

**CHAPTER 26G****HAZARDOUS WASTE****Authority**

N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:1E-1 et seq., 13:1E-49 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11 et seq., and 58:10A-1 et seq.

**Source and Effective Date**

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

**Executive Order No. 66(1978) Expiration Date**

Chapter 26G, Hazardous Waste, expires on October 21, 2001.

**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 and waste flow requirements of N.J.A.C. 7:26-6, Interdistrict and intradistrict solid waste flow, the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., and 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, 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.

##### 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) When a provision of 40 C.F.R. is incorporated by reference all internal references contained therein are also incorporated by reference 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 261 shall include the changes, additions and deletions which N.J.A.C. 7:26G-5 makes to 40 C.F.R. Part 261.

(c) Provisions of 49 C.F.R. incorporated by reference are prospective and all internal references contained therein are also incorporated by reference for the purposes of that provision, unless otherwise noted. Provisions of 49 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 following State agencies and corresponding State rules:



1. New Jersey Department of Transportation, N.J.A.C. 16:49-2.1; and

2. New Jersey Department of Law and Public Safety, Division of State Police, N.J.A.C. 13:60-1.1.

(d) 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 incorporation by virtue of the cross reference.

(e) Federal statutes and regulations that are cited in 40 C.F.R. Parts 124, 260 through 266, 268, and 270 that are not specifically adopted by reference shall be used to assist in interpreting the Federal regulations in 40 C.F.R. Parts 124, 260 through 266, 268, and 270.

(f) Federal statutes and regulations that are cited in 49 C.F.R. Parts 171 through 180, and 390 through 397 that are not specifically adopted by reference shall be used to assist in interpreting the Federal regulations in 49 C.F.R. Parts 171 through 180, and 390 through 397.

(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.

#### 7:26G-1.5 Document availability

(a) Copies of the C.F.R. (40 C.F.R. Parts 124, 260 through 266, 268, 270 and 49 C.F.R. Parts 171 through 180, and 390 through 397) as adopted and incorporated by reference herein are available for review. Publications incorporated by reference within the Code of Federal Regulations as listed at 40 C.F.R. 260.11, or the most currently available version, are also available for review. These may be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

CN 414, 120 South Stockton Street

Trenton, NJ 08625-0414

Telephone (609)292-7081

(b) Copies of the C.F.R. (40 C.F.R. Parts 124, 260 through 266, 268, 270 and 49 C.F.R. Parts 171 through 180, and 390 through 397) as adopted and incorporated by reference herein, may be purchased from the following sources:

U.S. Government Printing Office  
Superintendent of Documents

Mail Stop: SCOP

Washington, DC 20402-9328

U.S. Government Printing Office Bookstore

Room 110, 26 Federal Plaza

New York, NY 10278-0081

U.S. Government Printing Office Bookstore

Robert Morris Building

100 North 17th Street

Philadelphia, PA 19103

(c) Copies of the C.F.R. (40 C.F.R. Parts 124, 260 through 266, 268, 270 and 49 C.F.R. Parts 171 through 180, and 390 through 397) as adopted and incorporated by reference herein, are available for review at the following public libraries:

New Jersey State Library

CN 520, 185 West State Street

Trenton, NJ 08625-0520

Newark Public Library

5 Washington Street

Newark, NJ 07101

## SUBCHAPTER 2. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADMINISTRATIVE HEARINGS

### 7:26G-2.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for hazardous waste violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., (for the purpose of this subchapter, hereinafter "the Act"), including violation of any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act. This subchapter shall also govern the procedures for requesting administrative hearings on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$50,000 for each violation of each provision of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 13:1E-1 et seq. or any other statute, in connection with the violation for which the assessment is levied.

(e) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the Act. Specifically, the Department may revoke or suspend a permit, license or other operating authority, without regard to whether or not a civil administrative penalty has been or will be assessed pursuant to this subchapter.

(f) For purposes of this subchapter, any person who undertakes or performs an obligation imposed upon another person pursuant to the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act, may at the discretion of the Department be subject to a civil administrative penalty pursuant to this subchapter in the same manner and in the same amount as such other person.

#### **7:26G-2.2 Procedures for assessment and payment of civil administrative penalties**

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act, the Department shall, by means of notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one violation in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. This notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, administrative order, permit, license, or Part A permit application violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an administrative hearing, pursuant to the procedures in N.J.A.C. 7:26G-2.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order of a contested case or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is timely requested pursuant to N.J.A.C. 7:26G-2.3, the notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of civil administrative penalty assessment;

2. If a hearing is timely requested pursuant to N.J.A.C. 7:26G-2.3 and the Department denies the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of notice of such denial; or

3. If a hearing is requested pursuant to N.J.A.C. 7:26G-2.3 and an administrative hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

#### **7:26G-2.3 Procedures to request an administrative hearing to contest an administrative order or a notice of civil administrative penalty assessment, and procedures for conducting administrative hearings**

(a) To request an administrative hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, at:

Office of Legal Affairs

ATTENTION: Administrative Hearing Requests

Department of Environmental Protection

CN 402

Trenton, NJ 08625-0402

1. The name, address, telephone number and EPA Identification Number (if applicable) of the violator and its authorized representative;

2. The violator's defenses, to each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding which the violator denies, the violator shall allege the fact or facts as the violator believes such fact or facts to be;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's hazardous waste program assigned to the activity, calculated as a percentage of the average salary. The percentage is set by the New Jersey Department of the Treasury, and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a full time Department employee working in the Department's hazardous waste program assigned to the activity, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the sum of AS and FB;

iv. OE equals operating expenses (including without limitation: postage, telephone, travel, supplies, clerical support, other support staff and data system management) attributable to a full-time Department employee working in the Department's hazardous waste program assigned to the activity;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's hazardous waste activities, divided by the total number of billable Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's hazardous waste program spends annually performing activities for which fees are imposed under N.J.A.C. 7:26G-3.3.

(d) Promptly after completing the report described in (c) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26-3.3 within the one-year period covered by the report.

(e) Promptly after making the adjustment to the fees pursuant to the report described in (c) above, the Department shall publish a notice of administrative change in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees, in N.J.A.C. 7:26G-3.3 and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report and to submit comments within 45 days of the date of publication of the notice. The Department shall provide a copy of the report to each person requesting a copy. The Department will evaluate the comments submitted and publish its responses in the New Jersey Register prior to the operative date of the adjusted fees.

#### SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

##### 7:26G-4.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 260, except as provided in 4.1(b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 260 are not incorporated by reference: 260.1(b)(1), 260.2, the following definitions at 260.10: "Act or RCRA," "Administrator," and "Regional Administrator"; and 260.20(b) through (e).

