time shall waste be delivered to the facility at a rate exceeding the facility's capacity to sort and process such waste. Under no circumstances shall waste be deposited beyond the confines of the refuse pit, except for the purpose of conducting incoming waste load inspections and holding unauthorized materials, or storing unprocessable materials such as oversize bulky waste;

5. The designation of emergency unloading, loading, staging, storage or other disposal capabilities to be used for the removal of previously stored waste should the facility be unable to process waste by means of combustion. Identify the plans for waste transfer from the facility, and identify the alternative disposal facility to be used under such conditions;

6. The expected daily quantity of bottom ash, fly ash (air pollution control train residues), post combustion recovered metals and other waste residue generated by facility operations, referenced by weight and projected volumes;

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. A list of all required NJDEP environmental plans, such as Discharge Prevention Control and Countermeasures (DPCC Plans) and Pollution Prevention Plans;

11. A list of all NJDEP/USEPA enforcement actions taken in the five years prior to the application date; and

12. A summary of the applicant's compliance history for all applicable environmental rules and regulations.

(c) The completed Silver Track II application shall be submitted to:

New Jersey Department of Environmental Protection

Office of Pollution Prevention and Permit Coordination

401 East State Street 3rd Floor East Wing

PO Box 423

Trenton, New Jersey 08625-0423

Attention: Silver Track II Program Manager

(d) A Silver Track II application must be accompanied by the following Silver Track II certification, signed by a responsible official as defined at N.J.A.C. 7:26-2C.2. The certification shall state:

"I certify, to the best of my knowledge, based on reasonable inquiry, that the information submitted in this certification is true, complete and accurate, and the facility for which this application is submitted is currently in compliance, and intends to remain in compliance with all applicable State and Federal environmental requirements I understand that false certification will result in the rejection of the Silver Track II application and/or removal from the Silver Track II tier of the Silver Track II Program for Landfills. I am aware that there are significant civil and criminal penalties, including the possibility of fines or imprisonment, or both, for submitting false, inaccurate or incomplete information."

(e) If the Department determines that the Silver Track II application is incomplete, the Department shall issue a Notice of Deficiency (NOD) identifying the incomplete items and advising what is needed to complete the Silver Track II application. The incomplete items shall be provided to the Department within 30 days of the applicant's receipt of a NOD.

(f) Failure to respond to a NOD in the allotted time provided for in (e) above shall result in an automatic rejection of the applicants Silver Track II application. The applicant shall not be allowed to reapply for Silver Track II until six months from the date of notification of its rejection from the Department.

(g) If the Department determines that the information submitted in response to the NOD makes the application complete, the Department shall commence with the compli-

ance screening and the record review pursuant to (i) and (j) below.

(h) If the Department determines that the information submitted in response to the NOD is incomplete, the Department shall reject the applicant's Silver Track II application. The applicant shall not be allowed to reapply for Silver Track II until 6 months from the date of notification of its rejection from the Department.

(i) Once an application is found to be complete in accordance with (b)1 through 12 above, the Department shall review the application and determine whether it satisfies the eligibility requirements set forth at N.J.A.C. 7:26-2C.4.

(j) If the Department determines that the eligibility requirements of N.J.A.C. 7:26-2C.4 have been met, the Department shall conduct a records review including but not limited to all plans, permits, registrations, and approvals that the applicant is required by State and Federal environmental statutes, rules and regulations to have and maintain for the applicant's facility, in order to determine if they are up to date, accurate and approved.

(k) An entity shall be accepted into Silver Track II if the Department determines that:

1. The application submitted by the entity is complete;
2. The entity has satisfied all of the eligibility criteria set forth at N.J.A.C. 7:26-2C.4; and
3. A review of the Department's records indicate that the applicant possesses all permits, plans, registrations and approvals that it is required to possess pursuant to all applicable State and Federal environmental statutes, rules and regulations and that these permits, plans, registrations and approvals are accurate and up-to-date.

(l) The Department shall disapprove a Silver Track II application if:

1. The application submitted by the applicant is incomplete;
2. The Department determines that the requirements of (d) below have not been met; or
3. The records referred to in (i) above are not up-to-date, accurate or approved by the appropriate State or Federal agency(s).

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.4 Eligibility criteria for landfills seeking participation in Silver Track II

(a) Any sanitary landfill processing greater than 100 tons per day may negotiate a 15-year Silver Track II Covenant with the Department provided the applicant demonstrates that it complies with the following eligibility criteria:

1. The applicant shall have no significant violations nor have been considered a significant non-complier during the five-year period preceding the date of filing an application to participate in the Silver Track II;

2. For entities with NJPDES stormwater permits, the applicant must be in compliance with its permit. Applicant's with NJPDES stormwater permits who are not operating in compliance with its permit are ineligible to participate in Silver Track. A permit issued by a publicly owned treatment work (POTWs) constitutes a NJPDES permit;

3. The applicant shall have obtained all applicable permits and/or approvals and shall have submitted all applicable plans required by any State or Federal environmental statute, regulation or permit. (For example, Discharge Prevention, Control and Countermeasures Plan under N.J.A.C. 7:1E; or an Operations and Maintenance Plan as required by a solid waste facility permit); and

4. The applicant shall not have failed to comply with an executed Memorandum of Understanding, Administrative Consent Order (ACO), and/or other directive issued by or executed with the Department for the performance of any regulated activity.

(b) In determining whether an applicant has satisfactorily demonstrated its eligibility to participate in Silver Track II, the Department may take into consideration any defenses which the applicant raises concerning violations as well as the conduct of the applicant in responding to such violations. The Department may also consider whether the Silver Track II applicant entered into an Administrative Consent Order (ACO) with the Department in order to resolve any of these violations and whether the applicant is in compliance with the milestones of that ACO.

(c) Any minor violations committed by the Silver Track II applicant during the five-year period preceding the filing of its application shall be reviewed on a case-by-case basis in order to determine eligibility. In conducting this review, the Department shall consider:

1. The number and type of minor violations;
2. Whether those violations were corrected during the grace period under N.J.S.A. 13:1D-129 et seq.;
3. Whether the minor violations occurred at a source that had a continuous emissions monitor installed and if so, whether the minor violations occurred with decreasing frequency (downward trend); and
4. The corrective steps the applicant has taken to avoid future violations.

(d) Silver Track II applicants shall not have committed any criminal violations at any time.

New Rule. R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.5 Development of the Silver Track II Covenant

(a) Once the Department approves an application for a facility to participate in Silver Track II, and prior to the participating entity being entitled to regulatory flexibility, the Department and the participating entity shall develop a Silver Track II Covenant, which will have a minimum term of five years and shall become effective upon execution by both the participating entity's responsible official and the Commissioner, or a duly authorized representative of the Department.

(b) The Silver Track II Covenant shall include the following:

1. The commitments made by the Silver Track II participating entity to comply with the provisions set forth in N.J.A.C. 7:26-2C.6, 2C.7 and 2C.8; and
2. The regulatory flexibilities and incentives offered by the Department to the participating entity set forth in N.J.A.C. 7:26-2C.9.

(c) If, at any time during the Silver Track II Covenant term, a participating entity anticipates an inability to meet a commitment set forth in its Silver Track II Covenant, the Silver Track II participating entity shall submit the following to the Department, Division of Solid and Hazardous Waste, PO Box 414, Trenton, NJ 08625-0414, in writing 10 days before such failure is expected to occur:

1. An explanation of why the participating entity will not meet such commitment;
2. The measures the participating entity will take to meet such commitment, and an anticipated date when such commitment will be satisfied; and
3. An explanation of whether the reasons for the participating entity's not meeting the commitment were within the entity's control.

(d) After reviewing the information provided in accordance with N.J.A.C. 7:26-2C.4(c), the Department may grant the participating entity a one-time extension, not to exceed one year, to meet the stated commitment. The Department will determine the duration of the extension in consultation with the participating entity. The Department and the participating entity will revise the Silver Track II Covenant to reflect the new deadline. At such time, with the concurrence of the Department, the entity may also change its originally stated plans for meeting its commitments. For example, the participating entity may decide to use GHG emission credits in accordance with the procedures contained in the Department's proposed Open Market Emission Trading Rules, N.J.A.C. 7:27-30, to meet its GHG emission reduction requirement.

New Rule. R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

11. Participating landfills will be considered for financial awards provided for within the Electric Discount and Energy Competition Act at N.J.S.A. 48:3-49, as a way to meet the Renewable Portfolio Standards. Such financial benefits could be applied to equipment upgrades which increase energy recovery/production efficiency at these facilities, while decreasing air emissions. Portions of the funding for these financial awards specifically target grid-connected projects for Class 1 renewable energy projects, for which landfill operations provide distinctly suitable sites; and

12. A streamlined county planning process, consistent with the requirements pertaining to administrative actions described in N.J.A.C. 7:26-6.11, for any increase in the solid waste disposal capacity of an existing permitted landfill which is less than or equal to the volume equivalent of the acceptance of an additional 100 tons per day of solid waste over the smaller of 10 years or the remaining life of the existing permitted landfill. Only one capacity increase over the operational life of the regulated solid waste facility may be accomplished via administrative action.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.10 Procedures for withdrawal of Silver Track II status

(a) A participating entity that wishes to withdraw its participation in Silver Track II shall first enter into an Administrative Consent Order (ACO) with the Department which shall contain scheduled transition milestones and a final compliance date. The ACO shall also set forth appropriate penalties stipulated for an entity's failure to comply with the terms of the ACO.

(b) A participating entity may withdraw its participation in Silver Track II at any time during the life of its Silver Track II Covenant with written notification to the Department. Withdrawal shall be effective on the date the ACO identified in (a) above is executed by all parties. The withdrawal notification shall be addressed to:

New Jersey Department of Environmental Protection
Office of Pollution Prevention and Permit Coordination
401 East State Street 3rd Floor East Wing
PO Box 423
Trenton, New Jersey 08625-0423
Attention: Silver Track II Program Manager

(c) A participating entity that has withdrawn its participation in Silver Track II shall no longer be entitled to the incentives and flexibilities set forth in N.J.A.C. 7:26-2C.9.

(d) A participating entity that has withdrawn its participation in Silver Track II may be re-instated into the

program by re-applying as set forth in N.J.A.C. 7:26-2C.3(a) through (c).

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.11 Revocation of Silver Track II status

(a) The Department may revoke a participating entity's Silver Track II status for any of the following reasons:

1. Failure of the participating entity to develop and implement a Pollution Prevention and Sustainability Plan in accordance with N.J.A.C. 7:26-2C.6;

2. Failure of the participating entity to develop and implement a Community Outreach Plan in accordance with N.J.A.C. 7:26-2C.8;

3. Failure of the participating entity to meet the GHG commitments as defined in the Silver Track II Covenant, unless an extension has been granted by the Department in accordance with N.J.A.C. 7:26-2C.4(d); or

4. The occurrence of one or more violations identified in N.J.A.C. 7:26-2C.4(a)1 and 2 at the participating entity's facility after the effective date of its Silver Track II Covenant.

(b) If the Department determines to revoke Silver Track II status on the basis of the criteria in (a) above, the Department shall notify the participating entity of the revocation in writing by certified mail. The notice of revocation shall state the reason for the revocation and the effective date of the revocation.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.12 Procedures for renewal of Silver Track II status

(a) A Silver Track II Covenant may be renewed in accordance with the following:

1. If a participating entity wishes to renew its five year Silver Track II Covenant for an additional five years, the participating entity shall re-apply to the Department, at least six months prior to the expiration date of the Silver Track II Covenant, in accordance with the application procedures set forth at N.J.A.C. 7:26-2C.3.

2. If the Department determines that the renewal application is complete and meets the criteria for approval set forth at N.J.A.C. 7:26-2C.4, and none of the criteria for revocation pursuant to N.J.A.C. 7:26-2C.11 exists, the Department shall issue a renewal to the participating entity, and the participating entity and the Department shall develop a new Silver Track II Covenant.

3. If the new Silver Track II Covenant is not signed prior to the expiration of the existing Silver Track II Covenant, but the participating entity has submitted a complete application that meets the criteria for approval

set forth at N.J.A.C. 7:26-2C.4, and none of the criteria for revocation pursuant to N.J.A.C. 7:26-2C.11 exists, the participating entity's existing Silver Track II Covenant shall remain in effect until the new Silver Track II Covenant is signed by the participating entity and the Commissioner, or a duly authorized representative of the NJDEP.

4. The renewed Silver Track II Covenant shall include those elements required in N.J.A.C. 7:26-2C.5.

New Rule. R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.13 Requests for an adjudicatory hearing

(a) Any applicant or participating entity who is aggrieved with respect to any of the following may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1:

1. If an applicant or participating entity is aggrieved with respect to a decision made by the Department to:

i. Deny an application to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance;

ii. Deny or modify any plan submitted pursuant to any requirement of this subchapter;

iii. Impose any condition on any approval issued pursuant to any requirement of this subchapter, which the applicant, or participating entity finds objectionable;

iv. Revoke, withdraw or modify any approval issued pursuant to any requirement of this subchapter;

v. Deny an entity the ability to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance through the deferral track provisions, N.J.A.C. 7:26-2C.15; or

vi. Deny the request for a stay under N.J.A.C. 7:26-2C.14.

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, New Jersey 08625-402

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

(f) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact, which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

New Rule. R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.14 Request for a stay of the effective date of a Departmental determination

(a) The Department, in its discretion, may grant a stay of the effective date of a decision to revoke any previous approval upon application for a stay by the aggrieved party.

(b) To request a stay, an aggrieved party shall submit the following documents, which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

i. The granting of the stay is required as a constitutional or statutory right; or

ii. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(c) The Department's decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

(d) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(e) Written requests for a stay of the effective date of the Department's decision shall be made to the Department at the address provided at N.J.A.C. 7:26-2C.13 within 20 days of the date upon which the notice of decision was received.

(f) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.15 Deferral track

(a) An applicant for Silver Track II which, after an eligibility review by the Department pursuant to N.J.A.C. 7:26-2C.4, is determined by the Department to be ineligible for participation in Silver Track II as a result of having a disqualifying violation(s) as set forth at N.J.A.C. 7:26-2C.4, may be eligible for participation in Silver Track II pursuant to the requirements of this section after a deferral period.

(b) In order to be eligible for Silver Track II under the requirements of this section, an applicant shall fall within either of the following categories:

1. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period but for which the applicant has fully achieved compliance and/or has paid to the Department any civil administrative penalties owed in connection with a disqualifying violation(s); or

2. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period and which has entered into an Administrative Consent Order with the Department to achieve compliance; is in compliance with the Administrative Consent Order, including all milestones and corrective action requirements of the Administrative Consent Order, and which has paid any civil administrative penalties due to the Department in connection with the disqualifying violation(s).

(c) An applicant for Silver Track II, who has any criminal violations, is not eligible for deferral.

(d) An applicant who falls within any of the categories set forth in (b) above, may be eligible for participation in Silver Track II one year subsequent to the Department notifying the

applicant, in writing, of its deferral, if the following criteria are met:

1. The applicant agrees, in writing, to perform all of the requirements applicable to an approved Silver Track II participant pursuant to N.J.A.C. 7:26-2C.5 through 2C.8 during the one year deferral period;

2. The applicant agrees, in writing, within the one year deferral period:

- i. To perform a facility-level accounting of the inputs and outputs of materials at the facility. This accounting must include reasonable estimates of the amount of hazardous substances: contained in the products at the facility; consumed (molecularly altered) at the facility; used by or put into each process at the facility; generated as an air, water or waste release, prior to treatment or control; and sent for recycling either on-site or off-site, to incorporate maximum achievable levels of pollution prevention and to identify opportunities for materials reuse, product substitution and energy efficiency. Toward performing the necessary accounting, the applicant may choose to utilize a process for evaluating pollution prevention, materials reuse, product substitution and energy efficiency opportunities that has obtained certification by the New Jersey Corporation for Advanced Technology (NJCAT); and

- ii. To develop an implementation plan to maximize achievable levels pollution prevention and to identify opportunities for material reuse, product substitution and energy efficiency at the facility. This implementation plan shall contain (the specific elements identified in N.J.A.C. 7:26-2C.6) milestones for implementation of pollution prevention, material reuse, product substitution, or energy efficiency; and

- iii. The facility's accounting results and implementation plan shall be submitted to the address given in N.J.A.C. 7:26-2C.3 prior to the end of the one-year deferral period for the Department's approval. The accounting results and implementation plan prepared pursuant to (d)2i and iii above will be used by the Department as a criterion for determining full eligibility in the Silver Track Program at the conclusion of the one-year deferral period pursuant to (f) below;

3. The applicant agrees, in writing, that it shall not be eligible for the flexibilities and incentives, pursuant to N.J.A.C. 7:26-2C.9, during the one-year deferral period; and

4. The applicant shall enter into a Memorandum of Agreement (MOA) with the Department memorializing its obligations pursuant to (d)1 through 3 above, and a compliance schedule setting forth milestones for complying with all applicable requirements of the Silver Track II program.

(e) At the end of the one-year deferral period, the Department shall determine whether the deferred applicant may participate in Silver Track II and shall so notify the applicant, in writing, of its decision. The applicant shall not be eligible for the flexibilities and incentives of the Silver Track II program, pursuant to N.J.A.C. 7:26-2C.9, until it receives written confirmation from the Department that it has been accepted into the Silver Track II program. If accepted into Silver Track II, the applicant shall comply with all requirements of Silver Track II set forth in this subchapter.

(f) No deferred applicant shall be eligible for approval as a Silver Track II participant at the end of the one-year deferral period if the Department determines that the applicant has:

1. Committed a disqualifying violation(s) set forth at N.J.A.C. 7:26-2C.4, during the one-year deferral period;
2. Has not complied with the terms of an executed Administrative Consent Order;
3. Has not entered into an Administrative Consent Order with the Department if required under (b) above;
4. Has failed to submit the accounting or implementation plan required pursuant to (d)2i or ii, respectively, above; or
5. Has not obtained the Department's approval of the facility's implementation plan.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

SUBCHAPTER 2D. REQUIREMENTS ON RAIL CARRIERS THAT TRANSFER CONTAINERIZED SOLID WASTE TO OR FROM RAIL CARS

7:26-2D.1 Requirements on rail carriers that transfer containerized solid waste to or from rail cars

(a) For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services.

(b) A rail carrier that transfers containerized solid waste to or from rail cars shall provide the Division of Solid and Hazardous Waste with the following information prior to commencing solid waste transportation operations within the State of New Jersey: a description of the geographical location of the rail carrier's facility, identifying the name of the

municipality in which the facility is located and the address of the facility. This information shall be sent to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
401 East State Street, PO Box 414
Trenton, New Jersey 08625-0414

(c) A rail carrier that engages in the transportation of solid waste at a facility owned by such rail carrier within the State of New Jersey exclusively in the form of sealed containers of solid waste, and that does not engage in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. The rail carrier shall provide the Division of Solid and Hazardous Waste with the following information, in addition to the information required by (b) above, prior to commencing solid waste transportation operations: a narrative from an officer of the rail carrier describing the facility operations and certifying that containers will not be opened and that employees, the public or the environment will not be exposed to solid waste except as allowed in accordance with this section. This information shall be sent to the same address as in (b) above.

2. The rail carrier shall operate in accordance with the following standards:

- i. Nonputrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at the rail facility for greater than 72 hours;

- ii. Solid waste received, stored or transferred at the rail facility shall at all times be contained in sealed containers that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that a container holding ID 72 liquid solid waste may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed;

- iii. The operation shall not result in the migration of odors outside the confines of the rail carrier's property or the emission, except by locomotive or locomotive engine, of air contaminants in violation of N.J.A.C. 7:27-5.2(a);

- iv. All solid waste containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the containers and their contents;

v. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

vi. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

vii. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the facility;

viii. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles *while* on-site, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control rules, N.J.A.C. 7:29, and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 C.F.R. Part 210, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

ix. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted at the facility;

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

- (1) Observing and sampling any materials on-site;
- (2) Photographing any portion of the facility, solid waste vehicles, containers, and container contents;
- (3) Investigating an actual or suspected source of pollution of the environment;
- (4) Ascertaining compliance or noncompliance with the statutes, rules, or regulations of the Department; and
- (5) Reviewing and copying all records required by Federal or State statutes or regulations, which shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection;

xi. Any release or discharge of any solid waste that would harm human health and the environment at the facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response

24-hour Hotline at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification;

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

xiii. The facility shall maintain daily records of waste received in accordance with N.J.A.C. 7:26-3.6(h)1, and shall submit quarterly reports within 20 days of the end of each calendar quarter summarizing waste receipts in accordance with N.J.A.C. 7:26-3.6(h)2; and

xiv. Any rail carrier that fails to operate in compliance with the requirements of this section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

Amended by R.2009 d.335, effective November 2, 2009.

See: 40 N.J.R. 6507(b), 41 N.J.R. 4105(a).

Section was "Requirements on rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars". In the introductory paragraph of (b), deleted "or noncontainerized" preceding the first occurrence of "solid waste"; and deleted (d).

SUBCHAPTER 3. TRANSPORTATION

7:26-3.1 Improper transportation prohibited

(a) Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and 7:26A-6.6(a), the transportation of organic and/or combustible matter, including off-specification used oil as defined at N.J.A.C. 7:26A-1.3, or other forms of solid waste, on the roadways and highways in this State shall be made only through the use of:

1. Transportation systems established, operated and maintained in accordance with the rules set forth in this subchapter;
2. Other methods of transportation as may be approved by the Department.

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

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

"Collection" and "haulage" replaced by "transportation" throughout.

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

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

In (a), inserted reference to used oil.

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

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

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted "off-specification" preceding "used oil" in the introductory paragraph.

Case Notes

Township ordinances were not preempted, with exception of section of township ordinance permitting township to ban persons deviating from access routes from further access to solid waste facility. *Clyde v. Mansfield Tp.*, 263 N.J.Super. 140, 622 A.2d 270 (A.D.1993).

Claim of broker status; unregistered transporter of solid waste was subject to fine. In the *Matter of Penn Foundry, Inc.*, 94 N.J.A.R.2d (EPE) 36.

7:26-3.2 Registration

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. The registration period shall be biennial, unless otherwise established by the Department, and shall run from July 1 through June 30 of each odd numbered year. Annual registration shall continue through the registration period of calendar year 2002. Therefore, in accordance with this subsection, the odd numbered year for biennial registration shall begin the year 2003. For solid waste collection and disposal vehicles operated by a public entity, the registration period shall be five years commencing July 1, 2001. An approved registration statement shall expire at the end of the registration period unless renewed pursuant to (d) below.

1. No person shall act as a prime contractor or subcontractor for the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

i. For the purposes of this subchapter, a "prime contractor" means any person who enters into an oral or written agreement with a generator to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any solid waste transport unit.

ii. For the purposes of this subchapter, a "subcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste vehicle, pursuant to an oral or written agreement entered into with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to this subchapter, of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

2. Any device used for transportation of solid waste shall be registered with the Department as either a solid waste cab, trailer, container, or single-unit vehicle.

7:26-3.6 Intermodal container facility

(a) This section contains the regulations of the Department governing the authorization and operation of intermodal container facilities.

1. This section shall not apply to a rail carrier that transfers solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption under this section is applicable are being conducted by it or on its behalf as part of its rail transportation services. Such rail carriers, although exempted from this section, are fully subject to regulation pursuant to N.J.A.C. 7:26-2D.

2. Intermodal container facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.6 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 13C, 23, 25, 27, 72, 73, and 74. Such facilities shall not accept or in any manner handle hazardous waste or regulated medical waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6, respectively. This subsection does not prohibit the operator of an authorized intermodal container facility from conducting other solid waste, regulated medical waste, or hazardous waste management activities at the site of the intermodal container facility, provided the operator complies with all applicable permitting and operating requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G.

(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3, 16 and 16A to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified in (c) below, and at the same time one copy each to the host municipality and district solid waste plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed facility;

2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3, 16 and 16A;

3. Photocopies of documents as evidence of all authorizations for siting, construction and operation, and conformance with all local, regional, State or Federal requirements of any governmental agency, or other body with jurisdiction over any aspect of the proposed facility;

4. A description of the geographical location of the facility, identifying the name of the municipality in which the facility is located and the address of the facility;

5. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;

6. A description of the current use of the facility site and of all adjoining properties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Where applicable, additional information in support of a request for a variance from the 72-hour storage time limit, pursuant to (o) below.

