

CHAPTER 26G

HAZARDOUS WASTE

Authority

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

Source and Effective Date

R.2002 d.140, effective April 15, 2002.
See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Chapter Expiration Date

Chapter 26G, Hazardous Waste, expires on April 15, 2007.

Chapter Historical Note

Chapter 26G, Hazardous Waste, was adopted by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606.

Chapter 26G, Hazardous Waste, was readopted as R.2002 d.140, effective April 15, 2002. See: Source and Effective Date. See, also, section annotations.

Petition for Rulemaking: Hazardous Waste Rules. See: 36 N.J.R. 221(b), 1128(b), 2561(b).

Law Review and Journal Commentaries

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26G-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection which govern the registration, operation, closure and post-closure maintenance of hazardous waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of hazardous waste transporting operations and facilities in the State of New Jersey; and a fee schedule for services provided by the Department to hazardous waste facilities, generators and transporters.

(b) The definitions, exemptions, exclusions and discussions of solid and hazardous waste found in this chapter are for the purposes of classifying and regulating hazardous waste and do not provide any exemptions from the definition or regulation of solid waste found at N.J.A.C. 7:26.

(c) Hazardous waste facilities are exempt from district solid waste planning of N.J.A.C. 7:26-6, Solid Waste Planning Regulations; the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.; the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq.; and those provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., which relate to district solid waste planning.

(d) In addition to the rules in this chapter, all hazardous waste facilities are required to obtain other necessary approvals.

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

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

Rewrote (c).

7:26G-1.2 Construction and severability

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

(b) If this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion thereof, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, in any judicial proceeding, such judgment shall be confined in its operation to this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion or application thereof, 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.

7:26G-1.3 Practice where rules do not govern

The Department may rescind, amend or expand these rules from time to time, and such rules shall be filed with the Office of Administrative Law as provided by law. In any matter concerning hazardous waste management that arises not governed by these rules, the Department shall exercise its discretion within the authority of N.J.S.A. 13:1E-1 et seq., 58:10-23.11, 58:10A-1 et seq., 47:1A-2, 13:1D-9 and 18 and all other legislatively conferred powers.

7:26G-1.4 Incorporation by reference of the Code of Federal Regulations

(a) 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.

(b) Prospective incorporation by reference means the ongoing process, beginning May 6, 2002, whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually 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 change 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.

**SUBCHAPTER 14. SITING CRITERIA FOR NEW
MAJOR COMMERCIAL HAZARDOUS
WASTE FACILITIES****7:26G-14.1 Scope and authority**

This subchapter, adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., establishes the Department of Environmental Protection's criteria for the siting of new major commercial hazardous waste facilities. These criteria, adopted after consultation with the Hazardous Waste Advisory Council, shall be the minimum standards for siting of new major commercial hazardous waste facilities by the Hazardous Waste Facilities Siting Commission and the Department.

7:26G-14.2 Construction

(a) N.J.A.C. 7:26-14 shall be liberally construed to permit the Department to discharge its statutory functions pursuant to N.J.S.A. 13:1E-49 et seq.

(b) The Commissioner may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26G-14.3 Purpose of the regulations

(a) The purpose of this subchapter is to establish criteria for the siting of any new major commercial hazardous waste facility which shall prevent any significant threat to human health or the environment. When used in siting new major commercial hazardous waste facilities, the criteria shall:

1. Protect the residents of the State;
2. Ensure structural stability for the new major commercial hazardous waste facility;
3. Protect surface water;
4. Protect groundwater;

5. Provide for the safe transportation of hazardous waste to new major commercial hazardous waste facilities;
6. Protect environmentally sensitive areas; and
7. Protect air quality.

7:26G-14.4 Applicability

(a) This subchapter shall apply to:

1. The Commission in the development of the major hazardous waste facilities plan and the siting of new major commercial hazardous waste facilities; and
2. The Department and the Council in the review of environmental and health impact statements, registration statement, and engineering designs for new major commercial hazardous waste facilities submitted by applicants.

