

NEW JERSEY STATE LIBRARY**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).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26G, Hazardous Waste, expires on April 19, 2002. See: 33 N.J.R. 3794(a).

Law Review and Journal Commentaries

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

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26G-1.1 Scope of rules

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

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

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

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

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

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

Rewrote (c).

7:26G-1.2 Construction and severability

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

(b) If this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion thereof, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, in any judicial proceeding, such judgment shall be confined in its operation to this chapter or any subchapter, section, subsection, paragraph, subparagraph, sub-subparagraph or any portion or application thereof, directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this chapter.

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

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

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

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

(b) Prospective incorporation by reference means the ongoing process, beginning January 19, 1999, whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by USEPA in the Federal Register, shall be paralleled by a similar change to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart. Similarly, to maintain consistency, all new Federal regulations are also adopted into this Chapter by this automatic process.

(c) Provisions of 40 C.F.R. Parts 124, 260-266, 268 and 270 incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the C.F.R. shall be interpreted to include in addition to the Federal citation, any changes or additions or deletions made to that citation by the corresponding state subchapter. For example, all references within the C.F.R. to 40 C.F.R. Part 261 shall include the changes, additions and deletions which N.J.A.C. 7:26G-5 makes to 40 C.F.R. Part 261.

(d) 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.

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

(f) Federal statutes and regulations that are cited in 40 C.F.R. 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.

(g) 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.

(h) 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.

(i) 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.

(j) New Federal rules, amendments, supplements and other changes at 40 C.F.R. Parts 124, 260-266, 268, and 270, brought about through administrative or judicial action, shall be automatically incorporated through the prospective incorporation process in N.J.A.C. 7:26G.

(k) New Federal rules, amendments, supplements, and other changes at 40 C.F.R. Parts 124, 260-266, 268, and 270, brought about through administrative or judicial action, adopted or otherwise noticed in the Federal Register by USEPA after July 31, 1998 but prior to January 19, 1999 shall be prospectively incorporated by reference and effective January 19, 1999 and operative either April 19, 1999 or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

(l) On or after January 19, 1999, new Federal rules, amendments, supplements, and other changes, brought about through administrative or judicial action, automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative 90 days from the publication date or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote the section.

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

PO Box 414

Trenton, NJ 08625-0414

Telephone: (609) 984-3438

(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
 PO Box 520, 185 West State Street
 Trenton, NJ 08625-0520
 Newark Public Library
 5 Washington Street
 Newark, NJ 07101

(d) The Office of the Federal Register, a component of the National Archives and Record Administration, has a website at www.nata.gov/fedreg/ which shows a current listing of files available for public inspection, Federal Registers as well as the Code of Federal Regulations.

Amended by R.1999 d.19, effective January 19, 1999.
 See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).
 In (a), updated the address; and added (d).

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

PO Box 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;

4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All administrative hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26G-2.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each requirement of any rule listed in N.J.A.C. 7:26G-2.4(g).

(b) Each violation of a rule listed in (g) below shall constitute an additional, separate and distinct violation.

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

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of any rule listed in (g) below may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall determine the amount of a civil administrative penalty for each violation of any rule listed in (g) below on the basis of the provision violated, according to procedures which follow in (f)1 through 4 below. For a violation of a requirement or condition of an administrative order, permit, license or other operating authority, the Department may in its sole discretion identify the corresponding requirement of any rule summary listed in (g) below and determine the amount of the civil administrative penalty on the basis of the rule provision violated.

1. Identify the rule violated as listed in (g)1 through 9 below;

2. Identify the corresponding base penalty dollar amount for the rule violated as listed in (g)1 through 9 below;

3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

Severity factor	Multiplier
i. Violator had violated the same rule less than 12 months prior to the violation	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.50
iv. Violator had violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.25

4. To obtain the civil administrative penalty for a particular violation, add all of the severity penalty components pursuant to (f)3 above to the base penalty. If the sum total exceeds \$50,000, then the civil administrative penalty for that violation shall be \$50,000.

EXAMPLE:

Base penalty (for violation of N.J.A.C. 7:26-7.4(a)6)	= \$1,000
Subparagraph (f)3iii applies: 0.50×1000	= 500
Subparagraph (f)3iv applies: 0.25×1000	= +250
Civil administrative penalty	\$1,750

(g) The following summary of rules contained in N.J.A.C. 7:26G-2 through 7:26G-12 is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in N.J.A.C. 7:26G-2 through 7:26G-12, then the provision in N.J.A.C. 7:26G-2 through 7:26G-12 shall prevail. The citations beginning with the symbol "\$" identify the rule section found in 40 C.F.R. Parts 124, 260-266, 268 and 270. Citations beginning with "7:26G" signify a State requirement not found in 40 C.F.R. Parts 124, 260-266, 268 and 270.

1. The violations of N.J.A.C. 7:26G-4, Hazardous Waste Management System: General, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

2. The violations of N.J.A.C. 7:26G-5, Identification and Listing of Hazardous Waste, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

3. The violations of N.J.A.C. 7:26G-6, Standards Applicable to Generators of Hazardous Waste, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
(40 C.F.R. Part 262 Subpart A—General)			(40 C.F.R. Part 262 Subpart C—Pre Transport Requirements)		
§ 262.11	Failure of generator of solid waste to determine if waste is hazardous.	\$5,000	§ 262.30	Failure of generator to ensure all containers are of proper construction type.	\$1,000
§ 262.12(a)	Failure of generator to have EPA identification number before it treats, stores, disposes of, transports, or offers for transportation hazardous waste.	\$5,000	§ 262.31	Failure of generator to ensure all containers are properly labeled.	\$1,000
§ 262.12(c)	Failure of generator to offer hazardous waste to a hazardous waste transporter or TSD facility, that has received an EPA identification number.	\$3,000	§ 262.32(b)	Failure of generator to ensure all containers are properly marked.	\$1,000
§ 262.21(a)	Failure to use approved manifest forms from the Department for intra-state shipments of hazardous waste in New Jersey.	\$300	§ 262.33	Failure of generator to placard or offer appropriate placard for a vehicle containing hazardous waste.	\$500
§ 262.21(a)	Failure to use approved manifest forms for hazardous waste originating in another state and destined for New Jersey.	\$300	§ 262.34(a)	Failure of generator to ship waste off site within 90 days or to place it in an on-site authorized facility.	\$2,000
§ 262.21(b)	Failure to use approved manifest forms for hazardous waste originating in New Jersey and destined for another state.	\$300	§ 262.34(a)(2)	Failure of generator to clearly mark container with date when accumulation period begins or to make mark visible for inspection.	\$1,000
(40 C.F.R. Part 262 Subpart B—The Manifest)			§ 262.34 (a)(3)	Failure of generator to clearly mark each container with the words "Hazardous Waste".	\$1,000
§ 262.20(a)	Failure of generator to prepare a manifest before transporting or offering for transport hazardous waste off-site.	\$5,000	§ 262.34(c)(1)	Failure of generator accumulating hazardous waste on-site without a permit to ensure that quantity of waste in each area is less than 55 gallons of hazardous waste or less than one quart of acutely hazardous waste.	\$1,000
§ 262.20(a)	Failure of generator to supply generator's name, mailing address, site address, or phone number on the manifest.	\$300	§ 262.34(c)(1)	Failure of generator accumulating hazardous waste on-site without a permit to have accumulation area at or near any point of generation where wastes initially accumulate in a process.	\$1,000
§ 262.20(a)	Failure of generator to supply generator's EPA I.D. number on the manifest.	\$300	§ 262.34(c)(1) (ii)	Failure of generator to mark container with the words "HAZARDOUS WASTE" or other words which identify the content of the container.	\$1,000
§ 262.20(a)	Failure of generator to supply transporter(s) name, phone number, or New Jersey registration number on the manifest.	\$300	§ 262.34(c)(2)	Failure of generator to comply with 40 C.F.R. § 262.34(a) with respect to the amount of excess waste within three days after quantity of waste exceeds the volume identified in 40 C.F.R. § 262.34(c)(1).	\$1,000
§ 262.20(a)	Failure of generator to supply transporter(s) EPA I.D. number on the manifest.	\$300	§ 262.34(c)(2)	Failure of generator to mark container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.	\$1,000
§ 262.20(a)	Failure of generator to list name, type, or quantity of waste being shipped on the manifest.	\$500	(40 C.F.R. Part 262 Subpart D—Recordkeeping and Reporting)		
§ 262.20(a)	Failure of generator to list special handling instructions on the manifest.	\$300	§ 262.40(a)	Failure of generator to keep copy of manifest for three years.	\$500
§ 262.20(a)	Failure of generator to supply designated facility's name, address or phone number on the manifest.	\$1,000	§ 262.40(b)	Failure of generator to keep copy of biennial report or exception report for three years.	\$300
§ 262.20(a)	Failure of generator to supply designated facility's EPA I.D. number on the manifest.	\$500	§ 262.40(c)	Failure of generator to keep records of any test results, analysis or other determinations for three years.	\$2,000
§ 262.20(b)	Failure of generator to designate an authorized facility on the manifest.	\$10,000	§ 262.40(d)	Failure of generator to keep copy of manifest during course of unresolved enforcement action or as requested by the Department.	\$1,000
§ 262.23(a)(1)	Failure of generator to sign manifest.	\$2,000	§ 262.40(d)	Failure of generator to keep copy of biennial report or exception report during course of unresolved enforcement action or as requested by the Department.	\$1,000
§ 262.23(a)(2)	Failure of generator to obtain signature of initial transporter and date of acceptance on the manifest.	\$500	§ 262.41(a)	Failure of generator to submit biennial report of manifest activities by March 1.	\$300
§ 262.23(a)(3)	Failure of generator to retain one copy of manifest or to forward one copy to state of origin or one to state of destination.	\$500	§ 262.41(b)	Failure of generator who treats, stores, or disposes of hazardous waste on-site to submit biennial report covering those wastes.	\$3,000
§ 262.23(c)	Failure of generator shipping hazardous waste within the U.S. solely by water to send three copies of manifest form signed and dated to owner or operator of designated facility or last water transporter in the United States.	\$1,000	§ 262.42	Failure of generator to comply with exception reporting requirements.	\$1,000
§ 262.23(d)	Failure of generator to send at least three copies of signed and dated manifest for rail shipments of hazardous waste within the United States to next non-rail transporter, designated facility, or last rail transporter in the United States.	\$1,000			

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Rule	Rule summary	Base penalty
7:26G-7.3(a)	Failure of transporters to transport hazardous waste in accordance with 49 C.F.R. Part 397.	\$500
7:26G-7.3(b)	Failure of transporter to allow the Department to enter and inspect any vehicle.	\$5,000

5. The violations of N.J.A.C. 7:26G-8, Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule summary	Base penalty
(40 C.F.R. Part 264 Subpart B—General Facility Standards)		
§ 264.11	Failure of facility owner or operator to obtain EPA identification number.	\$5,000
§ 264.12(a)	Importing hazardous waste from a foreign country without notifying the EPA at least four weeks in advance of expected delivery.	\$5,000
§ 264.13(a)(1)	Failure of facility owner or operator to obtain detailed chemical analysis of representative sample before treating, storing or disposing of any hazardous waste.	\$5,000
§ 264.13(a)(3)	Failure of facility owner or operator to repeat analysis as necessary to ensure that it is accurate and up to date.	\$1,000
§ 264.13(a)(4)	Failure of facility owner or operator of an off site facility to inspect each hazardous waste shipment received or analyze to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.	\$1,000
§ 264.13(b)	Failure of facility owner or operator to develop or follow a written waste analysis plan, in accordance with 40 C.F.R. 264.13(b).	\$5,000
§ 264.14(b)(1)-(2)	Failure of facility owner or operator to have adequate surveillance system, or adequate artificial or natural barrier or means to control entry.	\$5,000
§ 264.14(c)	Failure of facility owner or operator to post signs meeting each requirement of 40 C.F.R. 264.14.	\$500
§ 264.15(a)	Failure of facility owner or operator to inspect for malfunctions and deterioration, operator errors and discharges.	\$3,000
§ 264.15(b)(1)-(4)	Failure of facility owner or operator to develop or follow written schedule for inspecting monitoring, safety, emergency, security equipment, etc.	\$3,000
§ 264.15(c)	Failure of facility owner or operator to remedy any deterioration or malfunction immediately or on an appropriate schedule.	\$2,000
§ 264.15(d)	Failure of facility owner or operator to record inspections in log or to retain required information for three years.	\$300
§ 264.16	Failure of facility owner or operator to provide required classroom or on-the-job training for facility personnel.	\$2,000
§ 264.17(a)	Failure of facility owner or operator to keep ignitable, reactive or incompatible wastes separated and protected from sources of ignition or reaction.	\$2,000
§ 264.17(a)	Failure of facility owner or operator to confine smoking or open flame to specially designated locations while handling ignitable or reactive waste.	\$2,000