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

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

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

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

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

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

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

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

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

1. Solid waste shall not remain at any intermodal container facility for more than 72 hours, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers and ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below may be stored for up to 10 days. An intermodal container facility at which solid waste is staged or stored for more than 72 hours, or at which ID 72 liquid solid waste is stored for more than 180 days, or at which ID 10 (non-putrescible), ID 13, ID 13C or ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below is stored for more than 10 days shall be deemed to be an unpermitted solid waste facility, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

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

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

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

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

- i. Observing and sampling any materials on site;
- ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and
- v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

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

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

8. Any release or discharge of any solid waste at the intermodal container facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

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

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

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

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

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

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

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

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

4. Records that document all incidents in which a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A, or container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the type of solid waste in the container. These incidents shall also be reported within 24 hours to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP.

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

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

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

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

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

1. The Department determines that there are material and significant alterations or additions to the authorized facility or operation that occurred after the Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

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

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

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

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

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

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

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

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

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

(o) The owner/operator of an intermodal container facility may obtain a variance from the 72-hour storage time limit in (g)1 above for ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes if the Department finds, as a result of a demonstration by the owner/operator, that no additional hazard or potential hazard will be posed to human health or the environment.

1. The owner/operator shall apply to the Department for the variance. The application shall address the relevant criteria contained in (o)2 below.

2. In deciding whether to grant a variance based on no additional hazard or potential hazard, the Department will consider:

- i. The types and amounts of solid wastes stored;
- ii. The method of storage;
- iii. Whether any contaminants are likely to be released into the environment; and
- iv. Other relevant factors.

3. If a variance is granted under this paragraph, the owner/operator will be allowed to store ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes at the intermodal container facility for up to 10 days. The Department shall require the owner/operator to construct and operate the facility in the manner that was demonstrated to meet the requirements for the variance. If the facility is not constructed and operated in the manner that was demonstrated to meet the requirements for the variance, the facility shall be deemed an unpermitted solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

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

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

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

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

Readopted provisions of Emergency Amendment R.1997 d.404 without change.

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

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

In (b)7, substituted "An administrative action issued by" for "A letter of consistency with the district solid waste management plan from"; substituted "administrative action" for "letter of plan consistency". Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted "13c" in the second sentence and added a N.J.A.C. reference in the fourth sentence; added (b)18; in (g), rewrote 1 and 8; in (h)1 and 4, rewrote the third sentence; in (i) and (j), substituted "unpermitted" for "illegal" and amended the N.J.S.A. reference; added (o).

Amended by R.2004 d.408, effective November 15, 2004.

See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

Rewrote (a).

Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

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

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

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

(c) In the event of an incident involving smoking, smoldering or burning solid waste in any solid waste vehicle, the registrant shall notify the Department at 1-877-WARNDEP within 24 hours of the incident.

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

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

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

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

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

Added (c).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), updated the Department's 24-hour emergency response hotline.

7:26-3.8 Applicability

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

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

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

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

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

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

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

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

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

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

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

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

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

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

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

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

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

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

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

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

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

7:26-3A.2 Construction

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

7:26-3A.3 Severability

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

7:26-3A.4 Record retention

(a) The length of time that parties shall keep records required under this subchapter is automatically extended in the case where EPA, the Departments or another State agency initiates an enforcement action, for which those records are relevant, until the conclusion of the enforcement action.

(b) All records, reports, logs and tracking forms required to be made and/or kept in accordance with this subchapter shall be made available for inspection by the Department.

7:26-3A.5 Definitions

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. In addition, the following terms, when used in this subchapter, shall have the following meanings:

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“Alternative or innovative technology” means any technology, including proprietary or patented methods, that permanently alters the composition, volume, weight, or other relevant waste or material characteristics of regulated medical waste, through chemical, biological, or physical means so as to have a beneficial and long-term effect on the environment by reducing the quantity (volume or weight), infectiousness, toxicity, or constituent mobility of waste or materials generated, recovered, recycled, treated, transported, disposed of or otherwise managed. The term also includes products or production processes that promote or enhance material recovery, recycling or marketing of secondary materials, or that reduce or eliminate waste or emissions at the source of generation.

“Biologicals” means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

“Blood products” means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

“Body art” means the practice of physical body adornment in permitted establishments by operators utilizing, but not limited to, the following techniques: body piercing, tattooing, and permanent cosmetics.

“Body art establishment” means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.

“Body fluids” means liquid emanating or derived from humans and limited to blood; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

“Central collection point” means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (for example, incineration).

“Collection facility” means a facility where individual shipments of packaged, tracked regulated medical waste are assembled and/or consolidated, or transferred between vehicles, but are not opened or unpackaged prior to transport off-site for disposal.

“Commercial facility” means a facility or on-site generator, accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal, for a fee in excess of the costs actually incurred by the facility or on-site generator for managing the regulated medical waste.

“Consolidated tracking form” means the tracking form on which a transporter consolidates or transfers other tracking forms representing shipments of regulated medical waste.

“Container” means any portable device in which a regulated medical waste is stored, transported, disposed of or otherwise handled. The term “container” does not include items listed in the table at N.J.A.C. 7:26-3A.6(a).

“Decontamination” means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

“Departments” means the New Jersey Department of Environmental Protection and the New Jersey Department of Health.

“Destination facility” means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form. The term “destination facility” also means any generator or facility that treats and destroys its own regulated medical waste.

“Destroyed regulated medical waste” means regulated medical waste that is no longer generally recognizable as regulated medical waste because all components of the waste have been ruined, torn apart, or mutilated to produce unrecognizable and unusable pieces smaller than three-quarters of an inch, except that all sharps must be smaller than one-half inch. It does not mean compaction or encapsulation except through:

1. Processes such as thermal treatment or melting, during which treatment and destruction occur;
2. Processes such as shredding, grinding, tearing, or breaking, during which only destruction takes place; or
3. Processes that melt plastics and fully encapsulate metallic or other sharps in the melted plastic and, in addition, the resulting melted plastic mass must be completely sealed in a secondary puncture-proof container that will not be opened or penetrated by undestroyed sharps in any circumstance of handling.

“Destruction facility” means a facility that destroys regulated medical waste by ruining or mutilating it, or tearing it apart.

“DHSS” means the New Jersey Department of Health and Senior Services.

“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 medi-

cal waste. A facility may consist of several treatment, destruction, storage, or disposal operational units.

“Generator” means any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. Noncontiguous properties owned or operated by the same person are separate sites and in the case where more than one person (for example, doctors with separate medical practices) are located in the same building and office, each individual business entity is a separate generator for the purposes of this subchapter. However, households utilizing home self-care are not generators.

“Home self-care” means the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services. Excluded from this definition are direct patient care services provided in the home by home health agencies as described in N.J.A.C. 8:42-1, durable medical equipment companies, home infusion companies, hospice care companies, and any other services or companies as determined by the State Department of Health that generate regulated medical waste in the home setting.

“Infectious agent” means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

“Intermediate handler” is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term does not include transporters.

“Laboratory” means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

“Medical waste” means any solid waste that is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, in the production or testing of biologicals, or in home self-care. The term does not include any hazardous waste identified or listed under 40 C.F.R. Part 261.

“Mobile treatment and/or destruction equipment” means equipment which treats and/or destroys regulated medical waste and which does not operate from a permanent location but which is capable of being transported from site to site.

“New Jersey medical waste tracking form” means the New Jersey medical waste tracking form available from the Department that must accompany all applicable shipments of regulated medical wastes.

"Noncommercial facility" means a facility or on-site generator accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal operating in accordance with section 501(c)(3) of the Federal Internal Revenue Service tax code, receiving only a cost-based rate or fee not in excess of the fixed and variable capital and operating costs actually incurred.

"Original generation point" means the location where regulated medical waste is generated. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

"Oversized regulated medical waste" means medical waste that is too large to be placed in a plastic bag or standard container.

"Package" means packaging and/or a container and its contents.

"Packaging" means the assembly of one or more containers and any other components necessary to ensure compliance with N.J.A.C. 7:26-3A.11 and applicable Federal laws and regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

"Regulated medical waste" or "RMW" means those medical wastes that have been listed or meet the waste characteristic classification criteria described at N.J.A.C. 7:26-3A.6 and that must be managed in accordance with the requirements of this subchapter.

"Storage" means the temporary holding of regulated medical wastes before treatment, disposal, or transport to another location.

"Tracking form" means a medical waste tracking form, including the New Jersey medical waste tracking form, the Federal tracking form, and the tracking form from other states that must accompany all applicable shipments of regulated medical waste.

"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a "transporter". A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered a collection facility if it meets the requirements of N.J.A.C. 7:26-3A.39; if such location does not meet the requirements of N.J.A.C. 7:26-3A.39, the facility must hold a permit as a transfer station pursuant to N.J.A.C. 7:26-2.4.

"Transportation" means the shipment or conveyance of regulated medical waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water, and, for the purposes of N.J.A.C. 7:26-3A.9(h), means a supplier of radioactive medical supplies.

"Treated regulated medical waste" means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

"Treatment", "treated", or "treats" when used in any section of this subchapter except for N.J.A.C. 7:26-3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. If antimicrobial chemicals are used in regulated medical waste treatment the chemicals must be registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) program specifically for this purpose. When used in the context of N.J.A.C. 7:26-3A.6(a), treatment means either the provision of medical services or the preparation of human or animal remains for interment or cremation.

"Treatment facility" means a facility which treats regulated medical waste.

"Universal biohazard symbol" means the symbol design that conforms to the design shown in 29 C.F.R. § 1910.145(f)(8)(ii).

"Untreated regulated medical waste" that has not been treated to substantially reduce or eliminate its potential for causing disease.

"Waste category" means either untreated regulated medical waste or treated regulated medical waste.

"Waste Class" means the description of Waste Class found at N.J.A.C. 7:26-3A.6(a).

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

Section formerly divided into two subsections which were combined into single definition list; added "collection facilities", "commercial facility", "consolidated tracking form", "container", "DOH", "noncommercial facility", "package", and "packing"; deleted "federal demonstration project"; and amended "generator", "transfer facility", "transporter", and "treatment".

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added "Body art", "Body art establishment" and "Mobile treatment and/or destruction equipment"; amended "Body fluids", "Destroyed regulated medical waste", "DHSS" and "Packaging".

7:26-3A.6 Definition of regulated medical waste

(a) A regulated medical waste is any solid waste, generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under (b) below, and that is listed or meets any waste characteristic classification criteria described in the following table:

**TABLE
REGULATED MEDICAL WASTE**

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids 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; blood; items saturated and/or dripping with human blood; or items that 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 (only if they have come into contact with blood or other regulated body fluid), soft plastic pipettes and plastic blood vials are also included in this category.
4. Sharps	Sharps that were used in animal or human patient care or treatment or in medical research, or industrial laboratories, including sharp, or potentially sharp if broken, items such as, but not limited to, hypodermic needles, all syringes to which a needle can be attached (with or without the attached needle) and their components, including those from manufacturing research, manufacturing and marketing, pasteur pipettes, scalpel blades, blood vials, carpules, needles with attached tubing, acupuncture needles 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. Carcasses that are not known to have been exposed to agents infectious to humans are considered Waste Type ID 25, and, therefore, are not included in this class.

- 6. Isolation Wastes Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
- 7. Unused Sharps The following unused, discarded sharps, that were intended to be used: hypodermic needles, suture needles, syringes, and scalpel blades.

(b) The following are excluded from the definition of regulated medical waste:

- 1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;
- 2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26-3A.5(b);
- 3. Ash from incineration of regulated medical waste once the incineration process has been completed;
- 4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed;
- 5. Human corpses, remains and anatomical parts that are intended for interment or cremation;
- 6. Biological materials, including, but not limited to, those blood or blood products and pathological waste listed at (a)2 and 3 above, intended for use, reuse or recycling as raw materials or products, except materials classified as Class-6 Isolation Wastes, pursuant to (a)6 above if the following conditions are met:
 - i. The materials are used, reused or recycled in accordance with all applicable Federal, State and local statutes and regulations for handling and managing the materials;
 - ii. The materials and their by-products are managed as regulated medical waste when discarded after use, reuse or recycling if not treated and destroyed as those terms are defined at N.J.A.C. 7:26-3A.5; and
 - iii. The generator of the materials reports the type, destination, and method of use, reuse or recycling of the materials to the Bureau of Resource Recovery and Technical Programs in the Department at the address given at N.J.A.C. 7:26-3A.8(f)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency;
- 7. Nonbiological materials intended for use, reuse or recycling, except materials classified as Class-6, Isolation Waste pursuant to (a)6 above, if the following conditions are met:
 - i. The generator treats all used materials, or any unused materials, that have come into contact with a regulated body fluid or blood, or pathological waste as defined at (a) above at the site of generation before shipping the materials off site;

ii. The generator destroys all sharps at the site of generation before shipping the destroyed sharps off site for recycling of the devices' component raw materials; and

iii. The generator of the materials reports the type, quantity, destination, and method of use, reuse or recycling of the materials to the Bureau of Resource Recovery and Technical Programs in the Department at the address given at N.J.A.C. 7:26-3A.8(f)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency; and

8. RMW, or non-regulated medical waste managed as RMW, that is either generated by a person and is less than 100 pounds or has become the property of a person other than the original generator except through the sale or transfer of assets, and where such person has not generated RMW within a two year period prior to requesting the exemption nor to the best of their knowledge plans to generate RMW in the future, may have a "one time only" exemption from registering as a generator and may offer RMW to a licensed RMW transporter using its own number as the generator number. The Department shall issue an authorization for this exemption in response to written notification sent to the address listed at N.J.A.C. 7:26-3A.8(f)4 prior to the disposal of the RMW in order for a one-time exemption of this type to be valid. Authorizations for registration exemption will not be granted to persons the Department expects will generate RMW in the future.

(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.

(d) In accordance with DHSS rules (N.J.A.C. 8:27), body art establishments shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned Act.

(e) Acupuncturists shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Act, and all rules promulgated pursuant to the aforementioned Act.

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

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

In (a), inserted text "or meets ... criteria described" and amended descriptions in medical waste table; and added (b)6 and (b)7. Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a)3 inserted "(only if they have come in contact with blood or other regulated body fluid)" following "Intravenous bags"; in (a)4 inserted "acupuncture needles" following "attached tubing," in (a)5 added a second sentence; added (b)8; and added (d) and (e).

Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

In (b), substituted "Bureau of Resource Recovery and Technical Programs" for "Bureau of Medical Waste and Technical Assistance" and updated the N.J.A.C reference in 6iii and 7iii.

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, and owners and operators of transporters, collection facilities, transfer stations, intermediate handlers and destination facilities

(a) Any person that generated regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (e) below, and shall pay annual fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into five categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Base Fee Category
1	less than 50	\$ 85.00
2	50-200	\$ 255.00
3	greater than 200-300	\$ 500.00
4	greater than 300-1,000	\$1,000.00
5	greater than 1,000	\$3,500.00

i. For annual regulated medical waste generator fee purposes only, quantities of body fluids and blood and blood products that are discharged or removed from a human and are disposed of into a sanitary sewer system, which shall be in compliance with all applicable Federal, State, and county and local statutes, rules and ordinances, shall not be included in a generator's annual calculation of regulated medical waste generated, but at a minimum, if the generator generates no other regulated

medical waste, the generator shall be included in generator category 1.

(b) Any person that engages or continues to engage in the transportation of regulated medical waste in this State, except generators that transport their own waste and that meet the requirements of N.J.A.C. 7:26-3A.17(a), shall register with the Department as a regulated medical waste transporter in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste commercial transporters shall pay an annual fee of \$3,950.00.
2. All noncommercial generator transporters of RMW (except radiopharmacies listed at (b)3 below) shall pay an annual fee of \$650.00.
3. All noncommercial generator transporters of RMW that transport solely spent radiopharmaceuticals back to a radiopharmacy to allow for the safe decay of the radioactive material prior to disposal as RMW shall pay an annual fee of \$200.00.

(c) Commercial intermediate handlers, intermediate handlers treating, destroying or disposing of their RMW on-site and owners and operators of destination facilities shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall register with the Department and pay an annual registration, compliance inspection, technical advisement and report analysis fee in accordance with the following:
 - i. A destination facility that treats and destroys less than 1,000 pounds of regulated medical waste produced shall pay a registration fee of \$50.00 per year.
 - ii. A destination facility that treats and destroys from 1,000 pounds up to and including 10,000 pounds of regulated medical waste produced per year shall pay a registration fee of \$500.00 per year.
 - iii. A destination facility that treats and destroys more than 10,000 pounds of regulated medical waste per year shall pay a registration fee of \$2,000 per year.
2. A commercial intermediate handler shall pay an annual registration fee of \$1,500.
3. A noncommercial intermediate handler, or an intermediate handler treating only its own waste that treats any quantity of liquid regulated medical waste that is disposed of into the sanitary sewer system, and treats less than 10,000 pounds of nonliquid regulated medical waste per year and sends that waste off-site as RMW for treatment, destruction or disposal is exempt from the inter-

mediate handler annual registration fee but shall register as an intermediate handler pursuant to this section.

4. Persons that only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) Each person authorized by the Department pursuant to N.J.A.C. 7:26-3A.39 to operate a collection facility for medical wastes shall pay fees in accordance with the following:

1. Commercial collection facilities shall pay an application fee of \$500.00. The application fee shall be submitted with the application required pursuant to N.J.A.C. 7:26-3A.39(c).
2. Commercial collection facilities shall pay an annual fee of \$350.00 for the costs of registration, quarterly compliance monitoring, and review and maintenance of the quarterly reports submitted pursuant to N.J.A.C. 7:26-3A.39(j) and the annual reports submitted pursuant to N.J.A.C. 7:26-3A.44.
3. Collection facilities shall pay the costs of any other inspections or activities conducted by the Department for the authorization, inspection, and revocation of authorization to operate a collection facility. Such costs shall be in accordance with the fee schedule set forth at (f) below and N.J.A.C. 7:26-4.3.

4. Commercial collection facilities shall pay a fee of \$250.00 for an authorization modification issued pursuant to N.J.A.C. 7:26-3A.39(o), which shall be paid on issuance of the authorization modification.

5. Noncommercial collection facilities collecting up to 2,000 pounds of medical wastes per year shall not pay an annual fee.

6. Noncommercial collection facilities collecting more than 2000 pounds of medical wastes per year shall pay an annual fee of \$150.00 for the cost of registration.

(e) Each person operating a transfer station and authorized by the Department to manage medical waste pursuant to N.J.A.C. 7:26-3A.39 shall pay an annual fee of \$2,000 in addition to all other solid waste transfer station facility-related fees pursuant to N.J.A.C. 7:26-4, for the costs of registration under this subchapter, review and maintenance of reports, and compliance monitoring.

(f) Each generator, transporter, intermediate handler, collection facility, transfer station and destination facility shall register with the Department on regulated medical waste registration forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata

adjustment or refund for prior registration year payment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;
2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and fees shall be payable by May 30 of each calendar year;
3. The registration year for intermediate handlers, collection facilities and destination facilities shall extend from January 1 through December 30 of each calendar year and fees shall be payable by January 29 of each calendar year; and
4. The Department's address for regulated medical waste is:

Bureau of Resource Recovery and Technical
Programs
Solid and Hazardous Waste Management Program
New Jersey Department of Environmental
Protection
P.O. Box 414
401 East State Street
Trenton, New Jersey 08625-0414

(g) The Department shall charge fees for regulated medical waste program services as follows:

1. Any person not registered for regulated medical waste activities in accordance with the requirements of this subchapter that requests a written interpretation of any solid waste regulation from the Department shall submit a fee of \$150.00 with the request for interpretation.
2. Any person that requests the authorization of an alternative or innovative technology pursuant to N.J.A.C. 7:26-3A.47(a) shall submit a fee of \$1,500 with the request for the authorization; and
3. Any person that requests the authorization of an alternative or innovative technology demonstration program pursuant to N.J.A.C. 7:26-3A.47(c) shall submit a fee of \$2,000 with the request for authorization of the demonstration program.

(h) The omission of any type of Department service from the fee schedule set forth in (g) above, or if the Department determines that performing its services will exceed the fee the Department charges for a service listed at (g) above, shall not prevent the Department from assessing a reasonable fee for such service, at any time whether prior to, during or after the Department has performed its services. Any person that requests a Department service not listed at (g) above may request an initial review of the service for purposes of determining the fee for performing such service.

1. If the Department determines that the service is of a type listed in (g)1 through 3 above, the fee shall be the applicable fee specified at (g) above.

2. If the Department determines that the service is not one of those listed in (g)1 through 3 above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the following hourly rates for regulated medical waste services:

- i. For State fiscal year 2006, the hourly rate shall be \$109.00; and
- ii. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to (n) and (o) below.

3. An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department will be based on actual hours worked multiplied by the hourly rate calculated pursuant to (h)2i and ii above.

(i) The Department shall charge an excess fee for regulated medical waste services at the following hourly rates for excess person-hours required to perform any service for which a fee is established pursuant to (a) through (g) above. The Department shall notify the applicant or permittee of such excess fee in writing before performing the additional work:

1. For State fiscal year 2006, the hourly rate shall be \$89.00; and
2. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to (n) and (o) below.

(j) The determination of an estimated fee pursuant to (h) above shall expire 90 days after the date such determination was issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the request for services for which the fee determination has expired, such applicant or permittee may request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (h) above, as applicable.

(k) The Department may refrain from commencing work on the service for which a fee is established pursuant to (g) through (i) above until the Department receives full payment of such fee. If the Department has commenced work on the service the Department may suspend such work until it receives full payment of such fee.

(l) Any generator that fails to register pursuant to this section and that submits the annual fee pursuant to (a) above later than August 20 of each calendar year shall pay a late fee in the amount of 25 percent of the annual fee up to 15 days, 50 percent up to six months, and 100 percent up to one year, in addition to the annual fee. Neither the assessment of a late

fee nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

(m) Any generator that submits the annual generator report required by N.J.A.C. 7:26-3A.21(d), 30 or more days after such report is due to be submitted to the Department shall pay a late fee of \$267.00. Neither the assessment nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

(n) The Department shall annually determine, during the month of October, the hourly rate for regulated medical waste services, as well as the hourly rate for excess hours. These hourly rates shall be determined using the following formulas:

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

$$\text{Excess Hourly rate} = \frac{(\text{AS} + \text{FB} + \text{IC})}{\text{BH}}$$

Where:

AS = The average annual salary of the Direct Program staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (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 Technology).

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, which 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).

(o) Each year, the Department shall prepare an Annual Regulated Medical Waste Hourly Rate Calculation Report detailing the factors used to calculate the hourly rate and the excess hourly rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and excess hourly rate. The notice shall state that the report is available, and shall 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 and shall post a copy of the report on the Department's website at www.state.nj.us/dep.

Amended by R.1990 d.358, effective July 16, 1990.
See: 22 N.J.R. 1478(a), 22 N.J.R. 2145(a).

Generator categories expanded to 5; fees restructured.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)1, amended base fees; in (a)1i, inserted "annual" preceding "regulated medical waste" and inserted reference to discharged fluids and blood; substantially amended (b) and (c), inserted new (d); recodified former (d) as (f); in (f), inserted references to collection facilities and transfer stations, and to refunds for prior years; in (f)2, deleted reference to 1989 registration year; rewrote (e) and (g) through (h); and added (i) through (m).

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

In (a)1, increased Pounds Generated Per Year for Generator Categories 3 and 4.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), inserted "(except radiopharmacies listed at (b)3 below)" following "RMW" in 2 and added 3; in (d)5, inserted "not" following "shall" and deleted "of \$10.00 for the cost of registration"; in (f)4, inserted "Resource Recovery and" preceding "Technical" and substituted "Programs" for "Assistance".

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

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

In the "Base Fee Category" column of the table in (a)1, substituted "\$500.00" for "\$425.00", "\$1,000.00" for "\$850.00" and "\$3,500" for "\$2,950"; in the address in (f)4, inserted "401 East State Street"; in the introductory paragraph of (h), substituted "(g) above, or if the Department determines that performing its services will exceed the fee the Department charges for a service listed at (g) above," for "(f) above" and "(g) above may" for "(f) above shall", and inserted ", at any time whether prior to, during or after the Department has performed its services"; in the introductory paragraph of (h)2, substituted "following hourly rates for regulated medical waste services:" for "hourly rate of \$74.73."; added (h)2i, (h)2ii and (h)3; in the introductory paragraph of (i), substituted "for regulated medical waste services at the following hourly rates" for "at the hourly rate of \$55.88" and substituted a semicolon for the period at the end; added (i)1 and (i)2; in (j), substituted "an estimated" for "a" and "may" for the second occurrence of "shall"; in (m), inserted "to be submitted to the Department" and substituted "\$267.00" for "\$50.00"; and added (n) and (o).