7:26G-14.5 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26G-14.6 Definitions

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

“Act” means the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.

“Aquifer” means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring.

“Coastal flood plain” means the area subject to high velocity waters, including, but not limited to, hurricane wave wash.

“Commercial hazardous waste facility” means any hazardous waste facility which accepts hazardous waste from more than one generator for storage, treatment or disposal at a site other than the site where the hazardous waste was generated.

“Commission” means the Hazardous Waste Facilities Siting Commission established by the Act.

“Containment structure” means a land emplacement or impoundment facility.

“Council” means the Hazardous Waste Advisory Council established by the Act.

“Criteria” means the standards adopted by the Department in this subchapter for the siting of new major commercial hazardous waste facilities.

“Department” means the New Jersey Department of Environmental Protection.

“Existing major hazardous waste facility” means any major hazardous waste facility which was legally in operation, or upon which construction had legally commenced prior to September 10, 1981.

“Facility” means a new major commercial hazardous waste facility.

“Formation” means a grouping of rock units or sediments of the earth’s crust that are more or less distinct from other rock units or sediments because of composition or structure.

“Generator” means any person, by site, whose act or process produces hazardous waste as defined by this subchapter.

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

“Hazardous waste” means, for the purposes of this subchapter, any waste or combination of wastes which pose a present or potential threat to human health, living organisms or the environment including, but not limited to, waste material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive or flammable, and any waste so designated by the United States Environmental Protection Agency or as more specifically defined in N.J.A.C. 7:26G-5. Hazardous waste does not include radioactive waste.

“Hazardous waste facility” means any area, plant or other facility for the treatment, storage or disposal of hazardous waste, including loading and transportation facilities or equipment used in connection with the processing of hazardous wastes.

“100-year flood event” means a flood of such severity that it would statistically occur only once every 100 years, although it may occur in any year.

“Hydrologic barrier” means a feature which restricts the movement of groundwater across it, such as a fault, groundwater divide, confining bed, discharge area, drainage divide, etc. It is characterized by different directions of groundwater flow or by a difference in the level of groundwater on opposite sides.

“Impoundment facility” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are

holding, storage, settling, and aeration pits, ponds, and lagoons.

"Land emplacement facility" means a controlled facility for the permanent disposal of hazardous waste into or onto the land and which is designed and operated to contain waste so that any migration of pollutants shall not create a health hazard. Such facilities include but are not limited to secure landfills, landfarms, and aboveground perpetual storage facilities.

"Major hazardous waste facility" means any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department, except that any hazardous waste facility which would otherwise be considered a major hazardous waste facility pursuant to these regulations solely as the result of recycling or rerefining of any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper shall not be considered a major hazardous waste facility for the purposes of this subchapter.

"Mean sea level" means the plane about which the tide oscillates; the average height of the sea for all stages of the tide. At any particular place (for example, Sandy Hook), it is derived by averaging the hourly tide heights over a 19-year period. The current level used in surveying is based on the National Geodetic vertical datum of 1929.

"New major hazardous waste facility" means any major hazardous waste facility other than an existing major hazardous waste facility.

"Nonattainment area" means any area determined by the Department as one in which the ambient air concentrations of a criteria pollutant exceeds a national ambient air quality standard (NAAQS).

"Plan" means the Major Hazardous Waste Facilities Plan adopted by the Commission pursuant to the Act.

"Potable water" means any water used, or intended to be used, for drinking and culinary purposes.

"Public water supply" means a water supply providing piped water to the public for human consumption if such system has at least 15 service connections or regularly services at least 25 individuals.

"Reservoir" means any impoundment, whether naturally created or created in whole or in part by the building of structures for the retention of surface water.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, or brook.

"Saturated zone" means that part of the water-bearing material in which all voids are ideally filled with water under pressure greater than atmosphere. The top of the saturated zone is the water table.

"Seasonally high water table" means the highest elevation of the water table during the wettest season in a year of above average precipitation. Whenever soil mottling occurs

the seasonally high water table shall be considered as the highest level at which mottling occurs if there is no other approved means of determination.