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

1. 260.1(a), after "chapter" add "and N.J.A.C. 7:26G";
2. 260.1(b)(3), after "chapter" add "and N.J.A.C. 7:26G";
3. 260.1(b)(4), after "chapter" add "and/or N.J.A.C. 7:26G"; and
4. 260.10 Definitions:

i. "Existing tank system or existing component," after "for which installation has commenced on or prior to July 14, 1986." add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

ii. "Manifest," after "Manifest" add "or State Manifest"; after "EPA form 8700-22" add "as modified by the State"; after "EPA form 8700-22A," add "or a form approved by the Department"; replace "part 262" with "N.J.A.C. 7:26G-6";

iii. "New tank system or new tank component," at the end of the paragraph add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

5. 260.20(a), after "parts 260 through 266" delete "and 268" and replace with ", 268 and N.J.A.C. 7:26A-7."; after "of this chapter" add "or N.J.A.C. 7:26G."; after "testing or analytical method to part 261, 264, or 265" add "of this chapter."; after "Section 260.22 sets forth additional requirements for petitions to exclude a waste"

add "or waste-derived material."; after "the lists of hazardous wastes in subpart D of part 261" add "of this chapter. N.J.A.C. 7:26G-4.2 sets forth additional requirements for petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes for categories of hazardous waste as universal waste. All petitions for rulemaking will be subject to N.J.A.C. 1:30, Rules for Rulemaking. All petitions for rulemaking are governed by N.J.A.C. 1:30-3.6 and 7:1-1.2.";

6. 260.21(b) deleted "§ 260.20(b)" and replace with "N.J.A.C. 7:1-1.2 and 1:30-3.6";

7. 260.21(d), after "will be incorporated in" add "and will be in addition to";

8. 260.33(a), delete "in the region where the recycler is located";

9. 260.33(b), delete "this decision may not be appealed to the Administrator." and replace with "a hearing may be requested in accordance with the provisions of the Administrative Procedure Act.";

10. 260.40(a), replace "261.6(a)(2)(iv)" with "261.6(a)(2)(iii)";

11. 260.41, replace "261.6(a)(2)(iv)" with "261.6(a)(2)(iii)";

12. Appendix I to Part 260 first paragraph, after "of the regulations they should comply." add "Appendix I contains guidance, not regulations. If any part of the appendix is inconsistent with the regulations, the regulations are controlling.";

13. Appendix I to Part 260 last paragraph, after "encouraged to write to EPA" add "and the Department"; after "(513) 684-5362" add "and New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Hazardous Waste Regulation, CN 414, 120 South Stockton Street, Trenton, NJ 08625-0414, (609)292-7081."

(d) When used in the term "EPA form," the definition of "Manifest," "Federal Agency" and "Person" at 40 C.F.R. 260.10, and in the Appendix I to 40 C.F.R. Part 260, the term "Agency" or "EPA" means the United States Environmental Protection Agency.

(e) When used in the definition for "hazardous waste constituent" at 40 C.F.R. 260.10, the term "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her designee.

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

Amended (c)5.

## 7:26G-4.2 State definitions

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

"Administrator" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee, except where specifically noted, then it means the Administrator of the United States Environmental Protection Agency or his or her designee.

"Agency" or "EPA" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the New Jersey Department of Environmental Protection, except when specifically noted, then it means the United States Environmental Protection Agency.

"Applicant" means the person who submits an application for a permit under this chapter and in whose name the permit is to be issued, and for the purposes of N.J.A.C. 7:26G-7, the person who files an application for an approved registration statement and in whose name the approved registration statement is to be issued.

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

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

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

"Commingling" means the transferring, bulking, or mixing of hazardous waste from one or more hazardous waste packages, containers, transport units or transport vehicles into another.

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

"Compliance inspection" is a site inspection performed by a representative of the Department's hazardous waste enforcement program of a generator, transporter, or facility to verify compliance with previously cited violations.

“Compliance review” is an analysis conducted by a representative of the hazardous waste enforcement program at one of the Department’s enforcement field offices to verify compliance with cited violations where the generator, transporter or facility has submitted written material for review. An example is where a contingency plan or personnel training plan has been submitted in response to violations discovered during a previously conducted initial inspection.

“Consignment state” means the state in which the designated facility is located.

“Consolidation” means the movement of closed containers of hazardous waste from one hazardous waste transport unit or transport vehicle to another.

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

“Department of Transportation” or “DOT” means the “U.S. Department of Transportation”.

“Destination facility” means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in N.J.A.C. 7:26A-7.2(d)1 and (d)3 and 7.3(d)1 and (d)3. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

“Director” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his designee, except when specifically noted.

“Environmental and Health Impact Statement” means a statement as to the realistically identifiable, probable impact of the proposed hazardous waste facility upon the geology, soils, hydrology, air quality, ecology, land use, socioeconomics, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at the project site and in the surrounding region; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

“Generator inspection” is an inspection of a generator as defined at 40 C.F.R. 260.10 who generates 100 kilograms or more, but less than 1,000 kilograms of non-acutely toxic hazardous waste per month and less than one kilogram of acute hazardous waste per month; and those who generate less than 100 kilograms per month non-acutely toxic hazardous waste, less than one kilogram of acute hazardous waste, but accumulate greater than 1,000 kilograms and less than 6,000 kilograms of non-acutely toxic hazardous waste at any one period of time. A generator’s category will be based upon hazardous waste manifest history and the quantity of

hazardous waste present at the facility at the time of inspection by enforcement personnel.

“Hazardous waste cab” means any powered device to which a hazardous waste transport unit can be attached for transporting hazardous waste off-site or to a hazardous waste facility by road.

“Hazardous waste transport unit” means any portable non-powered device that is used to contain and transport hazardous waste off-site or to a hazardous waste facility by road, rail, water, or air and that is not normally disposed of with the waste. Hazardous waste transport unit includes, but is not limited to, roll-off containers, hoppers/dumpsters, rail cars, barges, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs.

“Hazardous waste vehicle” means any self-propelled device that is used to move hazardous waste off-site or to a hazardous waste facility by road. Hazardous waste vehicle is any combination of hazardous waste cab and transport unit, whether detachable or permanently attached, and includes, but is not limited to, straight boxes/vans, straight dumps, straight tanks, straight vacs, straight roll-offs, and pick-up trucks.

“HSWA” means the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

“Large quantity generator inspection” is an inspection of a generator who generates 1,000 kilograms or more of non-acutely toxic hazardous waste per month, or one kilogram of acutely hazardous waste per month; and those who generate less than these amounts but accumulate greater than 6,000 kilograms of non-acutely toxic hazardous waste at any one period of time. A generator’s category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

“Major commercial hazardous waste facility” is defined at N.J.S.A. 13:1E-42.1 and 51 as “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 facility which would otherwise be considered a major hazardous waste facility pursuant to this section solely as the result of the recycling or re-refining 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 Act.”

“Non-major commercial hazardous waste facility” is a commercial hazardous waste facility which does not have a total capacity to treat, store or dispose of less than or equal to 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department.

“Non-commercial hazardous waste facility” means any area, plan or other facility for the treatment, storage or disposal of hazardous waste which is not a commercial hazardous waste facility.

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

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. Is a new animal drug under FFDCA section 201(w); or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or
3. Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph 1 or 2 of this definition.

“Prime contractor” means any person who enters into an oral or written agreement to store, collect, process, transfer, treat, or dispose of hazardous waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle.

“Resource Conservation and Recovery Act,” “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C,” “Subtitle C” or “the Act” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, when referring to either an operating permit or to the Federal hazardous waste program as a whole (that is, not a specific provision of RCRA), mean the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. or any other comparable provision of New Jersey’s statutes and implementing regulations, except when specifically noted, then it means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq. When the Federal language incorporated by reference refers to a specific provision of RCRA (except after references to RCRA section 3008 and 3008(h)) add the phrase “or any comparable provisions of New Jersey’s statutes and implementing regulations”. After references to RCRA sections 3008 and 3008(h) add the phrase “or N.J.S.A. 13:1E-9 or any other comparable provisions of New Jersey’s statutes and implementing regulations.”

“Registrant” means an applicant who has obtained an approved registration statement and who has registered hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable).

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

“Regional Administrator” as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his or her designee, except when specifically noted, then it means the Regional Administrator for the EPA Region in which the facility is located or his or her designee.

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

“State Director” as used in the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

“Subcontractor” means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of hazardous waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle pursuant to an oral or written agreement entered into by or on behalf of another person.

“Thermostat” means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of N.J.A.C. 7:26A-7.2(d)3ii or 7.3(d)3ii.