7:26-3A.9 Education

The supervisory personnel of all transporters, except generators that transport their own regulated medical waste and satisfy the requirements of N.J.A.C. 7:26-3A.17(a), collection facilities, intermediate handlers and destination facilities shall attend education and training sessions provided by the Department, and shall also be required to disseminate the information obtained at the sessions to all employees.

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

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

Inserted reference to collection facilities.

7:26-3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6(a)) including sharps containing residual fluid;
2. Fluids (quantities greater than 20 cubic centimeters); and
3. Other regulated medical waste.

(c) Other regulated medical waste described at (b)3 above may be included in sharps containers. Such containers shall be managed at all times as sharps containers in accordance with N.J.A.C. 7:26-3A.11. The waste in these containers shall not be allowed to putrefy or be malodorous in any detectable manner.

(d) If other nonregulated medical waste and/or solid waste is placed in the same container(s) as regulated medical waste, or if regulated medical waste cannot be initially segregated from other solid waste, then the generator shall package, label, and mark the container(s) and manage its entire contents according to the requirements for regulated medical waste in this subchapter.

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

Inserted new (c) and recodified former (c) as (d) and substantially amended.

7:26-3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;
2. Leak-resistant;
3. Impervious to moisture;
4. Sufficiently strong to prevent tearing or bursting under normal conditions of use and handling; and
5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging or containers that are puncture-resistant; and
2. Package fluids (quantities greater than 20 cubic centimeters) in packaging or containers that are break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

(e) Solid waste that is not being managed as regulated medical waste shall not be packaged for shipment inside a regulated medical waste container or in containers attached to, or part of, a regulated medical waste container.

(f) All waste packaged in "Biohazard" labeled bags or bags with the universal biohazard symbol on them will be presumed to be potentially infectious and shall be managed as RMW for transport and disposal.

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

In (c)1 and (c)2, inserted reference to containers; and added (e).
Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).
Added (f).

Case Notes

Fact issue: cleaning employee's fear that she would develop acquired immune deficiency syndrome (AIDS) after she was pricked by lancet while cleaning medical office precluded summary judgment in action for negligent infliction of emotional distress; it could not be said as matter of law that person who receives puncture wound from medical waste reacts unreasonably in suffering serious psychic injury from fear of AIDS. *Williamson v. Waldman*, 291 N.J.Super. 600, 677 A.2d 1179 (A.D.1996).

7:26-3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;
2. Maintain the regulated medical waste in a 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.

(b) The storage period for regulated medical waste is limited as follows:

1. Regulated medical waste shall be disposed of immediately if it becomes putrescent or emits any odors;
2. All regulated medical waste shall be disposed of within one year of the date of generation, or sooner as determined by the generator, except that:
 - i. The storage period may exceed one year for regulated medical wastes that must be stored for longer periods to provide for the decay of radioactive materials in accordance with applicable Federal or State statutes and regulations.

(c) Any container that is being used to accumulate or store sharps shall be secured so that the contents are not accessible to any unauthorized person.

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

Added (b) and (c).
Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.
See: 29 N.J.R. 2481(a), 29 N.J.R. 2570(a).

7:26-3A.13 Decontamination standards for reusable containers

(a) Generators, transporters, intermediate handlers and destination facility owners and operators shall comply with the following requirements with respect to reusing containers:

1. All non-rigid containers and inner liners shall be managed as regulated medical waste under this subchapter and shall not be decontaminated or reused;
2. Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, shall be decontaminated if the container shows signs of visible contamination;
3. If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of visible signs of contamination on its outer surface in accordance with (a)2 above, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this subchapter; and
4. Decontaminated containers shall be free of all removable contaminating material from the inner and outer surfaces.

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

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

In (a)1. substituted "containers" for "packaging"; and added (a)4.

7:26-3A.14 Labeling requirements

(a) Generators shall label each package of regulated medical waste and each individual container used at the specific location of initial generation immediately on use, to meet the packaging requirements of N.J.A.C. 7:26-3A.11 and in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented, before the waste is transported or offered for transport off-site as follows:

1. Each container of untreated regulated medical waste shall have a water-resistant label affixed to or printed on the outside of the container. The label shall include the words "Medical Waste," or "Infectious Waste," or display the universal biohazard symbol. Red plastic bag(s) used as an inner container need not display a label; and
2. Packages containing treated regulated medical wastes are not required to be labeled under this section but are required to be marked in accordance with the requirements of N.J.A.C. 7:26-3A.15.

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

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

Substantially amended (a); and in (a)1. substituted "container" for "package".

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote introductory paragraph.

7:26-3A.15 Marking (identification) requirements

(a) Generators (including intermediate handlers) shall mark each individual container of regulated medical waste in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented and according to the following marking requirements before the waste is removed from the generator's storage area and is transported or offered for transport off-site:

1. The outermost surface of the outer container or any inner container used to meet the packaging requirements at N.J.A.C. 7:26-3A.11 shall be marked with a water-resistant identification tag of sufficient dimension to contain the following information:
 - i. The generator's or intermediate handler's name;
 - ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address;
 - iii. The transporter's name;
 - iv. The transporter's NJDEP solid waste registration number;
 - v. The date of shipment; and
 - vi. Identification of contents as medical waste.

2. In addition to the requirements of (a)1 above, if the generator has used inner containers, including sharps and fluid containers, each inner container shall be marked with indelible ink or imprinted with water-resistant tags. The marking or the tag shall contain the following information:

- i. The generator's or intermediate handler's name; and
- ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address.

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

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

In (a) and (a)1. substituted references to containers for references to packages.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote introductory paragraph.

Case Notes

Dentist had duty to protect sanitation worker stuck in forearm by dental instrument while collecting trash; dentist consciously disregarded regulatory requirements regarding disposal of medical waste materials; sanitation worker claimed emotional distress, fearing HIV infection. *De Milio v. Schrager*, 285 N.J.Super. 183, 666 A.2d 627 (L.1995).

7:26-3A.16 General requirements for regulated medical waste generators, transporters, collection facilities, intermediate handlers and destination facilities

(a) A generator, transporter, collection facility, intermediate handler or destination facility that generates a medical waste, as defined in N.J.A.C. 7:26-3A.5 and who is located in New Jersey, or that stores, transfers, transports, treats, destroys or disposes of, or otherwise manages medical waste in New Jersey shall determine if that waste is a regulated medical waste.

(b) A generator, transporter, collection facility, intermediate handler or destination facility that either treats and/or destroys and disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act,) or any generator, transporter, collection facility, intermediate handler or destination facility that neither treats nor destroys regulated medical waste on site but disposes of regulated medical waste via sewer disposal in compliance with all applicable Federal, State, county and local statutes, rules and ordinances is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including, but not limited to, the generator reporting, registration, all fee requirements of this subchapter and the following conditions:

1. Bulk blood, body fluids and small amounts of pathological wastes that are liquefied or suspended in liquids, or have passed through the filters in alternative or innovative technologies may be disposed of in sanitary sewer, septic or municipal sewer system in accordance with Section 307(b) through (d) of the Clean Water Act.

2. Nonbiological regulated medical waste (for example, plastic blood bags, gauze bandages and similar substances) shall not be disposed of in a sanitary sewer, septic or municipal sewer system except for very minute amounts of such wastes that may escape retention on filters in alternative or innovative technologies designed to capture the insoluble waste particles in order to prevent their disposal into the sewer system.

(c) Vessels at port in New Jersey are subject to the requirements of this subchapter for those regulated medical wastes that are transported ashore in New Jersey. The owner or operator of the vessel and the person(s) removing or accepting waste from the vessel are considered co-generators of the waste.

(d) Any person offering regulated medical waste for transport shall use transporters that meet the requirements of N.J.A.C. 7:26-3A.27(c), unless the transporter is a generator meeting the requirements of N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the requirements of N.J.A.C. 7:26-3A.17(b) are met.

(e) Persons shall dispose of regulated medical waste only with a registered intermediate handler, at a registered destination facility, a regulated medical waste sanitary landfill permitted in accordance with N.J.A.C. 7:26-3A.18, a resource recovery facility authorized to accept such waste and permitted in accordance with N.J.A.C. 7:26-2, or a facility in another state authorized to accept such wastes by such state. Shipments to out-of-State facilities shall be made in accordance with N.J.A.C. 7:26-3A.28, 3A.46 and 3A.48.

(f) A generator receiving regulated medical waste from other generators for transfer to a facility for treatment, destruction or disposal is considered a collection facility for the purposes of this section, except:

1. Any generator generating regulated medical wastes in the ordinary course of business and receiving home self-care medical waste for management in accordance with N.J.A.C. 7:26-3A.16(h).

(g) Any generator generating regulated medical waste in the ordinary course of business and operating a noncommercial collection facility, an intermediate handler facility or a destination facility registered pursuant to this chapter, is not subject to the requirements at N.J.A.C. 7:26-16 or 16A.

(h) A generator generating regulated medical waste in the ordinary course of business, transporters, collection facilities, intermediate handlers or destination facilities may accept home self-care medical waste for management in accordance with the following requirements:

1. The generator, transporter, collection facility, intermediate handler or destination facility receiving the home self-care medical waste shall maintain a list of all persons delivering the home self-care medical waste, including such person's name, address, and telephone number, and the dates and the number of the medical waste containers received.

2. Containers shall meet the packaging requirements for regulated medical waste at N.J.A.C. 7:26-3A.11. Coffee cans, glass or soft thin-walled plastic bottles are not acceptable containers for collection and transportation of used or unused syringes. All containers shall be clearly labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste."

3. The home self-care medical waste, after receipt, shall be managed in compliance with the requirements for regulated medical waste in this subchapter in addition to the following specific requirements:

- i. For reporting purposes, home self-care medical waste shall be considered regulated medical waste by the person accepting it for disposal;

- ii. Collected home self-care medical waste shall be transported in compliance with this subchapter;

- iii. A person that offers home self-care medical waste for off-site treatment, destruction, or disposal

shall use the tracking form required by N.J.A.C. 7:26-3A.19;

iv. Packaged cardboard shipping boxes in which containers of home self-care medical waste is transported shall be labeled with the universal biohazard symbol or the words, "Home Self-Care Medical Waste";

v. The tracking form shall be prepared in accordance with all State standards, except that Box 14 on the tracking form shall contain the words "Home Self-Care Medical Waste." Box 14 shall be used to identify the total number of containers shipped and total quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L) of the shipment;

vi. Treatment and destruction shall be in accordance with this subchapter. A separate log shall be maintained to record the total number of containers and total quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L) of home self-care medical waste treated and destroyed.

(i) No person shall install or use any alternative or innovative technology, or any modification thereof, for the treatment and/or destruction of regulated medical waste unless such technology or modification has been approved and authorized by the Department and DOH for such purpose pursuant to N.J.A.C. 7:26-3A.47.

(j) No person shall abandon regulated medical waste on any public or private property or cause regulated medical waste to be abandoned. For the purpose of this section, "abandoned" means the intentional or unintentional placement, discard or loss of regulated medical waste in any area outside of the direct control of the person generating, transporting, managing, or disposing of the waste.

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

In (a), (b), and (d), specified the applicable medical waste generators; added (b)1 and (b)2; and added (e) through (j).

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), substituted "any generator, transporter, collection facility, intermediate handler or destination facility" for "person" following the reference to the Clean Water Act and inserted "neither treats nor destroys regulated medical waste on site but" preceding "disposes of regulated medical waste via sewer disposal"; in (h)3v and vi, substituted "quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal., Kg., or L)" for "weight".

Amended by R.2005 d.223, effective July 5, 2005.
See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

In (e), updated the N.J.A.C. reference.

7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that transport only their own regulated medical waste and home self-care medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27(c). The generator shall meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a vehicle with a gross weight of less than 8,000 pounds that is owned by the generator, the same operator as the generator at that site or the same operator's or generator's authorized employee;

2. The original generation point and the storage point or disposal facility are located in New Jersey; and

3. The generator complies with the requirements of N.J.A.C. 7:26-3A.19.

(b) Generators that transport by the U.S. Postal Service regulated medical waste, Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6, are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) if the generator generates less than three cubic feet (50 pounds) of regulated medical waste per month and ships less than three cubic feet (50 pounds) of regulated medical waste per shipment. The generator shall meet the following conditions:

1. The package shall be sent registered or certified mail, return receipt requested (indicating the person to which the package is sent, signature of sender, date, and address where delivered) or Priority Mail;

2. The generator shall retain the original mailing receipt and the returned registered or certified mail receipt, or in the case of Priority Mail, a hard copy of the electronic delivery confirmation (containing at a minimum the name, address, city, state, and zip code of the facility as well as the date of delivery and the amount of RMW delivered) attached to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26-3A.19.

(c) Generators of less than 500 pounds of regulated medical waste per year, excluding blood and body fluids disposed of in a municipal sewer system in accordance with N.J.A.C. 7:26-3A.16(b), are exempt from the tracking requirements of N.J.A.C. 7:26-3A.19 provided:

1. Such generators generate regulated medical waste within the boundaries of a medical care room operated by another registered generator generating regulated medical waste in the ordinary course of business, such as a doctor or hospital; and

2. Each generator using the medical care room has a written agreement with the operator of the medical care room providing that such operator will dispose of the generator's regulated medical waste according to the requirements of this subchapter.

(d) A generator that collects regulated medical waste from other generators, in the same building or in other buildings on the generator's property or on contiguous property owned by the generator not divided by public roads, is exempt from the requirements of N.J.A.C. 7:26-3A.16(d) provided:

1. The generator collecting the regulated medical waste is registered as a collection facility, intermediate handler or destination facility;

2. The generator or its employee collects the regulated medical waste;

3. All the regulated medical waste is managed in compliance with this subchapter at all times; and

4. The collected regulated medical waste is not transported on public roads.

(e) A generator that generates regulated medical waste at a temporary facility operating less often than 15 days each year is exempt from the registration requirement of N.J.A.C. 7:26-3A.8(d) provided:

1. The generator maintains a permanent registered regulated medical waste generator facility; and

2. The generator transports the regulated medical waste from the temporary facility to the generator's permanent facility at the end of each working day for management as a regulated medical waste in accordance with this subchapter.

(f) Noncommercial collection facilities operating in accordance with N.J.A.C. 7:26-3A.39(b) and that collect less than 2,000 pounds of RMW per year are exempt from registration with the Department as a noncommercial collection facility. Noncommercial collection facilities collecting less than 2,000 pounds of regulated medical waste per year are also exempt from annual fees for collection facilities listed at N.J.A.C. 7:26-3A.8(d).

Administrative Correction in (a).

See: 23 N.J.R. 3138(a).

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

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

Specified the weight of three cubic feet throughout; in (a), inserted reference to home self-care medical waste; in (b)1 and (b)2, inserted reference to certified mail; in (b)3 amended N.J.A.C. reference; and added (c) and (d).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b)1, inserted "or Priority Mail" preceding punctuation; rewrote (b)2; added (f).

7:26-3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste may be transported to or otherwise unloaded at any transfer station permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

1. Transfer stations accepting regulated medical waste shall comply with the requirements for regulated medical waste collection facilities at N.J.A.C. 7:26-3A.39(b)3 and (d)2 through 8.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

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

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

Added (a)1.

7:26-3A.19 Generator use of tracking form

(a) A generator that transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators that meet the requirements of N.J.A.C. 7:26-3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26-3A.8(e).

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

1. Generators that transport regulated medical waste to the supplier of the radioactive medical materials from which the waste was derived and such supplier of radioactive medical materials shall complete the tracking form in accordance with (h) below.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Complete Boxes 1 through 15 of the tracking form for each shipment of regulated medical waste off-site;

i. The quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal, Kg., or L) of the regulated medical waste shall be entered in Box 13.

2. Sign and date the certification statement in Box 15 on the tracking form by hand;

3. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form in Box 16; and

4. Retain "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

(e) Generators that transport their own regulated medical waste and that meet the requirements of N.J.A.C. 7:26-3A.17(a) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand, and enter in Box 5 the words "Self-Transport";

2. Sign the transporter section of the tracking form in Box 16, noting the date the regulated medical waste was transported;

3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Enter the name, address, telephone number and Generator Identification number of the collection facility in Box 14.

5. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1.

6. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

7. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26-3A.31(d).

(f) Generators that transport their regulated medical waste through the U.S. Postal Service and that meet the requirements of N.J.A.C. 7:26-3A.17(b) shall:

1. Sign and date the certification statement in Box 15 on the tracking form by hand;

2. Sign and date the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service in Box 5. The person delivering the RMW to the U.S. Postal Service shall sign and note the date the shipment was mailed in Box 16;

3. Enter the name, address, telephone number and State Permit number of the destination facility in Boxes 8 through 10;

4. Retain "Copy 3—Transporter Copy" and "Copy 4—Generator Copy", in accordance with N.J.A.C. 7:26-3A.21(a)1; and

5. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or
2. The intermediate handler or destination facility if transported solely by rail; or
3. The last rail transporter to handle the waste in the United States if exported by rail.

(h) For regulated medical waste derived from radioactive medical materials, the tracking form shall be prepared as follows:

1. The generator shall complete Boxes 1 through 10 on the tracking form;

2. The generator shall indicate in Box 14 that radioactive regulated medical waste is being transported to the supplier of the original radioactive medical materials;

3. The generator shall complete Box 15 (generator's certification) and enter the first date the tracking form is used. A copy of that specific tracking form may then be used for up to one year from the original date entered in Box 15;

4. A copy of the tracking form shall accompany each shipment of radioactive regulated medical waste from the generator to the supplier;

5. The generator shall use a registered regulated medical waste transporter;

6. The supplier shall maintain a receiving log for each shipment, which may be in the form of its usual record-keeping for the radioactive waste inventory, in which the following information is recorded:

i. The date of receipt of the radioactive regulated medical waste shipment;

ii. The type of radioactive regulated medical waste received and the number of containers of each type; and

iii. The total quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal, Kg., or L) of each type of radioactive regulated medical waste received; and

7. The supplier shall, on a semi-annual basis, submit a summary of the receiving log information to the generator of the radioactive regulated medical waste and to the Department.

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

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

Inserted new (d)1; recodified former (d)1 through (d)3 as (d)2 through (d)4; in (e)1, inserted date requirement and reference to "self-transport"; inserted new (e)3 and (e)4; recodified former (e)3 through (e)5 as (e)5 through (e)5; in (e)5; in (f)1 and (f)2 inserted date; inserted new (f)3; recodified former (f)3 and (f)4 as (f)4 and (f)5; in (f)4, inserted reference to "self-transport"; and added (g).

Administrative change.

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (d), rewrote 1; in (h)6, rewrote iii; in (h)7, substituted "semi-annual" for "quarterly".

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, collection facilities, transfer stations, and intermediate handlers that initiate tracking forms) that export regulated medical waste to a foreign country (for example, Canada) for treatment, destruction, or disposal, shall request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator shall submit an exception report as required under N.J.A.C. 7:26-3A.22.

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

In (a), inserted reference to collection facilities and transfer stations.

7:26-3A.21 Generator recordkeeping

(a) Each generator shall:

1. Keep the copy of each tracking form required by N.J.A.C. 7:26-3A.19 and the signed "Copy 1—Generator Copy" of each completed tracking form signed by the owner or operator of the destination facility, intermediate handler or collection facility for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26-3A.22(b) for at least three years after the day the exception report was submitted unless the Department specifically requires an additional retention period.

(b) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, shall maintain the following records:

1. The approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;

2. The approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and

3. For regulated medical waste accepted from other generators, the name and address of the generators, the date the waste was accepted from each generator, the weight of waste accepted from each generator, and the date the waste was treated and destroyed for each generator.

(c) Each generator in (b) above shall maintain records for a period of at least three years from the date the waste was

treated and destroyed, unless the Department specifically requires an additional retention period.

(d) Generators of more than 200 pounds of regulated medical waste during the reporting period of June 22 through June 21 of each calendar year shall submit annual generator reports to the Department on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(f)4. The generator annual report shall cover all regulated medical waste generated, treated or destroyed, and disposed of during the reporting period. The generator annual report shall be submitted to the Department by July 21 of each calendar year and shall include, but not be limited to, the following information:

1. The date of the report;

2. A description of the regulated medical waste, identified by Waste Class;

3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;

4. The name and NJDEP solid waste transporter registration number of every transporter who transported the generator's regulated medical waste;

5. The name and address of each intermediate handler or destination facility and a description of quantity in pounds for each Waste Class of regulated medical waste sent to each facility; and

6. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer).

(e) Generators of regulated medical waste that is reused or recycled shall comply with the reporting requirements of N.J.A.C. 7:26-3A.6(b)6iii and 7iii.

(f) All copies of the generator's annual reports, tracking forms and other documents required to be maintained under this subchapter as well as copies of the Department's compliance inspection reports and the certificate of generator registration for the site shall be retained at the generator's site, for at least three years from the date that the documents were due, or created, unless the Department specifically requires an additional retention period.

(g) Generators required to file Annual Generator Reports pursuant to (d) above shall have the option to file the required data electronically via the Division of Solid and Hazardous Waste's Internet web site at <http://www.state.nj.us/dep/online>.

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

In (a)1, inserted reference to the generator copy; in (a)2, inserted three year provision; deleted (d); recodified former (h) as (d); rewrote (e); deleted (f); recodified former (i) as (f) and substantially amended.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (f), deleted "logs," preceding "tracking"; added (g).

Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

In (d), rewrote the introductory paragraph.

Petition for Rulemaking.

See: 46 N.J.R. 643(b), 885(a).

7:26-3A.22 Exception reporting for generators

(a) A generator shall contact the owner or operator of the destination facility, transporter(s), intermediate handler(s) and collection facility(s), as appropriate, to determine the status of any tracked waste if the generator does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26-3A.8(d) if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter, or if the tracking form for the waste was consolidated onto a new tracking form by a transporter or a collection facility in accordance with N.J.A.C. 7:26-3A.33, within 60 days of the date the waste was accepted by the initial transporter. The exception report must be postmarked on or before the 46th day following the date the waste was accepted by the initial transporter, or for loads consolidated by transporters or collection facilities, on or before the 61st day, and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

(c) A copy of the generator exception report shall be kept by the generator for a period of at least three years from the date the exception report was submitted unless the Department specifically requires an additional retention period.

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

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

In (a), inserted reference to collection facilities; in (b), inserted provisions relating to consolidated tracking forms and consolidated loads; and in (c), amended the starting date for measuring required record retention period.

7:26-3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.24 Generators of regulated medical waste 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 that incinerate such waste on-site and that accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26-3A.39 through 3A.43.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26-2, 2B, 4 and 16 unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26-3A.38.

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

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

In (b), amended N.J.A.C. references.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), amended N.J.A.C. reference.

7:26-3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;
2. The length of the incineration cycle;
3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;
4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and
5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;
2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;
3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and

4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall initiate the generator on-site incinerator operating log required by (a) above as of June 22, 1989 and shall retain operating log for three years, unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26-3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

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

7:26-3A.26 Reporting for generators that incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of an Annual Intermediate Handler and Destination Facility Report as required by N.J.A.C. 7:26-3A.44 on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(f) and submit one copy of the Intermediate Handler and Destination and Facility 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 Intermediate Handler and Destination Facility Report submitted by generators with incinerators shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;
2. Facility type (for example, hospital, laboratory);
3. Contact person;
4. Waste feed information;
5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and
6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration

number of the transporter(s), and the name and address of the disposal facility.

(c) Each Intermediate Handler and Destination Facility Report submitted by generators with incinerators 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."

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

Deleted (d) and (e), recodified (f) as (d).
Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), substituted "an Annual Intermediate Handler and Destination Facility Report as required by N.J.A.C. 7:26-3A.44" for "a generator on site incinerator report", amended N.J.A.C. reference; in (b), substituted "The Intermediate Handler and Destination Facility Report submitted by generators" for "The generator on site incinerator reports"; in (c), substituted "Each Intermediate Handler and Destination Facility Report submitted by generators with incinerators" for "Each generator on site incinerator report"; deleted (d).
Amended by R.2005 d.223, effective July 5, 2005.
See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).

7:26-3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26-3A.27 through 3A.37 apply to transporters and collection facilities, including generators that transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26-3A.8;
2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements of N.J.A.C. 7:26-3.1, 3.4, 3.7, and 16; and
3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6;

(d) Generators of less than three cubic feet (50 pounds) of regulated medical waste per month that meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from the requirements of (c) above.

(e) Generators, such as a hospitals or doctors, that generates regulated medical waste in the ordinary course of

business and transports such regulated medical waste only among facilities that such generators wholly owns and operates are exempt from the requirements of (c) above, provided:

1. The generator files an affidavit with the Bureau of Registration in the Department verifying its limited transporter status;
2. The generator transports the regulated medical waste to a registered noncommercial treatment and destruction facility or a collection facility, wholly owned and operated by the generator; and
3. Pays the annual generator's noncommercial transporter fee pursuant to N.J.A.C. 7:26-3A.8.