Rule	Rule summary	Base penalty
§ 264.17(a)	Failure of facility owner or operator to conspicuously place "No Smoking" signs wherever there is a hazard from ignitable or reactive waste.	\$300
§ 264.17(b)	Failure of facility owner or operator to treat, store, or dispose of ignitable, reactive or mixtures of incompatible wastes in accordance with each of the requirements of 40 C.F.R. 264.17(b).	\$2,000
(40 C.F.R. Part 264 Subpart C—Preparedness and Prevention)		
§ 264.31	Failure of facility owner or operator to design, construct, maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents.	\$5,000
§ 264.32	Failure of facility owner or operator to equip facility with emergency equipment.	\$5,000
§ 264.33	Failure of facility owner or operator to test and maintain emergency equipment.	\$1,000
§ 264.34	Failure of facility owner or operator to maintain access to communications or alarm system.	\$1,000
§ 264.35	Failure of facility owner or operator to maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency.	\$1,000
§ 264.37	Failure of facility owner or operator to make required arrangements with police or fire departments, emergency response contractors, equipment suppliers, or local hospitals, or to document any such authority's refusal of such arrangements.	\$5,000
(40 C.F.R. Part 264 Subpart D—Contingency Plan and Emergency Procedures)		
§ 264.51(a)	Failure of facility owner or operator to have a contingency plan designed to minimize hazards to human health and environment.	\$5,000
§ 264.51(b)	Failure of facility owner or operator to carry out provisions of the plan immediately if there is a fire, explosion or release.	\$10,000
§ 264.52(a)	Failure of contingency plan to describe actions to be taken in response to fires, explosions, or any unplanned sudden or non-sudden release.	\$1,000
§ 264.52(b)	If facility has SPCC (40 C.F.R. Part 112 or Part 1510 of chapter V) or DPCC (N.J.A.C. 7:1E) plan, failure of facility owner or operator to amend that plan to incorporate hazardous waste management provisions.	\$1,000
§ 264.52(c)	Failure of contingency plan to describe arrangements agreed to by local police or fire departments, hospitals, contractors, or State or local emergency response teams.	\$300
§ 264.52(d)	Failure of contingency plan to list name, addresses or phone numbers of persons qualified to act as emergency coordinator.	\$300
§ 264.52(e)	Failure of contingency plan to list emergency equipment, updated as required, with its location, description, or capabilities specified.	\$300
§ 264.52(f)	Failure of contingency plan to include evacuation procedure for personnel including signals, evacuation routes or alternate evacuation routes.	\$300

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
§ 264.53	Failure of contingency plan to be maintained at facility with a copy sent to local police or fire departments, hospitals or State or local emergency response teams.	\$300		significant discrepancies in manifest or shipping paper on each copy of manifest or shipping paper.	
§ 264.54	Failure of facility owner or operator to review or amend contingency plan as necessary.	\$300	§ 264.71(b)(3)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) transporter to give transporter a copy of manifest or shipping paper.	\$500
§ 264.55	Failure of facility owner or operator to make emergency coordinator thoroughly familiar with plan or available at all times.	\$1,000	§ 264.71(b)(4)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) transporter to send copy of manifest or shipping paper to generator within thirty days after delivery.	\$500
§ 264.56 (a)-(b)	Failure of emergency coordinator to identify character, source, amount or areal extent of discharged materials, or to activate alarms or communications systems, or to notify appropriate State or local agencies if necessary.	\$2,000	§ 264.71(b)(5)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) transporter to retain copy of manifest for three years.	\$500
§ 264.56(c)	Failure of emergency coordinator to assess possible hazards to human health and environment.	\$1,000	§ 264.72(b)	Failure of facility operator to reconcile a significant manifest discrepancy with the generator or transporter within 15 days of receipt or to report the unresolved discrepancy to the Department within 16 days of receipt.	\$1,000
§ 264.56(d)	Failure of emergency coordinator to notify appropriate emergency response agency in situation threatening health and environment.	\$5,000	§ 264.73	Failure of facility owner or operator to keep written operating records meeting each requirement of 40 C.F.R. 264.73	\$3,000
§ 264.56(e)	Failure of emergency coordinator to take reasonable measures to ensure hazards are minimized.	\$5,000	§ 264.74(a)	Failure of facility owner or operator to furnish upon request, or make available for inspection, any record.	\$5,000
§ 264.56(f)	Failure of the emergency coordinator to monitor leaks, pressure buildup, gas generation, or ruptures, if the facility stopped operating due to fire, explosion or discharge.	\$5,000	§ 264.74(b)	Failure of facility owner or operator to keep any record during course of any unresolved enforcement action or as requested by the Department.	\$2,000
§ 264.56(g)	Failure of emergency coordinator to provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or other material.	\$1,000	§ 264.74(c)	Failure of facility owner or operator to submit copy of record of waste disposal locations and/or quantities to Department and/or local land authority upon closure of facility.	\$5,000
§ 264.56(h)	Failure of emergency coordinator to ensure that in affected area of facility no incompatible waste is treated, stored or disposed of until cleanup procedures are complete, or to ensure that emergency equipment is cleaned and fit for intended use before operations are resumed.	\$1,000	§ 264.75	Failure of facility owner or operator to prepare or submit a copy of the biennial report to Department by March 1 of each even numbered year.	\$3,000
§ 264.56(i)	Failure of facility owner or operator to notify DEP and local authorities that facility is in compliance before operations are resumed.	\$1,000	(40 C.F.R. Part 264 Subpart F—Releases from Solid Waste Management Units)		
§ 264.56(j)	Failure of facility owner or operator to submit incident report to DEP within 15 days after the incident.	\$500	§ 264.97	Failure of facility owner or operator to provide facility with ground water monitoring system in accordance with 40 C.F.R. 264.97.	\$10,000
(40 C.F.R. Part 264 Subpart E—Manifest System, Recordkeeping, and Reporting)			(40 C.F.R. Part 264 Subpart G—Closure and Post-Closure)		
§ 264.71(a)(1)	Failure of facility owner or operator to sign or date manifest.	\$2,000	§ 264.111 (a)-(b)	Failure of facility owner or operator to close in a manner that minimizes further maintenance and controls to the extent necessary to protect human health and environment.	\$10,000
§ 264.71(a)(2)	Failure of facility owner or operator to note any significant discrepancies in the manifest on each copy of the manifest.	\$500	§ 264.112(a)	Failure of facility owner or operator to have a written closure plan.	\$5,000
§ 264.71(a)(3)	Failure of facility owner or operator to give transporter a copy of manifest.	\$500	§ 264.112(c)	Failure of facility owner or operator to amend or request modification of closure plan before change.	\$1,000
§ 264.71(a)(4)	Failure of facility owner or operator to send copy of manifest to generator within thirty days after delivery of hazardous waste.	\$500	§ 264.112(d)	Failure of facility owner or operator to notify DEP prior to commencement of closure.	\$2,000
§ 264.71(a)(5)	Failure of facility owner or operator to retain copy of manifest for three years.	\$500	§ 264.113(a)	Failure of facility owner or operator to treat, remove or dispose of waste within 90 days after final volume of wastes received or closure plan approved.	\$2,000
§ 264.71(b)(1)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) transporter to sign or date manifest or shipping paper.	\$500	§ 264.113(b)	Failure of facility owner or operator to complete closure within 180 days after final volume of wastes received or closure plan approved.	\$2,000
§ 264.71(b)(2)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) transporter to note any	\$500			

Rule	Rule summary	Base penalty
§ 264.114	Failure of facility owner or operator, when closure is complete, to have disposed of or decontaminated all facility equipment or structures.	\$5,000
§ 264.115	Failure of facility owner or operator, when closure completed, to submit its own certification or that of an independent registered professional engineer to the Department.	\$2,000
§ 264.116	Failure of facility owner or operator, within 60 days after closure, to submit to local authorities and DEP detailed information on site.	\$2,000
§ 264.117(a)	Failure of facility owner or operator to continue proper post-closure care for 30 years and to comply with 40 C.F.R. 264.117(a)(1)-(2).	\$5,000
§ 264.117(c)	Failure of facility owner or operator to ensure that post-closure activity does not disturb final cover, liner(s), or containment or monitoring system.	\$2,000
§ 264.117(d)	Failure of facility owner or operator to perform post-closure care activities in accordance with post-closure plan.	\$5,000
§ 264.118(a)	Failure of facility owner or operator to have written post-closure plan.	\$5,000
§ 264.118(c)	Failure of facility owner or operator to keep copy of post-closure plan, or any revisions, at the facility.	\$1,000
264.118(d)	Failure of facility owner or operator to amend or request modification of post-closure plan when necessary.	\$1,000
§ 264.119(b)	Failure of facility owner or operator to comply with requirements for notice in deed to property.	\$1,000
(40 C.F.R. Part 264 Subpart H—Financial Requirements)		
§ 264.142(a)	Failure of facility owner or operator to have a written estimate of the cost of closing the facility.	\$2,000
§ 264.142(b)	Failure of facility owner or operator to adjust closure cost estimate for inflation according to regulatory time frames	\$1,000
§ 264.142(c)	Failure of facility owner or operator to revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.	\$1,000
§ 264.142(d)	Failure of facility owner or operator to keep the latest closure cost estimate and adjusted closure cost estimate at the facility.	\$1,000
§ 264.143	Failure of facility owner or operator to establish financial assurance for closure of facility.	\$5,000
§ 264.144(a)	Failure of facility owner or operator to have a written estimate of the cost of post-closure care.	\$2,000
§ 264.144(b)	Failure of facility owner or operator to adjust cost estimate of post-closure care for inflation according to regulatory time frames.	\$1,000
§ 264.144(c)	Failure of facility owner or operator to revise the post-closure care cost estimate whenever a change in the post-closure plan increases the cost of post-closure care.	\$1,000
§ 264.144(d)	Failure of facility owner or operator to keep the latest post-closure care cost estimate at the facility.	\$1,000
§ 264.145	Failure of facility owner or operator to establish financial assurance for post-closure care of facility.	\$5,000

Rule	Rule summary	Base penalty
§ 264.147(a)	Failure of facility owner or operator to meet liability requirements for sudden accidental occurrences.	\$5,000
§ 264.147(b)	Failure of facility owner or operator to meet the liability requirements for non-sudden occurrences.	\$5,000
§ 264.148(a)	Failure of facility owner or operator or guarantor to notify Department of commencement of proceeding under Title 11 of the Bankruptcy Code.	\$10,000
§ 264.148(b)	Failure of facility owner or operator to establish other financial assurances or liability coverage pursuant to 40 C.F.R. 264.147.	\$5,000
(40 C.F.R. Part 264 Subpart I—Use and Management of Containers)		
§ 264.171	Failure of facility owner or operator to handle hazardous waste in containers of good condition.	\$2,000
§ 264.172	Failure of facility owner or operator to use container compatible with hazardous waste stored.	\$2,000
§ 264.173	Failure of facility owner or operator to comply with any of the requirements for management of containers.	\$1,000
§ 264.174	Failure of owner or operator to perform inspection of each area where containers are stored.	\$3,000
§ 264.175(b)(1)	Failure of container storage area to have an underlying base free of cracks or gaps and sufficiently impervious to contain leaks, spills and accumulated precipitation until collected material is detected and removed.	\$1,000
§ 264.175(b)(2)	Failure of container storage area to be sloped or designed and operated to drain and remove liquids, unless containers are protected from contact with accumulated liquids.	\$1,000
§ 264.175(b)(3)	Failure of container storage area to have capacity to contain 10 percent of volume of all containers or volume of largest container whichever is greater.	\$2,000
§ 264.175(b)(4)	Failure of container storage area to be protected from run-on unless in compliance with exceptions at 40 C.F.R. 264.175(b)(4).	\$1,000
§ 264.175(b)(5)	Failure of facility owner or operator to remove accumulated precipitation from sump or collection area in a timely manner to prevent overflow.	\$1,000
§ 264.175(b)(5)	Failure of facility owner or operator to remove spilled or leaked waste from sump or collection area in a timely manner to prevent overflow.	\$2,000
§ 264.176	Failure of facility owner or operator to store containers holding ignitable or reactive wastes at least 50 feet from property line.	\$1,000
§ 264.177 (a)-(c)	Failure of facility owner or operator to comply with each of the special requirements for incompatible wastes.	\$2,000
§ 264.178	Failure of facility owner or operator to remove all hazardous wastes and residues from containment system at closure or failure to remove or decontaminate remaining containers, liners, bases and soil containing or contaminated with hazardous waste.	\$5,000

(40 C.F.R. Part 264 Subpart J—Tank Systems)