“Universal waste” means any of the following hazardous wastes that are managed under the universal waste requirements of N.J.A.C. 7:26A-7:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

“Universal waste handler” means a generator (as defined in 40 C.F.R. § 260.10) of universal waste or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of N.J.A.C. 7:26A-7.2(d) or 7.3(d)), disposes of, or recycles universal waste or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway or water.

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

Added definitions "battery", "destination facility", "pesticide", "thermostat", "universal waste", "universal waste handler", and "universal waste transporter".

### 7:26G-4.3 Petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of N.J.A.C. 7:26A-7 may petition for a regulatory amendment under this section, 40 C.F.R. 260.20 as incorporated by reference herein, and N.J.A.C. 7:26A-7.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Department that regulation under the universal waste regulations of N.J.A.C. 7:26A-7 is appropriate (in accord with the reasons for establishing the universal waste system as set forth in 60 F.R. 25492, May 11, 1995) for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by 40 C.F.R. 260.20(b) as incorporated by reference herein. The petition should also address as many of the factors listed in N.J.A.C. 7:26A-7.7(b) as apply to the waste or category of waste addressed in the petition.

(c) The Department shall grant or deny a petition using the factors listed in N.J.A.C. 7:26A-7.7(b). The decision will be based on the weight of evidence showing that regulation under N.J.A.C. 7:26A-7 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Department may request additional information needed to evaluate the merits of the petition.

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

## SUBCHAPTER 5. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

### 7:26G-5.1 Incorporation by reference

(a) This subchapter incorporates the July 1, 1993 edition of 40 C.F.R. Part 261, Federal Regulations on Identification and Listing of Hazardous Waste, and its appendices, by reference, except as provided in N.J.A.C. 7:26G-5(b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 261 are not incorporated by reference: 40 C.F.R. 261.5(c), (f) and (g). These provisions are replaced with provisions found respectively, at N.J.A.C. 7:26G-5.2(a), (b) and (c) below.

(c) The following provisions of 40 C.F.R. Part 261 are incorporated by reference with the specified changes:

1. Effective dates of regulations first promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) shall not be altered, because these rules take effect in all States at that time. Effective dates of rules promulgated by EPA under the authority of the Resource Conservation and Recovery Act (RCRA), which do not take effect in authorized states until state adoption of the rules, shall be removed and replaced with October 21, 1996. See 40 CFR 271.1 Table 1, which lists all HSWA regulations. Other regulations are promulgated under RCRA.

2. The phrase "in the Region where the sample is collected" shall be omitted from 40 C.F.R. 261.4(e)(3)(iii).

(d) When used in the following Federal citations, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 261.10 and 11.

(e) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 261.3(a)(2)(v), 261.6(a)(3)(i)(A), 261.6(a)(3)(i)(B), and 261.22(b).

(f) When used in the following Federal citations, the term "Regional Administrator" shall not be substituted by a State term, but shall retain its meaning: first sentence of 40 C.F.R. 261.4(e)(3) and 40 C.F.R. 261.4(f)(1).

Amended by R.1996 d.577, effective December 16, 1996.  
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).  
Inserted (b).

### 7:26G-5.2 Additional special requirements for hazardous waste generated by conditionally exempt small quantity generators

(a) When making the quantity determinations of this section, the generator shall include all hazardous waste that it generates, except hazardous waste that:

1. Is exempt from regulation under 40 C.F.R. 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8 as incorporated by reference herein;

2. Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 C.F.R. 260.10 as incorporated herein by reference;

3. Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 C.F.R. 261.6(c)(2) as incorporated herein by reference;

4. Is used oil managed under the requirements of 40 C.F.R. 261.6(a)(4) as incorporated herein by reference and N.J.A.C. 7:26A-6;

5. Is spent lead acid batteries managed under the requirements of 40 C.F.R. Part 266, subpart G as incorporated by reference at N.J.A.C. 7:26G-10; or

6. Is universal waste managed under N.J.A.C. 7:26-5.3 and 7:26A-7.

(b) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in 40 C.F.R. 261.5(e)(1) or (2), as incorporated herein by reference, to be excluded from full regulation under the subsection, the generator shall comply with the following requirements:

1. 40 C.F.R. 262.11 as incorporated by reference at N.J.A.C. 7:26G-6;

2. The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous waste in quantities greater than those set forth in 40 C.F.R. 261.5(e)(1) or (2) as incorporated herein by reference, all of those accumulated wastes are subject to regulation under N.J.A.C. 7:26G-6 through 13, and the applicable notification requirements of section 3010 of RCRA. The time period of 40 C.F.R. 262.34(a), as incorporated by reference at N.J.A.C. 7:26G-6, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit; and

3. A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the United States, is:

i. Permitted under N.J.A.C. 7:26G-12;

ii. In interim status under N.J.A.C. 7:26G-12 and 9;

iii. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 C.F.R. Part 271;

iv. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

v. A facility which:

(1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(2) Treats its waste prior to beneficial use or reuse or legitimate recycling or reclamation; or

vi. For universal waste managed under N.J.A.C. 7:26G-5.3, a universal waste handler or destination facility subject to the requirements of N.J.A.C. 7:26A-7.

(c) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator shall comply with the following requirements:

1. 40 C.F.R. 262.11 as incorporated by reference at N.J.A.C. 7:26G-6;

2. The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of N.J.A.C. 7:26G-6 applicable to generator of between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month as well as the requirements of N.J.A.C. 7:26G-7 through 13, and the applicable notification requirements of section 3010 of RCRA. The time period of 40 C.F.R. 262.34(d), as incorporated by reference at N.J.A.C. 7:26G-6 for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated waste exceed 1,000 kilograms; and

3. A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the United States, is:

i. Permitted under N.J.A.C. 7:26G-12;

ii. In interim status under N.J.A.C. 7:26G-12 and 9;

iii. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 C.F.R. Part 271;

iv. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

v. A facility which:

(1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(2) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

vi. For universal waste managed under N.J.A.C. 7:26G-5.3, a universal waste handler or destination facility subject to the requirements of N.J.A.C. 7:26A-7.

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

### 7:26G-5.3 Requirements for universal waste

(a) The wastes listed in this section are exempt from regulation under N.J.A.C. 7:26G-6 through 12 except as specified in N.J.A.C. 7:26A-7:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);

2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

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

#### 7:26G-5.4 Swine food

Pursuant to the Solid Waste Management Act, the definition of solid waste shall not include solid animal or vegetable wastes collected by swine producers, licensed by the State Department of Agriculture, who collect, prepare and feed such wastes to swine on their own farms.

## SUBCHAPTER 6. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

### 7:26G-6.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 262, Federal regulations on the standards applicable to generators of hazardous waste, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 262 are not incorporated by reference: Appendix to Part 262—Uniform hazardous waste manifest and instructions for EPA Form 8700-22 only.