(f) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26-3A.16, 3A.18, 3A.20, 3A.21, 3A.22, 3A.23 and 3A.39, when it consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(g) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26-3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or
2. Remove regulated medical waste from a reusable container; or
3. Modify packaging of regulated medical waste.

(h) Persons transporting regulated medical waste through New Jersey, when roadways and highways in New Jersey constitute a segment of such vehicle's route, are exempt from the requirements of (c) above, provided:

1. Transportation is completed in less than 24 hours, unless mechanical breakdown occurs and repair is necessitated;
2. Regulated medical waste is not collected, treated, transferred, or destroyed or disposed of in New Jersey;
3. Regulated medical waste is packaged, stored, labeled and marked in accordance with any applicable Federal law and regulations and with the requirements at N.J.A.C. 7:26-3A.11, 12, 15, and 16;
4. Containers of regulated medical waste are securely locked at all times during transit through New Jersey; and
5. The owner and/or operator of the vehicle transporting such waste is licensed in accordance with all applicable Federal law and regulations and all applicable law and regulations of the state of licensing of the owner and/or operator.

(i) Regulated medical waste transporters registered with the Department pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A that transport regulated medical waste of New Jersey origin may retain regulated medical waste in a transportation vehicle for up to 14 consecutive calendar days provided the waste does not become putrescent or emit any odors. If the regulated medical waste becomes putrescent, or emits any odors, the transporter shall dispose of the waste immediately.

(j) Regulated medical waste shall not be removed from or be transferred between vehicles by transporters or other persons unless the site of transfer is authorized as a solid waste transfer station for regulated medical waste pursuant to this chapter, or is registered and operating as a regulated medical waste collection facility pursuant to N.J.A.C. 7:26-3A.39.

(k) Regulated medical waste transported in New Jersey shall be transported in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented.

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

In (a), inserted reference to collection facilities; deleted (c)4, requiring EPA notification; inserted new (e); recodified former (e) and (f) as (f) and (g); in (f), amended N.J.A.C. references; and added (h) through (j).

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (k).

7:26-3A.28 Transporter acceptance of regulated medical waste

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container:

1. Is labeled and marked in accordance with N.J.A.C. 7:26-3A.14 and 3A.15; and
2. Appears to be in good condition and shows no signs of leakage or other visible packaging deficiencies.

(b) Transporters shall accept a shipment of regulated medical waste only from a registered regulated medical waste generator and all shipments shall be accompanied by a properly completed tracking form as required by N.J.A.C. 7:26-3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;

2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

(d) Before accepting regulated medical waste for transport to a facility outside New Jersey, a transporter shall obtain certification from the out-of-State facility that such a facility is authorized or permitted to accept such waste by the receiving state and shall submit the certification to the Bureau of Resource Recovery and Technical Programs in the Department at the address given at N.J.A.C. 7:26-3A.8(f)4.

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

Added (a)1 and (a)2; substantially amended (b); and added (d).
Amended by R.2005 d.223, effective July 5, 2005.
See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).
Rewrote (d).

7:26-3A.29 (Reserved)

Repealed by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Section was "Transporter EPA notification".

7:26-3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26-3, transporters shall use vehicles to transport regulated medical waste in accordance with all applicable Federal regulations including, but not limited to, 49 C.F.R. Parts 171-180 as amended and supplemented and that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;
2. The transporter shall ensure that the waste does not become putrescent in the vehicle through lengthy storage and is not subject to mechanical stress or compaction during loading and unloading or during transit;
3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and
4. The cargo-carrying body shall be securely locked if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;
2. The transporter's NJDEP solid waste transporter registration number; and
3. A sign or the following words imprinted:

- i. MEDICAL WASTE; or
- ii. INFECTIOUS WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26-3A.27 through 3A.36.

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

In (a)2; inserted reference to becoming putrescent; and in (b)3ii, substituted "Infectious Waste" for "Regulated Medical Waste".
Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote the introductory paragraph.

7:26-3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for collection, transport or transporting any regulated medical waste, the transporter shall:

1. Certify that the tracking form accurately reflects the number of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and
2. Return a signed "Copy 4—Generator Copy" of the tracking form to the generator before leaving the generator's site.

(c) Each transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Complete Boxes 17 through 22 of the tracking form and obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility or destination facility on the tracking form;

2. Retain "Copy 3—Transporter Copy" of the signed tracking form in accordance with N.J.A.C. 7:26-3A.34; and

3. Give the remaining copies of the tracking form to the second transporter, intermediate handler, or destination facility.

4. Third and/or subsequent transporters shall enter information required of transporter 2 in Boxes 17 through 21 in Box 14b.

5. Photocopies of the signed tracking form shall be retained by the second and/or any subsequent transporter(s).

(e) Any transporter that transports regulated medical waste across an international border, or that delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Obtain the signature of the accepting foreign transporter or destination facility; or

2. Verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction or destination facility by writing a statement to that effect in Box 14, certifying that the entire shipment (as specified in Boxes 11, 12 and 13 of the tracking form) has been delivered to the next (foreign) party, including the accepting party's name, company name, and mailing address, and signing directly below that certification statement; and

3. Retain "Copy 3—Transporter Copy" of the signed tracking form for that transporter's records; and

4. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26-3A.45 apply to rail transporters in lieu of the requirement of (b), (c) and (d) above.

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

In (b)2, amended form reference; in (d)1, inserted text "Complete Boxes... form and"; in (d)2, amended form reference; added (d)4 and (d)5; rewrote (e)1; inserted new (e)2; and recodified (e)2 and (e)3 as (e)3 and (e)4; in (e)3 and (f), amended form references.

7:26-3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) and (c) below, the transporter shall deliver the entire quantity of regulated medical waste that the transporter has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or

2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

(c) Notwithstanding (b) above, a transporter may deliver all or a portion of the regulated medical waste, in unopened containers, to a destination facility other than the destination facility designated on the generator's tracking form, if the generator in writing consents to the use of such specific alternative destination facility prior to the transfer of regulated medical waste from the generator to the transporter. The transporter shall enter the required information in Box 14 of the tracking form and shall comply with all other tracking form requirements of N.J.A.C. 7:26-3A.31.

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

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

In (a), added reference to (c); and added (c).

7:26-3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter that chooses to consolidate to a single tracking form shipments of regulated medical waste shall:

1. Enter the new consolidation tracking form number in Box 21 on the original generator's tracking form;

2. Enter the consolidating transporter's identification data as the generator of the consolidation tracking form in Boxes 1 through 4 of the consolidation tracking form;

3. Complete Boxes 5 through 14 of the consolidation tracking form.

i. Enter the tracking form number of the original generator's tracking form in Box 14 of the consolidation tracking form. If more than 20 tracking forms are being consolidated, reference shall be made in Box 14 to the consolidation log pursuant to (b) below and enter the total number of tracking forms being consolidated.

4. Sign Box 15 of the consolidation tracking form; and

5. Comply with N.J.A.C. 7:26-3A.31 through 3A.33, as applicable, to complete the remainder of the consolidation tracking form.

(b) When the transporter receives the signed tracking form that the transporter initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

(d) A person registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16, and 16A to transport regulated medical waste in the State of New Jersey that seeks to operate a commercial collection facility for medical waste shall submit an application containing the information listed at (d)1 through 15 below. All maps of the proposed facility shall be prepared in a manner and format consistent with N.J.A.C. 7:1D, Appendix A. Three copies of the application and all accompanying documents shall be submitted to the Department at the address specified in (e) below, and one copy each to the host municipality and district solid waste management plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed commercial collection facility;

2. A photocopy of the applicant's authorized registration as a regulated medical waste transporter obtained pursuant to N.J.A.C. 7:26-3, 3A, 16 and 16A;

3. Photocopies of all authorizations for siting, construction and operation obtained pursuant to applicable local, regional, State or Federal agency with jurisdiction over any aspect of the proposed facility;

4. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;

5. A description of the current use of the facility site and of all adjoining properties;

6. Documentation establishing that the facility has been included by administrative action in the applicable district solid waste management plan. The Department may issue an authorization in the absence of an administrative action if it determines that the collection facility is needed to help fulfill the objectives of the adopted and approved Statewide Regulated Medical Waste Management Plan or any individual district regulated waste management plan. The Department shall notify the host county and municipality of such a determination and the reasons justifying facility authorization in writing prior to any approval of operations;

7. A description of the maximum amount and types of waste to be received and transferred at the facility each day, expressed in tons or gallons per day, as applicable;

8. A description of the sources of the waste and the anticipated disposal locations of the waste, both in State and out of State;

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

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

i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading,

unloading and temporary storage of regulated medical waste;

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

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

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

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

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

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

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

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

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

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

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

15. A narrative describing the facility operations from the receipt of waste through the point of transfer to destination. The narrative must clearly demonstrate that packages and containers will not be opened and that employees, the public or the environment will not be exposed to regulated medical waste or medical waste.

(e) The application described in (d) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-3A.8, to:

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

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

1. Issue a letter of authorization to operate the commercial collection facility, or a denial of the application, to the applicant and provide a copy of the letter of authorization or denial to the host municipality and district solid waste management plan implementation agency. A letter of authorization shall not be transferred to any other person except in accordance with N.J.A.C. 7:26-3A.49(e);

2. Notify the applicant in writing of missing information and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (d) above and provide a copy of the letter of deficiency to the host municipality and district solid waste management plan implementation agency.

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

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

(i) The operating standards for collection facilities are as follows:

1. The maximum amount of regulated medical wastes at a collection facility including regulated medical wastes in any vehicles staged at the facility shall not exceed 300,000 pounds at any time unless a higher amount is specified in the facility's letter of authorization.

2. Collection facilities shall not receive medical wastes in excess of 150,000 pounds per day unless a higher amount is specified in the facility's letter of authorization.

3. Collection facility operators shall comply with all requirements for transporters at N.J.A.C. 7:26-3A.27 through 3A.37.

4. Collection facilities shall accept only regulated medical waste managed in accordance with this subchapter.

5. Collection facilities shall allow only collection and transportation vehicles registered in accordance with this subchapter and N.J.A.C. 7:26-2, 16, 16A and 27, and operated in accordance with N.J.A.C. 7:26-3 and this subchapter to transport regulated medical waste to and from the facility.

6. Regulated medical waste received, stored or transferred at any collection facility shall at all times remain fully contained in sealed packages and containers packaged, marked and labeled pursuant to this subchapter that do not leak any liquids or solid materials, are not opened for any purpose at the facility and are registered as solid waste containers pursuant to N.J.A.C. 7:26-3. Secondary outer packaging or containers may be removed so long as the primary packaging that contains the regulated medical waste and meets the performance requirements for packaging at N.J.A.C. 7:26-3A.11 is not opened, ruptured or compromised in any way.

7. Regulated medical waste shall not remain at a noncommercial collection facility for more than 90 consecutive calendar days, which period shall include weekends and holidays. A noncommercial collection facility at which waste is staged or stored for more than 90 days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

8. Unless exempted under N.J.A.C. 7:26-6.3, all regulated medical waste accepted at a collection facility from New Jersey sources shall be disposed of in accordance with the applicable District Solid Waste Management Plan developed pursuant to N.J.A.C. 7:26-6. A collection facility shall not accept packages or containers in which regulated medical waste generated from more than one New Jersey district or county, or out-of-State source, has been mixed. Any out-of-State waste accepted at a collection facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or at permitted out-of-State disposal facilities authorized by the receiving state.

9. Regulated medical waste at any collection facility shall not emit odors that are detectable at the facility or in the vicinity of the facility. Any waste that does emit any odor shall be immediately disposed of in accordance with this subchapter.

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

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

- i. Observing and sampling any wastes or other materials on site;
- ii. Photographing any portion of the facility, regulated medical waste vehicles, regulated medical waste packages and containers;
- iii. Investigating an actual or suspected source of pollution of the environment or any release of regulated medical waste;
- iv. Ascertaining compliance or noncompliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and
- v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

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

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

14. Any areas or surfaces at a commercial collection facility that have come into contact with regulated medical waste shall be disinfected immediately in accordance with the Spill Management Plan approved pursuant to N.J.A.C. 7:26-3A.37.

15. Any release or discharge of any regulated medical waste at a collection facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at 1-877-WARNDEP. This telephone report shall specify the type of waste or substance discharged in estimated quantity, the nature of

the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification. In addition, the facility operator or emergency coordinator designated pursuant to (j) below shall:

- i. Immediately identify the character, source, amount, and extent of any discharge and notify all appropriate State or local agencies with designated response roles if assistance is needed;

- ii. Assess possible hazards to public health or the environment that may result and notify appropriate local authorities if such assessment indicates that evacuation of local areas may be advisable;

- iii. Ensure that no regulated medical waste is processed in the affected unit and area until cleanup procedures are completed and all equipment is again fit for its intended use;

- iv. Notify the Department and appropriate local authorities when operations have returned to normal; and

- v. Submit a written report on the incident to the Department within 15 days after the incident. The written report shall include, but not be limited to, the name, address, and telephone number of the facility; the date, time, and description of the incident; the extent of any injuries of any severity, with names and job responsibilities of those persons injured indicated; an assessment of actual damage to the environment; an assessment of the scope and magnitude of the incident; a description of the immediate actions initiated to clean up and disinfect the affected area; a description of actions taken to prevent a recurrence of a similar incident and, an implementation schedule for undertaking long-term measures to effect cleanup and avoid recurrence of the incident, if applicable.

16. Deliveries of regulated medical waste to collection facilities shall be scheduled in such a manner as to minimize truck queuing on the facility property as well as on the street or road leading to the entrance. On-site traffic control measures shall be implemented to provide orderly vehicle movement at collection facilities. If, at any time, the additional traffic generated by the operation of the facility results in congestion of surrounding roads and intersections, corrective measures shall be developed and implemented immediately to alleviate traffic-related problems.

17. No regulated medical waste or medical waste shall be staged, placed or stored beyond the confines of a building at the collection facility or a regulated medical waste vehicle registered pursuant to this subchapter, N.J.A.C. 7:26-3, 16 or 16A.

18. Collection facilities shall pay all fees and register in accordance with all applicable regulations for any other

waste management activities conducted at the facility, in addition to the complying with the requirements of this subchapter.

(j) Additional operating requirements for commercial collection facilities are as follows:

1. The commercial collection facility operator shall designate an on-site emergency coordinator who is available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges or releases of medical wastes at the facility.

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

3. All personnel directly involved in any commercial collection facility waste management activities or who operate, service or monitor any facility equipment, machinery or system at the facility shall successfully complete a training program of classroom instruction, which shall be combined with on-the-job training as needed. The training program shall:

i. Provide fire fighting training, instructions for implementing the Spill Management Plan in accordance with N.J.A.C. 7:26-3A.37 and ensure that facility personnel are able to effectively respond to any equipment malfunction and emergency situation that may arise;

ii. Provide instructions in the use and operation of safety equipment, procedures for inspecting, maintaining and repairing facility equipment, machinery and monitoring systems and the procedures to be followed during planned and unplanned shutdown of operations;

iii. Contain instructions that ensure the facility's compliance with the requirements of this chapter and the conditions of any Departmental letters of authorization and permits issued for the facility;

iv. Contain instruction for the constant monitoring of incoming loads for conformance with the requirements of this section and the identification and proper handling of suspected unauthorized wastes;

v. Be completed by all facility personnel within two weeks after the date of their employment and prior to work assignment at the facility;

vi. Be conducted on an annual basis for all facility personnel in the form of a planned annual review of the complete training program; and

vii. Be documented in the form of detailed training records that record the names of personnel trained, the dates when training occurred and the type and extent of training provided. The training documentation shall be maintained at the facility for three years from the date the training occurred.

4. Any commercial collection facility operator and any person designated by such operator to operate part or all of the collection facility or to conduct any of its waste-related activities shall be registered as a regulated medical waste transporter pursuant to N.J.A.C. 7:26-3A.3, 16 and 16A.

5. The commercial collection facility shall maintain sufficient staff to ensure the proper, orderly and safe operation of all facility systems and equipment, along with the ability to handle all routine facility maintenance requirements.

6. Fire detection and protection systems shall be maintained in operable condition at all times. Fire-fighting equipment shall be available on-site or on call to extinguish any and all fires. Fire fighting procedures shall be posted in each area of the facility and shall include the telephone number of local fire and police departments.

7. Noise control shall be implemented to ensure that sound levels generated by the facility operation, including vehicles, shall not exceed the standards set forth in Noise Control rules at N.J.A.C. 7:29.

8. One complete set of the commercial collection facility's operating records, the O&M manual and these rules shall be kept on file at the facility, and shall be available to facility personnel and for inspection by the Department or its designated representatives.

9. The commercial collection facility's material management system's safety appliances and related appurtenances shall, at all times, be kept in the proper operating order through an effective inspection, planned maintenance, repair and parts replacement program as described in the O&M manual. As part of this program, the facility operator shall maintain an inventory of spare parts and replacement equipment, records of all inspections, as well as have access to back up equipment to ensure continued operation of the facility.

10. Regulated medical waste shall not remain at a commercial collection facility for more than 14 consecutive calendar days, which period shall include weekends and holidays. A commercial collection facility at which waste is staged or stored for more than 14 calendar days shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

(k) A collection facility operator shall maintain the following records at the facility at all times and shall file reports as follows. The operator shall retain records and reports for three years.

1. A commercial collection facility shall maintain daily records that shall note the source, destination and quantity, by vehicle, of all regulated medical waste received, transferred and shipped to and from the facility. The records shall specify the source for every shipment of regulated medical waste received and the destination of every shipment of regulated medical waste out of the facility. Quantities of regulated medical waste shall be listed in tons or gallons as appropriate.

i. The daily records shall be compiled into quarterly reports in accordance with N.J.A.C. 7:26-2.13 and shall be submitted to the following address within 20 days of the end of each calendar quarter:

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

2. A commercial collection facility shall maintain records that document all violations of any local, State and Federal requirements, including violations of the collection facility authorization issued by the Department.

3. A commercial collection facility shall maintain records that document all incidents in which a transporter not registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16 and 16A, or a container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the tracking form numbers for the waste in the container. These incidents shall also be reported within 24 hours to the Department's Bureau of Solid Waste Compliance and Enforcement or the Environmental Hotline at 1-877-WARNDEP.

4. All collection facilities shall maintain records in accordance with N.J.A.C. 7:26-3A.34, 3A.43 and 3A.44, except that noncommercial facilities are not required to comply with N.J.A.C. 7:26-3A.44(a)1 and 2.

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

(m) Any authorized commercial collection facility that accepts unauthorized waste, or fails to operate in compli-

ance with the requirements of this section, shall be deemed an illegal solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E, and N.J.A.C. 7:26-5.

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

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

(p) The Department may modify a commercial collection facility authorization for the following reasons and the operator shall pay a fee as specified in N.J.A.C. 7:26-3A.8 on issuance of any commercial collection facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized commercial collection facility or operation that occurred after Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

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

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

4. The regulatory compliance record of the collection facility operator;

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

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

and changes in the sources of regulated medical waste and changes in the regulated medical waste disposal location.

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

(r) Ninety days prior to the expiration of a Commercial Collection Facility Letter of Authorization, the bearer of the letter of authorization for the facility shall notify the Department in writing if they do not wish to renew said Letter of Authorization, otherwise a Letter of Authorization renewal application shall be submitted at that time in accordance with the provisions of N.J.A.C. 7:26-3A.49.

New Rule, R.1996 d.578, effective December 16, 1996.

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

Former section, "Use of tracking form for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.41.

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

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

Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

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

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

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

In (d), substituted "7:1D, Appendix A" for "7:1E, Appendix C" following "consistent with N.J.A.C." in the introductory paragraph; in (d)6, inserted "by administrative action" following "has been included" in the first sentence and substituted "an administrative action" for "a letter of consistency" in the second sentence; in (d)10ii, substituted "smaller" for "greater" preceding "than one inch".

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), inserted "in quantities greater than 2,000 pounds per year" following "medical wastes" in the introductory paragraph and rewrote 1 and 2; in (f)1, added "except in accordance with N.J.A.C. 7:26-3A.49(e)"; in (i)15 and (k)3, amended the phone number; added (r).

7:26-3A.40 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26-3A.40 through 3A.44 apply to owners and operators of intermediate handler or destination facilities located in New Jersey that manage regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities, including treatment and destruction facilities, facilities that cause the regulated medical waste to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4 including incineration facilities, alternative or innovative technology facilities and disposal facilities; and

2. Intermediate handlers, including alternative or innovative technology or other facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4.

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

(c) No person shall engage in the treatment and/or destruction of regulated medical waste in New Jersey unless such person:

1. Registers the site as an intermediate handler or destination facility in accordance with N.J.A.C. 7:26-3A.8;

2. Obtains a tariff in accordance with N.J.S.A. 13:1E-48.12.b if operating commercially;

3. Uses treatment and/or destruction process(es) authorized by the Department and DHSS pursuant to N.J.A.C. 7:26-3A.47;

4. Obtains the specific approval of the Department and DHSS to operate an alternative or innovative technology approved pursuant to N.J.A.C. 7:26-3A.47 for the treatment and/or destruction of regulated medical waste at the registered facility; and

5. Complies with all other environmental statutes applicable to the facility, including but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the rules and regulations adopted thereunder, and any permits or orders issued pursuant thereto.

(d) Persons operating mobile treatment and/or destruction equipment for RMW shall:

1. Operate such equipment only within the boundaries of a site registered as an intermediate handler or destination facility with the Department pursuant to N.J.A.C. 7:26-3A.8(c) for the specific type of activity the mobile treatment and destruction unit will be engaged in; and

2. Comply with all applicable statutes and regulations, including, but not limited to, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and 26:2D-1 et seq., the New Jersey Noise Control Act of 1971, N.J.S.A. 13:1G-1 et seq. and all other applicable Federal, State, and local requirements.

Recodified from 7:26-3A.38 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a), amended N.J.A.C. references and inserted reference to intermediate handlers and destination facilities; in (a)1 and (a)2, inserted reference to alternative or innovative technology facilities; and added (c). Former section, "Tracking form discrepancies for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.42.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), substituted "DHSS" for "DOH" in 3 and 4; added (d).

7:26-3A.41 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.42(a) on the tracking form;

3. Immediately give the transporter "Copy 3—Transporter Copy" of the signed tracking form:

i. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(a) immediately give the generator "Copy 4—Generator Copy" of the signed tracking form.

ii. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(b) the disposal facility shall mail "Copy 4—Generator Copy" of the signed tracking form.

4. Send "Copy 4—Generator Copy" of the tracking form to the generator (or "Copy 3—Transporter Copy" to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

5. Retain "Copy 2—Destination Facility Copy" of each tracking form in accordance with N.J.A.C. 7:26-3A.43.

(b) When an intermediate handler receives regulated medical waste the owner or operator shall meet the following requirements:

1. The owner or operator shall meet all the requirements for generators under both N.J.A.C. 7:26-3A.10 through 3A.16 and 3A.18 through 3A.23, including signing the tracking form accepting the waste as specified in Box 20, noting any discrepancies on the tracking form in Box 23, and entering the new tracking form number in Box 21 when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

2. The owner or operator shall maintain an intermediate handler log matching the original generator's tracking forms to the tracking form initiated. The intermediate handler log shall include:

i. The name(s) of generator(s);

ii. The generator's address. If the generator is not located in New Jersey, then use the generator's state permit or identification number. If the state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number; and

iv. The new tracking form number to which the waste is assigned.

3. Within 15 days of receipt of the tracking form that the intermediate handler initiated and that was signed by the destination facility, the intermediate handler shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in (b)2i above;

ii. Send a copy of each tracking form to the generator who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirement of N.J.A.C. 7:26-3A.43.

(c) If a destination facility or intermediate handler receives from a rail transporter regulated medical waste that is accompanied by shipping papers containing the information required on the medical waste tracking form, with the exception of the generator's certification and chain of custody signatures, the owner or operator or an agent of the owner or operator shall:

1. Sign and date each copy of the tracking form or the shipping papers (if the tracking form has not been received);

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.42(a) on each copy of the tracking form or shipping papers (if the tracking form has not been received);

3. Immediately give the rail transporter at least one copy of the tracking form or shipping papers (if the tracking form has not been received);

4. If the facility is a destination facility, send a copy of the signed and dated tracking form to the generator within 15 days after the delivery. If the owner or operator has not received the tracking form within 15 days of delivery, he shall send a copy of the signed and dated shipping papers to the party initiating the tracking form;

5. If the facility is an intermediate handler, retain a copy of the tracking form (or the shipping papers if the tracking form has not been received), until receiving a copy of the tracking form signed by the owner or operator of the destination facility. The facility then shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form (or the shipping papers if the tracking form has not been received) initiated by another party;

ii. Send a copy of each tracking form (or each set of shipping papers) to the party who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.43.

