

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).

Amended "Residue". Readopted provisions of Emergency Amendment R.1997 d.404 with changes effective December 1, 1997.

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

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

Rewrote "Recycling center" and added "Scrap processing facility".

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).

Rewrote the section.

7:26A-1.4 Exemptions

(a) The activities listed below are exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and, unless otherwise specified, the solid waste planning requirements at N.J.A.C. 7:26-6.10 or 6.11. The specific criteria applicable to these activities are as follows:

1. Manufacturers shall not be required to obtain general or limited approval pursuant to N.J.A.C. 7:26A-3 for the receipt, storage or processing of source separated recyclable materials. This exemption shall also apply to:

i. Asphalt manufacturing plants, which receive solely source separated recyclable asphalt, and pre-consumer asphalt shingles or other asphalt-based roofing scrap, or a combination thereof prior to its introduction into the asphalt manufacturing process; or

ii. Pallet manufacturers and/or refurbishers who process non-salvageable wood pallet materials generated from their manufacturing and refurbishing activities. Storage of processed wood materials shall not exceed one year;

2. The recycling of source separated recyclable materials which are generated, processed and reused as a product exclusively at the point of generation where all applicable county and municipal approvals have been obtained for that activity. Specifically excluded from this exemption are source separated petroleum contaminated soils, and the receipt, storage, processing or transfer of materials generated off-site;

3. Recycling activities in which tree branches, tree limbs, tree trunks, brush and wood chips derived from tree parts are to be received, stored, processed or transferred provided that:

i. Only the amount of unprocessed material which the equipment on-site or as may be readily available is capable of processing within a one-week period up to a maximum of 7,500 cubic yards is stored on-site;

ii. Storage of material on-site shall not exceed one year;

iii. Storage of processed material on-site shall not exceed 7,500 cubic yards; and

iv. Processing is limited to four times per year and each processing event shall be limited to a two-week

time period, unless prior approval is received from the Department;

4. Tire retreaders and tire remolders which receive, store, process or transfer tires provided that:

i. Only that amount of material which the equipment on-site is capable of processing within a two-month period is stored on-site; and

ii. Storage of material on-site shall not exceed one year;

5. Any person or recycling center which receives less than 5,000 scrap tires per month and which does not process the scrap tires provided that:

i. Storage of materials on-site shall not exceed six months;

ii. Tires shall only be stored in a totally enclosed structure or in roll-off containers or trailers dedicated to scrap tire storage;

iii. The provisions of N.J.A.C. 7:26A-3.8(b) and (c) are met; and

iv. The tires are transferred to an end-market or to a recycling center approved to receive, store, process or transfer scrap tires, or to a tire facility herein exempted;

6. Recycling operations in which scrap tires are received, stored and processed into artificial reef units for use in artificial reef projects approved by the Department, provided:

i. Only that amount of material which the equipment on-site is capable of processing within a two-month period is stored on-site; and

ii. Storage of material on-site shall not exceed six months;

7. Any person, with the exception of a recycling center operating pursuant to a general or limited approval in accordance with N.J.A.C. 7:26A-3, which receives source separated Class B recyclable materials, with the exception of scrap tires, leaves, non-container plastic materials and petroleum contaminated soil for temporary storage and meets the criteria in (a)7iii below and either:

i. Operates for a specified 60-day period that commences from the start date of the project as indicated in the notification letter required pursuant to (b)5 below, provided all material stored temporarily are removed from the temporary storage site by the end of the specified 60-day period and temporary storage pursuant to this subparagraph shall not occur more than twice within the same calendar year or in succession; or

ii. Operates on a continuous basis, provided all materials stored temporarily are stored in roll-off containers or other similar containers.

iii. Such person shall also meet the following criteria:

(1) Materials shall be stored in a manner which prevents runoff, leakage or seepage from the storage area into or onto the ground surface around the storage area, and shall be stored in accordance with all applicable county and municipal laws and regulations;

(2) No source separated Class B recyclable material which is received and stored as per this exemption shall be processed in any way, including further separation;

(3) Source separated Class B recyclable material which is stored as per this exemption shall be transferred only to a recycling center approved to receive, store, process or transfer the Class B recyclable material. Documentation from such recycling center(s), such as a legal contract or letter of agreement, that provides that the recycling center(s) will receive the material stored as per this exemption shall be provided to the Department along with the written notification required pursuant to N.J.A.C. 7:26A-1.4(b)5; and

(4) Records of the daily amount and type of the Class B recyclable materials received, stored and transferred, including the name and address of the recycling center to which the materials are transferred, shall be kept and shall be maintained for three years from the date of recording by the person or recycling center operating pursuant to this exemption. The required records shall be kept on site, be made available to the Department during an inspection and be submitted to the Department upon request;