"Site" means the area of plot of land being considered for use as a new major commercial hazardous waste facility plus any contiguous lands reserved to meet the requirements of N.J.A.C. 7:26G-14.12.

"Subsidence" means the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from material causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Surface waters" means any waters of the State which are not groundwaters.

"Uppermost saturated unit" means the saturated hydrogeologic unit (unconsolidated or bedrock) nearest the ground surface that is separated from deeper aquifers by confining beds.

"Watershed" means the region or area drained by a river, or stream.

"Water supply well" means a well or well field completely or partially supplying potable water for human consumption or for irrigation of crops intended for direct human consumption.

"Water table" means the upper surface of the saturated zone. For the purpose of N.J.A.C. 7:26G-14.12, a perched water table may be considered the water table.

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Well field" means a ground of water supply wells for which the Department has issued one water supply allocation permit.

7:26G-14.7 Protection of the population of the State

(a) For the purpose of protecting the population of the State:

1. No land emplacement or impoundment type of new major commercial hazardous waste facility shall be sited within 2,000 feet of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day;

2. No new major commercial hazardous waste facility other than land emplacement or impoundment type facilities shall be sited within one-half mile of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day; and

3. No new major commercial hazardous waste facility shall be cited in any area within a 20-mile radius of a nuclear fission plant at which spent nuclear fuel rods are stored on site.

(b) The measurement of distances required in (a)1 and 2 above shall be taken from structures which are legally occupied, in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and any ordinance adopted by the municipality pursuant thereto, six months prior to the Commission's formally proposing to designate the site.

(c) No new major commercial hazardous waste facility shall be sited in any area so as to cause an unreasonable risk of harm to the health, safety, and welfare of the population. In determining whether such risk would be presented, the Department and the Commission shall take into consideration, at every step of the siting process, the following factors:

1. The density of population in proximity to the facility;
2. The size and type of the facility;
3. The type of waste expected to be present at the facility;
4. The transportation means and routes available to evacuate the population at risk in a maximum credible accident, including both spills and fires;
5. The size and types of other hazardous waste facilities and facilities that handle hazardous materials in the adjacent area; and
6. The availability of fire, police, and other emergency management personnel and medical facilities in the area.

7:26G-14.8 Structural stability

(a) For the purpose of ensuring structural stability of new major commercial hazardous waste facilities:

1. No new major commercial hazardous waste facility shall be sited in a riverine flood hazard area delineated by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or the 100-year flood hazard area identified under the flood insurance studies prepared for the Federal Emergency Management Agency, or in other areas shown to be within the area subject to inundation by the 100-year design flood of a nondelineated stream as determined pursuant to N.J.S.A. 58:16A-55.2.

2. No type of new major commercial hazardous waste facility other than a land emplacement or impoundment type of facility shall be sited in:

- i. A coastal flood hazard area identified by the Federal Emergency Management Agency or delineated by the Department or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain, unless it can be demonstrated to the satisfaction

of the Department that the facility design will prevent the physical transport of any hazardous waste by the 100-year coastal flood event;

ii. Areas underlain by cavernous limestone, cavernous dolomite, or cavernous marble; or

iii. Areas overlying subsurface mining activities, past or present, unless the applicant can demonstrate to the satisfaction of the Department that the facility design fully compensates for the risk of surface subsidence; and

3. No land emplacement or impoundment type of new major commercial hazardous waste facility shall be sited in:

i. A coastal flood hazard area identified by the Federal Emergency Management Agency or delineated by the Department or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain;

ii. Areas underlain by limestone, dolomite or marble; or

iii. Areas overlying past or present subsurface mining activities.

7:26G-14.9 Protection of surface water

(a) For the purpose of protecting surface water, no new major commercial hazardous waste facility shall be sited within:

1. The upstream portion of the watershed draining to an on-stream reservoir;

2. Those watershed areas that drain directly into an off-stream reservoir; or

3. The water sheds for waters classified by the Department as FW-1, or FW-2 Trout Production Waters in the Surface Water Quality Standards, N.J.A.C. 7:9-4.