(d) The destination facilities and intermediate handlers as set forth in (c) above shall retain a copy of the tracking form (or shipping papers if signed in lieu of the tracking form) for at least three years from the date of acceptance of the regulated medical waste unless the Department specifically requires an additional retention period.

(e) The destination facilities and intermediate handlers receiving shipments by rail should expect to receive the tracking form from the generator, or the preceding non-rail transporter who will have sent the tracking form to the facility by some other means (for example, by mail).

(f) In cases where the destination facility or intermediate handler is an out-of-State facility and will not comply with the tracking form requirements of this section as listed above, signed generator copies of the tracking form shall be returned to the generator by the transporter.

Recodified from 7:26-3A.39 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a)2. amended N.J.A.C. references; in (a)3 through (a)5, amended form references; in (b)1, inserted reference to discrepancies; in (b)3, inserted reference to intermediate handler; in (c)2, amended N.J.A.C. references. Former section, "Record keeping for intermediate handlers and destination facilities". was recodified to N.J.A.C. 7:26-3A.43.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (f).

7:26-3A.42 Tracking form discrepancies for intermediate handlers and destination facilities

(a) Tracking form discrepancies are:

1. For packages, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;
2. For waste by categories (that is, untreated or treated), discrepancies in number of packages for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;
3. Packaging that is broken, torn, or leaking;
4. Regulated medical waste that arrives at in intermediate handler or a destination facility unaccompanied by a tracking form, or for which the tracking form is incomplete or not signed; and

5. For quantity (in net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement (for example, lbs., gal, Kg., or L) of packages, a discrepancy greater than three percent of each tracking form load or more than 200 pounds, whichever is less.

(b) Upon discovering a discrepancy, the owner or operator shall attempt to resolve (for example, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator shall submit a letter, within 15 days of receiving the waste describing the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator shall include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in (a)4 above, the letter shall specify the quantity of waste received, the transporter, and the generator(s). The letter shall be submitted to the Department at the address listed in N.J.A.C. 7:26-3A.8(d)

Recodified from 7:26-3A.40 and amended by R.1996 d.578, effective December 16, 1996.

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

Added (a)5. Former section, "Additional reporting for intermediate handlers and destination facilities", was recodified to N.J.A.C. 7:26-3A.44.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), rewrote 5.

7:26-3A.43 Recordkeeping for collection facilities, intermediate handlers and destination facilities

(a) The owner or operator of a collection facility, destination facility or an intermediate handler receiving regulated medical waste generated, transported, treated, destroyed, disposed of or otherwise managed in New Jersey shall maintain records at the registered site, for a minimum of three years from the date the waste was accepted unless the Department specifically requires an additional retention period. These records shall contain the following information:

1. Copies of all tracking forms required by N.J.A.C. 7:26-3A.41(a)5, (b)3iii, and (c)5iii; and the logs required by N.J.A.C. 7:26-3A.41(b)2;
2. Copies of all discrepancy reports required by N.J.A.C. 7:26-3A.42(b); and
3. Copies of Department facility compliance inspection reports and the facility registration certificates.

Recodified from 7:26-3A.41 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a), inserted reference to collection facilities and transported waste; in (a)1 and (a)2, amended N.J.A.C. references; and added (a)3. Former section, "Rail transporters", was recodified to N.J.A.C. 7:26-3A.45.

7:26-3A.44 Additional reporting for collection facilities, intermediate handlers and destination facilities

(a) Beginning July 30, 2002, all regulated medical waste commercial collection facilities, intermediate handlers and destination facilities are required to submit an annual medical waste collection facility, intermediate handler and destination facility report to the Department, except that non-commercial collection facilities are not required to comply with (a)1 and 2 below, covering the period from July 1 through June 30 of each calendar year and shall be submitted by July 30 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(f), which shall include, but not be limited, to the following information:

1. A description of the sources, the types and amounts of regulated medical waste and medical waste collected, treated and/or destroyed;
2. The methods used for treatment and/or destruction; and
3. A description of any injuries and illnesses resulting from the maintenance, operation or any other activity related to a regulated medical waste treatment and/or destruction device(s).

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

Recodified from 7:26-3A.42 and amended by R.1996 d.578, effective December 16, 1996.

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

In (a) inserted references to commercial collection facilities, medical waste collection facilities, and noncommercial collection facilities; recodified (a)i and (a)ii as (a)1 and (a)2; and added (a)3. Former section, "Rail shipment tracking form requirements", was recodified to N.J.A.C. 7:26-3A.46.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), substituted "Beginning July 30, 2002, all" for "All", "July 1 through June 30" for "January 1 through December 31" and "July 30" for "February 15" and amended the N.J.A.C. reference in the introductory paragraph.

7:26-3A.45 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26-3A.46 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

Recodified from 7:26-3A.43 and amended by R.1996 d.578, effective December 16, 1996.

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

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

7:26-3A.46 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

- i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;
- ii. Return a signed copy of the tracking form to the non-rail transporter;
- iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

Recodified from 7:26-3A.44 by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-3A.47 Alternative or innovative technology authorization

(a) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste, and any modification thereof, shall be authorized by the Department and DHSS prior to any marketing, sale or use in New Jersey, in accordance with the following:

1. Persons seeking to market, sell or use an alternative or innovative technology shall submit an application to the Bureau of Resource Recovery and Technical Programs in the Department at the address given at N.J.A.C. 7:26-3A.8(f)4 for authorization and pay the alternative technology review fee in accordance with N.J.A.C. 7:26-3A.8. The application shall be on forms provided by the Department and shall include the following:

- i. A description of the proposed method of operation;
- ii. Actual performance data;
- iii. Vendor and independently verified treatment efficacy data;
- iv. Information on parametric monitoring and controls;
- v. Limits on waste acceptance;
- vi. Information on residuals produced;
- vii. Potential environmental impacts, including emissions and noise impacts;
- viii. Occupational exposures;
- ix. Safety procedures; and
- x. Installation and operating costs, including data on energy efficiency.

2. The DHSS may require additional information concerning the ability of the technology to effectively treat regulated medical waste.

3. The information provided in the application and all other information of any nature provided to or obtained by the Department and DHSS in their administration of this section, shall be available to the public for review, unless a specific claim of confidentiality is submitted pursuant to in N.J.A.C. 7:26-17.1.

4. The Department and DHSS may use the information and recommendations of the State and Territorial Association on Alternative Treatment Technologies, and other sources as needed, in evaluating regulated medical waste alternative or innovative technologies.

5. An alternative or innovative technology authorization to operate shall specify general operating conditions and other applicable requirements, such as, but not limited to, requirements for general operation; maintenance and housekeeping; injury reporting; emergency management and reporting; media; fugitive emissions and equipment performance monitoring and control; equipment operation; design; pollution control; data reporting; a DHSS protocol to monitor treatment efficacy or other conditions of operation or performance; periodic technology evaluation progress reports as required by the Department and DHSS and other reports as needed; financial assurance; and operation termination and remedial action; and other applicable requirements as shall be determined by the Department and DHSS on a case-by-case basis. At a minimum, authorization shall include a DHSS protocol to monitor treatment efficacy.

6. An alternative or innovative technology authorization shall be issued only for the specific technology applied for. Any modifications to the technology shall be submitted to the Department and DHSS for review and approval pursuant to (a)1 through 5 above before introduction and use in New Jersey.

(b) Any alternative or innovative technology for the treatment and/or destruction of regulated medical waste authorized pursuant to (a) above:

1. May be marketed or sold for use in New Jersey;
2. Shall be authorized on a case-by-case basis at each facility intending to operate the alternative or innovative technology; and
3. Shall be installed and operated in compliance with all applicable Federal, State and local statutes and regulations.

(c) For the purposes of expediting development, demonstration, evaluation or implementation of alternative or innovative technologies and for the purpose of obtaining operational data and information on which the application for authorization to operate can be reviewed pursuant to (a) above, the Department may, in consultation with the DHSS, exempt any regulated medical waste alternative or innovative technology research, development or demonstration project from applicable waste management regulations in accordance with the procedures at N.J.A.C. 7:26-1.7(f).

New Rule, R.1996 d.578, effective December 16, 1996.

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

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a) and (c), substituted "DHSS" for "DOH" throughout.
Amended by R.2005 d.223, effective July 5, 2005.

See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).
In (a), rewrote the first sentence in 1.

7:26-3A.48 Requirements for generators using out-of-State facilities disposing of regulated medical waste from New Jersey

(a) A generator using an out-of-State intermediate handler, destination facility, transfer facility, or other medical waste disposal facility operating for any purpose that uses the U.S. Postal Service or other parcel delivery service in New Jersey and uses the U.S. Postal Service or other authorized mail or parcel delivery service to transport regulated medical waste from New Jersey to the out-of-State facility, shall request a certification from the out-of-State facility, which shall include copies of any state and local authorizations and/or permits. Copies of this certification shall be sent by the generator to the Bureau of Resource Recovery and Technical Programs at the address given at N.J.A.C. 7:26-3A.8(f)4. This information shall be provided by the generator prior to sending any RMW out-of-State for disposal.

(b) A generator using the out-of-State facility described in (a) above shall also submit a certification of any and all changes to the out-of-State facilities authorizations or permits within 30 days of such changes.

(c) A generator of regulated medical waste in this State shall not send regulated medical waste by the U.S. Parcel Service or other parcel delivery service to an out-of-State facility that has not submitted a certification to the Department in accordance with this section.

New Rule, R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Administrative change.
See: 30 N.J.R. 3948(a).
Amended by R.2005 d.223, effective July 5, 2005.
See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).
In (a), rewrote the second sentence.

7:26-3A.49 Duration of the letter of authorization; letter of authorization renewal requirements; continuation of an expiring letter of authorization and transfer of an existing letter of authorization for commercial collection facilities

(a) A letter of authorization 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 letter of authorization may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the applicable District Solid Waste Management Plan and provided that the waste processing rate, as specified in the letter of authorization is not exceeded.

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

2. Nothing in this section shall be construed to allow the bearer of a letter of authorization to exceed the

maximum waste processing rate of the facility as set forth in the letter of authorization for the facility at any time during the term of the letter of authorization. Any expansion, extension, enlargement or other increase beyond the letter of authorization waste processing rate shall be considered a new facility and shall require submittal of an application to the Department for approval of a new letter of authorization.

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

(b) Commercial collection facility letter of authorization renewal submission requirements and procedures shall be as follows:

1. The bearer of a letter of authorization of an authorized commercial collection facility shall apply for a letter of authorization renewal at least 90 days prior to the expiration date of the existing letter of authorization provided the facility is included in the applicable District Solid Waste Management Plan.

2. As an application to renew the letter of authorization for a commercial collection facility, the bearer of the letter of authorization for the facility, or the owner or operator of the facility shall submit all fees required by N.J.A.C. 7:26-3A.8(d)2, a letter requesting renewal of the letter of authorization for the facility and the following additional documents, if necessary to update the facility's operations:

- 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.

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 letter of authorization renewal application.

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

(c) The conditions of an expired letter of authorization are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, until the effective date of a new letter of authorization if:

1. The bearer of the letter of authorization has submitted a timely and complete application for a renewal pursuant to (b) above; and
2. The Department, through no fault of the bearer of the letter of authorization, does not issue a new letter of authorization with an effective date on or before the

expiration date of the previous letter of authorization, due to time or resource constraints.

(d) Letters of authorization continued under this section remain fully effective and enforceable. If the bearer of a letter of authorization is not in compliance with any one of the conditions of the expiring or expired letter of authorization during the continuance, the Department may do any or all of the following:

1. Initiate enforcement action based upon the letter of authorization which has been continued;
2. Issue a notice of intent to deny the new letter of authorization under N.J.A.C. 7:26-2.4. If the letter of authorization is denied, the owner or operator shall immediately cease activities authorized by the continued letter of authorization or be subject to enforcement action for operating a commercial collection facility without an approved letter of authorization;
3. Issue a new letter of authorization under N.J.A.C. 7:26-2.4 with appropriate conditions; or
4. 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 bearer of a letter of authorization shall not transfer the letter of authorization directly to a new owner or operator without the Department's approval.

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

- i. A registration statement completed by the prospective new bearer of the letter of authorization 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; and
 - iii. A written agreement between the bearer of the existing letter of authorization and the proposed bearer of the new letter of authorization 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 letter of authorization has been revoked and a new letter of authorization is issued pursuant to N.J.A.C. 7:26-3A.39.
3. The bearer of a letter of authorization of record remains liable for ensuring compliance with all conditions of the letter of authorization unless and until the existing letter of authorization is revoked and a new letter of authorization 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 bearer of the letter of authorization to be transferred from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision which may apply.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

SUBCHAPTER 4. FEES FOR SOLID WASTE

7:26-4.1 General provisions

(a) Except as provided in N.J.A.C. 7:26H-8.4, the fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, requiring licensing and registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with a motor vehicles agency as having a maximum gross vehicle weight of 9,000 pounds for a single vehicle or 16,000 pounds combined maximum gross vehicle weight for a vehicle pulling a trailer, and claiming said exemption under N.J.A.C. 7:26-3.3, need not pay any solid waste fee to the Department. Any person transporting solid waste who does not meet the criteria for exemption under this subsection shall be subject to the fee requirements applicable to transporters of solid waste set forth at N.J.A.C. 7:26-4.4.

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

Amended by R.1974 d.234, effective August 21, 1974.
See: 6 N.J.R. 343(c).

Amended by R.1983 d.269, effective July 5, 1983.
See: 15 N.J.R. 662(a), 15 N.J.R. 1095(b).

Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Added text "of solid waste, excluding hazardous waste".
Repeal and New Rule, R.1989 d.216, effective April 17, 1989.

See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
Amended by R.1995 d.205, effective April 17, 1995.

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

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

In (a), inserted reference to thermal destruction facilities and composting facilities; and in (b), added last sentence.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), substantially amended first sentence.

Amended by R.2008 d.117, effective May 5, 2008.

See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

In (a), substituted "Except as provided in N.J.A.C. 7:26H-8.4, the" for "The".

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 in U.S. dollars by certified check, government purchase order or check, or money order, payable to "Treasurer, State of New Jersey", and mailed or hand delivered to the following address unless the Department authorizes some other means of payment:

New Jersey Department of Environmental Protection
Solid and Hazardous Waste Management Program
P.O. Box 414
401 East State Street
Trenton, NJ 08625-0414

(b) The Department may refrain from commencing work on activities related to solid waste transporters and facilities until the Department receives full payment of such fee. If the Department has commenced work on the service, the Department may suspend such work until it receives full payment of such fee.

(c) All compliance monitoring fees shall be paid in U.S. dollars by certified check, government purchase order or check, or money order, payable to "Treasurer, State of New Jersey" and mailed, along with the fee invoice, to the following address:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

Repeal and New Rule, R.1989 d.216, effective April 17, 1989.

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

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

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

Administrative change.

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

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

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

In (a), inserted "in U.S. dollars" and ", government purchase order or check," substituted ", and mailed or hand delivered" for "at the following address," inserted "unless the Department authorizes some other means of payment", and inserted "401 East State Street" in the address; rewrote (b), and added (c).

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration is as follows:

1. Except as provided in (a)2 below, each solid waste facility permittee or rail carrier transfer facility shall pay an annual facility registration update fee of \$6,006. The annual facility registration update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

2. A newly permitted solid waste facility or a new rail transfer facility shall pay an initial facility registration fee of \$6,006, according to the following schedule:

i. The initial facility registration fee for a newly permitted solid waste facility shall be due no later than the first July 1 immediately following the issuance of the permit; and

ii. The initial facility registration fee for a new rail carrier transfer facility shall be due no later than the first July 1 immediately following the Department's receipt of the notification required under N.J.A.C. 7:26-2D.1(b).

(b) Each solid waste facility permittee or rail carrier transfer facility shall pay an annual compliance monitoring services fee as follows:

1. For State fiscal year 2006, each solid waste facility, including newly permitted facilities and rail carrier transfer facilities, shall pay the applicable annual fee listed in the following table for compliance monitoring services. Except for newly permitted facilities and rail transfer facilities, the Department shall bill for these fees in equal quarterly installments, on or about July 15, October 15, January 15 and April 15 of each year. The solid waste facility shall pay each invoice no later than 30 days from the date of the invoice.

Type of Facility	Annual Compliance Monitoring Services Fee for State fiscal year 2006
Sanitary Landfill - operating at 31,200 tons per year (tpy) or more	\$13,695
Sanitary Landfill-operating at less than 31,200 tpy	\$ 6,090
Transfer Stations and Materials Recovery Facilities - operating at 31,200 tpy or more	\$ 9,895
Transfer Stations and Materials Recovery Facilities - operating at less than 31,200 tpy	\$ 7,990
Thermal Destruction Facilities - operating at 9.6 tons per day or more	\$ 6,090
Thermal Destruction Facilities - operating at less than 9.6 tons per day	\$ 2,030
Solid Waste Composting and Co-Composting Facilities	\$ 9,895
Closed Landfills	\$ 665
Landfill Disruption	\$ 540
Research Demonstration & Development/ Certificate of Authority to Operate	\$ 2,535
Rail Carrier Transfer Facility	\$ 9,895

2. The annual compliance monitoring services fee for each State fiscal year after State fiscal year 2006 shall be

annually adjusted pursuant to N.J.A.C. 7:26-4.7. Except for newly permitted facilities and newly permitted rail transfer facilities, the Department shall bill for these fees in equal quarterly installments, on or about July 15, October 15, January 15 and April 15 of each year and the solid waste facility shall pay each invoice no later than 30 days from the date of the invoice.

3. A newly permitted solid waste facility or new rail transfer facility shall pay its first annual compliance monitoring services fee as follows, based on the quarterly beginning dates listed at N.J.A.C. 7:26-4.3(b)1:

i. A newly permitted solid waste facility shall pay its first quarterly installment of the annual compliance monitoring services fee on or before the first quarter immediately following the issuance of the permit.

ii. A new rail carrier transfer facility shall pay its first quarterly installment of the annual compliance monitoring services fee on or before the first quarter immediately following the Department's receipt of the notification required under N.J.A.C. 7:26-2D.1(b).

iii. The Department shall bill for each quarterly installment following the first quarterly installment and these installments shall be payable in accordance with the schedule set forth at (b)1 above.

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:

Class A: small scale thermal destruction facility (as such term is defined at N.J.A.C. 7:26-1.4)

Class B: design capacity greater than 9.6 tons per day

2. Sanitary landfills:

Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

3. Sanitary landfill closure plan submissions:

Closure Plan

Class A: less than 10 acres

Class B: 10 to 30 acres

Class C: more than 30 acres

(d) Each class of solid waste facility set forth in (c) above shall pay the applicable fee for the Department's review of any submission listed in the following table. Each fee must accompany the corresponding submission, and is payable in accordance with N.J.A.C. 7:26-2.4(b) and (c)1vi. If the solid waste facility modifies or amends a submission and the modification or amendment falls into a submission category different from the submission category of the initial submission, the applicable fee for that new category must accompany the modification/amendment if greater than the initial fee submit-

ted. If, however, the new category fee is less than the initial fee submitted, the Department will refund the difference between the fees, minus an adjustment for the amount of work the Department completed. The Department may refrain from commencing work on the service for which a fee is established pursuant to this subsection until the Department receives full payment of such fee. If the Department has commenced work on the service, the Department may suspend such work until it receives full payment of such fee. Where the Department's review of any submission listed in the following table results in the rejection, denial or withdrawal of an application that is the subject of that submission, full payment of the fee in the amount listed below is due and payable at the time of resubmission of the application.

1. Thermal Destruction Facilities

	Class	
	A	B
i. Initial permit	\$83,286	\$271,452
ii. Permit renewal	\$49,355	\$140,661
iii. Major modification to permit	\$22,210	\$ 74,032
iv. Minor modification to permit	\$12,339	\$ 18,508
v. Transfer of ownership of permit	\$12,956	\$ 22,827
vi. Minor technical review	\$ 3,085	\$ 6,169

2. Sanitary Landfill Facilities

	Class		
	A	B	C
i. Initial permit	\$157,131	\$111,737	\$78,566
ii. Permit renewal	\$101,262	\$ 69,836	\$40,156
iii. Major modification to permit	\$ 41,902	\$ 26,538	\$17,808
iv. Minor modification to permit	\$ 15,713	\$ 10,475	\$ 6,984
v. Transfer of ownership of permit	\$ 17,459	\$ 12,338	\$10,825
vi. Minor technical review	\$ 2,095	\$ 1,397	\$698.00

3. Transfer Stations and Materials Recovery Facilities

i. Initial permit	\$138,680
ii. Permit renewal with modification(s)	\$109,047
iii. Permit renewal without modification(s)	\$ 31,141
iv. Major modification to permit	\$ 77,906
v. Minor modification to permit	\$ 11,206
vi. Transfer of ownership of permit with modification(s)	\$109,047
vii. Transfer of ownership of permit without modification(s)	\$ 31,141
viii. Minor technical review	\$ 2,586

4. Closure Plan

	Class		
	A	B	C
i. Initial closure plan approval	\$13,243	\$19,864	\$27,299
ii. Closure plan renewals	\$ 5,808	\$ 8,712	\$11,617
iii. Major modification to approval	\$ 3,485	\$ 5,227	\$ 6,970
iv. Minor modification to approval	\$ 1,162	\$ 2,323	\$ 3,485
v. Transfer of ownership of approval	\$ 2,323	\$ 3,485	\$ 5,227
vi. Minor technical review	\$697.00	\$ 1,394	\$ 2,091
vii. Minor landfill disruption	\$ 855	\$ 855	\$ 855
viii. Major landfill disruption	\$ 4,065	\$ 4,065	\$ 4,065

5. Annual Topographic Map Submissions

i. Engineering design report review	\$ 3,525
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Rule <u>N.J.A.C.</u>	Rule Summary	Base Penalty	Type of Violation	Grace Period (days)
7:26-3A.41(d)	Failure of destination facility or intermediate handler to maintain shipping or tracking form for three years.	\$3,000	M	30
7:26-3A.41(f)	Failure of transporter to provide signed copies of the tracking form to the generator when the destination facility or intermediate facility is an out-of-State facility and will not comply with the tracking from requirements of N.J.A.C. 7:26-3a.41.	\$4,500	NM	
7:26-3A.42	Failure to comply with tracking form discrepancy requirements.	\$3,000	M	30
7:26-3A.43	Failure to comply with recordkeeping requirements.	\$3,000	M	30
7:26-3A.44	Failure of collection facilities, intermediate handlers and/or destination facilities to comply with additional reporting requirements.	\$4,500	NM	
7:26-3A.46	Failure of rail transporter to comply with tracking form requirements.	\$4,500	NM	
7:26-3A.47(a)	Failure to ensure alternative of innovative technology processes and any modifications are approved by the NJDEP and DOH prior to any marketing, sale or use in New Jersey.	\$5,000	NM	
7:26-3A.48(a,b)	Failure of an out-of-State organization using the U.S. Postal Service or other parcel service and disposing of regulated medical waste from New Jersey to comply with certification requirements.	\$4,500	NM	
7:26-3A.48(c)	Failure of a RMW generator to ensure that RMW waste is not sent to any out-of-State facility that does not have a certificate on file with the Department.	\$5,000	NM	

8. The violations of N.J.A.C. 7:26-6, Solid Waste Planning Regulations, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule <u>N.J.A.C.</u>	Rule Summary	Base Penalty	Type of Violation	Grace Period (days)
7:26-6.12(b)	Failure to comply with the applicable district solid waste management plan.	\$4,500	NM	

Administrative Correction in (g)7.

See: 23 N.J.R. 3138(a).

Amended by R.1993 d.5, effective January 4, 1993.

See: 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a)), 25 N.J.R. 98(a).

Reflects amendments to N.J.A.C. 7:26-7.6 and 9.4.

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

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

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

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

In (f)1 and (f)2, amended N.J.A.C. references; in (f)4, amended EX-AMPLE; in (g), amended N.J.A.C. references; and added (g)1 through (g)8.

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

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

In (g)2 table, deleted 7:26-2.13(c)2 and recodified 7:26-2.13(c)3 as 7:26-2.13(c)1; in (g)5 table, added 7:26-3.5(g)2.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (g)2, amended the penalty table.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (g)8, rewrote the Rule Summary table.

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Rewrote (g).

Amended by R.2009 d.52, effective February 2, 2009.