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
§ 264.191(b)	Failure of existing tanks to have sufficient strength or to meet other specified requirements; and/or facility owner or operator placing waste in an existing tank incompatible with the material of construction of the tank.	\$5,000		wastes residues, contaminated containment system components, contaminated soils, structures, etc.	
§ 264.192(a)	Failure of new tanks to have sufficient strength or to meet other specified requirements; and/or facility owner or operator placing waste in a new tank incompatible with the material of construction of the tank.	\$5,000	§ 264.198(a)	Failure of facility owner or operator to meet specific requirements before placing ignitable or reactive waste in a tank.	\$5,000
§ 264.193(b)(2)	Failure of tank storage areas to have a containment system capable of collecting releases and accumulated liquids.	\$3,000	§ 264.198(b)	Failure of facility owner or operator storing or treating ignitable or reactive wastes in tanks to comply with NFPA's buffer zone requirements for tanks.	\$2,000
§ 264.193(c)(1)	Failure of containment system to consist of material compatible with wastes stored.	\$2,000	§ 264.199(a)	Failure of facility owner or operator to prevent the placing of incompatible wastes, or wastes and materials, in same tank, except in compliance with 40 C.F.R. 264.17(b).	\$10,000
§ 264.193(c)(4)	Failure of facility owner or operator to remove accumulated precipitation from sump or collection area in a timely manner.	\$2,000	§ 264.199(b)	Failure of facility owner or operator to prevent the placing of hazardous waste in a tank which was not decontaminated and previously held incompatible waste, except in compliance with 40 C.F.R. 264.17(b).	\$5,000
§ 264.193(c)(4)	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	\$2,000	(40 C.F.R. Part 264 Subpart K—Surface Impoundments)		
§ 264.193(c)(4)	Failure of containment system to be sloped or designed and operated to drain and remove liquids.	\$1,000	§ 264.221(a)	Failure of facility owner or operator to design and operate surface impoundments in such a way as to prevent migration of wastes.	\$10,000
264.193(e)(1)(i)	Failure of external liner containment system to contain 100 percent of the capacity of largest tank.	\$2,000	§ 264.221(a)	Failure of surface impoundment to have liner designed, constructed and installed that prevents migration of waste during active life of impoundment.	\$10,000
§ 264.193(e)(1)(ii)	Failure of owner or operator to prevent run-on into external liner containment system unless system has required excess capacity.	\$1,000	§ 264.221(a)(1)	Failure of liner to have properties that prevent failure due to pressure gradients, contact with the waste, climatic conditions, and stress of installation and operation.	\$10,000
§ 264.193(e)(1)(iii)	Failure of external liner containment system to be free of cracks or gaps.	\$1,000	§ 264.221(a)(2)	Failure of facility owner or operator to place lower liner on foundation capable of providing support.	\$10,000
§ 264.193(e)(2)(i)	Failure of vault containment system to contain 100 percent of the capacity of largest tank.	\$2,000	§ 264.221(a)(3)	Failure of surface impoundment to have the liner installed to cover all surrounding earth likely to be in contact with the waste or leachate.	\$10,000
§ 264.193(e)(2)(ii)	Failure of facility owner or operator to prevent run-on into vault containment system unless system has required excess capacity.	\$1,000	§ 264.221(c)(1)(i)(A)	Failure of top liner to be designed and constructed to prevent migration of hazardous constituents into liner during active life and post closure care period.	\$5,000
§ 264.194(a)	Failure of facility owner or operator to prevent hazardous wastes or treatment reagents from being placed in tank system if they can cause the tank, its ancillary equipment, or containment system to rupture, leak, corrode, or otherwise fail.	\$5,000	§ 264.221(c)(1)(i)(B)	Failure of bottom liner to consist of at least three feet of soil of specified hydraulic conductivity.	\$5,000
§ 264.194(b)(2)	Failure of tank to have controls to prevent overfilling.	\$500	§ 264.221(c)(2)	Failure of surface impoundment to have leachate collection system between liners.	\$10,000
§ 264.194(b)(3)	Failure of facility owner or operator to maintain sufficient freeboard for uncovered tanks to prevent overtopping by wave or wind action or precipitation.	\$500	§ 264.221(c)(4)	Failure of bottom surface of bottom liner to be above seasonally high water table.	\$10,000
§ 264.195(a)	Failure of facility owner or operator to inspect overfill controls	\$500	§ 264.226(a)	Failure to comply with inspection requirements for surface impoundments during and immediately after construction.	\$3,000
§ 264.195(b)(1)	Failure of facility owner or operator to inspect aboveground portions of a tank system for corrosion or releases of waste.	\$1,000	§ 264.226(b)	Failure to comply with inspection requirements during operation of surface impoundments.	\$3,000
§ 264.195(b)(2)	Failure of facility owner or operator to inspect data gathered from monitoring and leak detection equipment each operating day.	\$500	§ 264.227(a)	Failure to remove surface impoundment from service if liquid level suddenly drops or if dike leaks.	\$10,000
§ 264.195(b)(3)	Failure of facility owner or operator to inspect construction materials.	\$500	§ 264.227(b)	Failure of facility owner or operator to comply with requirements necessary when surface impoundment is removed from service.	\$10,000
§ 264.195(b)(3)	Failure of facility owner or operator to inspect area immediately surrounding tank system or secondary system for erosion or signs of releases.	\$500	§ 264.227(c)	Failure of facility owner or operator to have requirements for surface impoundment in contingency plan.	\$1,000
§ 264.197(a)	Failure of facility owner or operator at closure to remove or decontaminate all	\$5,000	§ 264.227(d)	Failure to comply with requirements for placing surface impoundments back into service.	\$5,000

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
§ 264.227(e)	Failure to close surface impoundment that is not being repaired.	\$5,000	§ 264.314(b)	Placing bulk or non-containerized liquids in landfill.	\$10,000
§ 264.228(b)(2)-(3)	Failure of facility owner or operator to comply with maintenance and monitoring requirements during post-closure of surface impoundments.	\$2,000	§ 264.314(d)	Placing containers holding free liquids in hazardous waste landfill.	\$5,000
§ 264.229	Failure to meet requirements for placing ignitable or reactive waste in surface impoundment.	\$5,000	§ 264.315	Failure to comply with special requirements for containers being placed in a landfill.	\$2,000
§ 264.230	Failure to prevent incompatible wastes and/or materials from being placed in same surface impoundment.	\$10,000	§ 264.316(a)	Failure of inside containers of overpack containers to be made of material that will not react with, or be decomposed or ignited by waste.	\$5,000
(40 C.F.R. Part 264 Subpart N—Landfills)			§ 264.316(a)	Failure to tightly seal inside containers of overpack containers before placing in landfill.	\$1,000
§ 264.301(a)(2)	Failure of facility owner or operator of hazardous waste landfill to operate leachate collection system so that leachate depth over the liner does not exceed one foot.	\$2,000	§ 264.316(a)-(b)	Failure to meet requirements of inside containers of overpack containers before placing in a hazardous waste landfill.	\$2,000
§ 264.301(c)(2)	Failure of facility owner or operator of new hazardous waste landfill to operate leachate collection system so that leachate depth over the liner does not exceed one foot.	\$2,000	§ 264.316(b)	Failure of metal outer container to be full after packing with inside containers and absorbent material.	\$2,000
§ 264.301(g)	Failure of facility owner or operator of hazardous waste landfill to manage run-on system.	\$2,000	§ 264.316(c)	Failure to have absorbent material that is not capable of reacting dangerously with, being decomposed by, or being ignited by the contents inside the containers in accordance with 40 C.F.R. 264.17(b).	\$5,000
§ 264.301(h)	Failure of facility owner or operator of hazardous waste landfill to manage run-off system.	\$2,000	§ 264.316(d)	Failure to prevent incompatible wastes from being placed in same outside container.	\$5,000
§ 264.301(i)	Failure of facility owner or operator of hazardous waste landfill to empty or manage system after storm.	\$2,000	§ 264.316(e)	Failure to meet requirements for packaging reactive wastes before placing in hazardous waste landfill.	\$5,000
§ 264.301(j)	Failure of facility owner or operator of hazardous waste landfill to control wind dispersion of particulate matter.	\$2,000	§ 264.317	Failure of facility owner or operator of hazardous waste landfill to comply with special requirements for F020, F021, F022, F023, F026, and F027 wastes.	\$5,000
§ 264.303	Failure to meet inspection requirements for hazardous waste landfill.	\$3,000	(40 C.F.R. Part 264 Subpart O—Incinerators)		
§ 264.309(a)	Failure of facility owner or operator to maintain in operating record details of location and dimensions of each hazardous waste landfill cell.	\$2,000	§ 264.341(b)	Failure of facility owner or operator, throughout normal operation of incinerator, to conduct sufficient waste analyses to verify compliance with permit.	\$5,000
§ 264.309(b)	Failure of facility owner or operator to maintain in operating record the contents of each hazardous waste landfill cell and location of each hazardous waste type.	\$2,000	§ 264.345(a)	Failure of facility owner or operator to operate incinerator in accordance with operating requirements of permit.	\$5,000
§ 264.310(a)	Failure of facility owner or operator of hazardous waste landfill to place final cover over landfill.	\$5,000	§ 264.345(c)	Feeding hazardous waste into the incinerator during start up and shut down when it is not operating within the conditions of operation in the permit.	\$10,000
§ 264.310(b)(1)	Failure of facility owner or operator of a hazardous waste landfill to maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events.	\$2,000	§ 264.345(d)(1)	Failure of facility owner or operator to keep combustion zone of incinerator totally sealed against fugitive emissions.	\$1,000
§ 264.310(b)(3)	Failure of facility owner or operator to maintain and monitor the leak detection system.	\$2,000	§ 264.345(d)(2)	Failure of facility owner or operator to maintain combustion zone of incinerator at lower pressure.	\$1,000
§ 264.310(b)(5)	Failure of facility owner or operator to prevent run-on and run-off from eroding or otherwise damaging the final cover.	\$2,000	§ 264.345(d)(3)	Failure of facility owner or operator of incinerator to provide approved alternate means of control of fugitive emissions.	\$1,000
§ 264.310(b)(6)	Failure of facility owner or operator to protect and maintain surveyed benchmarks used in complying with 40 C.F.R. 264.309	\$1,000	§ 264.345(e)	Failure of facility owner or operator to operate incinerator with automatic feed cut off.	\$3,000
§ 264.312	Facility owner or operator of hazardous waste landfill placing ignitable or reactive waste in hazardous waste landfill.	\$10,000	§ 264.345(f)	Failure of facility owner or operator to cease operation of incinerator if change in waste feed or operating conditions exceed permit limits.	\$5,000
§ 264.313	Facility owner or operator of hazardous waste landfill placing incompatible wastes and materials in same landfill cell.	\$10,000	§ 264.347(a)(1)	Failure to monitor combustion temperature, waste feed rate, gas velocity continuously;	\$500
			§ 264.347(a)(2)	Failure to monitor carbon monoxide continuously;	\$500
			§ 264.347(a)(3)	Failure to conduct, upon request, sampling or analyses of waste or exhaust emissions.	\$1,000

Rule	Rule summary	Base penalty
§ 264.347(b)	Failure of facility owner or operator to thoroughly inspect incinerator or associated equipment at least daily.	\$3,000
§ 264.347(c)	Failure of facility owner or operator to test emergency waste feed cut-off controls or alarm systems weekly.	\$500
§ 264.351	Failure of facility owner or operator to remove all hazardous waste and hazardous waste residues from incinerator site at closure.	\$5,000

6. The violations of N.J.A.C. 7:26G-9, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule summary	Base penalty
(40 C.F.R. Part 265 Subpart B—General Facility Standards)		
§ 265.11	Failure of facility owner or operator to obtain EPA identification number.	\$5,000
§ 265.12(a)	Importing hazardous waste from a foreign country without notifying the EPA at least four weeks in advance of expected delivery.	\$5,000
§ 265.13(a)(1)	Failure of facility owner or operator to obtain detailed chemical analysis of representative sample before treating, storing or disposing of any hazardous waste.	\$5,000
§ 265.13(a)(3)	Failure of facility owner or operator to repeat analysis as necessary to ensure that it is accurate and up to date.	\$1,000
§ 265.13(a)(4)	Failure of facility owner or operator of an off site facility to inspect each hazardous waste shipment received or analyze to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.	\$1,000
§ 265.13(b)	Failure of facility owner or operator to develop or follow a written waste analysis plan, in accordance with 40 C.F.R. 264.13(b).	\$5,000
§ 265.14(b)(1)-(2)	Failure of facility owner or operator to have adequate surveillance system, or adequate artificial or natural barrier or means to control entry.	\$5,000
§ 265.14(c)	Failure of facility owner or operator to post signs meeting each requirement of 40 C.F.R. 265.14.	\$500
§ 265.15(a)	Failure of facility owner or operator to inspect for malfunctions, deterioration, errors or discharges.	\$3,000
§ 265.15(b)(1)-(4)	Failure of facility owner or operator to develop or follow written schedule for inspecting monitoring, safety, emergency, security equipment, etc.	\$3,000
§ 265.15(c)	Failure of facility owner or operator to remedy any deterioration or malfunction immediately or on an appropriate schedule.	\$2,000
§ 265.15(d)	Failure of facility owner or operator to record inspections in log or to retain required information for three years.	\$300
§ 265.16	Failure of facility owner or operator to provide required classroom or on-the-job training for facility personnel.	\$2,000
§ 265.17(a)	Failure of facility owner or operator to keep ignitable, reactive or incompatible wastes separated and protected from sources of ignition or reaction.	\$2,000

Rule	Rule summary	Base penalty
§ 265.17(a)	Failure of facility owner or operator to confine smoking or open flame to specially designated locations while handling ignitable or reactive waste.	\$2,000
§ 265.17(a)	Failure of facility owner or operator to conspicuously place "No Smoking" signs wherever there is a hazard from ignitable or reactive waste.	\$300
§ 265.17(b)	Failure of facility owner or operator to treat, store, or dispose of ignitable, reactive or mixtures of incompatible wastes in accordance with each of the requirements of 40 C.F.R. 265.17(b).	\$2,000

(40 C.F.R. Part 265 Subpart C—Preparedness and Prevention)