7:26G-14.10 Protection of environmentally sensitive areas

(a) For the purpose of protecting environmentally sensitive areas, no new major commercial hazardous waste facility shall be sited in or on:

1. Wetland areas inundated by surface or groundwater with a frequency to support, under normal circumstances, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction;

2. Areas where the placement of the facility would adversely affect a habitat of an endangered or threatened wildlife or vegetative species as defined by the New Jersey Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A-1 et seq., or the Federal Endangered Species Act of 1973, P.L. 93-205, unless a habitat adequate to assure the survival of the species within the region surrounding or on the site is preserved.

i. These areas preserved as habitats shall be appropriately managed in accordance with a plan approved by the Endangered and Non-Game Species Project within the Division of Fish, Game and Wildlife.

3. Areas designated as wild, scenic, recreational, or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C.A. §§ 1271 et seq., or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45 et seq.;

4. Lands in municipally approved farmland preservation programs or on lands which have been dedicated to agricultural use by the purchase of their development rights pursuant to the provisions of the "Agriculture Retention and Development Act," P.L. 1983, c.33 or equivalent independent county/municipal programs, provided that such designation and dedication was officially adopted by municipal ordinance and the development rights have been purchased at least six months prior to the Commission's proposing the site or an applicant submitting to the Department and the municipality a letter stating the intention to apply for registration and engineering design approval;

5. The Pinelands Area as established by N.J.S.A. 13:18A-11a of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.; or

6. Within 6.25 miles (10 kilometers) of any mandatory Federal Class 1 Prevention of Significant Deterioration of Air Quality area.

7:26G-14.11 Ensuring safe transportation

(a) For the purpose of ensuring the safe transportation of hazardous waste from generators to new major commercial hazardous waste facilities:

1. Hazardous waste should be transported on Interstate, State or county highways or other roads which are well-maintained, well-constructed, free of obstructions and with a high degree of visibility;

2. The Department and Commission may consider requiring private, direct access roads from those specified in (a)1 above to the facility; and

3. No hazardous waste shall be transported on roads where weight restrictions for the road or any bridge on the road will be exceeded in the selected route or travel, unless engineering upgrades, undertaken and financed by the facility operators, are provided which conform to all appropriate Federal, State, county and local laws and regulations.

7:26 G-14.12 Protection of groundwater

(a) For the purpose of protecting groundwater:

1. New major commercial hazardous waste facilities may only be sited in areas where, prior to facility construction, the flow of groundwater in the uppermost saturated unit is predominantly parallel to or upwards toward the water table and the predominant groundwater flow direction is toward a nearby surface water body without any intermediate withdrawals from the uppermost saturated zone for public or private water supply and there is no significant recharge to deep aquifers;

2. All new major commercial hazardous waste facilities shall be prohibited in areas where the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface; and a

3. Land emplacement and impoundment type of new major commercial hazardous waste facilities shall be prohibited in the following areas:

i. In areas where the groundwater travel time within the uppermost saturated unit from the outermost edge of the containment structure to the site boundary, or to a surface water body or wetland within the site boundary, is less than 10 years;

ii. In areas within one mile of a water supply well or well field producing over 100,000 gallons per day, unless it can be demonstrated to the satisfaction of the Department or Commission, as appropriate, that natural hydrologic barriers isolate the site from the aquifer being pumped;

iii. In the case of partially in-ground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within five feet of the bottom of the containment structure; and

iv. In the case of wholly aboveground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface.