See: 40 N.J.R. 7(a), 41 N.J.R. 742(a).

In the introductory paragraph of (g), deleted "and 7:26A" following "7:26" three times; and deleted (g)9 through (g)14.

Case Notes

Summary proceedings to enforce agency orders, action brought for alleged violations of Pesticide Control Act. State, Dept. of Environmental Protection v. Larchmont Farms, Inc., 266 N.J.Super. 16, 628 A.2d 761 (A.D.1993), certification denied 135 N.J. 302, 639 A.2d 301.

Administrative hearings concerning collection of penalties were not provided for in Solid Waste Management Act; violator is entitled to collection hearing in Superior Court on due process basis, though not to a preliminary Departmental administrative hearing. Bordentown Twp. Bd. of Health v. Interstate Waste Removal Co., Inc., 191 N.J.Super. 128, 465 A.2d 587 (Law Div.1983).

Hazardous waste generator's failure to respond to discovery request supported dismissal of generator's appeal from penalty assessment. New Jersey Department of Environmental Protection v. Oil Transfer Company, 96 N.J.A.R.2d (EPE) 360.

Failure to remove hazardous waste from manufacturing site within time allowed by Solid Waste Management Law mandates penalty even if violation was unintentional. DEPE v. Plasti-Glas Molded Products, Inc., 96 N.J.A.R.2d (EPE) 135.

Corporate successor to hazardous waste facility was strictly liable for failing to test holding tanks. Department of Environmental Protection v. Warner, 95 N.J.A.R.2d (EPE) 245.

Each shipment of hazardous waste constituted separate violation of regulations governing manifesting and disposing of hazardous waste. Department of Environmental Protection v. Rollins Environmental Services, Inc., 92 N.J.A.R.2d (EPE) 13.

7:26-5.5 Civil administrative penalty determination

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26-5.4 when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26-5.4 would be too low to provide a sufficient deterrent effect as required by the Act; or

2. The violation is not listed under N.J.A.C. 7:26-5.4.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other op-

erating authority issued, any district solid waste management plan approved, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the midpoint of the following ranges as follows:

1. A violation that meets the criteria at (f)1i through iii below and the criteria at N.J.A.C. 7:26-5.10(c)1 through 5 is minor. Such a minor violation shall be subject to a grace period of 30 days if the violation meets the criteria at (f)1i through iii below and N.J.A.C. 7:26-5.10. If compliance is not achieved in the required time period, the violator shall be subject to a \$3,000 penalty, to be assessed in accordance with the procedures set forth at N.J.A.C. 7:26-5.10.

i. The violation poses minimal risk to the public health, safety and natural resources;

ii. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

iii. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

2. A violation that does not meet the criteria set forth in (f)1 above is non-minor and the penalty shall be assessed at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

		SERIOUSNESS		
		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
CONDUCT	Major	\$40,000- \$50,000	\$30,000- \$40,000	\$15,000- \$25,000
	Moderate	\$30,000- \$40,000	\$10,000- \$20,000	\$3,000- \$6,000
	Minor	\$15,000- \$25,000	\$3,000- \$6,000	N/A*

*N/A means not applicable.

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

1. Major seriousness shall apply to any violation which:

(i) The Department may adjust the amount determined pursuant to (f), (g) and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (f) above, on the basis of the following factors:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

1. The compliance history of the violator;

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

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

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

5. Other specific circumstances of the violator or the violation.

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

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

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

Rewrote (a); in (b), (c), and (g), deleted reference to Part A permit application; in (f), deleted N.J.A.C. references; and rewrote (i)2 through (i)4.

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Rewrote (f).

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).

Penalties for unpermitted recycling and solid waste disposal activities affirmed. *NJDEPE v. Cardell, Inc.*, 96 N.J.A.R.2d (EPE) 9.

Initial Decision (2008 N.J. AGEN LEXIS 119) adopted, which found that a \$40,000 penalty was properly assessed against respondents for operating a solid waste facility without a permit where a DEP inspector had been to the site on multiple occasions and had observed composting activity, compost storage on bare ground, and commingled construction debris that was not source separated at other construction sites. The respondents' "conduct" was determined to be major because it was willful, while the "seriousness" factor was evaluated as moderate because it substantially deviated from the regulatory scheme. The matrix yielded a penalty of between \$30,000 and \$40,000, and the Department assessed at the top of the range based on respondents' negative compliance history. *N.J. Dep't of Env'tl. Prot. v. A. Montone Construction, OAL Dkt. No. ESW 10090-2005S*, 2007 N.J. AGEN LEXIS 1037, Final Decision (April 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 693) adopted, which concluded that a penalty of \$700,000 for respondent solid waste transfer station's numerous violations of the Solid Waste Management Act was not unreasonable, excessive, or inequitable. The respondent's activities or violations spanned over 20 dates during a two-year period; they increased in number, rather than decreased, as time progressed; many of the violations were repeated throughout the period; the respondent's poor operation exposed the environment, its employees, and area residents to potential rodent problems, odor, unsafe air particulates, and unmanaged leachate; and, notwithstanding the risks to the site and the neighborhood, DEP minimized the penalty by only asserting it on a daily basis rather than on a per violation basis. *Dep't of Env'tl. Prot. v. Magic Disposal, Inc.*, OAL Dkt. No. ESW 4763-05, 2007 N.J. AGEN LEXIS 981, Final Decision (November 23, 2007).

Where respondent had, over time, deposited substantial quantities of solid waste, particularly construction and demolition debris, on his property without requisite permits, the conduct and seriousness of the offense appeared to have been calculated appropriately as "major" under the penalty matrix; the conduct from all appearances was willful and had the potential to impact groundwater, and a penalty of \$45,000 was appropriate. *N.J. Dep't of Env'tl. Prot. v. White*, OAL Dkt. No. ESW 8271-05, 2006 N.J. AGEN LEXIS 419, Initial Decision (June 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 17) adopted and modified on other grounds, which found that a registered solid waste hauler's violation of operating a solid waste facility without obtaining a solid waste facility permit under N.J.A.C. 7:26-2.8(f), although of minor seriousness, justified a \$25,000 fine, taking into account the hauler's experience in the business, familiarity with the solid waste rules, and previous violations, including a penalty of \$197,250 recently upheld by the Appellate Division. *N.J. Dep't of Env'tl. Prot. v. Circle Carting, Inc.*, OAL Dkt. No. ESW 05939-03, 2006 N.J. AGEN LEXIS 227, Final Decision (February 21, 2006).

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 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 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 nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
 - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
 - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

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

In (a), deleted reference to Part A permit application and rewrote (d)2 through (d)4.

Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added (e).

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).

Applicant's failure to disclose prior criminal record in application for approval as solid waste transporter justifies civil administrative penalty. *NJDEP v. Martinez*, 96 N.J.A.R.2d (EPE) 121.

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 midpoint 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 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 nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
 - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
 - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Rewrote (d)2 through (d)4.
Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
Added (e).

Case Notes

Where the operator of a solid waste facility admitted that he excluded one of two inspectors who appeared at his facility to conduct an inspection, his motive for doing so was irrelevant and the operator was properly assessed a fine of \$25,000. Unfettered access by inspectors was crucial to effective enforcement and oversight of a highly regulated industry and operators did not have the power to choose their inspectors by dictating to the Department of Environmental Protection who would be allowed on their property. N.J. Dep't. of Env'tl. Prot. v. Mazza, OAL Dkt. No. ESA 2063-07, 2009 N.J. AGEN LEXIS 846, Final Decision (April 9, 2009), aff'd per curiam, No. A-4311-08T3, 2010 N.J. Super. Unpub. LEXIS 1450 (App.Div. June 28, 2010).

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 oper-

ating authority issued, any district solid waste management plan approved pursuant to the Act.

(b) To assess a civil administrative penalty pursuant to this section:

1. The Department shall identify the civil administrative base penalty pursuant to (c) below; and
2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (d) below.

(c) The base penalty shall be as follows:

1. An amount equal to one-half of the unpaid fee or \$100.00, whichever is greater, for nonpayment of a fee due in any calendar year; or
2. An amount equal to the unpaid fee or \$250.00 whichever is greater, for the nonpayment of a second fee due in the same calendar year as that in (c)1 above; or
3. An amount equal to the twice the unpaid fee or \$500.00, whichever is greater for the nonpayment of a third fee due in the same calendar year as that in (c)1 or 2 above.

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

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

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

In (a), deleted reference to Part A permit application; rewrote (b) and (c); and added (d).
Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
Added (e).

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, 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 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.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Deleted reference to Part A permit application.

7:26-5.10 Grace period applicability; procedures

(a) Each violation identified in the penalty tables at N.J.A.C. 7:26-5.4(g) by an "M" in the Type of Violation column and each violation that is determined to be minor under N.J.A.C. 7:26-5.5(f)1, for which the conditions at (c) below are satisfied, is a minor violation, and is subject to a grace period, the length of which (in days) is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty tables at N.J.A.C. 7:26-5.4(g) by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department or local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;
3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and
5. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:
 - i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and
 - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation, and in addition, shall not consider the minor violation for purposes of calculating the "severity penalty component" under N.J.A.C. 7:26-5.4(f).

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26-2.4(e) or 7:26A-3.2(b), and signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance, and shall be certified in accordance with N.J.A.C. 7:26-2.4(e) or 7:26A-3.2(b). The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

New Rule, R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Former N.J.A.C. 7:26-5.10, Severability, recodified to N.J.A.C. 7:26-5.11.

7:26-5.11 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.

Recodified from N.J.A.C. 7:26-5.10 by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

SUBCHAPTER 6. SOLID WASTE PLANNING REGULATIONS

Law Review and Journal Commentaries

EBB and Flow of Solid Waste. T. Kevin Sheehy, 141 N.J.L.J. 46 (1991).

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

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

An injunction prohibiting enforcement of New Jersey's solid waste flow control statutes, which favored the designation of in-state waste facilities for disposal of locally generated solid waste in violation of the Commerce Clause, prohibited the state department of environmental protection from enforcing any solid waste management plan which required waste to be directed to in-state facility designated without participation of out-of-state competitors. *Union County Utilities Authority v. Bergen County Utilities Authority*, 995 F.Supp. 506 (D.N.J.1998).

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.

Although not ultra vires, an amendment to a county's solid waste management plan and a redirection order implementing the amendment, which was issued by the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) and which required the county's non-municipal waste to be processed and shipped out of state, were not validly adopted because the amendment was not enacted in accordance with proscribed procedures. The DEP and the BPU failed to proceed with formal notice and comment and hold open hearings on the amendment in conformity with the rulemaking procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, as required by the DEP's own rules, former N.J.A.C. 7:26-6.6. In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).

In a challenge to an amendment to a county's solid waste management plan, the appellate court rejected the argument of the Department of Environmental Protection (DEP) that because its adoption of the rulemaking requirements of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, was itself discretionary, the DEP was free to disregard its own rules of procedure, former N.J.A.C. 7:26-6.6, which adopted the APA requirements. Under N.J.S.A. 52:14B-2, an agency's decision to abandon or modify its own procedural regulations had to be accomplished through rulemaking. In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).

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

Pursuant to the Solid Waste Management Act, the Department is charged with developing procedures to assure the orderly preparation of a solid waste management plan for every solid waste management district and the approval, modification, or rejection of such a solid waste management plan, and the certification of the determinations to the board of chosen freeholders or the Hackensack Meadowlands Development Commission, as the case may be, which submitted such plan. This subchapter sets forth the rules to conduct these tasks.

Amended by R.1993 d.508, effective October 18, 1993.
See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

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

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

Readopted provisions of Emergency Amendment R.1997 d.404 without change.

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

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

Rewrote section.

7:26-6.3 Types of wastes 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 liquids 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 nonhazardous 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. 7:26G, 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. 7:26G-5 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. 7:26G-5. The operator shall submit the analysis performed in accordance with the approved sampling to the Division of Solid and Hazardous Waste 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 and Hazardous Waste
PO Box 414
Trenton, NJ 08625-0414
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, Class B recyclable material, Class C recyclable material and Class D 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. 7:26G-5; and

8. Non-residentially generated chemically treated wood, such as wood treated with creosote, pentachlorophenol (PCP) or chromated copper arsenate (CCA), or scrap tires that are destined for incineration and/or energy recovery provided that the following conditions are met:

i. The chemically treated wood or scrap tires are separated at the point of generation from other solid waste;

ii. The chemically treated wood or scrap tires transported for incineration and energy recovery are transported by a solid waste transporter licensed under N.J.A.C. 7:26-3, 16 and 16A. Transporters delivering chemically treated wood scrap or scrap tires to an out-of-State power generating incinerator pursuant to (a)8iv(1) below shall submit a tonnage report to the Department at the address specified at (a)8v below by March 1 of each year for the prior calendar year that specifies the total amount of material received, in tons, from New Jersey sources;

iii. Each load of chemically treated wood or scrap tires is accompanied by the waste origin/waste disposal form satisfying the requirements of N.J.A.C. 7:26-2.13(c); and

iv. The chemically treated wood or scrap tires are delivered to one or both of the following:

(1) An out-of-State power generating incinerator authorized or permitted by the receiving state to accept such materials for utilization as fuel; or

(2) An in-State power generating incinerator, including a resource recovery facility, that is approved by the Department to accept such materials for utilization as fuel subject to a review of the facility's operating permit, incoming materials specifications and written narrative explanation of operation. An in-state resource recovery facility that accepts chemically treated wood or scrap tires shall obtain an approved tariff for the receipt of these materials pursuant to N.J.A.C. 7:26H-5 and modify its solid waste facility permit pursuant to N.J.A.C. 7:26-2.6. Each approved in-state power generating facility, with the exception of an in-state resource recovery facility which must report such activity in its facility monthly volume report pursuant to N.J.A.C. 7:26-2.13, shall submit a tonnage report specifying the total amount of chemically treated wood or scrap tires received, in tons, from New Jersey sources, to the Department at the address specified at (a)8v below by March 1 of each year for the prior calendar year.

v. Applications for approval and annual tonnage reports shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
PO Box 414
Trenton, N.J. 08625-0414

Public Notice: Notice of receipt of petition for rulemaking.
See: 23 N.J.R. 2187(c).

Action on Petition for Rulemaking: Amend Type 27 waste which exempts certain classes of waste from interdistrict and intradistrict waste flow orders.

See: 23 N.J.R. 2428(b).

Amended by R.1993 d.27, effective January 4, 1993.

See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

If certain conditions are met, exempts the residue from the operation of scrap metal shredding facilities from the waste flow rules.

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

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

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

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

Added (a)8 and 9.

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

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

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

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

In (a)5ii and (a)7, amended N.J.A.C. references; in (a)6, inserted reference to Class C and Class D materials; and added (a) 8.

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

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

Deleted (a)9. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

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

Law Review and Journal Commentaries

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

7:26-6.4 Informational requirements

Any person registered with the Department for the collection, transportation, and/or disposal of solid wastes affected by this subchapter shall, upon request by the Department, submit, in such form as the Department may deem appropriate, information concerning the sources of wastes collected, and his/her transportation and disposal patterns.

7:26-6.5 (Reserved)

As amended, R.1984, d.4, effective January 17, 1984.

See: 15 N.J.R. 1914(a), 16 N.J.R. 134(a).

(k) substantially amended; (o)11 revised; (p)9-13 added; (v) substantially amended.

As amended, R.1984 d.41, effective February 21, 1984.

See: 15 N.J.R. 1417(a), 16 N.J.R. 367(c).

(m)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)11i (l)1 substantially revised.

As amended, R.1984 d.475, effective October 15, 1984.

See: 16 N.J.R. 1149(a), 16 N.J.R. 2808(a).

Substantially amended.

Amended by R.1985 d.317, effective June 17, 1985.

See: 17 N.J.R. 517(b), 17 N.J.R. 1560(a).

(a)8iii added.

Amended by R.1985 d.503, effective October 7, 1985.

See: 15 N.J.R. 517(a), 17 N.J.R. 2388(a).

(k)3 added. This amendment was adopted jointly with the Board of Public Utilities.

Amended by R.1986 d.159, effective May 5, 1986.

See: 17 N.J.R. 2590(a), 18 N.J.R. 983(b).

(p)5i and (p)6i-ii added.

Amended by R.1986 d.164, effective May 5, 1986.

See: 17 N.J.R. 2591(a), 18 N.J.R. 983(c).

Deleted old (d)3 through (d)8 and inserted new (d)3-5.

Amended by R.1987 d.71, effective January 20, 1987.

See: 18 N.J.R. 2171(a), 19 N.J.R. 202(a).

(c) substantially amended.

Amended by R.1987 d.72, effective January 20, 1987.

See: 18 N.J.R. 1773(a), 19 N.J.R. 202(b).

(d) substantially amended.

Amended by R.1988 d.357, effective August 1, 1988.

See: 19 N.J.R. 1142(a), 20 N.J.R. 1910(a).

The amendments to this section were jointly adopted with Public Utilities. The section was substantially amended.

Amended by R.1989 d.308, effective June 5, 1989.

See: 20 N.J.R. 1048(a), 21 N.J.R. 1558(a).

The amendments were jointly adopted with the Board of Public Utilities. Essex County solid waste redirected from HMDC 1-C landfill to 3 transfer stations for processing and transfer to out-of-state facilities.

Amended by R.1990 d.324, effective July 2, 1990.

See: 21 N.J.R. 1486(a), 22 N.J.R. 2005(b).

All Bergen County solid waste, except type 10, directed to facility 0239E1SP01.

Amended by R.1991 d.113, effective March 4, 1991.

See: 22 N.J.R. 284(a), 23 N.J.R. 719(a).

The amendments to this section were jointly adopted with the Board of Public Utilities.

Gloucester City added to waste flow list in (d)1. Designated out-of-state facility deleted by name in (d)1, new (d)4i and (d)5. Added new (d)3, redesignated existing (d)3 as (d)4. Recodified (d)4 as (d)5. Replaced (d)5 and (d)6. Added (d)7. Added (g)6. Repealed (h)1-5 and added new (h)1. Recodified and amended (h)6 to (h)2; (h)6i repealed and added new (h)3. Deleted (t)1 through 8. Recodified (t)9 as (t)1. Added (t)1ii. Deleted (t)10 through 14. Added (t)2. Amended by R.1993 d.109, effective March 1, 1993.

See: 24 N.J.R. 3291(a), 25 N.J.R. 991(a).

Waste flows updated and simplified for all counties; amendments adopted solely by DEPE, in accordance with Executive Order No. 38(1991) Reorganization Plan 002(1991).

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "District waste flow planning requirements and disposal facility designations".

7:26-6.6 (Reserved)

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

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

Substantially amended (b); in (c), inserted reference to plan amendment, deleted (d), relating to submission of recommendations; and recodified former (e) as (d).

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Procedure for modification of waste flows pursuant to an amendment to a District Solid Waste Management Plan".

7:26-6.7 (Reserved)

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

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

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Procedure for emergency direction or redirection of solid waste flow".

7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A-1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and non-ferrous metal remaining after the shredding process; and

2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

New Rule, R.1993 d.27, effective January 4, 1993.

See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

7:26-6.9 (Reserved)

New Rule, R.1993 d.508, effective October 18, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Transporting solid waste between solid waste districts and out-of-State".

7:26-6.10 Modifications to district solid waste management plans; plan amendments

(a) Each plan amendment to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a plan amendment means a modification to the district solid waste management plan, which, if implemented, would have a significant impact on the environment, property rights, public and private funds or the overall solid waste management system. A plan amendment includes, but is not limited to, the following:

1. An interdistrict agreement between two or more districts for the purpose of managing solid waste and/or recyclables on a regional basis;

2. The designation of an in-district weighing facility(ies), if a district chooses. If a district chooses to impose a weighing requirement in order to collect any fees or charges for ensuring the payment of outstanding debt and other fee obligations, the district shall submit, within 180 days, an alternative means of collecting such fees or charges which does not rely on in-district weighing. Following submission of said plan, districts may continue to collect any fees or charges through in-district weighing pending the Department's review of the alternative method of collecting fees or charges.

3. A solid waste disposal contract entered into by the district or authority;

4. The deletion of a solid waste facility other than those listed at N.J.A.C. 7:26-6.11(b)7;

5. The identification of new or a change in the identity of existing designated plan implementation agency or agencies;

6. The method of financing solid waste management in the district, including any mechanism to be instituted by the district for ensuring the payment of outstanding debt and other financial obligations;

7. The inclusion of new facilities, including landfills, resource recovery facilities, transfer stations, materials recovery facilities, solid waste and co-composting facilities, recycling facilities for Class B (except those described at N.J.A.C. 7:26A-1.4(a) or 3.7(a)), Class C (except those identified at N.J.A.C. 7:26A-1.4(a)14) and Class D materials, permanent household hazardous waste collection sites, and new regulated medical waste treatment, processing and disposal facilities;

8. An increase in the amount of material received during a 24 hour period at an existing permitted solid waste facility greater than 100 tons per day.

9. A modification to any district solid waste and recycling policy and/or program, including, but not limited to, short and long-term disposal strategies, methods for achieving designated recycling goals and blanket facility inclusion policies;

10. Any increase in the solid waste disposal capacity of an existing permitted landfill other than that specified at N.J.A.C. 7:26-6.11(b)10; and

11. Any modification to the solid waste management plan as may be identified by the Department.

(c) Upon the development of a solid waste plan amendment, a board of chosen freeholders or the Hackensack Meadowlands Development Commission shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment.

1. The designated plan implementation agency shall publish notice of a public hearing concerning the plan amendment in a newspaper of general circulation in the county or district once each week for two consecutive weeks, the second publication date being not less than 10 calendar days prior to the public hearing date. For the purposes of determining weekly publication, Sunday is considered the first day of the week, in conformance with N.J.S.A. 13:1E-23.

2. The notice of the public hearing concerning the plan amendment shall provide a detailed description of the plan amendment and, at a minimum, contain the following information:

- i. The date, time and place of the public hearing;
- ii. The name and address of the district solid waste coordinator;
- iii. When and where the plan amendment can be reviewed; and
- iv. In the case of a facility, a description and the site location, by municipality, street address, lot and block number, the proposed or expanded capacity and the waste types which will be received.

(d) The board of chosen freeholders or the New Jersey Meadowlands Commission shall submit to the Department a complete plan amendment which shall include the following:

1. One copy of the adopting ordinance or resolution;
2. Twenty copies of the plan amendment;
3. One copy of the public hearing transcript and any substantive comments submitted to the county or district or designated plan implementation agency prior to the close of any stated comment period;
4. One copy of the public notice accompanied by an affidavit of publication issued by the publishing newspaper; and
5. For any plan amendment which proposes to incorporate a facility site, 20 copies of an 8½ inch x 11 inch tax map identifying the location of the site, the street address, and the lot and block numbers.

(e) The plan amendment in (d) above shall be submitted to:

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

(f) Upon receipt of a plan amendment submitted pursuant to (d) and (e) above, the Department shall review the plan amendment for completeness. Within 10 working days of receipt of the plan amendment, the Department shall notify, in writing, the entity that submitted the plan amendment whether the plan amendment is complete or incomplete.

(g) The Department shall submit a copy of a complete plan amendment to the Advisory Council on Solid Waste Management in the department, and to the agencies, bureaus and divisions in the Department identified at N.J.S.A. 13:1E-23 for review and recommendations.

(h) Upon review of the plan amendment and upon receipt of recommendations provided pursuant to (g) above, the Department shall approve, modify, or reject a plan amendment within 150 calendar days of receipt of a complete plan amendment and shall certify such determination to the board of chosen freeholders or to the Hackensack Meadowlands Commission. If the Department takes no action on a complete plan amendment within 150 calendar days, the plan amendment shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Emergency Amendment, by R.1997 d.404, effective September 2, 1997
 (to expire November 1, 1997).
 See: 29 N.J.R. 4170(a).

Rewrote (b)2; and in (b)6, inserted reference to mechanism for ensuring payment of obligations.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.

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

Administrative change.

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

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

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

Rewrote (b)7; in (h), substituted "(g)" for "(f)" and inserted "calendar" following "150" throughout.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added new (b)10; recodified former (h)10 as (b)11; substantially amended (d)3.

7:26-6.11 Administrative actions concerning a district solid waste management plan

(a) Each administrative action taken relative to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a solid waste management plan administrative action includes, but is not limited to, the following:

1. The use of Resource Recovery Investment Tax (RRIT) grant moneys and/or the development of the associated disbursement schedules;

2. The designation of or change to prior approved truck routes to or from solid waste facilities;

3. The inclusion of new recycling facilities for processing Class A or Class C recyclable materials (as identified at N.J.A.C. 7:26A-1.4(a)14), or replacement units at existing regulated medical waste facilities;

i. The inclusion and/or expansion of recycling and compost facilities shall be, at the discretion of the district, subject to any previous blanket inclusion policies approved by the Department and shall be undertaken by the district in accordance with the approved district solid waste management plan. This paragraph is intended to supplement and not replace any previously approved blanket inclusion policy for a district.

ii. Any blanket inclusion amendment approved by the Department shall contain a provision requiring, among other things, notification to the public as to the location for the receipt of written comments and the starting and ending dates for the written comment period.