(c) The following provisions of 40 C.F.R. Part 262 are incorporated by reference with the specified changes:

1. 40 C.F.R. 262.10(e), after “penalties prescribed in section 3008 of the Act” add “, N.J.S.A. 13:1E-9 and N.J.A.C. 7:26G-2”;

2. 40 C.F.R. 262.11, delete the language at paragraph “(d)” and replace it with the following: “If the waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste.”;

3. 40 C.F.R. 262.20(a), after “according to the instructions included in the appendix to part 262” add “for EPA form 8700-22A, and for EPA form 8700-22, according to the instructions in the appendix to N.J.A.C. 7:26G-6. If an out-of-state manifest is used, the generator shall complete Items A-K of the manifest even if the instructions on the back of the out-of-state manifest do not address these shaded portions.”;

4. 40 C.F.R. 262.21(a), at the end of the paragraph add “If the consignment State for the shipment is New Jersey, the generator shall use the manifest supplied by the Department.”;

5. 40 C.F.R. 262.21(b), at the end of the paragraph add “In these situations, the generator shall use the manifest supplied by the Department.”;

6. 40 C.F.R. 262.23(a)(3), after “in accordance with 262.40(a)” add “and forward one copy to the generator State and one copy to the consignment State”;

7. 40 C.F.R. 262.23, after “subsection (e)”, add new subsection “(f) The generator is responsible for assuring that the Department and the consignment state receive copies of the completed manifest containing the handwritten signature of the owner or operator of the designated facility. If the designated facility is located in a state that does not mandate its facilities to return copies of the completed manifests to the generator state and the consignment state, the generator must so distribute these copies. The generator may provide photocopies to satisfy this requirement, if the manifest form provided by the consignment State does not contain a sufficient number of copies. In the case of an interstate shipment for which the manifest has not been returned, the Department will provide notification to the consignment state and to the State in which the shipment may have been delivered (or to EPA, in the case of unauthorized states)”;

8. 40 C.F.R. 262.32(b), remove 110 and replace with 119; after “HAZARDOUS WASTE—Federal” add “and/or State”; after “If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency” add “or the New Jersey Department of Environmental Protection”; before “Manifest Document Number” add “State”;

9. 40 C.F.R. 262.40(a), after “signed in accordance with § 262.23(a) for three years” delete “or until he receives a signed copy from” and replace with “and a signed copy from the owner or operator of the”;

10. 40 C.F.R. 262.41(a), delete “EPA Form 8700-13A” and replace with “forms approved by the Department”;

11. 40 C.F.R. 262.42(a)(1), after “to determine the status of the hazardous waste” add “and contact the Department at 609-292-7081 to inform the Department of the situation”;

12. 40 C.F.R. 262.42(a)(2), after “must submit an exception report to the EPA Regional Administrator” delete “for the Region in which the generator is located”;

13. 40 C.F.R. 262.43, delete “sections 2002(a) and 3002(6) of the Act” and replace with “N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1D-1 et seq., or any comparable provisions of New Jersey’s statutes and implementing regulations”;

14. 40 C.F.R. 262.54(e). Delete the last sentence of the paragraph and replace with “For all export shipments, the primary exporter shall obtain the manifest from the Department.”;

15. 40 C.F.R. 262.60(c). Delete the last sentence of the paragraph and replace with "For all import shipments, the person who imports the waste shall obtain the manifest from the Department.";

(d) N.J.A.C. 7:26G-5.2 and 40 C.F.R. 261.5(d) as incorporated by reference at N.J.A.C. 7:26G-5 shall be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

(e) When used in the following Federal citations, the term "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 262.11(c)(1), 262.12(a), 262.12(b), 262.55, 262.56 and 262.57(b).

(f) When used in "EPA identification number," "EPA form," "EPA hazardous waste number", "US EPA ID number", and in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 262.51, 262.52, 262.53, 262.54 and 262.57.

Amended by R.1996 d.577, effective December 16, 1996.  
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).  
Inserted (c)2 and (d).

**7:26G-6.2 Waste code(s)**

(a) The proper waste code(s) that accurately describe the shipment of hazardous waste shall be entered on the Hazardous Waste Manifest and determined according to the following hierarchy:

Table A. Wastes which can be described only by one or more Federal F, K, P, or U codes (40 C.F.R. 261.31 through 261.33 as incorporated by reference at N.J.A.C. 7:26G-5)

Waste composition	Manifest completion	
	Item I	Item J
1. One F, K, P, or U waste	Use the applicable F, K, P or U code	
2. Mixture of two or more F, K, P, and/or U wastes	Use the listed code for the component forming the highest percentage by weight or volume of the total waste depending on units reported in Item 14	All other acutely hazardous listed codes

Table B. Wastes which can be described by Federal F, K, P, or U codes and Federal characteristic (D) code(s) (40 C.F.R. 261.31 through 261.33 and 40 C.F.R. 261.21 through 261.24 respectively, as incorporated by reference at N.J.A.C. 7:26G-5)

Waste composition	Manifest completion	
	Item I	Item J
1. One F, K, P, or U waste that exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code	

Waste composition	Manifest completion	
	Item I	Item J
2. Mixture of two or more F, K, P, or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code for the listed waste forming the highest percentage by weight or volume of the total waste depending on the units reported in Item 14	all other acutely hazardous listed code(s)

Table C. Waste is not Federal F, K, P, or U code but displays one or more Federal characteristics (D waste) (40 C.F.R. 261.31 through 261.33 and 40 C.F.R. 261.21 through 261.24 respectively, as incorporated by reference at N.J.A.C. 7:26G-5)

Waste composition	Manifest completion	
	Item I	Item J
1. Waste displays only one characteristic	D code for the characteristic	
2. Waste displays multiple characteristics	D code for the first characteristic displayed according to the following order: 1. Ignitability 2. Reactivity 3. Corrosivity 4. TC toxicity	

**7:26G-6.3 Rejected loads**

(a) If all or part of a shipment of hazardous waste is rejected by a hazardous waste facility or if a transporter is unable to deliver a shipment of hazardous waste to the designated hazardous waste facility, the hazardous waste facility owner or operator, the transporter, and the generator shall comply with the following requirements:

1. If all or part of the shipment of hazardous waste is immediately rejected by the hazardous waste facility or if the transporter is unable to deliver the shipment of hazardous waste to the designated hazardous waste facility, the transporter shall contact the generator, who shall instruct the transporter to return the shipment to the generator or to deliver the shipment to an alternate hazardous waste facility.

i. If the shipment of hazardous waste is returned to the generator, the Manifest shall be completed as follows:

(1) In the Discrepancy Indication space of the Manifest, the facility operator shall indicate the reason(s) for the rejection and that the waste is to be returned to the generator. The facility operator shall complete, sign and date the Certification of Receipt (Section 20) on the Manifest;

(2) The transporter shall receive manifest copies 1, 2, 3, and 5 from the facility operator and shall return the shipment to the generator. The facility operator shall retain manifest copy 4;

(3) The generator, upon receiving the rejected shipment, shall certify the return receipt (signature and date) in the Special Handling Instructions and Additional Information section of the Manifest;

(4) The generator shall then distribute manifest copies 1, 2, 3, and 5 as indicated on the form, except that if the shipment was rejected by an out-of-state facility which did not return the manifest copies 1, 2, 3, and 5, the generator shall notify the consignment state and the generator state of receipt of the waste and shall provide those states with a photocopy of the generator's manifest copy; and

(5) The generator shall arrange to dispose of the waste at an authorized facility using another manifest in accordance with this subchapter.

ii. If the shipment of hazardous waste is delivered to an alternate hazardous waste facility, the Manifest shall be completed as follows:

(1) The designated facility operator shall indicate the reason(s) for the rejection and that the waste is to be shipped to an alternate facility in the Discrepancy Indication space of the Manifest. The designated facility operator shall complete, sign, and date the Certification of Receipt (Section 20) on the Manifest;

(2) The transporter shall indicate the alternate facility's name, address, EPA Identification Number, and telephone number in the Special Handling Instruction and Additional Information section;

(3) The designated facility operator shall photocopy the manifest and retain the copy;

(4) After receipt of the original manifest copies 1, 2, 3, 4, and 5 from the designated facility operator, the transporter shall transport the hazardous waste to the indicated alternate authorized facility;

(5) Upon receipt of the originally rejected shipment, the alternate facility operator shall certify receipt (signature and date) in Section 15 of the Manifest; and

(6) The alternate facility operator shall then distribute manifest copies 1, 2, 3, and 5 and retain copy 4.