§ 265.31	Failure of facility owner or operator to design, construct, maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents.	\$5,000
§ 265.32	Failure of facility owner or operator to equip facility with emergency equipment.	\$5,000
§ 265.33	Failure of facility owner or operator to test and maintain emergency equipment.	\$1,000
§ 265.34	Failure of facility owner or operator to maintain access to communications or alarm system.	\$1,000
§ 265.35	Failure of facility owner or operator to maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency.	\$1,000
§ 265.37	Failure of facility owner or operator to make required arrangements with police or fire departments, emergency response contractors, equipment suppliers, or local hospitals, or to document any such authority's refusal of such arrangements.	\$5,000

(40 C.F.R. Part 265 Subpart D—Contingency Plan and Emergency Procedures)

§ 265.51(a)	Failure of facility owner or operator to have a contingency plan designed to minimize hazards to human health and environment.	\$5,000
§ 265.51(b)	Failure of facility owner or operator to carry out provisions of the plan immediately if there is a fire, explosion or release.	\$10,000
§ 265.52(a)	Failure of contingency plan to describe actions to be taken in response to fires, explosions, or any unplanned sudden or non-sudden release.	\$1,000
§ 265.52(b)	If facility has SPCC (40 C.F.R. 112 or Part 1510 of chapter V) or DPCC (N.J.A.C. 7:1E) plan, failure of facility owner or operator to amend that plan to incorporate hazardous waste management provisions.	\$1,000
§ 265.52(c)	Failure of contingency plan to describe arrangements agreed to by local police or fire departments, hospitals, contractors, or State or local emergency response teams.	\$300
§ 265.52(d)	Failure of contingency plan to list name, addresses or phone numbers of persons qualified to act as emergency coordinator.	\$300
§ 265.52(e)	Failure of contingency plan to list emergency equipment, updated as required, with its location, description, or capabilities specified.	\$300
§ 265.52(f)	Failure of contingency plan to include evacuation procedure for personnel in-	\$300

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
	cluding signals, evacuation routes or alternate evacuation routes.		§ 265.71(b)(2)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to note any significant discrepancies in manifest or shipping paper on each copy of manifest or shipping paper.	\$500
§ 265.53	Failure of contingency plan to be maintained at facility with a copy sent to local police or fire departments, hospitals or State or local emergency response teams.	\$300			
§ 265.54	Failure of facility owner or operator to review or amend contingency plan as necessary.	\$300	§ 265.71(b)(3)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to give hauler a copy of manifest or shipping paper.	\$500
§ 265.55	Failure of facility owner or operator to make emergency coordinator thoroughly familiar with plan or available at all times.	\$1,000	§ 265.71(b)(4)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to send copy of manifest or shipping paper to generator within thirty days after delivery.	\$500
§ 265.56 (a)-(b)	Failure of emergency coordinator to identify character, source, amount or areal extent of discharged materials, or to activate alarms or communications systems, or to notify appropriate State or local agencies if necessary.	\$2,000	§ 265.71(b)(5)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to retain copy of manifest for three years.	\$500
§ 265.56(c)	Failure of emergency coordinator to assess possible hazards to human health and environment.	\$1,000	§ 265.72(b)	Failure of facility operator to reconcile a significant manifest discrepancy with the generator or transporter within 15 days of receipt or to report the unresolved discrepancy to the Department within 16 days of receipt.	\$1,000
§ 265.56(d)	Failure of emergency coordinator to notify appropriate emergency response agency in situation threatening health and environment.	\$5,000	§ 265.73	Failure of facility owner or operator to keep written operating records meeting each requirement of 40 C.F.R. 265.73	\$3,000
§ 265.56(e)	Failure of emergency coordinator to take reasonable measures to ensure hazards are minimized.	\$5,000	§ 265.74(a)	Failure of facility owner or operator to furnish upon request, or make available for inspection, any record.	\$5,000
§ 265.56(f)	Failure of the emergency coordinator to monitor leaks, pressure buildup, gas generation, or ruptures, if the facility stopped operating due to fire, explosion or discharge.	\$5,000	§ 265.74(b)	Failure of facility owner or operator to keep any record during course of any unresolved enforcement action or as requested by the Department.	\$2,000
§ 265.56(g)	Failure of emergency coordinator to provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or other material.	\$1,000	§ 265.74(c)	Failure of facility owner or operator to submit copy of waste disposal locations and/or quantities to Department and/or local land authority upon closure of facility.	\$5,000
§ 265.56(h)	Failure of emergency coordinator to ensure that in affected area of facility no incompatible waste is treated, stored or disposed of until cleanup procedures are complete, or to ensure that emergency equipment is cleaned and fit for intended use before operations are resumed.	\$1,000	§ 265.75	Failure of facility owner or operator to prepare or submit a copy of the biennial report to Department by March 1 of each even numbered year.	\$3,000
§ 265.56(i)	Failure of facility owner or operator to notify DEP and local authorities that facility is in compliance before operations are resumed.	\$1,000	(40 C.F.R. Part 265 Subpart G—Closure and Post-Closure)		
§ 265.56(j)	Failure of facility owner or operator to submit incident report to DEP within 15 days after the incident.	\$500	§ 265.111 (a)-(b)	Failure of facility owner or operator to close in a manner that minimizes further maintenance and controls to the extent necessary to protect human health and environment.	\$10,000
(40 C.F.R. Part 265 Subpart E—Manifest System, Recordkeeping, and Reporting)			§ 265.112(a)	Failure of facility owner or operator to have a written closure plan.	\$5,000
§ 265.71(a)(1)	Failure of facility owner or operator to sign or date manifest.	\$2,000	§ 265.112(c)	Failure of facility owner or operator to amend or request modification of closure plan before change.	\$1,000
§ 265.71(a)(2)	Failure of facility owner or operator to note any significant discrepancies in the manifest on each copy of the manifest.	\$500	§ 265.112(d)	Failure of facility owner or operator to notify DEP prior to commencement of closure.	\$2,000
§ 265.71(a)(3)	Failure of facility owner or operator to give hauler a copy of manifest.	\$500	§ 265.113(a)	Failure of facility owner or operator to treat, remove or dispose of waste within 90 days after final volume of wastes received or closure plan approved.	\$2,000
§ 265.71(a)(4)	Failure of facility owner or operator to send copy of manifest to generator within thirty days after delivery of hazardous waste.	\$500	§ 265.113(b)	Failure of facility owner or operator to complete closure within 180 days after final volume of wastes received or closure plan approved.	\$2,000
§ 265.71(a)(5)	Failure of facility owner or operator to retain copy of manifest for three years.	\$500	§ 265.114	Failure of facility owner or operator, when closure is complete, to have disposed of or decontaminated all facility equipment or structures.	\$5,000
§ 265.71(b)(1)	Failure of facility owner or operator receiving hazardous waste from rail or water (bulk shipment) hauler to sign or date manifest or shipping paper.	\$500			

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
§ 265.115	Failure of facility owner or operator, when closure completed, to submit its own certification or that of an independent registered professional engineer to the Department.	\$2,000	§ 265.147(a)	Failure of facility owner or operator to meet liability requirements for sudden accidental occurrences.	\$5,000
§ 265.116	Failure of facility owner or operator, within 60 days after closure, to submit to local authorities and DEP detailed information on site.	\$2,000	§ 265.147(b)	Failure of facility owner or operator to meet the liability requirements for non-sudden occurrences.	\$5,000
§ 265.117(a)	Failure of facility owner or operator to continue proper post-closure care for 30 years and to comply with 40 C.F.R. 265.117(a)(1)-(2).	\$5,000	§ 265.148(a)	Failure of facility owner or operator or guarantor to notify Department of commencement of proceeding under Title 11 of the Bankruptcy Code.	\$10,000
§ 265.117(c)	Failure of facility owner or operator to ensure that post-closure activity does not disturb final cover, liner(s), or containment or monitoring system.	\$2,000	§ 265.148(b)	Failure of facility owner or operator to establish other financial assurances or liability coverage pursuant to 40 C.F.R. 265.147.	\$5,000
§ 265.117(d)	Failure of facility owner or operator to perform post-closure care activities in accordance with post-closure plan.	\$5,000	(40 C.F.R. Part 265 Subpart I—Use and Management of Containers)		
§ 265.118(a)	Failure of facility owner or operator to have written post-closure plan.	\$5,000	§ 265.171	Failure of facility owner or operator to handle hazardous waste in containers of good condition.	\$2,000
§ 265.118(b)	Failure of facility owner or operator to keep copy of post-closure plan, or any revisions, at the facility or during the post-closure period, keep a copy of the post-closure plan with the person or office specified in 40 C.F.R. 265.118(c)(3).	\$1,000	§ 265.172	Failure of facility owner or operator to use container compatible with hazardous waste stored.	\$2,000
§ 265.118(d)	Failure of facility owner or operator to amend or request modification of post-closure plan when necessary.	\$1,000	§ 265.173	Failure of facility owner or operator to comply with any of the requirements for management of containers.	\$1,000
§ 265.119(b)	Failure of facility owner or operator to comply with requirements for notice in deed to property.	\$1,000	§ 265.174	Failure of owner or operator to perform inspection of each area where containers are stored.	\$3,000
(40 C.F.R. Part 265 Subpart H—Financial Requirements)			§ 265.176	Failure of facility owner or operator to store containers holding ignitable or reactive wastes at least 50 feet from property line.	\$1,000
§ 265.142(a)	Failure of facility owner or operator to have a written estimate of the cost of closing the facility.	\$2,000	§ 265.177 (a)-(c)	Failure of facility owner or operator to comply with each of the special requirements for incompatible wastes.	\$2,000
§ 265.142(b)	Failure of facility owner or operator to adjust closure cost estimate for inflation according to regulatory time frames.	\$1,000	(40 C.F.R. Part 265 Subpart J—Tank Systems)		
§ 265.142(c)	Failure of facility owner or operator to revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.	\$1,000	§ 265.192(a)	Failure of tanks to have sufficient strength or to meet other specified requirements or facility owner or operator placing waste in tank incompatible with the material of construction of the tank.	\$5,000
§ 265.142(d)	Failure of facility owner or operator to keep the latest closure cost estimate and adjusted closure cost estimate at the facility.	\$1,000	§ 265.193(b)(2)	Failure of tank storage areas to have a containment system capable of collecting releases and accumulated liquids.	\$3,000
§ 265.143	Failure of facility owner or operator to establish financial assurance for closure of facility.	\$5,000	§ 265.193(c)(1)	Failure of containment system to consist of material compatible with wastes stored.	\$2,000
§ 265.144(a)	Failure of facility owner or operator to have a written estimate of the cost of post-closure care.	\$2,000	§ 265.193(c)(4)	Failure of facility owner or operator to remove accumulated precipitation from sump or collection area in a timely manner.	\$2,000
§ 265.144(b)	Failure of facility owner or operator to adjust cost estimate of post-closure care for inflation according to regulatory time frames.	\$1,000	§ 265.193(c)(4)	Failure of facility owner or operator to remove spilled or leaked waste daily from sump or collection area.	\$2,000
§ 265.144(c)	Failure of facility owner or operator to revise the post-closure care cost estimate whenever a change in the post-closure plan increases the cost of post-closure care.	\$1,000	§ 265.193(c)(4)	Failure of containment system to be sloped or designed and operated to drain and remove liquids.	\$1,000
§ 265.144(d)	Failure of facility owner or operator to keep the latest post-closure care cost estimate at the facility.	\$1,000	§ 265.193(e)(1) (i)	Failure of external liner containment system to contain 100 percent of the capacity of largest tank.	\$2,000
§ 265.145	Failure of facility owner or operator to establish financial assurance for post-closure care of facility.	\$5,000	§ 265.193(e)(1) (ii)	Failure of facility owner or operator to prevent run-on into external liner containment system unless system has required excess capacity.	\$1,000
			§ 265.193(e)(1) (iii)	Failure of external liner containment system to be free of cracks or gaps.	\$1,000
			§ 265.193(e)(2) (i)	Failure of vault containment system to contain 100 percent of the capacity of largest tank.	\$2,000
			§ 265.193(e)(2) (ii)	Failure of facility owner or operator to prevent run-on into vault containment system.	\$1,000