7:26G-14.13 Protection of air quality

(a) For the purpose of protecting the air quality of the State:

1. No new major commercial hazardous waste facility shall be sited in a nonattainment area unless the facility demonstrates that emission offsets will be obtained prior to operation, pursuant to the requirements of the Department's air pollution Control regulation entitled, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas," N.J.A.C. 7:27-18 et seq., subject to the following more stringent requirements:

i. The annual significant emission increase for volatile organic substances shall be 10 tons per year;

ii. The annual significant emission increase for total suspended particulate matter shall be 25 tons per year;

iii. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27-18.4(b) for volatile organic substances (VOS) shall be at least 2:1 and the offsets shall be obtained at a distance not to exceed 50 miles from the proposed new facility; and

iv. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27-18.4(b) for total suspended particulate matter (TSP) shall be as follows:

Distance of TSP offsets from facility (miles)	Minimum offset ratio
0-0.5	1.0:1
0.5-1.0	1.5:1
1.0-2.0	2.01:1

SUBCHAPTER 15. HAZARDOUS WASTE FACILITIES SITING COMMISSION: POLICIES AND PROCEDURES

7:26G-15.1 Scope and authority

Unless otherwise provided by statute, this subchapter, adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., establishes the Hazardous Waste Facilities Siting Commission's policies and procedures applicable to the siting of new major commercial hazardous waste facilities and to the conduct of other business which comes before the Commission.

7:26G-15.2 Construction

(a) This subchapter shall be liberally construed to permit the Hazardous Waste Facilities Siting Commission to discharge its statutory functions pursuant to N.J.S.A. 13:1E-49 et seq.

(b) The Hazardous Waste Facilities Siting Commission may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26G-15.3 Purpose

The purpose of this subchapter is to provide the public with information as to the policies and procedures adopted by the Hazardous Waste Facilities Siting Commission in regard to the siting of new major commercial hazardous waste facilities and in regard to the discharge of other duties of the Commission.

7:26G-15.4 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a

court of competent jurisdiction, the remainder of the subchapter shall not be affected thereby.

7:26G-15.5 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in N.J.A.C. 7:26G-14.

"Alternate or additional site" means a site for a facility which is proposed and adopted by the commission at the request of a hazardous waste industry, pursuant to N.J.S.A. 13:1E-59b.

"Applicant" means the applicant for a registration statement and engineering design for a major hazardous waste facility.

"Application" means the application for a registration statement and engineering design for a major hazardous waste facility.

"Disclosure statement" means a statement submitted to the Department by an applicant, which statement shall include:

1. The full name, business address and social security number of the applicant, or, if the applicant is a business concern, of any officers, directors, partners, or key employees thereof and all persons or business concerns holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

2. The full name, business address and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the applicant holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any State or Federal authority, in the 10 years immediately preceding the filing of the application, which are pending or have resulted in a finding or a settlement of a violation of any law or rule and regulation relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by the applicant, or if the applicant is a business concern, by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or Federal statute or local ordinance, against the applicant, or, if the applicant is a business concern, against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes;

7. A listing of all labor unions and trade and business associations in which the applicant was a member or with which the applicant had a collective bargaining agreement during the 10 years preceding the date of the filing of the application;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant in connection with his collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

9. Any other information the Attorney General or the Department may require that relates to the competency, reliability or good character of a specific applicant.

“Engineering design” means the specifications and parameters approved by the Department for the construction and operation of a major hazardous waste facility.

“Environmental and health impact statement” means a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility, and includes an inventory of existing environmental conditions at the site, a project description, an assessment of the impact of the project on the environment and on public health, a listing of unavoidable environmental and public health impacts, and steps to be taken to minimize environmental and public health impacts during construction and operation.

“Key employee” means any person employed by the applicant or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

“Plan” means the Major Hazardous Waste Facilities Plan adopted by the Commission pursuant to N.J.S.A. 13:1E-58.

“Registration statement” or “registration” means the operating license approved by the Department, for a major hazardous waste facility; “registrant” means the person to whom such approval was granted.

“Respondent” means, for the purposes of this subchapter, the party, or parties, to a dispute regarding payment of the gross receipts tax which is not the petitioning party.

“Site suitability study” means a study conducted to determine whether a proposed site is suitable for a particular type and size major hazardous waste facility when the siting criteria, N.J.A.C. 7:26G-13, are applied to that site.