2. If a hazardous waste facility rejects all or part of a shipment of hazardous waste after the Manifest has been distributed by the facility, the hazardous waste facility owner or operator, the transporter, and the generator shall comply with the following requirements:

i. The owner or operator of the hazardous waste facility shall describe the nature of the rejection in Section 19 of the facility's manifest copy;

ii. The owner or operator of the hazardous waste facility shall ship the waste to the generator with three photocopies of the revised manifest, each copy to be signed by the owner or operator, the transporter returning the hazardous waste to the generator, and the generator;

iii. The generator shall retain one copy of the revised signed manifest, return one copy to the transporter returning the hazardous waste to the generator, and return one copy to the owner or operator of the hazardous waste facility;

iv. The owner or operator shall notify the generator state and the consignment state of the rejection by sending to each state a photocopy of the revised signed manifest copy, returned to the owner or operator by the generator in accordance with (a)2iii above, showing that the generator received the waste; and

v. The owner or operator, the generator, and the transporter returning the hazardous waste to the generator shall each retain a copy of the revised, signed manifest.

(b) If a shipment of hazardous waste is rejected by a designated facility after a transporter has mixed or commingled hazardous waste, the transporter shall accept the return shipment of the rejected wastes.

(c) If a transporter accepts a return shipment of rejected wastes under (b) above, the transporter shall:

1. Promptly place and secure the rejected waste in a transfer facility; and

2. Make arrangements with an authorized facility to receive and manage the commingled waste.

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

## SUBCHAPTER 7. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

### 7:26G-7.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 263, except as provided in (b) and (c) below:

(b) The following provisions of 40 C.F.R. Part 263 will not be incorporated: 40 C.F.R. 263.12.

(c) The following provisions of 40 C.F.R. Part 263 are incorporated by reference with the specified changes:

1. 40 C.F.R. 263.10(c)2, replace "of different DOT shipping descriptions by placing them into a single container" with "and has the shipment of hazardous waste rejected by the designated facility. The transporter shall comply with the requirements at N.J.A.C. 7:26G-6.3(b)-(c) and will not be subject to the provisions at § 262.34."

2. 40 C.F.R. 263.30(a), after "local authorities" add "[including the Department at 609-292-7172 (if this number is inoperable, notify the New Jersey State Police at 609-882-2000)]".

(d) When used in the following citations, the term "Administrator" means the Administrator of the Environmental Protection Agency or his designee: 40 C.F.R. 263.11.

(e) When used in the following citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 263.11, 263.20(a), 263.20(c), 263.20(e)(2) and 263.20(f)(2).

### 7:26G-7.2 Registration statement and registration requirements

(a) Registration statement approval, renewal, and revocation requirements are as follows:

1. Prior to operation, a hazardous waste transporter shall obtain an approved registration statement from the Department.

2. The application for an approved registration statement shall be executed on forms provided by the Department, and shall state such information as required below, as well as any additional information that the Department may require from a specific applicant. This information includes the following:

i. Proof of compliance with the minimum financial responsibility requirements covering public liabilities, property damage and environmental restoration set out at 49 C.F.R. Part 387;

ii. Disclosure of any conviction for any criminal offense during the 10 year period prior to application for a license under state or Federal law for acts involving the illegal storage, transportation or disposal of hazardous waste against any owner, officer, or employee of the firm seeking a license;

iii. Vehicle identification numbers and license plate numbers;

iv. For any leased hazardous waste vehicles (hazardous waste cab and transport unit individually if detachable), a copy of the Motor Vehicle Registration card, a copy of the lease which meets the requirements of (a)11 below, a sworn affidavit described at (a)12 below, and certification described at (a)13 below; and

v. For those transporters intending to operate a hazardous waste transfer facility pursuant to N.J.A.C. 7:26G-7.4, the address of each such facilities and an indication whether each property, where the transfer facility is to be located, is owned or leased by the transporter. For any leased property, a copy of the written lease.

3. Any person who files an application for an approved registration statement shall also submit the disclosure statement described in N.J.A.C. 7:26-16.4. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d).

4. Any applicant who claims to be exempted under N.J.A.C. 7:26-16.3(d) from the requirement of a disclosure statement shall submit an affidavit stating the basis for the claim. The applicant claiming the exemption shall also file an alternative information statement on forms supplied by the Department, containing the following information:

i. The names and addresses of all officers, director or partners of any business concern seeking a license and all persons or business concerns holding more than 10 percent of the equity in or more than 10 percent of the liability of the business concern seeking a license;

ii. The names and addresses of all officers, directors, or partners of any business concern disclosed pursuant to (a)4i above and all persons holding more than 10 percent equity share in or more than 10 percent of the debt liability of any business concern disclosed pursuant to (a)4i above;

iii. The name and address of any company in the field of hazardous waste management in which the business concern seeking a license or officers, directors, or partners of the business concern hold an equity interest;

iv. A description of the experience, credentials, and licenses in the field of hazardous waste management possessed by the key employees, officers, directors, or partners of the business concern seeking a license;

(i) If a shipment of hazardous waste is rejected by a designated facility after a transporter has commingled hazardous wastes, the transporter must comply with requirements set forth at N.J.A.C. 7:26G-6.3(b) and (c) and any additional requirements set forth at N.J.A.C. 7:26G-7.1(c)1.

(j) Repeated and/or multiple violations at a transfer facility may result in termination of eligibility for these transfer activities and require the cessation of such activities. Notwithstanding a hazardous waste transporter's compliance with all requirements of the hazardous waste transfer facility regulations at (c), (d), (e), (f), (g), (h) and (i) above, the Department may terminate eligibility for these transfer activities and require the cessation of such activities any time the Department determines that a particular hazardous waste transporter or hazardous waste transfer facility poses a threat to the environment or that a transporter cannot be relied upon to operate the transfer facility safely and in conformance with all applicable rules and regulations. Owners or operators of such hazardous waste facilities for which the Department has terminated eligibility for one or more activities or who have had to cease all operations, shall have the right to a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

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## SUBCHAPTER 8. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

### 7:26G-8.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 264, Federal regulations on the standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, except as provided in 7:26G-8.1(b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 264 are not incorporated by reference:

1. 40 C.F.R. 264.149 Use of State-required mechanisms;
2. 40 C.F.R. 264.150 State assumption of responsibility;
3. 40 C.F.R. 264.301(l) Design and operating requirements, Alabama landfills; and
4. 40 C.F.R. Part 264 Appendix VI Political Jurisdictions in which compliance with § 264.18(a) must be demonstrated.

(c) The following provisions of 40 C.F.R. Part 264 are incorporated by reference with the specified changes:

1. The term "New Jersey" shall be substituted for "State(s)," "authorized state," "approved state", and the term "New Jersey's hazardous waste program" for "approved program" in those provisions of 40 C.F.R. Part 264 which are incorporated by reference, except at 40 C.F.R. 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);

2. 40 C.F.R. 264.1(g)(9), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";

3. 40 C.F.R. 264.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";

4. 40 C.F.R. 264.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 609-292-7172 and";

5. 40 C.F.R. 264.71(a)(3), after "one copy of the signed manifest" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";

6. 40 C.F.R. 264.71(b)(3), after "one copy of the manifest or shipping paper (if the manifest has not been received)" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";

7. The term "EPA" as used in 40 C.F.R. 264.75 and 264.76 shall not be replaced with "DEP" when referring to EPA forms;

8. 40 C.F.R. 264.113(e)(7)(v), delete "not subject to administrative appeal" and replace with "subject to appeal in accordance with the provisions of Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.";

9. 40 C.F.R. 264.119(a), substitute "October 9, 1981" for "January 12, 1981";