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
	tem unless system has required excess capacity.		§ 265.201(d)	Failure of facility owner or operator at closure to remove or decontaminate all wastes residues, contaminated containment system components, contaminated soils, structures, etc.	\$5,000
§ 265.194(a)	Failure of facility owner or operator to prevent hazardous wastes or treatment reagents from being placed in tank system if they can cause the tank, its ancillary equipment, or containment system to rupture, leak, corrode, or otherwise fail.	\$5,000	§ 265.201(e)(1)	Failure of facility owner or operator to meet specific requirements before placing ignitable or reactive waste in a tank.	\$5,000
§ 265.194(b)(2)	Failure of tank to have controls to prevent overfilling.	\$500	§ 265.201(e)(2)	Failure of facility owner or operator storing or treating ignitable or reactive wastes in tanks to comply with NFPA's buffer zone requirements for tanks.	\$2,000
§ 265.194(b)(3)	Failure of facility owner or operator to maintain sufficient freeboard for uncovered tanks to prevent overtopping by wave or wind action or precipitation.	\$500	§ 265.201(f)(1)	Failure of facility owner or operator to prevent the placing of incompatible wastes, or wastes and materials, in same tank, except in compliance with 40 C.F.R. 265.17(b).	\$10,000
§ 265.195(a)(1)	Failure of facility owner or operator to inspect overfill/spill control equipment each operating day.	\$500	§ 265.201(f)(2)	Failure of facility owner or operator to prevent the placing of hazardous waste in a tank which was not decontaminated and previously held incompatible waste.	\$5,000
§ 265.195(a)(2)	Failure of facility owner or operator to inspect aboveground portions of tank system for corrosion or releases of waste.	\$1,000			
§ 265.195(a)(3)	Failure of facility owner or operator to inspect data gathered from monitoring and leak detection equipment each operating day.	\$500	(40 C.F.R. Part 265 Subpart K—Surface Impoundments)		
§ 265.195(a)(4)	Failure of facility owner or operator to inspect construction materials.	\$500	§ 265.226	Failure of facility owner or operator to comply with monitoring and inspection requirements of surface impoundments.	\$3,000
§ 265.195(a)(4)	Failure of facility owner or operator to inspect area immediately surrounding tank system for erosion or signs of releases.	\$500	§ 265.228(b)(2)–(3)	Failure of facility owner or operator to comply with maintenance and monitoring requirements during post-closure of surface impoundments.	\$2,000
§ 265.197(a)	Failure of facility owner or operator at closure to remove or decontaminate all wastes residues, contaminated containment system components, contaminated soils, structures, etc.	\$5,000	§ 265.229	Failure to meet requirements for placing ignitable or reactive waste in surface impoundment.	\$5,000
§ 265.198(a)	Failure of facility owner or operator to meet specific requirements before placing ignitable or reactive waste in a tank.	\$5,000	§ 265.230	Failure to prevent incompatible wastes and/or materials from being placed in same surface impoundment.	\$10,000
§ 265.198(b)	Failure of facility owner or operator storing or treating ignitable or reactive wastes in tanks to comply with NFPA's buffer zone requirements for tanks.	\$2,000	(40 C.F.R. Part 265 Subpart N—Landfills)		
§ 265.199(a)	Failure of facility owner or operator to prevent the placing of incompatible wastes, or wastes and materials, in same tank, except in compliance with 40 C.F.R. 265.17(b).	\$10,000	§ 265.301(f)	Failure of facility owner or operator of hazardous waste landfill to manage run-on system.	\$2,000
§ 265.199(b)	Failure of facility owner or operator to prevent the placing of hazardous waste in a tank which was not decontaminated and previously held incompatible waste.	\$5,000	§ 265.301(g)	Failure of facility owner or operator of hazardous waste landfill to manage run-off system.	\$2,000
§ 265.201(b)(2)	Failure of facility owner or operator to prevent hazardous wastes or treatment reagents from being placed in tank system if they can cause the tank, its ancillary equipment, or containment system to rupture, leak, corrode, or otherwise fail.	\$5,000	§ 265.301(h)	Failure of facility owner or operator of hazardous waste landfill to empty or manage run-on/runoff systems after storm.	\$2,000
§ 265.201(b)(3)	Failure of facility owner or operator to maintain sufficient freeboard for uncovered tanks to prevent overtopping by wave or wind action or precipitation.	\$500	§ 265.309(a)	Failure of facility owner or operator to maintain in operating record details of location and dimensions of each hazardous waste landfill cell.	\$2,000
§ 265.201(c)(2)	Failure of facility owner or operator to inspect data gathered from monitoring and leak detection equipment each operating day.	\$500	§ 265.309(b)	Failure of facility owner or operator to maintain in operating record the contents of each hazardous waste landfill cell and location of each hazardous waste type.	\$2,000
§ 265.201(c)(4)	Failure of facility owner or operator to inspect construction materials.	\$500	§ 265.310(a)	Failure of facility owner or operator of hazardous waste landfill to place final cover over landfill.	\$5,000
§ 265.201(c)(5)	Failure of facility owner or operator to inspect area immediately surrounding tank system for erosion or signs of releases.	\$500	§ 265.310(b)(1)	Failure of facility owner or operator of a hazardous waste landfill to maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events.	\$2,000
			§ 265.310(b)(2)	Failure of facility owner or operator to maintain and monitor the leak detection system.	\$2,000
			§ 265.310(b)(4)	Failure of facility owner or operator to prevent run-on and run-off from eroding or otherwise damaging the final cover.	\$2,000

Rule	Rule summary	Base penalty	Rule	Rule summary	Base penalty
§ 265.310(b)(5)	Failure of facility owner or operator to protect and maintain surveyed benchmarks used in complying with 40 C.F.R. 264.309.	\$1,000		ture and emission control at least every 15 minutes.	
§ 265.312(a)(1)	Facility owner or operator of hazardous waste landfill placing ignitable or reactive waste in hazardous waste landfill.	\$10,000	§ 265.377(a)(2)	Failure of facility owner or operator when thermally treating hazardous waste to observe stack plume, at least hourly.	\$500
§ 265.313	Facility owner or operator of hazardous waste landfill placing incompatible wastes and materials in same landfill cell.	\$10,000	§ 265.377(a)(3)	Failure of facility owner or operator when thermally treating hazardous waste to inspect process and associated equipment for leaks, spills, etc.; at least daily.	\$3,000
§ 265.314(b)	Placing bulk or non-containerized liquids in landfill.	\$10,000	§ 265.381	Failure of facility owner or operator at closure to remove all hazardous waste and residues from thermal treatment process.	\$5,000
§ 265.314(c)	Placing containerized liquids in hazardous waste landfill.	\$5,000	§ 265.382	Failure of facility owner or operator to prevent the open burning of any hazardous waste, or the open burning and detonation of waste explosives too close to property line.	\$10,000
§ 265.315	Failure to comply with special requirements for containers.	\$2,000			
§ 265.316(a)	Failure of inside containers of overpack containers to be made of material that will not react with, or be decomposed or ignited by waste.	\$5,000	(40 C.F.R. Part 265 Subpart Q—Chemical, Physical, and Biological Treatment)		
§ 265.316(a)	Failure to tightly seal inside containers of overpack containers before placing in landfill.	\$1,000	§ 265.401(b)	Failure of facility owner or operator to prevent placing of hazardous wastes in treatment process if they could cause process to leak, corrode or fail.	\$5,000
§ 265.316(a)-(b)	Failure to meet requirements of inside containers of overpack containers before placing in a hazardous waste landfill.	\$2,000	§ 265.401(c)	Failure of facility owner or operator to provide continuously fed treatment process with a mechanism to stop inflow.	\$3,000
§ 265.316(b)	Failure of metal outer container to be full after packing with inside containers and absorbent material.	\$2,000	§ 265.402(a)(2)(i)	Failure of facility owner or operator to provide additions to waste analysis for substantially different waste.	\$5,000
§ 265.316(c)	Failure to have absorbent material that is not capable of reacting dangerously with, being decomposed by, or being ignited by the contents inside the containers.	\$5,000	§ 265.403(a)(1)	Failure of facility owner or operator to inspect discharge control and safety equipment at least once each operating day.	\$750
§ 265.316(d)	Failure to prevent incompatible wastes from being placed in same outside container.	\$5,000	265.403(a)(2)	Failure of facility owner or operator to inspect data from monitoring equipment at least once each operating day.	\$750
§ 265.316(e)	Failure to meet requirements for packaging reactive wastes before placing in hazardous waste landfill.	\$5,000	§ 265.403(a)(3)	Failure of facility owner or operator to inspect construction materials at least weekly.	\$750
(40 C.F.R. Part 265 Subpart O—Incinerators)			§ 265.403(a)(4)	Failure of facility owner or operator to monitor and inspect discharge confinement structures for erosion or leakage at least weekly.	\$750
§ 265.341	Failure of facility owner or operator to sufficiently analyze waste not previously burned.	\$5,000	§ 265.404	Failure of facility owner or operator to remove all hazardous waste and residues at closure.	\$5,000
§ 265.345	Feeding hazardous waste into the incinerator during start up and shut down when it is not operating at steady state conditions.	\$10,000	§ 265.405	Failure of facility owner or operator to prevent placing ignitable or reactive waste in treatment process unless it is treated accordingly.	\$10,000
§ 265.347(a)	Failure of facility owner or operator of incinerator to conduct monitoring of combustion and emission control instruments at least every 15 minutes, or to make appropriate corrections immediately.	\$500	§ 265.406(a)	Failure of facility owner or operator to prevent the placing of incompatible wastes in the treatment process.	\$10,000
§ 265.347(b)	Failure of facility owner or operator to completely inspect incinerator or associated equipment at least daily.	\$3,000	§ 265.406(b)	Failure of facility owner or operator to prevent the placing of hazardous waste in unwashed treatment equipment which previously held incompatible waste or material.	\$5,000
§ 265.351	Failure of facility owner or operator to remove all hazardous waste and hazardous waste residues from incinerator at closure.	\$5,000			
(40 C.F.R. Part 265 Subpart P—Thermal Treatment)					
§ 265.373	Failure of facility owner or operator to bring thermal treatment process to normal operating conditions before adding hazardous waste.	\$10,000			
§ 265.375	Failure of facility owner or operator to sufficiently analyze waste not previously treated.	\$5,000			
§ 265.377(a)(1)	Failure of facility owner or operator when thermally treating hazardous waste to monitor instruments relating to tempera-	\$500			

7. The violations of N.J.A.C. 7:26G-10, Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, and the civil administrative penalty amounts for each violation, are as set forth in the following table. (Reserved)

8. The violations of N.J.A.C. 7:26G-11, Land Disposal Restrictions, and the civil administrative penalty amounts

for each violation, are as set forth in the following table.
(Reserved)

9. The violations of N.J.A.C. 7:26G-12, Hazardous Waste Permit Program, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule summary	Base penalty
(40 C.F.R. Part 270 Subpart B—Permit Application)		
§ 270.10(e) and (f)	Construction, installation, modification or operation of hazardous waste facility, without submitting Part A or Part B of permit application.	\$10,000
(40 C.F.R. Part 270 Subpart C—Permit Conditions)		
§ 270.30(d)	Failure of permittee to take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with permit.	\$10,000
§ 270.30(h)	Failure of permittee to furnish to the Department within a reasonable time, any information which the Department may request and copies of records required to be kept.	\$5,000
§ 270.30(i)(1) and (2)	Failure of permittee to allow an authorized representative of the Department to enter and have access to and copy any records that shall be kept under the conditions of the permit.	\$5,000
§ 270.30(i)(1) and (4)	Failure of permittee to allow authorized representative of the Department to enter and sample or monitor any substances or parameters at any location.	\$5,000
§ 270.30(j)(2)	Failure of permittee to maintain records from each required monitoring well, and for disposal facilities for post closure care period.	\$2,000
§ 270.30(j)(2)	Failure to retain records of required information regarding monitoring sampling and measurements.	\$2,000
§ 270.30(k)	Failure to sign and certify all applications, reports or information submitted to DEP.	\$300
§ 270.30(l)(1)	Failure of permittee to give notice to DEP as soon as possible of any planned physical alterations or additions to permitted facility.	\$2,000
§ 270.30(l)(2)	Failure to give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.	\$5,000
§ 270.30(l)(4)	Failure to report monitoring results at intervals specified in permit.	\$2,000
§ 270.30(l)(5)	Failure to submit compliance reports on interim or final requirements in any compliance schedule within 14 days after schedule date.	\$300
§ 270.30(l)(6)(i)(A)	Failure to report, orally within 24 hours, information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.	\$25,000
§ 270.30(l)(6)(i)(B)	Failure to report, orally within 24 hours, information concerning a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste facility which could threaten the environment or human health outside the facility.	\$25,000
§ 270.30(l)(6)(iii)	Failure to report any noncompliance which may endanger health or environment in writing within five days.	\$10,000

Rule	Rule summary	Base penalty
§ 270.30(l)(10)	Failure to report all instances of noncompliance not reported under 40 C.F.R. 270.30(l)(4), (5) and (6) at time monitoring reports submitted.	\$1,000
(40 C.F.R. Part 270 Subpart D—Changes to Permits)		
§ 270.40(b)	Failure of permittee to obtain prior approval in advance of any proposed change of ownership or operational control.	\$5,000
(40 C.F.R. Part 270 Subpart G—Interim Status)		
§ 270.72(a)(1)	Treating, storing or disposing of hazardous waste types not specified in Part A.	\$5,000
§ 270.72(a)(2)	Exceeding design capacities or operational limits specified in Part A of the permit application.	\$5,000
§ 270.72(a)(3)	Employing processes not specified in Part A application.	\$5,000
§ 270.72(b)	Facility owner or operator making changes to existing facility, prior to final disposition of permit application, which amount to reconstruction of facility.	\$5,000

7:26G-2.5 Civil administrative penalty determination

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26G-2.4, when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26G-2.4 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26G-2.4.

(b) Each violation of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

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

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, administrative order, permit, license or other operating authority issued, or Part A permit application filed, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

(d) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (c) above by the amount obtained by multiplying the base penalty dollar amount by 1.0 percent for each day that the fee is past due.

7:26G-2.9 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter include as an additional civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, or any Part A permit application filed, pursuant to the Act. If the total economic benefit was derived from more than one violation, the total economic benefit may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

SUBCHAPTER 3. HAZARDOUS WASTE FEES

7:26G-3.1 General provisions

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-6, 13:1E-18, 13:1E-42.2 and 13:1E-60d, there is hereby established a fee schedule for hazardous waste generators, transporters, and treatment, storage, or disposal facilities. Notwithstanding provisions in N.J.A.C. 7:26-4, this subchapter constitutes the rules of the Department for hazardous waste fees. Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

7:26G-3.2 Payment of fees

(a) Fees for activities related to hazardous waste generators, transporters, and treatment, storage, or disposal facilities shall be paid by certified check or money order payable to: Treasurer, State of New Jersey. Payment shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
PO Box 417
Trenton, New Jersey 08625-0417

(b) All fees shall be paid within 30 days of the date on the bill issued by the Department unless otherwise specified

herein. A person who fails to pay a fee within the time due shall be subject to penalties pursuant to N.J.A.C. 7:26G-2.8.