8. Those generators of source separated petroleum contaminated soil who arrange for mobile recycling equipment to process source separated petroleum contaminated soil at its point of generation;

9. Any person or recycling center which receives, stores, processes and transfers non-container plastic materials provided that:

i. Only the amount of material that the equipment on-site is capable of processing within a two-month period is stored on-site; and

ii. Storage of material on-site shall not exceed six months;

10. Land clearing activities that have been approved in accordance with a municipal planning ordinance, whereby on-site trees, including tree stumps, tree trunks and tree parts, are uprooted, processed into wood chips at the point of generation and either utilized on-site as a product or transferred off-site for utilization as a product. **This exemption shall not apply to the receipt, storage, processing or transfer of trees, including tree stumps, tree trunks or tree parts, that have been generated off-site;**

11. Any person or recycling center which receives, stores, processes or transfers source separated textiles for reuse or recycling purposes;

12. Leaf mulching activities on land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland assessment Act of 1964, N.J.S.A. 54:4-23.5, provided that:

i. Leaves delivered for mulching shall be removed from bags, boxes or similar containers prior to spreading. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in a staging area for removal to an off-site disposal facility;

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

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

13. The receipt of yard trimmings for composting where the activity meets the following criteria:

i. Only yard trimmings are received and no more than 10,000 cubic yards are received per year;

ii. If grass clippings are received, they shall constitute no more than 10 percent by volume of all yard trimmings received per year;

iii. The receipt and processing is not conducted on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:1E-1, 13:8A-20 and 13:8A-35, and N.J.A.C. 7:36;

iv. The receipt and processing is not conducted on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities, or other similar open public spaces;

v. The facility is included by administrative action pursuant to the requirements at N.J.A.C. 7:26-6.11 in the solid waste management plan of the solid waste management district within which the facility is to be located;

vi. The windrow composting area shall not exceed three acres. In addition, composting windrows shall terminate no closer than 50 feet from any property line and 150 feet from the property line of any area of human use or occupancy, or if grass clippings are received, the composting windrows shall terminate a minimum of 500 feet from the property line of any area of human use or occupancy;

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

viii. The perimeter of the composting operation shall be separated from any and all adjacent residential and/or commercial land uses by an effective visual screen buffer;

ix. The access road shall be fenced or otherwise secured to prevent unauthorized access;

x. Yard trimmings shall be received only during times when the operator or owner is present;

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

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

xiii. The composting operation shall follow the approved method of windrow composting set forth at (a) 13xiii(1) through (7) below, or other composting method approved by the Department which results in the aerobic biodegradation of the yard trimmings received:

(1) Upon receipt, all yard trimmings delivered for processing shall be removed from bags, boxes or similar containers prior to windrow formation except that yard trimmings in paper or biodegradable plastic bags need not be removed from such bags if the processing equipment provides for a shredding or cutting action. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in the staging area for removal to an off-site disposal facility;

(2) Prior to windrow formation, dry yard trimmings shall be moistened to saturation without producing excess runoff;

(3) Yard trimmings shall be placed in windrows within the week of receipt;

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

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

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

(7) Windrows shall be turned and reconstructed, at a minimum, once per month. Windrows shall be turned and reconstructed, at a minimum, twice per month when grass clippings have been co-mixed with leaves or wood chips. Grass clippings shall be mixed at minimum ratio of five parts leaves or wood chips to one part grass clippings by volume. More frequent windrow turning and reconstruction may occur at the discretion of the owner or operator; and

xiv. Within one year of start-up of the compost operation, yard trimming composting operators shall attend a composting course sponsored by the Rutgers Extension, County Agricultural or Resource Management Agents or other courses approved by the Department;

14. The collection, consolidation and transfer for recycling, treatment or disposal of universal waste and the collection, consolidation and transfer for recycling of other source separated Class D recyclable materials, except for used oil, latex paints and antifreeze, managed by small quantity handlers of universal waste provided the operation is in compliance with the standards for small quantity handlers of universal waste as incorporated by reference at N.J.A.C. 7:26A-7.1(a) and 7.4;

15. The collection, consolidation and transfer for recycling, treatment or disposal of universal waste and the collection, consolidation and transfer for recycling of other source separated Class D recyclable materials, except for used oil, latex paints and antifreeze, managed by large quantity handlers of universal waste provided the operation is in compliance with the standards for large quantity handlers of universal waste as incorporated by reference at N.J.A.C. 7:26A-7.1(a) and 7.5;