10. Changes to 40 C.F.R. 264.151:

i. 40 C.F.R. 264.151(l), after "Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended" add "or any comparable provisions of N.J.S.A. 13:1E-1 et seq. and implementing regulations", in the form agreements contained in these subparagraphs;

ii. 40 C.F.R. 264.151(a), 264.151(m)(1) and 264.151(n)(1), substitute "a Department of the State of New Jersey" for "an Agency of the United States Government";

iii. 40 C.F.R. § 264.151(l), in paragraph (3) of the form agreement, under the heading "Governing Provisions" delete "governing State agency (if applicable) [insert citation]" and insert instead, "State of New Jersey, particularly N.J.A.C. 7:26G-8";

iv. Whenever 40 C.F.R. 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the Department and all Regional Administrators of the United States Environmental Protection Agency of Regions which are affected by the owner or operator's financial assurance mechanisms;

11. 40 C.F.R. 264.191(a) substitute "[within 180 days after the effective date of these regulations] by April 19, 1997" for "by January 12, 1988" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

12. 40 C.F.R. 264.191(c). substitute "[the effective date of these regulations] October 21, 1996" for "July 14, 1986" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

13. 40 C.F.R. 264.193. substitute "[180 days after the effective date of these regulations] April 19, 1997" for "January 12, 1987" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

14. 40 C.F.R. 264.276(b)(1)(ii), in the second line of the table, substitute "0.5" for "1.25";

15. 40 C.F.R. 264.570(a), substitute "October 21, 1996" for "December 6, 1990" unless the regulated drip pads accept F032 waste; and

(d) (Reserved)

(e) The requirements of this subchapter do not apply to universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) handling the wastes listed in (e)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(f) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 264.12(a).

(g) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 264.11, Comment at the end of 40 C.F.R. 264.18(b)(1)(ii)(D), Comment and forms at the end of 40 C.F.R. 264.18(b)(2)(iii), 264.151(f) and 264.151(g).

(h) When used in the following Federal citations, the term "RCRA" or Resource Conservation and Recovery Act" shall retain its meaning and not be replaced by a state analog: 40 C.F.R. 264.251(f), and 264.301(f)(1).

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

Inserted (e).

## SUBCHAPTER 9. EXISTING STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

### 7:26G-9.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 265, Federal regulations on the interim status standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 265 are not incorporated by reference: 40 C.F.R. 265.149 and 265.150.

(c) The following provisions of 40 C.F.R. Part 265 are incorporated by reference with the specified changes:

1. 40 C.F.R. 265.1(c)(12), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";

2. 40 C.F.R. 265.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";

3. 40 C.F.R. 265.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 609-292-7172 and";

4. 40 C.F.R. 265.90(a), 265.90(d)(1) and 265.93(a), substitute "By December 6, 1982" for "Within one year after the effective date of these regulations";

5. 40 C.F.R. 265.90(d)(2), substitute "December 6, 1982" for "one year after the effective date of these regulations";

6. 40 C.F.R. 265.119(a), substitute "January 3, 1984" for "January 12, 1981";

7. 40 C.F.R. 265.191(a), substitute "by April 19, 1997" for "by January 12, 1988" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

8. 40 C.F.R. 265.191(c) substitute "[the effective date of these regulations] October 21, 1996" for "July 14, 1986" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

9. 40 C.F.R. 265.193, substitute “[180 days after the effective date of these regulations] April 19, 1997” for “January 12, 1987” unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

10. 49 C.F.R. 265.276(a), substitute “May 21, 1984” for “the effective date of this part”;

11. 40 C.F.R. 265.440(a), substitute “October 21, 1996” for “December 6, 1990” and “December 24, 1992” unless the regulated drip pads accept F032 waste; and

12. The term “New Jersey” shall be substituted for “State(s)”, “authorized state”, “approved state”, and the term “New Jersey’s hazardous waste program” for “approved program” in those provisions of 40 C.F.R. Part 265 which are incorporated by reference, except at 40 C.F.R. 265.147(a)(1)(ii), 265.147(g)(2) and 265.147(i)(4).

(d) The requirements of this subchapter do not apply to universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) handling the wastes listed in (d)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) When used in the following Federal citations, the term “Administrator” or “Regional Administrator” means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 265.12(a), 265.149(a) and 265.150(a).

(f) When used in the following Federal citations, the term “EPA” means the United States Environmental Protection Agency: 40 C.F.R. 265.11.

(g) When used in the following Federal citations, the term “RCRA” or “Resource Conservation and Recovery Act” shall retain its meaning and not be replaced by a state analog: 40 C.F.R. 265.301(c)(1).

Amended by R.1996 d.577, effective December 16, 1996.  
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).  
Inserted (d).

## SUBCHAPTER 10. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

### 7:26G-10.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 266 (including all appendi-

ces), Federal regulations on the management of specific hazardous waste, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions of 40 C.F.R. Part 266 are incorporated by reference with the specified changes:

1. 40 C.F.R. 266.103(a)(1)(ii), delete the first sentence and replace with “*Existing or in existence* means a boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. For sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, *existing or in existence* means that on or before October 21, 1996 such units are either in operation burning or processing hazardous waste, or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.”;

2. 40 C.F.R. 266.103(a)(6)(iii), after “August 21, 1991” add “for all boiler or industrial furnaces except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and prior to October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators”;

3. 40 C.F.R. 266.103(b)(1), after “August 21, 1991” add “for all boiler or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators”;

4. 40 C.F.R. 266.103(b)(6), after “August 21, 1991” add “for all boiler or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators”;

5. 40 C.F.R. 266.103(c), after “August 21, 1992” add “for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators”;

6. 40 C.F.R. 266.103(c)(7)(i), after “August 21, 1992” add “for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators”;

7. 40 C.F.R. 266.103(c)(7)(i)(B), after “August 21, 1992” add “for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared inciner-

ators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators"; after "August 23, 1993" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

8. 40 C.F.R. 266.111(e)(1)(ii), after "August 21, 1991" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators"; and

9. 40 C.F.R. 266.111(e)(2), after "August 21, 1992" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators".

(d) As of October 21, 1996, any boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, which failed to comply with EPA's certification of compliance schedule as provided by 40 C.F.R. 266.103(b), (c) and (d), is also deemed not to be in compliance under State law and shall comply with the requirements of 40 C.F.R. 266.103(e), as adopted by reference at (a) above.

## SUBCHAPTER 11. LAND DISPOSAL RESTRICTIONS

### 7:26G-11.1 Incorporation by reference

(a) This subchapter incorporates the July 1, 1993 edition of 40 C.F.R. Part 268, EPA Regulations on Land Disposal Restrictions, and the Appendices to 40 C.F.R. Part 268, by reference, except as provided in (b) and (c) below.

(b) The following provisions of the Land Disposal Restrictions are not incorporated by reference:

1. The following sections of 40 C.F.R. Part 268 because these sections contain the schedule by which EPA must evaluate wastes for disposal restrictions:

i. 40 C.F.R. 268.10, Identification of Wastes to be Evaluated by August 8, 1988;

ii. 40 C.F.R. 268.11, Identification of Wastes to be Evaluated by June 8, 1989;

iii. 40 C.F.R. 268.12, Identification of Wastes to be Evaluated by May 8, 1990; and

iv. 40 C.F.R. 268.13, Schedule for Wastes Identified or Listed After November 8, 1990; and

2. The following sections of 40 C.F.R. Part 268 because they have not been delegated by EPA to the State:

i. 40 C.F.R. 268.5, Procedures for case-by-case extension of an effective date;

ii. 40 C.F.R. 268.6, Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268;

iii. 40 C.F.R. 268.42 (b), Treatment standards expressed as specified technologies (alternative treatment method; and

iv. 40 C.F.R. 268.44, Variance from a treatment standard.