7:26G-3.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) Fees for generators filing a biennial report in accordance with 40 C.F.R. 261.5(e), 261.5(f), 262.41 and 262.44 (as incorporated by reference at N.J.A.C. 7:26G-5 and 6) shall be based on quantities of hazardous waste generated during the odd numbered calendar year preceding the even numbered reporting year. Hazardous waste generator biennial reporting fees are as follows:

1. Less than 1.1 tons of hazardous waste generated: \$67.00.
2. Equal to or greater than 1.1 tons but less than 10 tons of hazardous waste generated: \$134.00.
3. Equal to or greater than 10 tons but less than 100 tons of hazardous waste generated: \$248.00.
4. Equal to or greater than 100 tons but less than 150 tons of hazardous waste generated: \$501.00.
5. Equal to or greater than 150 tons of hazardous waste generated: \$801.00.

(b) The manifest processing fee for generators and hazardous waste facilities is as follows:

1. Generators located in the State of New Jersey: \$9.00 per manifest.
2. Hazardous waste facilities: \$9.00 per manifest for waste received from generators located outside of the State of New Jersey unless exempt under N.J.A.C. 7:26G-3.4(c). A hazardous waste facility will not be assessed a manifest processing fee for waste received from New Jersey generators.

(c) Fees for conducting inspections and compliance reviews for generators and facilities are as follows:

1. Inspection fee for a major commercial hazardous waste facility, as defined at N.J.S.A. 13:1E-42.1, shall be determined on an annual basis by the following formula:

$$\begin{aligned}
 F &= \text{Fee} \\
 T &= \text{Inspection time (expressed as a percentage of the Department's total annual time for all major facilities)} \\
 W &= \text{Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)} \\
 I &= \text{Total annual cost for inspecting major commercial hazardous waste facilities} \\
 F &= (T + W)/2 \times I
 \end{aligned}$$

2. Inspection fee for a commercial hazardous waste facility, other than a major hazardous waste facility as defined at N.J.S.A. 13:1E-42.1, per inspection: \$930.00;

3. Inspection fee for a non-commercial hazardous waste facility: \$1,639;

4. Inspection fee for a generator:

i. Large quantity generator: \$2,180; and

ii. Small quantity generator: \$517.00

5. Inspection fee for compliance inspection: \$829.00

6. Inspection fee for compliance reviews: \$454.00

(d) Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee shall be assessed for each separate waste classification requested. Fees for each step in the delisting process shall be submitted prior to the commencement of review/action by the Department:

1. Fee for the classification of wastes where the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: \$431.00;

2. Fee for the classification of wastes where the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: \$216.00;

3. Fee for the review of sampling plans submitted in support of waste classification requests, for each plan submitted: \$249.00;

4. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26G-4 (40 C.F.R. 260.22) shall be paid upon submission of the document, or in the case of the New Jersey Register notices, prior to the preparation of the notice, and are as follows:

i. Review of delisting petition: \$38,143;

ii. Development, monitoring, and review of sampling plan: \$1,244;

iii. Development and publication of public notice in the New Jersey Register: \$12,438;

(e) Fees for permitting/review activities are as follows:

1. Fees for review of a permit application for a new hazardous waste facility, expansion of 50 percent or more at a major hazardous waste facility, as defined at N.J.S.A. 13:1E-51, and expansion of any facility that includes a new type of hazardous waste management unit among those listed below shall be paid at time of application submission and are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$62,377.

ii. Storage and/or treatment including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$33,862, subject to any rebate available under (e)13 below

iii. Incineration (including boilers and industrial furnaces) with trial burn: \$142,576

iv. Incineration (including boilers and industrial furnaces) without trial burn: \$124,754

2. Fees for review of permit renewal application shall be paid at time of renewal application submission and are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$33,862

ii. Non-commercial storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$24,951

iii. Commercial storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$46,337

iv. Incineration (including boilers and industrial furnaces) with trial burn: \$98,021

v. Incineration (including boilers and industrial furnaces) without trial burn: \$80,199

3. Fees for permit issuance/denial for a facility with "existing facility status" prior to February 3, 1992 shall be paid by June 2, 1992 or at the time of public notice of the draft permit/denial, whichever is earliest. Fees for permit issuance/denial for a facility with "existing facility status" after February 3, 1992 shall be paid at the time of public notice of the draft permit/denial. These fees are as follows:

i. Land disposal (without storage) as defined in 40 C.F.R. 268.2(c) (that is, landfills, surface impoundments, waste piles, injection wells, land treatment facilities, salt dome formations, salt bed formations, underground mines or caves, and concrete vaults or bunkers): \$62,377

ii. Storage and/or treatment, including containers, tanks, drip pads, miscellaneous units, and containment buildings: \$33,862, subject to any rebate available under (e)13 below

iii. Incineration (including boilers and industrial furnaces) with trial burn: \$142,576

iv. Incineration (including boilers and industrial furnaces) without trial burn: \$124,754

4. Fees for the issuance of a closure plan approval shall be paid at time of submission of the application for closure and are as follows:

- i. Closure with soil sampling plan: \$11,139
- ii. Closure without soil sampling plan: \$6,683

5. The fee for the approval/denial of existing facility changes pursuant to N.J.A.C. 7:26G-12 (40 C.F.R. 270.72) shall be paid at time of submission of request for change and is: \$891.00.

6. The fee for the approval/denial of ownership or operational control changes shall be paid at the time of submission of the request and is: \$1,337.

7. The fee for permit modifications shall be paid at time of modification request and are as follows:

- i. Class 1 modifications: \$1,248.
- ii. Class 2 modifications: \$5,168.
- iii. Class 3 modifications: \$20,941.

8. The fee for a RD&D permit (as described at 40 C.F.R. 270.65) shall be paid at time of application for permit and is: \$33,862, subject to any rebate under (e)13 below.

9. The fee for issuance of an emergency permit is: \$5,703.

10. The fee for treatability study annual report shall be paid at time of submission of report and is: \$178.00.

11. The fee for permit exemption qualification determinations shall be paid at time of submission of request and is: \$1,069.

12. The fee for review of Environmental Health and Impact Statements shall be paid at time of submission and is: \$17,822.

13. A non-commercial hazardous waste facility which has paid a fee under (e)1ii, (e)3ii, or (e)8 above may request a rebate of part of the fee. The request shall be in writing and delivered to the Department after the final permit for the facility is issued, but no later than 20 days after the final permit is issued. If the Department's timekeeping records show that the actual cost to the Department to issue the final permit is more than 10 percent less than the fee provided in (e)1ii, (e)3ii, or (e)8 above, the Department shall rebate the difference between the fee provided in (e)1ii, (e)3ii, or (e)8 above and the actual cost. Facilities requesting a rebate of part of the fee under (e)15 below shall make the request in writing and deliver it to the Department after the Department action on the activity, but no later than 20 days after the action is completed. If the Department's timekeeping records show that the actual cost to the Department is more than 10 percent less than the estimated fee, the Department shall rebate the difference between the estimated fee and the actual cost.

14. All costs associated with public participation in the permit process (including, but not limited to, public hearing costs such as stenographer fees and public hearing notice, and costs for public notices of draft permits and closure plans where no public hearing is scheduled, etc.) shall be paid by the permit applicant. The applicant will be billed by the Department prior to permit issuance.

15. If the Department determines that the activity is of a type listed in (e)1 through 12 above, the amount of the fee shall be equal to the amount listed in (e)1 through 12 above. If the Department determines that such activity is not of a type listed in (e)1 through 12 above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$89.11, subject to any rebate available under (e)13 above.

(f) The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.

(g) The fee schedule for hazardous waste transporters is as follows:

1. All hazardous waste transporters shall pay an annual registration fee. A State of New Jersey hazardous waste transporter registration decal will be issued for each hazardous waste cab and transport unit (as defined at N.J.A.C. 7:26G-4.2) for which a fee is paid. The fee registration year shall extend from October 1 through the following September 30. The fee shall accompany the submission of the annual registration application. All vehicles registered with the Department must be owned or leased by the applicant. If the vehicle is leased, a copy of the lease must be submitted with the registration application. The registration of a hazardous waste transporter is non-transferable and fees are not refundable. The annual registration fees are as follows:

- i. Each hazardous waste cab: \$21.00;
- ii. Each hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab, having a capacity less than or equal to one ton (one ton = one cubic yard = 200 gallons): \$85.00;
- iii. Each hazardous waste transport unit without a hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): \$191.00; and
- iv. Each hazardous waste transport cab with permanently attached hazardous waste transport unit with a capacity greater than one ton (one ton = one cubic yard = 200 gallons): \$212.00.

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

Case Notes

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

7:26G-3.4 Exemption from fee payment

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

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

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

7:26G-3.5 Adjustment of fees

(a) The Department shall adjust the fees for each activity described in N.J.A.C. 7:26G-3.3 with the exception of the fees referenced at N.J.A.C. 7:26G-3.3(c)1, as necessary, based upon the following formula:

$$\text{Fee} = (\text{hours required}) \times (\text{hourly rate})$$

where "hours required" and "hourly rate" are as set forth in the Hazardous Waste Fee Schedule Report as provided in (c) below.

(b) The Department shall adjust the transporter registration fee described in N.J.A.C. 7:26G-3.3(g), as necessary, based upon the following formula:

$$\text{Total Revenue Needed to Carry Out Program} = (\text{Total Hours Required to Carry Out Program}) \times (\text{Hourly Rate})$$

Where Total Hours Required and the Hourly Rate are as set forth in the Hazardous Waste Fee Schedule Report as provided in (c) below; and where Total Revenue Needed to Carry Out Program is then apportioned among the four types of vehicles required to be registered under this subchapter in the manner noted in the Hazardous Waste Fee Schedule Report resulting in the adjusted fees for the four vehicle types.

(c) The Department shall prepare a Hazardous Waste Fee Schedule Report. This report shall include the following:

1. The Department's estimate of the number of hours which will be required to perform each type of activity for which fees are assessed under N.J.A.C. 7:26G-3.3(a) through (f) and an estimate of the total hours required to carry out the transporter regulatory program to be paid for by the fees assessed under N.J.A.C. 7:26G-3.3(g). In formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records and/or workplan projections for a period of at least nine months, ending no more than six months before the completion of the report;

ii. The Department's timekeeping records and/or workplan projections from previous years, if the Department determines that it does not have sufficient data to reliably determine the number of hours required to perform the activity;

iii. Any other factors relevant to the estimate, provided that the report explains any such other factors, and explains how such factors support the estimate;

iv. If the Department determines that the creation of additional classifications of regulated entities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications, and shall report them in the Hazardous Waste Fee Schedule Report. The Department's determination shall be in its reasonable discretion, based upon its review of the data upon which the report is based. In the report, the Department shall set forth the hours required to perform an activity for such additional classes. This subparagraph provides only for the creation of additional classification of types of facilities or activities for which fees are assessed under the Department's rules, and shall not be construed to provide for the assessment of fees for types of facilities or activities not already contained in the Department's rules; and

v. If the Department reports a decrease in the number of hours spent performing an activity, compared with the expected level of activity, and such decrease is due solely or in part to a lack of Department staff sufficient to perform the activity, the Department may set the fee at the level necessary to defray the cost of sufficient staff to perform the expected activity; and

2. A statement of the hourly rate for calculating fees. The hourly rate for an activity is the average cost of one hour of the Department's hazardous waste program's staff time needed to perform the activity, calculated according to the following formula:

$$\frac{(\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{BH}}$$

where:

i. AS equals the average salary of a full-time Department employee working in the Department's hazardous waste program assigned to the activity. In calculating the average salary of a Department employee, the salaries for Direct support and Division overhead positions shall be included along with the salaries for employees assigned to the activity;

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 up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 260, as amended and supplemented, except as provided in (b) and (c) below.

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

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

1. 260.1(a), after "chapter" add "and N.J.A.C. 7:26G";

2. 260.1(b)(3), after "chapter" add "and N.J.A.C. 7:26G";

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

4. 260.10 Definitions:

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

ii. "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 7:1D-1.1.”;

6. 260.21(b), delete “§ 260.20(b)” and replace with “N.J.A.C. 7:1D-1.1 and 1:30-3.6”;

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, PO Box 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, in the Appendix I to 40 C.F.R. Part 260, and 40 C.F.R. 260.11(a), 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.

(f) When used in the following Federal citation, the terms “EPA” and “Environmental Protection Agency” shall not be replaced with a State term, but shall retain its meaning: 40 C.F.R. 260.11(a).

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.
Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (d), added C.F.R. reference; and added (f).
Administrative change.
See: 32 N.J.R. 1796(a).

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 or the act of transferring liquid hazardous waste from one container to one or more empty containers meeting the conditions at 40 C.F.R. 261.7 (as incorporated by reference at N.J.A.C. 7:26G-5).

“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.

“Exempt transporter” shall, for purposes of N.J.A.C. 7:26G-7.2, mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

“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.