16. The transportation of universal waste and the transportation for recycling of other source separated Class D recyclable materials, except for used oil, managed by universal waste transporters, provided the transportation is in compliance with the standards for transportation of universal waste as incorporated by reference at N.J.A.C. 7:26A-7.1(a);

17. The collection, consolidation and transfer for recycling of source separated Class D recyclable materials, except for used oil and those Class D recyclable materials that are also universal waste, provided that the operation is in compliance with N.J.A.C. 7:26A-4.6(d), (e) and (f);

18. The receipt of yard trimmings for composting where the finished compost product is applied on site on land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.5, or on mined lands being restored under an approved restoration plan and where the activity meets the criteria below:

i. Yard trimmings shall be removed from bags, boxes or similar containers prior to windrow formation except that yard trimmings in paper or biodegradable plastic bags need not be removed from such bags if the processing equipment provides for a shredding or cutting action. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in a staging area for removal to an off-site disposal facility;

ii. Yard trimmings shall be placed in windrows within the week of receipt;

iii. Composting windrows shall terminate no closer than 50 feet from any property line and 150 feet from the property line of any area of human use or occupancy, or if grass clippings are received, the composting windrows shall terminate a minimum of 500 feet from the property line of any area of human use or occupancy;

iv. Yard trimmings shall be received only during times when the operator or owner is present;

v. An adequate water supply and fire-fighting equipment shall be readily available to extinguish any fires;

vi. The composting operation shall incorporate a composting method that results in the aerobic biodegradation of the yard trimmings received; and

vii. The on-site use of the final compost product shall be subject to an approved agricultural management plan, mining area restoration plan, or other plan defining appropriate methods of compost product use and rates of application, developed by the Natural Resources Conservation Service, or other applicable local, State or Federal agency;

19. The receipt of less than 1,000 cubic yards of leaves per day at a site for transfer to a recycling center holding a general approval pursuant to N.J.A.C. 7:26A-3 for the receipt and processing of leaves or to other sites exempted from the requirement to obtain a general approval and operating pursuant to N.J.A.C. 7:26A-1.4, or other specific use approved in writing by the Department where the receipt and transfer activity meets the criteria below:

i. The perimeter of the leaf receipt and transfer activity areas shall be separated from any and all adjacent residential, recreational and/or commercial land uses by an effective visual screen buffer;

ii. Leaf receipt and transfer operation areas shall terminate no closer than 150 feet from the property line of any area of human use or occupancy;

iii. Leaves shall be removed from the site within 30 days of receipt; and

iv. Records of the daily volume of leaves received and transferred, including the name and address of the site to which the leaves are transferred shall be kept and shall be maintained for three years from the date of recording. The required records shall be made available to the department during an inspection and be submitted to the department upon request;

20. Any construction company or contractor which through the course of construction and demolition activities generates source separated concrete, asphalt, brick, and block, may receive, store, process, and transfer the material provided that:

i. The company or contractor is the sole generator of the material;

ii. The unprocessed material shall be stored in accordance with N.J.A.C. 7:26A-1.4(a)7i, ii, and iii(1) and (4) and all applicable county or municipal laws or regulations;

iii. A schedule for the completion of the processing activities shall be provided to the Department along with the written notification required pursuant to N.J.A.C. 7:26A-1.4(b)5. A written notification is required each time the material stored on-site is to be processed. Processing may not begin until the contractor has received a written response from the Department;

iv. The company or contractor shall be the sole end-user and/or end-market of the end product that is generated and the end product shall be used exclusively for future projects of the company or contractor. Sale of the processed material is strictly prohibited; and

v. The processed material shall only be stored on-site for a period of one year; and

21. The recycling of source separated Class C recyclable materials that are generated on site, and processed exclusively at the point of generation into a product for sale and/or use off site.

(b) The general requirements applicable to all exemptions set out in (a) above are as follows:

1. The receipt, storage, processing or transfer of recyclable material shall be conducted in a manner consistent with the protection of public health, safety and the environment in light of the nature, scale and location of the exempted activity;

2. All persons operating pursuant to an exemption in (a) above shall ensure that the receipt, storage, processing or transfer of materials pursuant to the exemption is conducted in a manner which minimizes degradation of existing transportation patterns, ambient acoustical conditions, ambient air quality, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands and agricultural development areas, dedicated recreational or open space areas floodways and endangered or threatened wildlife and vegetation, consistent with applicable municipal, county, State and Federal law and regulations;

3. Activities exempted pursuant to this section which exceed or violate the criteria for exemptions specified in (a) above and of this subsection, or which are conducted in a manner which endangers the public health, welfare and safety or the environment, or which are in violation of Federal, State or local law, shall be subject to regulation as a recycling center pursuant to this chapter or subject to the solid waste rules pursuant to N.J.A.C. 7:26;