4. The expansion of capacity of any size, other than that specified at N.J.A.C. 7:26-6.10(b)8 and 10, for any regulated solid waste facility. Only one capacity increase over the operational life of the regulated solid waste facility may be accomplished via administrative action.

5. The modification of an existing facility including acceptance of additional waste types, on-site operational changes and expansions of facility buffer zones or expansions into buffer zones for ancillary operational activities;

6. The modification of a recycling program, including the designation of additional materials for recycling, procurement strategies, market strategies, public education, private incentive programs, waste audit strategies, yard waste programs, per container programs, and enforcement strategies;

7. The deletion of any facility which is included in the plan for more than two years but for which a complete permit application has not been made, or the deletion of any facility which is included in the plan but has not been in operation for more than two years;

8. Unless specifically noted by the Department within a plan certification document, any information collected and/or submitted by the district plan implementation agency, including, but not limited to, solid waste studies, reports, data collection, compost inventories, and weekly waste averaging (when the daily rate has already been included in the plan);

9. The reaffirmation of an existing district solid waste disposal strategy subsequent to the final disposition of the *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, Civil Action No. 93-cv-02669 (D.N.J. May 1, 1997) case, provided that the plan implementation agency has held a public hearing on such reaffirmation for the purpose of receiving comments from persons interested in or affected by the amendment. Notice of such hearing shall be published in newspapers of general circulation in the district not less than 10 calendar days prior to the hearing and shall include the information set forth in N.J.A.C. 7:26-6.10(c)2;

10. Any increase in the solid waste disposal capacity of an existing permitted landfill which is less than or equal to the volume equivalent of the acceptance of an additional 100 tons per day of solid waste over the smaller of 10 years or the remaining life of the existing permitted landfill. Such capacity increase may only be done via administrative action if the facility has signed a Silver Track II for Landfills Covenant with the Department. Additionally, only one capacity increase over the operational life of the permitted landfill may be accomplished via administrative action; and

11. The operation of a solid waste intermodal container facility;

12. The operation of a commercial collection facility for medical waste;

13. The operation of a RD & D project pursuant to N.J.A.C. 7:26-1.7;

14. Any other administrative action as may be identified by the Department.

(c) Nothing contained in this section shall be construed to subrogate the district solid waste management planning process. The board of chosen freeholders or the Hackensack Meadowlands Development Commission, in its discretion, may hold a public hearing prior to the adoption of any administrative district solid waste plan action.

(d) The board of chosen freeholders or the New Jersey Meadowlands Commission or the designated implementation agency of the affected district shall submit to the Department a letter that describes in detail the administrative action to be taken relative to the district solid waste management program.

1. The letter concerning the administrative action shall be submitted to the address at N.J.A.C. 7:26-6.10(e).

(e) Upon receipt of a letter describing the administrative action, submitted pursuant to (d) above, the Department shall review the information provided. Within 10 working days of receipt of the letter, the Department shall notify, in writing, the entity that submitted the letter concerning the administrative action of its receipt of such letter.

(f) The Department shall approve, modify or reject an administrative action within 30 working days of receipt of the letter describing the administrative action pursuant to (d) above, unless it determines that the described action is subject to the requirements for a solid waste management plan amendment pursuant to N.J.A.C. 7:26-6.10. In the event the Department fails to respond to a letter concerning an administrative action within the 30 day period, the administrative action shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).
See: 29 N.J.R. 4170(a).

Inserted new (b)9 and recodified former (b)9 as (b)10.
Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.
See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Rewrote section.
Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b)4, in first sentence added "and (b)10" after "7:26-6.10(a)8", and added second sentence; added new (b)10; recodified former (b)10 through 13 as (b)11 through 14; amended N.J.A.C. reference in (d)1.

7:26-6.12 Compliance with district solid waste management plan

(a) Any contract or renewed contract for solid waste collection and/or disposal which is inconsistent with an amendment or approved administrative action to the applicable solid waste management plan, and which was executed prior to the approval of such amendment or approved administrative action and subsequent to December 16, 1996, and which is for a term in excess of one year, shall be renegotiated in order to bring such contract into conformance with the provisions of the amended solid waste management plan and this chapter.

1. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract or a renewed contract as described in this subsection shall be deemed to be in violation of the Act and this chapter and of the district solid waste management plan if such renegotiation is not completed

within 90 calendar days of the effective date of this amendment or approved administrative action, unless such solid waste collection operation or disposal facility applies to the Department, and obtains, for good cause shown, an extension of time to complete such renegotiation.

(b) All solid waste facility operators and transporters registered with the Department shall operate in compliance with the applicable district solid waste management plan as well as any amendments to and/or approved administrative actions concerning such plan. Any facility operator or transporter who fails to comply with the applicable solid waste management plan as well as any amendment to or approved administrative actions concerning such plan shall be deemed to be in violation of the Act and this chapter and shall be subject to the applicable penalties provided under the Act and this chapter, and any other applicable law or regulation.

New Rule, R.1996 d.578, effective December 16, 1996.

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

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

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

In (a), substituted "December 16, 1996" for "the effective date of this chapter"; in (a)1, inserted "calendar" following "90".

SUBCHAPTERS 7 THROUGH 14. (RESERVED)

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

7:26-14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. Additionally P.L. 1985, c.335 appropriated to the Resource Recovery and Solid Waste Disposal Facility Fund \$50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction and operation of resource recovery facilities and environmentally sound sanitary landfill facilities or other approved solid waste facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985 c.330, c.331 and c.335 after June 20, 1988, shall be in accordance with this subchapter.

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

Loan usage amended to include operation of specified facilities; and deleted provision relating to conforming specified loan agreements to N.J.A.C. rule.

7:26-14A.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:26-14A.3 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;
2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing and operating resource recovery facilities and environmentally sound sanitary landfill facilities and other approved solid waste facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;
3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and
6. To establish accounting procedures for the administration of loans.

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

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

(a)2 amended to include operation of specified facilities.

7:26-14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

"1985 Act" means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335.

"Approved solid waste facility" means and includes the plants and structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any local government unit, including materials recovery facilities, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal and/or recovery of solid waste.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the Commissioner's designee;

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid and Hazardous Waste in the Department.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

"Escrow account" means the account established with the escrow bank or the Department for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Loan project officer" means, with respect to the local government unit or the State, the person designated to communicate, negotiate and receive all notices and communications relating to the loan agreement or the project.

“Local government unit” means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

“Project” means any work relating to the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility or an approved solid waste facility by a local government unit.

“Project cost” means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;
2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use

in connection with any project authorized by the 1985 Act, including any rights or interests therein;

3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;

4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;

5. The issuance of bonds, or any interest or discount thereon;

6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary 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, non-processable 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.

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

Added “approved solid waste facility” and “loan project officer”; and amended “commissioner”, “division” “escrow account”, and “project”.

7:26-14A.5 Eligibility for project loans

(a) Any local government unit is eligible to receive a loan for a resource recovery facility, environmentally sound sanitary landfill facility or other approved solid waste facility from the Fund. 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, com-

posting, 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.

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

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

In (a), deleted reference to loan application eligibility and satisfactory completion of applications, and inserted other approved facilities reference; deleted (c), relating to projects with pre-approval.

7:26-14A.6 Application procedures

(a) No loan shall be awarded until an appropriation is made by the Legislature for the project to be financed. Upon receipt of notice from the Legislature that an appropriation has been made, the Department shall transmit a non-governmental use determination questionnaire (questionnaire) to the local government unit for which an appropriation was made.

(b) Each questionnaire shall be submitted to the Department on forms available from the Department for that purpose.

(c) Each questionnaire submitted to the Department shall include the following information:

1. The name, address and description of the project or facility;
2. A list of the individuals or entities with an ownership interest in the project of facility, including the percentage of the facility owned by such individual or entity;
3. A description of the function performed and/or the contributions made by such individuals and entities on behalf of the project or facility; and
4. A detailed summary of the proposed project or facility, including the estimated costs of each phase of such project of facility.

(d) Questionnaires 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 loan 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.

(e) All questionnaires shall be submitted to:

Department of Environmental Protection
Division of Solid and Hazardous Waste
CN 414
Trenton, New Jersey 08625-0414

Repeal and New Rule, R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Section was "Preapplication procedures".

7:26-14A.7 Use and disclosure of information

All questionnaires and other submissions, when received by the Department, are public records pursuant to N.J.S.A. 47:1A-1 et seq. The Department 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.

Recodified from 7:26-14A.8 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Substituted "questionnaires" for "loan applications". Section was "Application procedures".

7:26-14A.8 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. Loan amounts shall be established and appropriated by the Legislature of the State of New Jersey.

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 and/or the operation of resource recovery facilities and/or environmentally sound sanitary landfill facilities and/or other approved solid waste 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 and/or other approved solid waste 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.

iv. Loan proceeds may be used to pay any operation and maintenance costs after project completion as well as the costs of any debt service associated with the development, construction or operation of the project.

3. The interest rate on the loans 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 not more than 23 years from the date the funds are delivered to the escrow agent by the Department. Repayment shall begin no later than the fourth year of the loan maturity period or one year following the initiation of 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. Partial repayment shall be applied on a pro rata basis to reduce all subsequent payments.

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 a monthly financial activity report to the Department which includes a disbursement report for the previous month, an expenditure report which identifies the specific uses of loan funds and, where applicable, 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 Department loan project officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the use of loan funds 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;
7. Unforeseen expenses; and
8. Less than anticipated revenues;

(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.

Recodified from 7:26-14A.11 and amended by R.1996 d.578, effective December 16, 1996.

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

Inserted (a)1; (a)2i and (a)2ii amended to include operation of specified facilities, added (a)2iv; in (a)3, deleted reference to proposed loans; in (a)4, amended loan maturity date and repayment start date, and added partial payment provision; in (b)6, amended reporting period and added expenditure report requirement; and added (c)7 and (c)8. Former section was recodified to N.J.A.C. 7:26-14A.7.

7:26-14A.9 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) The escrow agent shall certify that all disbursements from the account will be made strictly in accordance with the escrow agreement, the loan agreement and this subchapter. The form of certification shall be subject to Department approval and shall be attached to the loan agreement and be made a part thereof.

(c) The borrower shall submit a requisition to the escrow agent which sets forth the amount of the requested disbursement and the purposes for which the money to be used. The borrower shall certify that the money requisitioned will be used in accordance with the loan agreement and this subchapter. The requisition and certification shall be signed by the individual vested with such authority by the local government unit. The form of requisition and certification shall be subject to Department approval and shall be attached to the loan agreement and made a part thereof.

(d) through (g) (Reserved)

(h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within one year 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.

Recodified from 7:26-14A.12 and amended by R.1996 d.578, effective December 16, 1996.

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

Inserted (b) and (c); and in (h), amended nonrequisition period from one year. Section was "Criteria for project loan priority".

7:26-14A.10 Loan agreement

(a) The Department may impose conditions precedent as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the 1980 and 1985 Acts 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 loan agreement shall set forth the terms and conditions of the loan, which may include, but not be limited to, as applicable: a description of the project, including an estimate of all expenses to be funded, escrow agent requirements, and the approved commencement and completion dates for the project or major phases thereof.

1. The borrower shall execute 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.

Recodified from 7:26-14A.14 and amended by R.1996 d.578, effective December 16, 1996.

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

Rewrote introductory paragraph of (b). Section was "Determination by the Department".

7:26-14A.11 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 or future loans. The Department shall not in any way be held responsible for the borrower's use of loan funds.

(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.

Recodified from 7:26-14A.15 and amended by R.1996 d.578, effective December 16, 1996.

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

Substituted reference to future loans and to use of loan funds for reference to cost overruns. Former section recodified to N.J.A.C. 7:26-14A.8.

7:26-14A.12 Repaid funds

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 or other approved solid waste facility projects in accordance with P.L. 1985, c.330.

Recodified from 7:26-14A.16 and amended by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.9.

7:26-14A.13 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 and Hazardous Waste 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.

Recodified from 7:26-14A.17 and amended by R.1996 d.578, effective December 16, 1996.

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

Section was "State share of the project cost".

7:26-14A.14 Administration and performance of loan

The borrower bears primary responsibility for the administration and use of loan proceeds. 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.

Recodified from 7:26-14A.18 and amended by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.10.

7:26-14A.15 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 use of loan funds. 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.

Recodified from 7:26-14A.19 and amended by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.11.

7:26-14A.16 Assignment

The rights and obligations of the parties to the loan agreement shall not be assigned.

Recodified from 7:26-14A.20 by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.12.

7:26-14A.17 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.

Recodified from 7:26-14A.21 by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.13.

7:26-14A.18 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. 7:1D-2.

(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. 7:1D-2.2.

(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. 7:1D-2, 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. 7:1D-2, 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. 7:1D-2, may suspend or debar any such person, or take such action as may be appropriate.

Recodified from 7:26-14A.22 by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.14.

Administrative change.

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

7:26-14A.19 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.

Recodified from 7:26-14A.23 by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.15.

7:26-14A.20 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. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty as set forth at N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

Recodified from 7:26-14A.24 and amended by R.1996 d.578, effective December 16, 1996.

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

Added last sentence in certification statement. Former section recodified to N.J.A.C. 7:26-14A.16.

7:26-14A.21 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.

Recodified from 7:26-14A.25 and amended by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.17.

7:26-14A.22 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.

Recodified from 7:26-14A.26 by R.1996 d.578, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26-14A.18.

SUBCHAPTER 15. RECYCLING GRANTS AND LOANS PROGRAM

7:26-15.1 Scope

This subchapter shall constitute the rules of the Department governing the disposition of grants and loans pursuant to the Recycling Act, N.J.S.A. 13:1E-92 et seq.

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

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

7:26-15.2 Construction

(a) This subchapter shall be liberally construed as to permit the Department to discharge its statutory functions and effectuate the purposes of the law.

(b) The Commissioner may, from time to time, 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.

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

7:26-15.3 Practice where these rules do not govern

The Commissioner shall exercise discretion in respect to any matters not explicitly covered by this subchapter.

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

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 Clean Communities and Recycling Act, N.J.S.A. 13:1E-92.1 et seq.

“Applicant” means a county or a municipality submitting an application for a Recycling Tonnage grant pursuant to N.J.A.C. 7:26-15.5.

“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.

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

“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.

“Department” means the 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 Department 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.

“NJDEP” means the New Jersey Department 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 Department from the Planning and Program Fund.

“Processing” means treating recyclable materials so as to conform to market specifications, including but not limited to 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 any process or processes by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream of 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 Tonnage Grant” means any grant awarded by the Department from the Recycling Tonnage Grant Fund.

“Recycling Tonnage 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 allocated by the Department 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.

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

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

Added "applicant"; and amended several definitions.

7:26-15.5 Application and award procedure for Recycling Tonnage Grants

(a) Eligible applicants for Recycling Tonnage Grants shall be limited to municipalities and/or counties in the State of New Jersey, except that a municipality or county 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 or county and claimed for the purposes of this Act shall be submitted on one application form.

2. The applicant 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.

(b) Application for Recycling Tonnage Grants shall be accepted by the Department between January 1 and April 30 of each grant year. Applications shall be made on forms provided by the Department, or electronic means as approved by the Department and shall be submitted to:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

Bureau of Recycling and Planning

PO Box 414

Trenton, New Jersey 08625-0414

(c) Applicants shall be entitled to receive Recycling Tonnage Grants based on the tonnage of recyclable material generated by and recovered for recycling from residential and/or 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 which are approved by the Department upon application by the applicant.

2. Only recyclable material which is collected in accordance with all applicable regulation 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 applicant's jurisdiction 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 district solid waste district management plan shall specifically designate such facility to be the recipient of an applicant's solid waste, and shall specifically require that the separation and recovery of recyclables shall occur prior to fuel production or disposal. In these instances, the applicants 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 Department upon application by an applicant; 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 applicant shall be accurately reported to the Department in accordance with the provisions of N.J.A.C. 7:26-2.13. 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 Department 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. 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 preceding calendar year and shall be calculated in accordance with the following formula, provided that no municipality shall receive more than \$10.00 per ton:

$$\text{Award} = R \times T_m / T_s$$

where Award = Dollar value of award to a given municipality or county for the preceding calendar year

R = Total dollar amount allocated to the Recycling Grant Fund as of January 1, in the year in which the application for a Recycling Grant is submitted.

T_s = Total tonnage of eligible recyclable material collected within the State during the preceding calendar year and claimed by all municipalities and counties.

T_m = Total tonnage of eligible recyclable material recycled within a given municipality or county during the preceding calendar year.

(f) Applications shall be made on forms provided by the Department and shall include the following:

1. The name and address of the applicant;
2. A detailed breakdown of the materials collected, including type and quantity;
3. Certifications regarding:
 - i. Tonnage recycled;
 - ii. Origin of materials; and
 - iii. Non-diversion from a pre-existing commercial recycling program.
4. Other information as required by the Department.

(g) Recycling Tonnage Grants may be credited to the general treasury of the applicant and may be used for recycling activities or other 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.

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

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

Deleted (a)2iii and (a)2iv; in (d) inserted N.J.A.C. reference; and substantially amended (e) and (f).

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

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

7:26-15.6 Application and award procedures for Recycling Business Loans

(a) This portion of the Act shall be administered jointly by the Department and the EDA.

(b) Eligible applicants for Recycling Business Loans shall be limited to recycling businesses and industries located in or planning to locate in New Jersey which are engaged in converting recyclables into a raw material, other than energy, processing recyclables to meet final use specifications, or separating commingled recyclables for resale to a market. 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 Department and shall be submitted in triplicate to:

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

(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 Department and EDA.

(e) Loans and loan guarantees shall be awarded in accordance with such terms and conditions as set forth by the Department and EDA. No single applicant or project may receive a loan or loan guarantee for less than \$50,000 or for more than \$500,000. The maximum may be exceeded for certain projects which are deemed necessary by the Department in order to reach the State's recycling goals set forth in the State Solid Waste Management Plan Update: 1993-2000 (Update).

(f) Loans and loan guarantees shall be awarded on a competitive basis.

1. The application shall demonstrate, at a minimum, that:

i. The project promotes the goals and objectives set forth in the State Recycling Plan and applicable district solid waste management plans;

ii. All necessary permits have been obtained or applied for;

iii. The goals, objectives and implementation strategy of the project are clearly stated;

iv. The type, quantity and value of recyclable material to be recovered by the project are reasonable in relation to the investment required;

v. The applicant is able to repay the loan;

vi. The applicant has previous experience in recycling;

vii. The applicant has the ability to manage the project;

viii. The project substantially increases the quantity of recyclable material removal from the waste stream for recycling; and

ix. Only source separated recyclable materials will be received, stored, processed or transferred at the facility.

(g) Applications shall be made on forms provided by the Department 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 project cost breakdown explaining how the funds will be incorporated in the total budget for the entire project; and

4. A description of the type and quality of material to be recycled as a result of the loan or loan guarantee;

(h) The Department shall deny an application for a low-interest recycling business loan if the applicant:

1. Does not submit information required pursuant to (f) above;

2. Does not correct any deficiencies in information submitted pursuant to (f) above within 60 days of receipt of a letter specifying such deficiencies;

3. Does not submit the appropriate fee;

4. Has been denied a license or permit by the Department pursuant to this chapter;

5. Has violated any environmental protection law or regulation, civil or criminal, of this State or any other state or any Federal environmental protection law or regulation, civil or criminal; or

6. Fails to comply with any lawful order of the State.(i) 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.

(j) The loan maturity period shall be for a period not to exceed 10 years. The interest rate on each loan when issued shall be established at three points below the prime rate, but in no case shall be less than five percent.

(k) 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.

4. Closing fee—\$600.00 per loan, payable at 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).

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

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

Amended (b) to include business planning to relocate and specified applicable recycling activities; in (e), amended loan and loan guarantee amounts; substantially amended (f); inserted new (h) and (j); and recodified former (h) and (i) and (i) and (k).

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

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

7:26-15.7 Application and award procedures for Planning and Programs 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 Department. Applications shall be submitted to:

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

1. The applicant shall submit a spending plan setting forth the proposed expenditures for which a Planning and Program Grant and/or the Education Grant will be used.

2. The Department shall review the spending plan for consistency with the recommended uses set forth in (d) and (e) below in accordance with the criteria set forth at (f)1 through 3 below, and shall approve the spending plan and award grant moneys unless the spending plan proposes expenditures inconsistent with (d) and (e) below or unless the proposed expenditures fail to satisfy the criteria set forth at (f)1 through (3) below.

(c) Planning and Program Grants and Education Grant applications shall be subject to the following minimum amounts. The Department 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 based on the Department's 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 Department during the grant year and for two years following receipt of the grant. Applicants who receive a Recycling Tonnage Grant pursuant to N.J.A.C. 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.

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

Added (b)1 and (b)2.

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

7:26-15.8 Application and award procedure for Supplementary Projects

(a) The Department may, in its 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 for Supplementary Projects involving recycling research, program development, program implementation and other related activities. Supplementary Projects may be developed by the Department on its 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 Department 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).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
In (a), amended N.J.A.C. reference.

7:26-15.9 Execution of award documents

(a) As concerns Recycling Tonnage Grants, the Department 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 Department 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 Planning and Program Grants and Education Grants, the applicant shall submit the spending plan with an ordinance or resolution of the appropriate governing body, authorizing the signing of the spending plan, naming the person authorized to sign the spending plan and committing the applicant to use the funding in accordance with the terms and conditions of the spending plan, this subchapter and the Act.

(c) As concerns loans or loan guarantees made pursuant to the Act, the applicant shall execute the award document. The award document shall be executed by the person(s) having authority to commit the entity receiving the monies to the terms and conditions of the loans or loan guarantees.

(d) 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 Department in the application process.

(e) At the time of execution of the award document by the Department 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.

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

Inserted new (b), recodified former (b) through (d) as (c) through (e).

7:26-15.10 Unused monies

(a) All monies which remain unused or unexpended by the Department at the close of the calendar year or which have been withheld or rescinded by the Department 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 Department in its discretion deems 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.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.11 Debarment

(a) Any person or corporation who is debarred, suspended or disqualified from State contracting pursuant to N.J.A.C. 7:1D-2 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. 7:1D-2.2.

(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 Department.

(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, or any contractor who is or will be funded by a grant or loan under this subchapter may present information to the Department, indicating why this section should not apply to such person. If the Commissioner determines that an exception is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant such exception in keeping with the provisions of N.J.A.C. 7:1D-2.9.

(e) The Department may suspend or debar any such person, or take such other action as may be appropriate pursuant to N.J.A.C. 7:1D-2.

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.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Administrative change.
See: 32 N.J.R. 1796(a).

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 Department may, in addition to any other rights or remedies available pursuant to law, withhold a grant or any portion thereof, for good cause which 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 Department.

(b) The Department shall give written notice to the recipient of its intent to withhold or rescind the grant in whole or in part.

(c) The Department shall afford the recipient an opportunity for consultation prior to withholding or rescission of the grant.

(d) The Department, 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 Department.

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

7:26-15.14 Return of grants

(a) The recipient of a grant which has been withheld or rescinded by the Department shall refund or credit to the Department the amount of grant monies withheld or rescinded.

(b) The Department 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.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.15 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 Department or EDA.

(b) In the event that a loan or loan guarantee is terminated the monies shall be returned to the Recycling Business Loan Fund.

As amended, R.1983 d.119, effective April 18, 1983.

See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.14.

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

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

7:26-15.16 Severability

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

As amended, R.1983 d.119, effective April 18, 1983.

See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.15.

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

7:26-16.1 Scope and authority

(a) This subchapter 16 implements P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), and the public policy declared therein to preclude from participation in the solid and hazardous waste industries persons with known criminal records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise or competence that his or her participation would create or enhance the danger of unsound, unfair or illegal practices, methods or activities in the business of those industries.

(b) This subchapter applies to any proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a solid waste or hazardous waste business in New Jersey, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

(c) All subcontractors and prime contractors, as defined under N.J.A.C. 7:26-3.2(a)1, are subject to the registration requirements of N.J.S.A. 13:1E-1 et seq. and to N.J.S.A. 13:1E-126 et seq. and to this subchapter.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), inserted "waste" following "solid" and substituted "transporter" for "hauler" prior to "license,;" added (c).