7:26G-15.6 Procedure for designating a facility site at the request of any hazardous waste industry pursuant to N.J.S.A. 13:1E-59

(a) The Commission may, after adoption of this subchapter and the adoption of a Major Hazardous Waste Facilities Plan by the Commission, accept for consideration proposals for alternate or additional site designations at the request of any hazardous waste industry.

1. The requester shall have the burden of proof concerning suitability of the site in the proceedings provided for in this section.

(b) The requester shall submit a written request for the site designation, a letter of intent to apply for registration and engineering design approval and description of the nature of the proposed facility, and a disclosure statement on a form to be supplied by the Commission.

1. The form may be obtained from and shall be mailed, by certified mail, to the Commission at CN 406, Trenton, New Jersey 08625-0406 and to the governing body of the affected municipality or municipalities and county.

2. The Commission shall acknowledge receipt of the request and disclosure statement and, at its discretion, require the requester to supplement the form with additional information which the Commission reasonably deems necessary.

(c) Within 90 days of the receipt of a completed request for site designation, letter of intent and disclosure statement, the Commission shall either:

1. Deny the request in writing, without prejudice, upon a determination by the Commission that the proposed site does not comply with the siting criteria and/or the proposed facility is not of the number and type determined to be necessary in the plan; or

2. Transmit notice of the accepted request, by certified mail, to the requester, the governing body, board of health, planning board and environmental commission of the affected municipality or municipalities and to the governing body and any county health department of the affected county;

3. Forward the letter of intent to the Department;

4. Forward the disclosure statement to the Office of the Attorney General; and

5. Publish, in a newspaper of general circulation in the affected jurisdiction, notice of the accepted request.

(d) As soon as is practicable, but no later than 45 days after providing notice as required in (c)2 above, the governing body of the affected municipality or municipalities shall be offered a grant for conducting suitability studies for the proposed facility site from the Commission, in an amount to be determined by the Commission.

(e) Upon receiving notice of transmittal of the request as required in (c)2 above, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26G-12 and a fee in accordance with N.J.A.C. 7:26G-3 to the Department. The requester may also, at its discretion, authorize the Commission to prepare at the requester's expense, an environmental and health impact statement, which meets the requirements of N.J.A.C. 7:26G-12, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:

1. Consult with the Commission and the department in the preparation of a request for proposals; and

2. Recommend consultants to be provided with a request for proposals.

(f) In no way shall the Commission's preparation of an environmental and health impact statement be construed as an endorsement of the proposed site and/or facility by the Commission or the Department.

(g) Within six months of the receipt of a grant, as provided for in (d) above, the governing body of the affected municipality or municipalities shall complete and transmit to the Commission the site suitability studies on the proposed site.

1. Upon receipt of the site suitability studies, or upon the completion of the time period for such studies, whichever is sooner, the Commission shall publish, in a newspaper of general circulation in the affected jurisdiction, a notice of the scheduling of an adjudicatory hearing to consider the proposed site.

(h) Within 45 days of the receipt by the Commission of the site suitability studies, or upon completion of the time

period for such studies, whichever is sooner, an adjudicatory hearing concerning the proposed site shall be conducted by an administrative law judge.

1. The affected municipality or municipalities and the requester shall be parties of interest to the adjudicatory hearing, and shall have the right to present testimony and cross-examine witnesses.

2. Intervention in the adjudicatory hearing by any other person shall be as provided in N.J.A.C. 1:1-12.

3. Within 30 days of the close of the adjudicatory hearing, the administrative law judge shall transmit his or her initial decision including recommendations for action on the proposed site to the Commission.

(i) Within 30 days of the receipt of the administrative law judge's recommendations, the Commission, whose membership shall be expanded for this purpose as provided for in N.J.S.A. 13:1E-52c, shall affirm, conditionally affirm or reject the recommendations. Such action by the Commission shall:

1. Be based upon the potential for significant impairment of the environment or the public health; and

2. Be considered to be final agency action thereon for the purposes of the Administrative Procedure Act and shall be subject only to judicial review in the Appellate Division of the Superior Court pursuant to R.2-1.