4. With the exception of the exempted activities set forth at (a)5, 7, and 8 above, tonnage reports shall be submitted in accordance with N.J.A.C. 7:26A-4.4(c);

5. All persons operating pursuant to an exemption in (a) above except for small quantity handlers of universal waste operating pursuant to N.J.A.C. 7:26A-7.2 shall provide a written notice of such operation to the 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, the host municipality, and host county prior to the commencement of operations.

i. Any person submitting a written notice of an exempt operation 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 further certify that the operation described herein satisfies the criteria for exemption as set forth in N.J.A.C. 7:26A-1.4. 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 termination of any exemption."

ii. The certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official; and

iii. The certification shall be signed by a person described in (b)5ii above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in (b)5ii above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the operation or activity, such as the position of plant manager, or positions of equivalent responsibility; and

(3) The written authorization is submitted to the Department.

6. Exemption from the requirement of a general or limited approval pursuant to (a) above shall not constitute an exemption from applicable county or municipal laws or regulations.

7. Operators of recycling centers, who have been issued a general or limited approval and subsequently wish to engage in activities listed at N.J.A.C. 7:26A-1.4(a), are subject to the district solid waste management plan requirements identified at N.J.A.C. 7:26-6.11 and the approval modification requirements at N.J.A.C. 7:26A-3.10 for those additional activities.

(c) Recycling centers, which receive, store, process, or transfer only Class A recyclable materials, are not subject to the approval requirements in N.J.A.C. 7:26A-3 but are subject to the operational standards at N.J.A.C. 7:26A-4.

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

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

Rewrote (a); added (b)7 and (c).

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).

Rewrote the section.

Petition for Rulemaking.

See: 35 N.J.R. 4135(a).

Administrative correction.

See: 35 N.J.R. 4883(a).

Petition for Rulemaking.

See: 35 N.J.R. 4921(a).

7:26A-1.5 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 this chapter or that they are not otherwise subject to the rules in this chapter shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of this chapter.

(b) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is not a recyclable material shall demonstrate and appropriately document that the material is not recyclable and that there is an approved alternate use for the material.

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

7:26A-1.6 Incorporation by reference of the Code of Federal Regulations

(a) Portions of this chapter that are prospectively incorporated by reference from any portion of 40 C.F.R. Part 273, Federal Regulations on Hazardous Waste, shall be understood in the manner set forth in this section.

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

(c) Prospective incorporation by reference means the ongoing process, beginning on the most recent Federal Register date following December 17, 2002, whereby all provisions of regulations incorporated into this chapter from the Federal regulations at 40 C.F.R. Part 273 are continually and automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by USEPA in the Federal Register, shall be paralleled by a similar automatic update to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart. Similarly, to maintain consistency, all new Federal regulations are also adopted into this chapter by this automatic process.

(d) Provisions of 40 C.F.R. Part 273 incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the C.F.R. shall be interpreted to include in addition to the Federal citation, any changes or additions or deletions made to that citation by the corresponding State subchapter. For example, all references within the C.F.R. to 40 C.F.R. Part 273 shall include the changes, additions and deletions which N.J.A.C. 7:26A-7 makes to 40 C.F.R. Part 273.

(e) Provisions of the C.F.R. which are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation which was specifically entirely excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference. Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.

(f) Federal statutes and regulations that are cited in 40 C.F.R. Part 273 that are not specifically adopted by reference shall be used to assist in interpreting the Federal regulations in 40 C.F.R. Part 273.

(g) In the event that there are inconsistencies or duplications in the requirements of the provisions incorporated by reference from the C.F.R. and the rules set forth in this chapter, the provisions incorporated by reference from the C.F.R. shall prevail, except where the rules set forth in this chapter are more stringent.

(h) Nothing in these provisions incorporated by reference from the C.F.R. shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Commissioner.

(i) New Federal rules, amendments, supplements, repeals and other changes at 40 C.F.R. Part 273, brought about through administrative or judicial action, shall be automatically incorporated through the prospective incorporation process in N.J.A.C. 7:26A.

(j) New Federal rules, amendments, supplements, repeals, and other changes at 40 C.F.R. Part 273, brought about through administrative or judicial action, adopted by USEPA after July 1, 1998 but prior to December 17, 2002 shall be prospectively incorporated by reference and effective December 17, 2002 and operative either March 17, 2003 or on the operative date set by USEPA the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

(k) On or after December 17, 2002, new Federal rules, amendments, supplements, and other changes, brought about by either judicial or administrative action, automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative 90 days from the publication date or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

New Rule, 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).