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 business concern which has filed a disclosure statement with the Department and the Attorney General and is seeking an initial license, provided that the business concern has furnished the Department and the Attorney General with any information required pursuant to P.L. 1991, c.269.

"Application" means the forms and accompanying documents filed in connection with an applicant's or permittee'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, sole proprietorship, trust or other form of commercial organization.

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

"Disclosure statement" means a statement containing information about an applicant or licensee as set forth in N.J.A.C. 7:26-16.4.

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

"Key employee" means any individual employed by the applicant, the permittee 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, transfer or disposal of solid waste or hazardous waste.

"License" means the initial approval and first renewal by the Department 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, transfer or disposal of solid waste or 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. "License" shall include any registration statement approved for any person

who transports any other hazardous waste in addition to hazardous wastes which are or contain precious metals.

"Licensee" shall be defined as set forth in N.J.S.A. 13:1E-127i.

"Permittee" shall be defined as set forth in N.J.S.A. 13:1E-127i.

"Person" means any individual or business concern.

Amended by R.1989 d.54, effective January 17, 1989.

See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substituted "transporter" for "hauler" in the definition for "license".

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

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

Inserted "Exempt transporter"; rewrote "Licensee"; and added "Permittee".

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Amended "Applicant", "Application", "Business concern", "Key employee", and "License"; added "Department" and "Person".

7:26-16.3 Licensure; filing of disclosure statement

(a) No person shall engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license, or without complying with all the provisions of N.J.S.A. 13:1E-126 et seq., and with the provisions of this subchapter and of N.J.A.C. 7:26-16A. Every applicant and permittee shall file a disclosure statement with 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 Attorney General at the following address:

New Jersey Division of Law
A-901 Unit
PO Box 093
Trenton, New Jersey 08625-093

Payment of fees is to be made by check, payable to "Treasurer—State of New Jersey," and sent to the following address:

Department of Treasury
Bureau of Revenue
160 South Broad Street
PO Box 417
Trenton, New Jersey 08625-0417

1. Additional conformed copies of disclosure statement, or any portions thereof, shall be supplied upon the request of the Attorney General.

2. Within 30 days of receipt of a disclosure statement from an applicant, the Attorney General shall advise the applicant, if the disclosure statement is incomplete on its face, and shall specify what additional information is required.

(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, permittee or licensee with the filed disclosure statement. The applicant, permittee or licensee 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, permit 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, permit 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, permit or license is for the operation of a hazardous waste facility which is considered as such solely as the result of the reclamation, recycling or refining of hazardous wastes which are or contain any of the following precious metals: gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, or copper;

5. Any person whose application, permit or license is solely for the transportation of hazardous wastes which are or contain precious metals to a hazardous waste facility described in (d)4 above for the purposes of reclamation;

6. Any person whose application, permit or license is solely for the collection, transportation, treatment, storage or disposal of granular activated carbon used in the absorption of hazardous waste; and

7. Any regulated medical waste generator for the treatment or disposal of regulated medical waste at any noncommercial incinerator or noncommercial facility in this State that accepts regulated medical waste for disposal.

(e) Where an applicant, permittee 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, permittee 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).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

7:26-16.4 Content of disclosure statement

(a) The disclosure statement shall be filed on forms supplied by the Division of Law, 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, permittee or licensee, of any officers, directors, partners, or key employees thereof and all persons holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons 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, permittee or licensee 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 disclosure statement and the names and address 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 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, permittee or licensee 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, transfers or disposes of solid waste or hazardous waste in which the applicant, permittee or licensee 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, transfer or disposal of solid waste or hazardous waste possessed by the applicant, permittee or licensee, or 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, transfer or disposal of solid waste or hazardous waste by the applicant, permittee or licensee, or 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, permittee or licensee, or against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes (N.J.S.A.), other than a violation of the provisions of N.J.S.A.

39:5B-18 et seq., 39:5B-25 et seq., or 39:5B-30 et seq., 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, permittee or licensee was a member or with which the applicant, permittee or licensee had a collective bargaining agreement during the 10 years preceding the date of filing of the disclosure statement;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant, permittee or licensee in connection with its collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste;

9. A listing of all persons employed by the applicant, permittee or licensee in its solid waste 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 or forms supplied by the Department, including information about family, education and employment history. Holders of debt liability or non-supervisory employees may be required to provide Personal History Disclosure Forms if this information is requested by the Department or the Attorney General; and

11. Any other information the Attorney General or the Department may require that relates to the competency, reliability, honesty, integrity or good character of the applicant, permittee or licensee.

(b) The disclosure statement shall be sworn to or affirmed and subscribed and dated by the applicant, permittee, licensee or the author before a person legally competent to take an oath or affirmation, who shall himself subscribe and date the signature of affiant and indicate the basis of his authority to take oaths and affirmation. 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.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

7:26-16.5 Investigative report by Attorney General

(a) The Department shall not issue any license to an applicant, permittee or licensee until it has received and reviewed an investigative report from the Attorney General.

(b) In conducting a review of the application, the Department shall include a review of the disclosure statement and investigative report.

(c) In its discretion, the Department may issue a temporary license for not more than six months at a time to an applicant or permittee 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 license otherwise serves some interest of the general public. The issuance of a temporary license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease its solid waste or hazardous waste operations upon the expiration date of the temporary license 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 license 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 license otherwise serves some interest of the general public. The renewal of a temporary license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease its solid waste or hazardous waste operations upon the expiration date of the temporary license 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.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), added ", permittee or licensee" after "applicant"; substituted "license" for "registration" and added "or permittee" after "applicant" throughout.

Case Notes

County municipal utilities authority's communications with Department of Environmental Protection regarding sanitation company's application for registration did not breach implied covenant of good faith and fair dealing in its waste disposal contract with sanitation company. *East Penn Sanitation, Inc. v. Grinnell Haulers, Inc.*, 294 N.J.Super. 158, 682 A.2d 1207 (A.D. 1996).

Issuance of permit prior to approval of disclosure statement not prohibited by Solid Waste Management Act. *Matter of Stream Encroachment Permit No. 12400*, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

Public hearing prior to issuance of Master Performance Permit. *Mount Olive Twp. v. DEP*, 225 N.J.Super. 94, 541 A.2d 1089 (App.Div. 1988).

7:26-16.6 Change of information on disclosure statement; sales or transfers of ownership

(a) Where an applicant or permittee 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 permittee 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. Unless previously disclosed under (i) below, 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, transfers 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 or permit 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 or permit need only be reported annually;

6. Any criminal charge or conviction and any conviction for a disorderly persons offense filed or entered against the licensee or against any key employee, officer, director, equity holder required to be disclosed, 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) All changes to the information contained in a permittee's or 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 Division of Law at the time of the permittee's or 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 criminal or disorderly persons conviction, or the filing of a criminal or disorderly persons charge, is not required unless specifically requested by the Department or 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, permittee or licensee has submitted multiple amendments to its disclosure statement; or the information concerning an applicant, permittee 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, permittee or licensee to file a new disclosure statement.

(i) When a permittee or licensee leases ten (10) or more solid waste vehicles and operators from a single lessor which is not a permittee or licensee, or when such leased vehicles represent at least 20 percent of the permittee's or licensee's fleet of solid waste vehicles, the permittee or licensee shall, within 30 days of entering into the lease, file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(j) Permittees and licensees which lease 20 or more solid waste operators from a single lessor which is not also a permittee or licensee, shall file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor, within 30 days of entering into the lease. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(k) Permittees and licensees who have 10 or less leased solid or hazardous waste vehicles and/or operators in their total fleet shall be exempt from the business concern disclosure statement requirements pursuant to N.J.A.C. 7:26-16.6(i) and (j).

(l) No permittee or licensee shall enter into a management agreement with a business concern which is not authorized to conduct that solid waste activity as a permittee or licensee. For the purposes of this section, a management agreement is an agreement under which a business concern assumes effective management and control of a permittee or licensee.

As amended, R.1984 d.541, effective December 3, 1984.

See: 16 N.J.R. 2480(a), 16 N.J.R. 3310(a).

"Department" substituted for "Division of State Police"; "Attorney General" substituted for "Department".

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

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

Added (i) and (j).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

7:26-16.7 Additional information; duty to cooperate

(a) All applicants, permittees and licensees shall 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 or the State Commission of Investigation 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, permittee or licensee refuses to comply, the application of the business concern for a license may be denied, or the license of that business concern may be 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.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote (a).

7:26-16.8 Disqualification criteria

(a) No license shall be approved by the Department unless the Department finds that the applicant or permittee, in any prior performance record in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof, or if no prior record exists, that the applicant or permittee is likely to exhibit that integrity, 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 otherwise shown to have a beneficial interest in the business of the applicant, the permittee or the licensee, 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 N.J.S.A. 2C:35-5, except possession of 84 grams or less of marijuana, or violation of N.J.S.A. 2C:35-10;
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, including, but not limited to, solid waste or hazardous waste management laws 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. Violation of the criminal provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. or 48:13A-6.1.

(c) Notwithstanding the provisions of (b) above, no applicant, permittee or licensee shall be denied a license on the basis of a conviction of any individual required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, for any of the offenses enumerated in (b) above as disqualification criteria, if the person has affirmatively demonstrated by clear and convincing evidence his or her rehabilitation. In determining whether a convicted individual 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 otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, does not possess a reputation for good character, honesty and integrity, and that person or the applicant, permittee or licensee 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 if the Attorney General determines that any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, has been identified by the State Commission of Investigation or the Federal Bureau of Investigation as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel, where such identification, membership or association creates a reasonable belief that the participation of that person in any activity required to be licensed under this act would be inimical to the policies of N.J.S.A. 13:1E-126 et seq. For the purposes of this subsection, "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and a "career offender cartel" means any group of persons who operate together as career offenders. Also, for purposes of this subsection, association of a person required to be listed in a disclosure statement, or shown to have a beneficial interest in the business of the applicant, permittee, or licensee, with career offenders or members of career offender cartels, will be considered "inimical" to the policies of N.J.S.A. 13:1E-126 et seq. where the nature and quality of the association create a risk that the career offender or member of a career offender cartel might exercise some degree of influence or control over the applicant with regard to operations required to be licensed under N.J.S.A. 13:1E-126 et seq. or other business incidental to such operations.

(f) 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 otherwise shown to have a beneficial interest in the business of the applicant or the permittee, for any of the crimes enumerated in (b) above, provided, however, that at the request of the applicant, permittee or the person charged, the Department shall defer decision upon such application during the pendency of such charge.

(g) No license shall be approved by the Department if any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or the licensee, 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 the purposes of this subsection, "occupational manner or context" means the systematic planning, administration, management or execution of an activity for financial gain. Also for the purposes of this subsection, pursuit of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State will be considered "inimical" to the policies of the act where the nature and quality of the activity in question create a risk that the applicant will, after licensure, engage in civil or criminal violations of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or other New Jersey environmental statutes and their implementing regulations while engaged in any activity required to be licensed under N.J.S.A. 13:1E-126 et seq. or other business incidental to such activities.

(h) No license shall be approved by the Department if the applicant, permittee or licensee refuses to comply with inquiries as required under N.J.A.C. 7:26-16.7.

(i) No license shall be approved by the Department if the applicant, permittee or licensee 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.

(j) A license may be approved by the Department for any applicant or permittee if the information contained within the disclosure statement and investigative report, including any determination made by the Attorney General concerning the character, honesty and integrity of any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant or permittee, would not require disqualification pursuant to (a), (b), (c), (d), (e), (g), (h) or (i) above.

(k) A license approved by the Department for any applicant, licensee or permittee pursuant to this section is non-transferable and shall be valid only for the length of time for which it is given.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).
Rewrote the section.

Case Notes

Failure to demonstrate rehabilitation after conviction for disqualifying crime justifies denial of solid waste transporter license. *Bolus v. Solid Waste Management Division, DEPE, 96 N.J.A.R.2d (EPE) 4.*

Failure to disclose criminal indictment for involvement in solid waste disposal conspiracy warranted denial of application for solid waste licensure. *PJV Transport v. Division of Solid Waste Management, 95 N.J.A.R.2d (EPE) 50.*

Application for license to collect solid and hazardous waste; insufficient showing of integrity, reliability, expertise and competence. *Sasso's Sea-Gull Disposal, Inc. v. DEPE, 94 N.J.A.R.2d (EPE) 67.*

7:26-16.9 Cause for license revocation

(a) In addition to any other cause set forth in this chapter, any license may be revoked by the Department for any of the following causes:

1. Any cause which would require disqualification, pursuant to N.J.S.A. 7:26-16.8, from receiving a license upon original application;
2. Fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;
3. Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1E-126 et seq., or of any other law relating to the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, or of any rule adopted pursuant thereto;
4. Coercion of a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee or licensee; or
5. Preventing, without authorization of the Department, any permittee or licensee from disposing of solid waste or hazardous waste at a licensed, authorized or approved treatment, storage, transfer or disposal facility.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a)3, inserted "transfer" after "storage."; in (a)4, inserted "permittee or" before "licensee"; in (a)5, inserted "permittee or" before "licensee", inserted ". authorized or approved" before "treatment", and inserted ", transfer" before "or disposal facility".

Case Notes

Commissioner of Department of Environmental Protection was obliged to impose civil administrative penalties against generator and transporter. *Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).*

Each truckload of hazardous waste, which was not accompanied by written manifest was separate offense; penalty against generator was warranted despite generator's claim that it was victim of transporter's fraud and the department's negligence in enforcing its regulations. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Hazardous waste generator or transporter is strictly liable for violation of regulations governing transportation and disposal of hazardous waste. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Penalty for each truckload of hazardous waste that transporter accepted from generator was warranted. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D. 1993).

Flagrant and repeated violations warranted revocation of solid waste disposal licenses and denial of permit applications. *DEPE v. Pucillo & Sons*, 96 N.J.A.R.2d (EPE) 87.

Oil trading company not corporation in good standing; no basis to oppose proposed revocation and denial of application for hazardous waste license. *Department of Environmental Protection v. N.O.C. Enterprises, Inc.* 93 N.J.A.R.2d (EPE) 227.

Dumping of hazardous wastes; mislabeled manifests; penalties. *Department of Environmental Protection v. Rollins Environmental Services, Inc.* 92 N.J.A.R.2d (EPE) 67.

7:26-16.10 Administrative hearing; requests

(a) Any applicant or permittee who is denied an initial license pursuant to this subchapter shall, upon 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 a license or notice of refusal to renew a license shall have 20 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, PO Box 402, Trenton, New Jersey 08625-0402.

Administrative correction heading and change in (c).
See: 23 N.J.R. 3325(b).

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted "or permittee" after "applicant"; in (b), substituted "a license or notice of refusal" for "or refuse", and substituted "20" for "15".

7:26-16.11 Severance of disqualifying individuals

(a) Notwithstanding the disqualification of any applicant, permittee 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, permittee 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, permittee or applicant, the individual must completely divest himself or herself of that interest. Where immediate sale of the interest would work an economic hardship on the individual, the licensee, permittee or applicant, the Depart-

ment 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, permittee or licensee which has severed a disqualifying individual, the applicant, permittee 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.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added references to permittee and neutralized gender references throughout.

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 business concern includes the person or persons that were the cause of the original disqualification.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), inserted "business" before "concern".

7:26-16.13 Annual solid waste license approval renewal; fees

(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 expenses incurred by any State agency in the performance of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), reviewing disclosure statements, post-licensing compliance monitoring, including special investigations, conducting investigations to verify claims of exemption from A-901, conducting pre-licensing investigations, securing confidential documents, maintenance, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.391 (N.J.S.A. 13:1E-126 et seq.). For purposes of this subsection, "State agency" means any State department, division, agency commission or authority. The A-901 annual fee shall be \$600.00 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 who is otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, 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, permittee or licensee shall calculate the amount of each fee due and submit to the Division of Law a check for the total fee amount, made payable to "Treasurer—State of New Jersey." 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, or that a person not listed on the disclosure statement otherwise has a beneficial interest in the business of the applicant, permittee or licensee, the Department may require the payment of additional fees along with the submission of additional information, including a Personal History Disclosure Form, pertaining to that person. The applicant, permittee or licensee shall pay such additional 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 fees of \$600.00 to the Attorney General 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). Checks are to be made payable to "Treasurer—State of New Jersey." 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 purposes of fee calculation.

(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, permittee 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).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Rewrote the section.

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, permittee, licensee or an individual required to be listed on a disclosure statement, which pertains to private financial matters of the applicant, permittee, 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 permittee, a licensee or an individual required to be listed on a disclosure statement which is not otherwise subject to public disclosure by any statute or regulation;

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 magnetic medium to which access is physically restricted to authorized personnel, a record shall be kept of the persons who access the data, including the time and date of the access.

2. If confidential information is stored on a computer system or on magnetic media, access to which is shared with users who are not authorized personnel, access to the confidential information shall be restricted to authorized personnel by means of secure access codes, code names and other appropriate software safeguards. In addition, the computer shall be programmed so as to maintain a list of all requests for display or printout of confidential information, identifying the user who made the request.

(k) Confidential information within the possession of the Department shall not be released or disclosed in whole or in part to any person except:

1. Upon lawful order of a court of competent jurisdiction;
2. In the course of the necessary administration of N.J.S.A. 13:1E-126 et seq., including issuance of Administrative Orders denying or revoking a license, or granting a license on condition;
3. With the approval of the Attorney General, to a duly authorized law enforcement agency;
4. Upon presentation of proper identification, to the applicant, permittee, 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, permittee, 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, permittee, 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.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Inserted references to permittee throughout; amended (a)2ii and (k)2.

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, permittees and licensees in light of the policies expressed in N.J.S.A. 13:1E-126.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (b), inserted "permittees" after "applicants,".

7:26-16.21 Convicted persons generally

(a) No applicant, permittee or licensee shall knowingly hire as an officer, director or key employee, nor knowingly allow to acquire an equity interest or 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 applicant, permittee or 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 applicant, permittee or 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 applicant, permittee or licensee to employ the individual or allow him to acquire an interest in the applicant, permittee or licensee.

(d) Any applicant, permittee or licensee that violates (a) above may be subject to having its permit or license revoked or having its license application denied, notwithstanding the rehabilitation of the individual in question.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (d), inserted "permit or" before "license revoked", and inserted "or having its license application denied," before "notwithstanding"; inserted "applicant, permittee or" before "licensee" throughout.

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, permittees 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, permittee 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, permittee 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.

Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), in first sentence inserted ", permittees" after "Applicants", and in second sentence inserted ", permittee" after "applicant"; in (b), inserted ", permittee" after "applicant".

7:26-16.24 (Reserved)

Repealed by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Section was "Brokerage" by convicted persons".

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

7:26-16A.1 Scope and applicability; conflicts

(a) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing permittees or licensees.

(b) Except where the context would require otherwise, the provisions of N.J.A.C. 7:26-16 are applicable to this subchapter.

(c) 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.

(d) The Commissioner or Director may relax the application of any part of this subchapter if necessary to prevent unreasonable delay in the processing of any application that was pending before the Department prior to July 2, 1984.

Amended by R.1987 d.54, effective January 20, 1987.

See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).

Deleted text from (b) "so as to . . . two year period."

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Deleted former (a); recodified former (b) through (e) as new (a) through (d); in new (a), inserted "permittees or" before "licensees".

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, permittee or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

(d) Any permittee or licensee may voluntarily submit a disclosure statement earlier than demanded.

(e) The applicant, permittee 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.S.A. 13:1E-128b and N.J.A.C. 7:26-16.7.

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

Amended by R.1987 d.54, effective January 20, 1987.

See: 18 N.J.R. 2172(a), 19 N.J.R. 203(a).

Substantially amended.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).
 Inserted references to permittee throughout.

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. CONFIDENTIALITY DETERMINATIONS

7:26-17.1 Scope

(a) This subchapter sets forth the procedures for making information received by the Department in administering the solid waste program under N.J.A.C. 7:26 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 solid waste regulatory activities under N.J.A.C. 7:26 shall be generally available to the public except as provided otherwise in this subchapter. Any owner or operator of a solid waste facility or any solid waste collector or transporter required to submit any information pursuant to the Act or this chapter, which in the owner's or operator's opinion, constitutes trade secrets or proprietary information may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the fee set forth in N.J.A.C. 7:26-4.8.

Amended by R.2005 d.223, effective July 5, 2005.
 See: 36 N.J.R. 4602(a), 37 N.J.R. 2497(a).
 In (b), updated the N.J.A.C. reference.

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.

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:26-17.14 for a class of information.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines, in accordance with the procedures of this subchapter, to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:26-17.3 through 17.5, and such confidentiality claim has not expired by its terms, been waived or withdrawn;
2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;
3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;
4. The information is not, and has not been, available or otherwise disclosed to other persons whether by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

“Confidentiality claim” or “claim” means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person, meeting the requirements of this subchapter that the Department treat such information as confidential information.

“Confidentiality determination” means a determination by the Department that assertedly confidential information is or is not confidential information.

“Contract” means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

“Contractor” means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

“Final public copy” means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which the confidential information can be concealed by blacking out, the “final public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Preliminary public copy” means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the “preliminary public copy” shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

“Requester” means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

“Substantiation” means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:26-17.8.

7:26-17.3 Procedure for making a confidentiality claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:26-17.5) a confidential copy and, upon the Department’s request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy “CONFIDENTIAL COPY.” At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading “CONFIDENTIAL.” The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word “CONFIDENTIAL” in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:26-17.4.

7:26-17.4 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under this subchapter. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including, without limitation, the

inquiries and notices listed in N.J.A.C. 7:26-17.5(a), be directed to the designee.

7:26-17.5 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:26-17.4, including, without limitation, the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:26-17.7(a)1ii;
2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:26-17.10(a)1;
3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:26-17.17(a);
4. Notices of disclosure under N.J.A.C. 7:26-17.18; and
5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:26-17.21.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following:

Division of Solid and Hazardous Waste
CN 414
Trenton, New Jersey 08625-0414

7:26-17.6 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:26-17.22 through 17.26 to inspect or copy records containing asserted confidential information which is the subject of a confidentiality claim; or
2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:26-17.22 through 17.26.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:26-17.7 Notice of initial confidentiality determination and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;

ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:26-17.8.

iii. All address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:26-17.9;

v. The method for requesting a time extension under N.J.A.C. 7:26-17.9(b); and

vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:26-17.9 shall operate as a waiver of the claimant's claim; and

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by (a) 1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:26-17.8, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:26-17.10. The Department shall provide such notices of determination as are required by N.J.A.C. 7:26-17.10.

7:26-17.8 Substantiation of confidentiality

(a) If the Department has determined that any assertedly confidential information may be confidential and notified the claimant pursuant to N.J.A.C. 7:26-17.7(a) and (b), the

claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:26-17.9:

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

3. If the Department, USEPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:26-17.9 Time for submission of substantiation

(a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:26-17.7(a).

(b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time; provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

(c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:26-17.10 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:26-17.7 and 17.8, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public; and

2. On or after the 14th day following receipt by the claimant of the written notice required by (a) above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:26-17.8, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:26-17.22 through 17.26. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:26-17.11 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:26-17.12 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:26-17.10(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:26-17.13 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:26-17.14 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:26-17.15 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:26-17.22 and 23, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

- i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
- ii. The claimant has consented to disclosure of the information by the requesting agency.

7:26-17.16 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if it complies with the procedure established under (b) below, and if:

- 1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;
- 2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and
- 3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:26-17.17 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:26-17.9, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:26-17.10(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:26-17.18 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:26-17.15, 17.16 or 17.17, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain all contain the following information:

- 1. The date on which disclosure was made;
- 2. The name of the agency or other person to which the Department disclosed the confidential information; and
- 3. A description of the confidential information disclosed.

7:26-17.19 Disclosure by consent

(a) The Department may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:26-17.20 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the Department has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:26-17.21 Disclosure of confidential information in rulemaking, permitting and enforcement proceedings

(a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.

(b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:

1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including, without limitation, N.J.A.C. 1:1-14.1.

2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:

i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;

ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and

iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public a confidentiality claim has been made available to the public.

7:26-17.22 Hearing before disclosure of information for which a confidentiality claim has been made

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:26-17.22, and shall be delivered to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b) The Department may deny a request for an adjudicatory hearing under (a) above if

1. The claimant fails to provide all information required under this chapter;

2. The Department receives the request after disclosure of the assertedly confidential information occurs;

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:26-17.17.

(c) 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.

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this subchapter.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.

7:26-17.23 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:26-17.15 through 17.22.

7:26-17.24 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:26-17.25 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:26-17.26 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or
2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Any use of any of the remedies specified under this section shall not preclude the use of any other remedy.

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