(j) If the Commission fails to act upon the recommendations of the administrative law judge within 30 days, as required in this subsection, the failure shall constitute Commission affirmance of those recommendations in accordance with the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1.

(k) If the requester's proposed site is adopted by the Commission, the requester, if it has not previously exercised its discretion to do so, shall:

1. Authorize the Commission to prepare an environmental and health impact statement as provided for in (e) above;

2. Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in N.J.S.A. 13:1E-60 and the applicable rules of the Department; and

3. Submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26G-12 and a fee in accordance with N.J.A.C. 7:26G-3 to the Department.

(l) Any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 percent or more of the capacity of that facility shall be reviewed and approved by the Depart-

ment according to the procedure in N.J.S.A. 13:1E-60 and any applicable rules pursuant thereto.

(m) The Commission may, upon its own motion or at the request of the governing body of any affected municipality, repeal or withdraw any adopted site for a facility if, in the discretion of the Commission, such action is consistent with the purposes and provisions of the Act.

7:26G-15.7 (Reserved)

7:26G-15.8 Procedure for resolving disputes regarding payment of the gross receipts tax

(a) To resolve a controversy or dispute regarding the payment of the five percent gross receipts tax pursuant to N.J.S.A. 13:1E-80, an interested person shall initiate a proceeding before the Commission by:

1. Obtaining a form petition at the address given in (a)3 below from the Commission. The petitioner shall include the following information in the petition:

- i. The petitioner's name and address;
- ii. The host or affected municipality;
- iii. A statement of relevant facts or issues;
- iv. The reason for the petition; and
- v. The action sought in the petition.

2. Completing the petition, including a sworn statement as to its truth;

3. Filing the original petition with the Commission in person at 28 West State Street, Room 514, Trenton, New Jersey 08625-0406, or by mail to CN 406, Trenton, New Jersey 08625-0406; and

4. At the time of filing, providing to the Commission proof of service of a copy of the petition on the respondent or respondents.

(b) Within 30 days after service of the petition upon them, the respondent or respondents shall file an answer with the Commission together with proof of service of a copy thereof upon the petitioner.

1. The answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the allegation of the petition.

2. A respondent may not generally deny all the allegations, but shall make denials as specific denials which meet the substance of designated allegations or paragraphs of the petition.

3. Allegations in any answer setting forth an affirmative defense shall be taken as denied.

4. The time for filing an answer with the Commission may be extended beyond 30 days upon written request to the Commission.

(c) After an answer has been filed or the time for doing so has expired, the Commission may summon counsel for the parties to appear at a conference for the following purposes:

1. Eliminate or simplify issues;
2. Obtain admissions of fact or of documents that will avoid unnecessary proof;
3. Arrive at an agreement of facts; and
4. Come to an amicable resolution of the controversy without requiring a hearing.

(d) In order to resolve the controversy at a settlement conference, the Commission may require the parties to:

1. Submit written statements, verified by oath, as to the facts involved in the controversy; and
2. Submit certified copies of all documents necessary to a full understanding of the issues.

(e) For failure to appear at a settlement conference or to participate therein or to take action required by the Commission, the Commission in its discretion may make such order with respect to the continued prosecution of the matter or an objection thereto, as it deems just and proper.

(f) In the event that the parties and the Commission are unable to resolve the controversy at a settlement conference, as referred to in (c) above, the Commission shall refer the matter to the Office of Administrative Law as a contested case for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 1:1.

1. Upon receipt of the initial decision from the Office of Administrative Law, the Commission shall affirm, reject or modify the decision within 45 days.

2. The Commission's decision shall be considered to be the final agency action from which any party may take an appeal to the Appellate Division of the Superior Court.

SUBCHAPTER 16. AVAILABILITY OF INFORMATION; CONFIDENTIAL BUSINESS INFORMATION

7:26G-16.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the hazardous waste program under this chapter available to the public and maintaining confidentiality of certain parts of that information.