(c) (Reserved)

(d) Universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) are exempt from 40 C.F.R. 268.7 and 268.50 as incorporated herein by reference for the hazardous wastes listed in (d)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);

2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and

3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) The regulated community in New Jersey may apply to EPA Region II for all Land Disposal Restriction extensions, exemptions and variances offered by EPA but not delegated to the States. (Examples are case-by-case extensions to an effective date, at 40 C.F.R. 268.5(a), petitions to allow land disposal of a prohibited waste, at 40 C.F.R. 268.6(a), and alternate treatment at 40 C.F.R. 268.42(b).)

(f) When used in the following Federal citations, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency: 40 C.F.R. 268.40(b).

(g) When used at 40 C.F.R. 268.1(e)(3), the term "EPA" shall mean the United States Environmental Protection Agency.

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

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

Inserted (d).

## SUBCHAPTER 12. HAZARDOUS WASTE PERMIT PROGRAM

### 7:26G-12.1 Incorporation by reference

(a) This subchapter incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 270, Federal regulations on EPA administered permit programs: the hazardous waste permit program, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 270 are not incorporated by reference: 40 C.F.R. 270.1(a) and (b), 270.3, 270.14(b)(18), 270.51 and 270.73(c) through (g).

(c) The following provisions of 40 C.F.R. Part 270 are incorporated by reference with specified changes:

1. 40 C.F.R. 270.2, in the definition of "Corrective Action Management Unit," after "RCRA Section 3008(h)," add "and all applicable provisions of N.J.S.A. 13:1E-9";

2. 40 C.F.R. 270.2, in the definition of "Final Authorization," after section 3006(b) of RCRA," add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9";

3. 40 C.F.R. 270.2, in the definition of "Interim Authorization," after section 3006(c) of RCRA," add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations";

4. Two changes are needed at 40 C.F.R. 270.10:

i. Applicants must comply not only with the requirements of this section, but also with the disclosure requirements at N.J.S.A. 13:1E-126 et seq., and implementing regulations, as well as the requirement for Environmental and Health Impact Statements at N.J.A.C. 7:26G-12.2,

ii. 40 C.F.R. 270.10(e)(3), after "Section 3008 of RCRA," add "and all applicable provisions of N.J.S.A. 13:1E-9";

5. 40 C.F.R. 270.12, replace "40 C.F.R. Part 2" with "N.J.A.C. 7:26G-16"; in the sentence beginning "Any such claim", delete the phrase "on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information."

6. 40 C.F.R. 270.14(b)(20), replace the phrase "his duties under other Federal laws as required in § 270.3 of this part" with "any duties he may have under federal laws cited in 40 C.F.R. 270.3 as well as his duties under New Jersey Statutes, including but not limited to The Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., The New Jersey Conservation and Historic Preservation Restriction Act, N.J.S.A. 23:2A-1 et seq., The Endangered Plant Species List, N.J.S.A. 13:1B-151 et seq., The Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., The Wetlands Act of 1970, N.J.S.A. 13:19A-et seq., The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., The Waterfront Development Law, N.J.S.A. 12:5-3 et seq., The Trails System Act N.J.S.A. 13:8-30 et seq., The Pineland Protection Act, N.J.S.A. 58:11-49 et seq., The Water Pollution Control Act and Clean Water Enforcement Act, N.J.S.A. 58:10A-1 et seq., The Flood Hazard Area Control Act, 58:16A-50 et seq., The Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.,

and The Air Pollution Control Act, N.J.S.A. 26-2C et seq."

7. 40 C.F.R. 270.32(b)(2), after "section 3005 of this act," add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq. and implementing regulations";

8. 40 C.F.R. 270.40, after the last sentence of subsection (b), add "(c) The change of ownership or operational control shall not occur until the Department issues approval to the new owner or operator in accordance with the requirements of N.J.S.A. 13:1E-133.";

9. 40 C.F.R. 270.70(a)(1), after "section 3010(a) of RCRA," add "or any comparable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations";

10. 40 C.F.R. 270.70(a)(1), in the Comment at the end of this paragraph, after "section 3010(a) of RCRA," add "and all provisions of N.J.S.A. 13:1E-1 et seq., and implementing regulations";

11. 40 C.F.R. 270.72(a)(5), after "Section 3008(h)," add "and all applicable provisions of N.J.S.A. 13:1E-9 and implementing regulations";

12. 40 C.F.R. 270.72(a)(4), after the last sentence of paragraph (4), add "The change of ownership or operational control shall not occur until the Department issues approval to the new owner or operator in accordance with the requirements of N.J.S.A. 13:1E-133.";

13. 40 C.F.R. 270.72(b)(2), after "section 3004(o)," add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9";

14. 40 C.F.R. 270.72(b)(5), after "RCRA section 3008" add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq., and implementing regulations";

15. 40 C.F.R. 270.72(b)(6), after "RCRA section 3004," add "and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations";

16. 40 C.F.R. 270.73, replace subsection (c) through (g) with the following: "Interim status can be terminated by the Department for failure to comply with interim status facility standards or violation of applicable statutes, regulations or orders, or if the activity of the facility endangers human health and the environment and cannot be regulated to acceptable levels."; and

17. The term "New Jersey" shall be substituted for "State(s)," "authorized state," "approved state," and the term "New Jersey's hazardous waste program" for "approved program" in those provisions of 40 C.F.R. Part 270 which are incorporated by reference, except at 40 C.F.R. 270.2.

(d) Universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) managing the wastes listed in (d)1 through 3 below are not required to

obtain a RCRA permit. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when managing the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) Notwithstanding N.J.A.C. 7:26G-4.2, in the following definitions found at 40 C.F.R. 270.2 there shall not be a blanket substitution for terms such as Administrator, EPA, RCRA, Interim Authorization, or any other generally substituted term. These definitions are incorporated without change: Administrator, Approved program or approved state, Director, Environmental Protection Agency, EPA, Final Authorization, Permit, Major facility, Person, Regional Administrator, and State/EPA agreement.

(f) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his designee: 40 C.F.R. 270.5, 270.10(e)(2), 270.10(f)(2) and (3) and (g) i and iii, 270.32(a) and (b)(2) and 270.11(a)(3).

(g) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 270.5, 270.10(e)(2), 270.32(c), 270.51, 270.72(a)(5) and 270.72(b)(5).

Amended by R.1996 d.577, effective December 16, 1996.  
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).  
Inserted (d).

### 7:26G-12.2 Environmental and Health Impact Statement

(a) Certain applicants shall be required to submit an Environmental and Health Impact Statement (EHIS) in addition to Parts A and B of the permit application in accordance with the provisions set out in this section.

(b) Applicants for the following shall submit an EHIS in all cases:

1. An initial permit issued pursuant to this subchapter for a new commercial hazardous waste facility; and
2. Authorization to construct and operate a hazardous waste incinerator or hazardous waste land disposal unit at a hazardous waste facility where no such hazardous waste management unit is presently authorized.

(c) Applicants for the following may be required in accordance with (d) and (e) below to submit an EHIS:

1. An initial permit issued pursuant to this subchapter for a new non-commercial hazardous waste facility;
2. An initial permit issued pursuant to this subchapter to an existing hazardous waste facility; or

3. A modification or revocation and reissuance or renewal of a permit pursuant to this subchapter.

(d) Whether or not an EHIS is required with the submission of an application for the permit or changes listed in (c) above shall be determined by the Department on a case by case basis, whenever a change to authorized hazardous waste management practices may change or increase the danger to human health and the environment. Such cases are as follows:

1. Addition of waste types;
2. Increase in capacity of a hazardous waste management unit;
3. Alteration of operating conditions of a hazardous waste management unit; or
4. Addition of hazardous waste management units, including replacement of existing hazardous waste management units.

(e) The Department shall apply the following criteria to the proposed changes (to facility operation to) determine whether the changes will increase or change the nature of the risk to human health and the environment. If the Department finds that this is so, an Environmental and Health Impact Statement shall be required.