“Licensee” shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

“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.

"Permittee" shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"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.

"Small quantity generator inspection" is an inspection of a generator as defined at 40 C.F.R. 260.10, 261.5(e), 261.5(f), 261.5(g), 262.34(d) and 262.34(f), who meets the conditions in paragraphs 1 and 2 or 1 and 3 below:

1. Generates (in a calendar month) and accumulates (at any time) one kilogram or less of acute hazardous waste or 100 kilograms or less of spill clean-up of acute hazardous waste; and
2. Generates 100 kilograms or less of non-acute hazardous waste in a calendar month and accumulates greater than 1,000 kilograms but never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any time; or
3. Generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month and never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any 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.

"State CAA 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.

"State Director" or "State RCRA 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 with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to N.J.A.C. 7:26G-7.2, of hazardous waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter shall not, for purposes of N.J.A.C. 7:26G-7.2, be considered a subcontract.

“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”.

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Inserted “State CAA Director”; and changed “State Director” definition to “State Director” or “State RCRA Director”.

Amended by R.2000 d.75, effective February 22, 2000.
See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Inserted “Exempt transporter”, “Licensee” and “Permittee”; and rewrote “Subcontractor”.

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

Rewrote “Consideration”; deleted “Generator inspection”; added “Small quantity generator inspection”.

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 by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 261, Federal Regulations on Identification and Listing of Hazardous Waste, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 261 are not incorporated by reference: 40 C.F.R. Part 261 Appendix IX.

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

1. Operative dates of regulations first promulgated by EPA are determined as follows:

i. Operative dates of rules originally promulgated by USEPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and incorporated by reference on October 21, 1996, shall not be altered, because these rules are operative in all states at the time of adoption.

ii. Operative dates of rules incorporated by reference on October 21, 1996, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with October 21, 1996, because these rules are not operative in authorized states until state adoption of the rules.

iii. Operative dates of rules incorporated by reference after October 21, 1996, but prior to August 1, 1998, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with January 19, 1999, because these rules are not operative in authorized states until state adoption of the rules.

iv. Operative dates of rules incorporated through prospective incorporation by reference shall become operative in accordance with N.J.A.C. 7:26G-1.4(k) and (l).

v. See 40 C.F.R. 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).

3. 40 C.F.R. 261.5(c)(4), replace "40 C.F.R. Part 279" with "N.J.A.C. 7:26A-6";

4. 40 C.F.R. 261.5(c)(6), replace "40 C.F.R. Part 273" with "N.J.A.C. 7:26A-7";

5. 40 C.F.R. 261.5(f)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

6. 40 C.F.R. 261.5(g)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

7. 40 C.F.R. 261.5(j), replace "part 279 of this chapter" with "N.J.A.C. 7:26A-6";

8. 40 C.F.R. 261.6(a)(5), replace "State requirements analogous to 40 C.F.R. Part 273." with "N.J.A.C. 7:26A-7";

9. 40 C.F.R. 261.9, replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7" and replace "under 40 C.F.R. part 273:" with "at N.J.A.C. 7:26A-7";

10. 40 C.F.R. 261.9(a), replace "40 C.F.R. 273.2" with "N.J.A.C. 7:26A-7.1(b)";

11. 40 C.F.R. 261.9(b), replace "40 C.F.R. 273.3;" with "N.J.A.C. 7:26A-7.1(c)";

12. 40 C.F.R. 261.9(c), replace "40 C.F.R. 273.4." with "N.J.A.C. 7:26A-7.1(d).";

13. 40 C.F.R. 261.38(c)(1)(i), after "State RCRA and CAA Directors," remove "in Authorized States or Regional RCRA and CAA Directors in Unauthorized States";

14. 40 C.F.R. 261.38(c)(1)(i)(A), after "The generator must submit a one-time notice to the," remove "Regional or";

15. 40 C.F.R. 261.38(c)(1)(ii)(E), after "Name and mailing address of the," remove "Regional or State Directors" and insert "State Director."

(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), 261.22(a)(1) and (2), 261.22(b), 261.24(a), 261.24(b), 261.38 footnotes to Table 1, and 261.38(c)(1)(i)(C)(2).

(f) When used in the following Federal citation, the term "Regional Administrator" shall not be substituted by a state term, but shall retain its meaning: 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).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote the section.

7:26G-5.2 (Reserved)

New Rule, R.1996 d.577, effective December 16, 1996.

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

Repealed by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Section was "Additional special requirements for hazardous waste generated by conditionally exempt small quantity generators".

7:26G-5.3 (Reserved)

New Rule, R.1996 d.577, effective December 16, 1996.

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

Repealed by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Section was "Requirements for universal waste".

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 up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 262, Federal regulations on the standards applicable to generators of hazardous waste, as amended and supplemented, 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(d), replace “State requirements analogous to 40 C.F.R. 273.” with “N.J.A.C. 7:26A-7”;

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

3. 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.”;

4. 40 C.F.R. 262.12(c), at the end of the paragraph add “It is considered a violation for a generator to utilize a transporter who is not properly licensed and registered with the Department in accordance with N.J.A.C. 7:26G-7.2 and/or who fails to display a current Department registration number in accordance with N.J.A.C. 7:26-7.2(b)6”;

5. 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.”;

6. 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.”;

7. 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.”;

8. 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”;

9. 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)”;

10. 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”;

11. 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”;

12. 40 C.F.R. 262.41(a), delete “EPA Form 8700-13A” and replace with “forms approved by the Department”;

13. 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”;

14. 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”;

15. 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”;

16. 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.”;

17. 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.”;

18. 40 C.F.R. 262.80(a), replace “State requirements analogous to 40 C.F.R. 273.” with “N.J.A.C. 7:26A-7.”;

19. 40 C.F.R. 262.89(a)2, replace "State requirements analogous to 40 C.F.R. 273." with "N.J.A.C. 7:26A-7."

(d) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be replaced with a State term, but shall retain its meaning: 40 C.F.R. 262.53(b), 262.56(b), 262.81(k), 262.83(b)(1)(i), 262.83(b)(2)(i), 262.84(e), 262.85(g), 262.87(a) and 262.89(e).

(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, 262.57, and 262.80 through 262.89.

(f) When used in "EPA identification number," "EPA form," "EPA hazardous waste number," "US EPA ID number," "EPA Acknowledgment of Consent" and in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 262.51, 262.53, 262.54, and 262.80 through 89.

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).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (c), changed C.F.R. reference in 1, and added 16 through 18; rewrote (d); in (e) and (f), changed C.F.R. references; and in (f), inserted a reference to "EPA Acknowledgement of Consent".

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

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

Rewrote (c).

7:26G-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

1. One F, K, P, or U waste that exhibits RCRA characteristic(s) (D wastes)
2. Mixture of two or more F, K, P, or U wastes which exhibits RCRA characteristic(s) (D wastes)

Manifest completion

Item I	Item J
F, K, P or U code	
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

1. Waste displays only one characteristic
2. Waste displays multiple characteristics

Manifest completion

Item I	Item J
D code for the characteristic	
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 reasons(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 up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 263 Federal regulations on the standards applicable to transporters of hazardous waste, as amended and supplemented, 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. 263 are incorporated by reference with the specific 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. 263.10(d), replace "State requirements analogous to 40 C.F.R. Part 273" with "N.J.A.C. 7:26A-7."

3. 40 C.F.R. 263.30(a), after "local authorities" add "(including the Department at 1-877-WARNDEP (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).

(f) When used in EPA acknowledgment of consent, the term "EPA" means the United States Environmental Protection Agency.

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (c), added 3; and added (f).
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Inserted a new (c)2; recodified former (c)2 as (c)3 and substituted "1-877-WARNDEP" for "609-292-7172"; deleted former (c)3.

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 through 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), but shall apply in the case of a licensee or permittee which must file a disclosure statement for any lessor which holds a beneficial interest in the licensee or permittee pursuant to N.J.A.C. 7:26-16.6(i) or (j).

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;

v. A listing and explanation of any notices, administrative orders or license revocations issued by any state or Federal authority citing a violation of any administrative rule relating to hazardous waste management against the business concern seeking a license or against any key employee, officer, director, or partner of the business concern;

vi. A listing and explanation of any judgement of liability or conviction under State or Federal statute or local ordinance concerning hazardous waste management against the business concern seeking a license or against any key employee, officer, director, or partner of the business concern; and

vii. Any other information the Department may require that relates to the competency or reliability of the applicant.

5. Every hazardous waste approved registration statement issued by the Department shall indicate on its face an annual renewal/expiration date, which, unless otherwise established by the Department, shall be September 30. The approved registration statement shall expire on the renewal date unless renewed pursuant to this paragraph. Prior to October 1 in each calendar year or such other date as the Department may establish, each registrant shall submit to the Department a registration statement updating the information contained in the previous registration statement. Such information shall be submitted on forms supplied by the Department. Transporters who are also the owner or operator of one or more hazardous waste transfer facilities shall include on the registration statement renewal the addresses of all 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. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration statement was granted.

6. The failure to submit updated registration statement and all applicable fees (see N.J.A.C. 7:26G-3) on or before October 1 in each calendar year or the failure to submit an updated disclosure statement pursuant to N.J.A.C. 7:26-16 and all applicable fees or the failure to comply with a final order of the Department shall be sufficient cause for the Department to revoke the approved registration or to declare it expired. Any registrant who receives a notice of intent to revoke or to declare an approved registration expired, shall have 15 days from receipt of the notice to submit to the Department a request for a hearing pursuant to N.J.A.C. 7:26G-2.3.

7. Except for information regarding the operation of hazardous waste transfer facilities, a registrant shall notify the Department in writing within 30 days of change of information supplied on the current registration statement, or on any leases submitted for registered hazardous waste vehicles (hazardous waste cab and transport unit individually if detachable), or on any documentation of leased operators of equipment submitted pursuant to (a) 13 below. Written notifications regarding transfer facilities shall occur prior to operations and include the following information: 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 shall be submitted.

8. No person shall be issued a hazardous waste approved registration statement nor shall any hazardous waste approved registration statement be renewed, if the applicant has failed to provide the accurate and complete information required on the application for issuance or the updating hazardous waste transporter registration statement for renewal.

9. No person shall be issued a hazardous waste approved registration statement if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

10. The Department, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the approved registration statement of a hazardous waste transporter for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9:

i. Failure to maintain the financial responsibility requirements as required above;

ii. Violation of any applicable provision of the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), this chapter, any administrative order issued by the Department or any environmental protection statute or implementing regulations of this State;

iii. A pattern of violations of the environmental protection statutes or regulations of this or any other State, or the Federal government; or

iv. Failure to submit updated information for the registration statement renewal or to submit the appropriate fee.

11. A permittee, licensee or exempt transporter who files a lease in connection with the registration statement for a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable) which the permittee, licensee or exempt transporter will operate shall ensure that such lease is signed and dated by the parties thereto, provides for the exclusive use, control and possession of such equipment by the permittee, licensee or exempt transporter during the lease, and also includes:

i. The dates on which the lease begins and ends, during which the permittee, licensee, or exempt transporter will have exclusive use, possession and control over the equipment;

ii. The amount and method of payment for the lease;

iii. The company or person responsible for payment of gas, oil, maintenance and insurance for the equipment;

iv. Identification of the equipment by vehicle identification number (VIN) as it appears on the Motor Vehicles Registration card, license plate number, state which issued license plate and vehicle type; and

v. A provision that the lease shall not be assigned to any person.

12. The lease shall be submitted along with an affidavit or certification by the president, chief executive officer, managing partner or sole proprietor or other appropriate officer or key employee of the permittee or licensee for whom a disclosure statement has been filed in accordance with N.J.A.C. 7:26-16.4(a)10, or if an exempt transporter, by the president, chief executive officer, managing partner or sole proprietor or other appropriate officer or official or key employee of the exempt transporter. The following statement shall immediately precede the signature of the affiant or certifier:

"1. I swear (or certify) that I am the _____ (title) of _____ (name of licensee, permittee, or exempt transporter) and am authorized to make this certification/affidavit on behalf of _____ (name of licensee, permittee, or exempt transporter), and that I have personal knowledge of the facts set forth below.

2. The lease filed by me as part of this registration statement for the equipment, vehicle type: _____, with the VIN number: _____, license number: _____, issued by the State of: _____, contains the true terms of the lease and has a bonafide business purpose and is not filed with the purpose of preventing

the discovery of information which would disqualify, for any reason set forth in N.J.S.A. 13:1E-133, the lessor or any other person from receiving a license.

3. I further swear (or certify) that my company and I understand that it shall exercise exclusive use, possession and control over each piece of hazardous waste equipment which is included in this application for a registration statement while such equipment is used to transport hazardous waste.

4. I further swear (or certify) that my company and I understand that it shall take reasonable measures to ensure that the above-described equipment will not, during the period of the lease, be used by any other person for the purpose of transporting hazardous waste."

In the case of a certification, the certification shall end with the following statement immediately preceding the signature and date: "I am aware that if any of the foregoing information or statement is willfully false, I am subject to punishment."

13. In addition to the requirements of (a)12 above, when a permittee, licensee, or exempt transporter files a lease in connection with an application for a registration statement for a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable), the lease shall provide that the leased equipment is or will be under the exclusive management, direction, and control of the permittee, licensee, or exempt transporter while being used to conduct hazardous waste activities for the permittee, licensee, or exempt transporter. This paragraph is in no way intended to affect whether the operator or operators of hazardous waste vehicles leased to a permittee, licensee, or exempt transporter are or should be deemed to be employees of the permittee, licensee, or exempt transporter.