1. Dissimilarity between proposed waste types and present waste types;
2. Magnitude of facility-wide volume and capacity increases;
3. Magnitude of facility-wide waste throughput increases;
4. Relative risks posed by the proposed changes;
5. Location of the existing facility and nearby land use;
6. Nature of the existing facility;
7. Scale of new construction proposed;
8. Potential for increased transportation impacts;
9. Nature and scale of additional construction and structure usages at other than hazardous waste management units;
10. Environmental sensitivity of the land involved;
11. Existing site conditions;
12. Magnitude of facility-wide emissions increases;
13. Any circumstances peculiar to the facility.

(f) Applicants shall not be required to submit an EHIS in the following cases:

1. The applicant is seeking an initial permit issued pursuant to this subchapter for an existing hazardous waste facility, if no changes in authorized hazardous waste management practices are proposed;

2. The applicant is seeking permit revocation and reissuance or permit renewal for a permitted hazardous waste facility, if no changes in authorized hazardous waste management practices are proposed; or

3. The facility is an on-site pre-treatment facility which is directly connected to an industrial process and which is constructed pursuant to 40 C.F.R. 403 or N.J.S.A. 58:11-49 et seq.

(g) The Environmental and Health Impact Statement shall include:

1. An Executive Summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts, issues of major concern, matters to be decided and major conclusions;

2. A Description of the Proposed Facility, including:

i. The proposed facility owner and operator;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the prod-

ucts or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;

iii. An identification of the waste streams which the proposed facility will accept;

iv. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

v. A narrative statement of the types of the existing and proposed hazardous waste management systems at the site. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily handling capacity of the overall facility and the anticipated operating time in hours per day and days per week;

vi. A narrative description of the proposed site location including history of site use;

vii. A site plan including a scale drawing showing location of all past, present, and future hazardous waste management areas;

v. For each of the contaminants listed in iv above, a toxicity profile shall be developed. This profile shall include data on the physical and chemical nature of the contaminant, as well as a description and discussion of data available regarding the environmental fate, acute effects (LD<sub>50</sub>, irritation), chronic effects (mutagenicity, teratogenicity, carcinogenicity) and epidemiology of the material. This profile shall include a listing of available toxicological, epidemiological or other acute or chronic health effects studies used or otherwise available on the material in question;

vi. A quantification of the potential health impacts, where possible. If such quantification is not included, and explanation of the reason for such omission shall be provided; and

vii. A detailed description of the mitigation techniques proposed to address any potential health impacts associated with the proposed facility.

7. A summary discussion of any potential adverse impacts identified in the environmental and health assessment in (g)5 and 6 above that cannot be avoided should the proposed facility be implemented. For those impacts which cannot be avoided, their implications and the reasons why the proposed facility should be permitted shall be described. Where mitigation measures are proposed to reduce these potentially adverse impacts, the projected effectiveness and costs of the mitigative measures shall be discussed;

8. A discussion of the relationship between local, short term uses of the environment and the effect of the proposed facility on available options for subsequent future uses. Short term refers to the construction phase of the proposed facility. A description of the following shall be included:

i. Those cumulative and long-term effects of the proposed facility which either negatively impact or enhance the environment for the future;

ii. The extent to which the proposed facility prohibits future options;

iii. Plans which provide for the protection and maintenance of the environment during construction of the proposed facility, which shall include, but not be limited to, the following:

(1) Procedures to be used during construction if archeological resources are uncovered;

(2) Erosion and sediment control plans; and

(3) Controls for dust, odors, noise, traffic, and soil tracking; and

iv. Plans which provide for the protection and maintenance of the environment after termination of the facility operation;

9. A discussion of unusual conditions, including:

i. Foreseeable abnormal occurrences at the facility such as fires, spills, explosions, malfunction of control devices, natural disasters and their associated impacts on human health and the environment; and

ii. Maximum credible accidents including spills and their associated impacts on human health and the environment. For each maximum credible accident provide the probability calculations;

10. A list of all sources, references and basis documents supporting all factual information and conclusions; and

11. A list of all co-authors of the environmental and health impact statement including their name, title, affiliation and qualifications.

(h) The Department may waive the requirement for the applicant to submit data on any aspect of the proposed project's environmental setting and the analysis of the proposed project's impact on the aspect of the environmental setting when, in the opinion of the Department, such aspect of the environmental setting is not relevant to the proposed project.

## SUBCHAPTER 13. PROCEDURES FOR DECISIONMAKING

### 7:26G-13.1 Incorporation by reference

(a) This section incorporates by reference the July 1, 1993 version of 40 C.F.R. Part 124, except as provided in 7:26G-(b) and (c) below. 40 C.F.R. Part 124, Subparts A and B are adopted by reference solely for the purpose of establishing procedures regarding hazardous waste management permits.

(b) The following provisions of 40 C.F.R. Part 124 are not incorporated by reference:

1. Any reference relating to "404," "sludge," "UIC," "PSD" or "NPDES" permits;

2. 40 C.F.R. Part 124 Subparts C, D, E, and F;

3. 40 C.F.R. 124.1;

4. 40 C.F.R. 124.2;

5. 40 C.F.R. 124.3(b) through (g);

6. 40 C.F.R. 124.4;

7. 40 C.F.R. 124.5(b) and (e) through (g);

8. 40 C.F.R. 124.6(b), (c), and (d)(4)(ii) through (v);

9. 40 C.F.R. 124.7;

10. 40 C.F.R. 124.8(b)(3) and (8);

11. 40 C.F.R. 124.9;

12. 40 C.F.R. 124.10(a)(1)(i), (iv) and (vi);
13. 40 C.F.R. 124.10(a)(2) and (3);
14. 40 C.F.R. 124.10(d)(1)(vii) and (viii);
15. 40 C.F.R. 124.12(b) through (e);
16. 40 C.F.R. 124.13 through 124.16;
17. 40 C.F.R. 124.17(b); and
18. 40 C.F.R. 124.18 through 124.21.

(c) The following provisions of 40 C.F.R. Part 124 are incorporated by reference with the specified changes:

1. All references to "EPA" shall mean "EPA";
2. All references to "Director" shall mean the "Commissioner of NJDEP".
3. 40 C.F.R. 124.6(a), after "Once an application is complete, the Director shall" insert ", within six months of that date for non-major hazardous waste facilities and eight months of that date for major hazardous waste facilities,"
4. 40 C.F.R. 124.6(e), delete "All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). For RCRA, UIC or PSD permits, an appeal may be taken under § 124.19 and, for NPDES permits, an appeal may be taken under § 124.74.";
5. 40 C.F.R. 124.8(a), after "A fact sheet shall be prepared for every draft permit for a" delete "major";
6. 40 C.F.R. 124.10(b)(1), delete "Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment.";
7. 40 C.F.R. 124.10(b)(1), delete "For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued."; and
8. 40 C.F.R. 124.12(a)(1), after "The Director shall hold a public hearing" insert ", on every draft permit for a new hazardous waste facility, or on any draft permit modification or revocation and reissuance which would result in an increase of greater than 50 percent in the capacity of an existing facility to treat, store, or dispose of hazardous waste, or".

## 7:26G-13.2 Other requirements

(a) All applications for permits and expansions which are subject to the criteria set forth in the Major Hazardous Waste Facilities Siting Act shall additionally be subject to the supplemental permitting procedures set out therein.

(b) The applicant for a permit shall appear at the public hearing and be available to answer questions regarding the proposed facility or facility expansion. Failure to appear at the public hearing and answer questions may result in denial of the application. In the event that a response cannot be given at the hearing, a written response shall be prepared by the Department or the applicant after the hearing.

## 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;