14. No person shall act as a prime contractor or subcontractor for the transportation of hazardous waste in this State without first obtaining an approved registration statement from the Department. A lease, pursuant to this subchapter, of hazardous waste vehicle operators and equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

15. A person who has not obtained an approved registration statement shall not, through a subcontractor or any other means, engage or contract to engage in the transportation, storage, collection, processing, transfer, treatment, or disposal of hazardous waste in this State through the use, control or possession of any hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable) registered to any other person, or through any other means. The leasing of hazardous waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, pursuant to this subchap-

ter, shall not be deemed engaging or contracting to engage in said hazardous waste activities.

16. A person is not required to obtain an approved registration from the Department solely because that person is transporting hazardous waste through New Jersey, if roadways or highways in New Jersey constitute a segment of such person's route, the hazardous waste being transported through New Jersey is not discharged from the hazardous waste vehicle, and hazardous waste from the person's hazardous waste vehicle is not collected, treated, processed, transferred, consolidated, commingled, or disposed of in New Jersey. Provided that these requirements are satisfied, the exemption from registration is not affected if the person's hazardous waste vehicle stops in New Jersey for any of the following reasons:

- i. The vehicle suffers a mechanical breakdown which makes repair necessary;
- ii. The operator of the hazardous waste vehicle must stop for a mandatory rest or break; or
- iii. The operator of the hazardous waste vehicle temporarily stores hazardous waste at a hazardous waste transfer facility for 10 days or less in compliance with N.J.A.C. 7:26G-7.4.

(b) Hazardous waste vehicle registration requirements are as follows:

1. Any device used for the transportation of hazardous waste shall be registered with the Department as a hazardous waste vehicle (hazardous waste cab and transport unit individually if detachable).

2. A permittee, licensee, or exempt transporter shall not allow, through a subcontract or any other means, any such registered equipment to be used by another person, unless such person is an employee of the permittee, licensee, or exempt transporter, or unless such use is in accordance with a lease of vehicle operators pursuant to this subchapter.

3. The Department shall not issue a registration certificate and hazardous waste decal to any registrant who fails to submit the updated registration statement, the updated disclosure statement and the applicable fees (see N.J.A.C. 7:26G-3) on or before October 1.

4. No person shall engage in or continue to engage in the transportation of hazardous waste during the period when a hazardous waste decal and registration certificate are withheld pursuant to this subsection.

5. New Jersey Department of Environmental Protection (NJDEP) hazardous waste transporter registration certificates and decals shall be void if altered. Department representatives shall confiscate altered or stolen hazardous waste transporter registration certificate and decals upon discovery.

6. All hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable) used in the transporting of hazardous waste shall properly and conspicuously display, on both sides of the vehicle, a current New Jersey hazardous waste decal and the New Jersey Department of Environmental Protection (NJDEP) registration number. The NJDEP registration number shall be in letters and numbers at least three inches in height. Current hazardous waste decals must be permanently affixed to each hazardous waste vehicle (the hazardous waste cab and transport unit if detachable) prior to use on a public roadway or highway and prior to the hazardous waste vehicle (the hazardous waste cab and transport unit individually if detachable) being placed into service or before receiving waste.

i. A copy of any lease filed in connection with the registration of the hazardous waste (the hazardous waste cab and transport unit individually if detachable) shall be carried within the vehicle at all times and available to the Department upon inspection or request.

ii. Only the current year's decals shall be displayed. For hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable) which are owned by the registrant, the registrant shall, upon the interruption or termination of the exclusive use, possession or control of any such equipment by the registrant, notify the Department, return the NJDEP registration certificate to the Department, and remove and destroy the NJDEP registration number and decals on such hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable). In all situations in which the Department issues decals to a permittee, licensee, or exempt transporter for affixation to the hazardous waste vehicle(s) of a lessor from which the permittee, licensee, or exempt transporter is leasing hazardous waste vehicles, the permittee, licensee, or exempt transporter to which the lessor has leased hazardous waste vehicles, and the lessor itself, are under independent obligations to notify the Department, return the NJDEP registration certificate to the Department, and remove and destroy the NJDEP registration number and decals from the hazardous waste vehicles of the lessor at the expiration and non-renewal of the lease pursuant to which the decals were issued. Such decals, after the expiration and non-renewal of the lease pursuant to which the decals were issued or at the expiration of the decals (whichever comes first), shall be deemed expired. When used for hazardous waste transportation purposes, such vehicles may only be used pursuant to the lease, and may be operated only by operators pursuant to the requirements of (a)12 and 13 above.

(1) Failure to remove and destroy such decals and registration numbers after the expiration and non-renewal of the lease shall constitute a violation of this subchapter, and shall subject both the lessor and the permittee, licensee, or exempt transporter to penalties and licensing action. It shall be an affirmative defense to a penalty proceeding or licensing action for a permittee, licensee or exempt transporter if it can show that it made reasonable efforts to remove and destroy the decal and gave the Department timely written notice of its inability to remove and destroy the decal.

(2) All expired decals and registration numbers shall be confiscated by the Department upon discovery.

(3) Use of decaled vehicles by a lessor receiving decals for its vehicles pursuant to a lease, for the transportation of hazardous waste within, or into or out of New Jersey other than pursuant to a lease with a permittee, licensee, or exempt transporter, and in conformity with (a)12 and 13 above, shall constitute unlicensed hauling, and shall subject the lessor to penalties and debarment from involvement in the solid and hazardous waste and recycling industry in the State of New Jersey, including a prohibition on leasing solid and hazardous waste vehicles or solid and hazardous waste operators to permittees, licensees, and exempt transporters.

iii. The current vehicle registration card for a cab issued by the Department shall be carried in the cab of the vehicle at all times. If the cab and the transport unit are detachable, the registration card for the transport unit shall be immediately accessible for inspection upon request.

7. Permittees, licensees and exempt transporters shall, for purposes of hazardous waste activities and to the extent provided for under New Jersey law, be responsible for the actions and omissions of their lessors and their vehicle operators, and for selecting lessors and vehicle operators with appropriate qualifications; and the fact that the underlying relationship between a permittee, licensee or exempt transporter, and a lessor and/or vehicle operator was other than that of employer-employee shall be no defense in a licensing or enforcement action taken against the permittee, licensee, or exempt transporter because of the actions, omissions, or lack of qualifications of the lessor or vehicle operator.

Amended by R.2000 d.75, effective February 22, 2000.

See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Rewrote the section.

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

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

In (b), added 6iii.

7:26G-7.3 Other requirements

(a) All hazardous waste transporters shall comply with the following United States Department of Transportation (USDOT) regulations, with all the modifications that the New Jersey Department of Transportation has made in incorporating them into N.J.A.C. 16:49-2.1, and that the New Jersey State Police has made in incorporating them into N.J.A.C. 13:60-1.1:

1. The Hazardous Materials Regulations at 49 C.F.R. Parts 171 through 180, as amended and supplemented; and

2. The Motor Carrier Safety Regulations at 49 C.F.R. Parts 390 through 397, as amended and supplemented.

(b) The Department shall exercise fully its authority to enter and inspect vehicles transporting or registered to transport hazardous waste, while in operation on the highways of this State or areas incidental thereto, or at the premise or places of business of the owner or lessor of such vehicles.

(c) If the hazardous waste is rejected by the designated facility or if the transporter is unable to deliver the shipment of hazardous waste to the designated facility and no alternate facility is noted on the manifest, the transporter shall comply with all applicable transporter requirements at N.J.A.C. 7:26G-6.3(a).

7:26G-7.4 Requirements for hazardous waste transfer facilities

(a) A hazardous waste transfer facility shall be operated by a licensed hazardous waste transporter, who owns or leases the property upon which the transfer facility is located. If the property is leased, the lease shall be a written agreement between the property owner and the licensed hazardous waste transporter which discloses the hazardous nature of the operation.

(b) Except during emergencies in transportation, hazardous waste storage, consolidation, or commingling may be conducted only at a hazardous waste transfer facility as described in (a) above or an authorized hazardous waste facility, which is designated on the manifest. Storage, consolidation, or commingling of hazardous waste in transit shall not occur except as authorized under this section, and within the time limits established in this section.

(c) The owner or operator of the hazardous waste transfer facility shall notify the Department in writing prior to conducting activities at the transfer facility. The owner or operator of hazardous waste transfer facility shall submit, as part of the initial transporter license application, the annual hazardous waste transporter license renewal at N.J.A.C. 7:26G-7.2(a)5, or written notification to update transporter license information at N.J.A.C. 7:26G-7.2(a)7, the address of the hazardous waste transfer facility and an indication whether the property where the transfer facility is located is

owned or leased by the transporter. If the hazardous waste transfer facility is to be operated pursuant to a lease in accordance with (a) above, a copy of the lease shall be submitted as part of the hazardous waste transporter license application, license renewal, or written notification to update license information.

(d) The owner or operator of the hazardous waste transfer facility shall maintain at the transfer facility a written operating log (or logs, as necessary) documenting the movement of hazardous waste into and out of the hazardous waste facility and any hazardous waste transfers occurring at the facility and documenting compliance with the conditions set forth at (f), (g) and (h) below. At a minimum, the log(s) shall include the following information:

1. The date each hazardous waste arrives at the transfer facility;
2. The decal number of the waste bearing portion of the vehicle;
3. A description (including the USDOT shipping description) and the quantity of each hazardous waste received on a vehicle when it arrives at the transfer facility;
4. The state manifest document number or manifest document number or associated with each hazardous waste load;
5. Location of each hazardous waste within the facility;
6. A notation of any consolidation or commingling performed;
7. The date each hazardous waste departs from the transfer facility;
8. A description (including the USDOT description) and quantity of hazardous waste on the vehicle when it departs from the transfer facility; and
9. Cross references to specific manifest document numbers involved in the consolidation or commingling of hazardous waste loads.

(e) Each transporter utilizing the hazardous waste transfer facility shall enter the necessary information on the log(s) regarding his hazardous waste shipment.

(f) A hazardous waste transporter, who stores or consolidates closed containers of manifested shipments of hazardous waste at a hazardous waste transfer facility for a period of 10 days or less, is not subject to regulations at N.J.A.C. 7:26G-8 through 12 except as noted in this subchapter, provided that the following requirements are met:

1. The transporter consolidating the containers of hazardous waste is a licensed hazardous waste transporter in the State of New Jersey;

2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the hazardous waste manifests;

3. The hazardous waste is held in closed containers which meet the applicable U.S. Department of Transportation packaging regulations specified in 49 C.F.R. Parts 171 through 180, as amended;

4. The hazardous waste containers are in good condition (that is, no severe rusting, apparent defects or deterioration) and are not leaking;

5. The storage or consolidation of the containers of hazardous waste complies with the hazardous materials segregation criteria at 49 C.F.R. 177.848 or 174.81, and with the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265;

6. The containers of hazardous waste remain closed, and no waste or other materials shall be removed from or added to the containers except to commingle hazardous wastes with identical USDOT shipping descriptions in accordance with (g) below or as necessary to respond to an emergency situation; and

7. The newly consolidated waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit by the component of the waste load which has been at the transfer facility the longest.

(g) A hazardous waste transporter who commingles hazardous waste with identical USDOT shipping descriptions (provided the commingling does not constitute treatment) at a transfer facility for a period of 10 days or less is not subject to regulations at N.J.A.C. 7:26G-8 through 12 except as noted in this subchapter, provided the following requirements are met:

1. The transporter commingling the waste is a licensed hazardous waste transporter in the State of New Jersey;

2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the manifests;

3. The hazardous waste is commingled between containers which meet the applicable US Department of Transportation packaging regulations specified in 49 C.F.R. 107, 171 through 180, as amended;

4. The hazardous wastes that are commingled are designated on the generators' hazardous waste manifests for receipt by the same designated hazardous waste facility;

5. The hazardous waste transporter amends the generators' manifests to reflect the commingling of hazardous wastes by the transporter, and to describe accurately the containers and quantities of hazardous wastes shipped after the commingling; and

6. The newly commingled waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit by the component waste which has been at the transfer facility the longest.

(h) A hazardous waste transporter, who consolidates by transferring hazardous waste from one container to one or more empty containers (meeting the conditions at 40 C.F.R. 261.7 as incorporated by reference at N.J.A.C. 7:26G-5) at a hazardous waste transfer facility for a period of 10 days or less, is not subject to N.J.A.C. 7:26G-8 through 12 except as noted in this subchapter, provided the following requirements are met:

1. The transporter consolidating the hazardous waste is a licensed hazardous waste transporter in the State of New Jersey;

2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the hazardous waste manifests;

3. The transfer involves liquid hazardous waste only;

4. The contents of only one container shall be transferred at a time;

5. Prior to and after consolidation, the hazardous waste is stored in closed containers, which meet the applicable U.S. Department of Transportation packaging regulations specified in 49 C.F.R. Parts 171 through 180, as amended;

6. The storage of the consolidated hazardous waste complies with the hazardous materials segregation criteria at 49 C.F.R. 177.848 or 174.81, and with the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265;

7. The cumulative capacity of the empty containers (meeting the conditions at 40 C.F.R. 261.7 as incorporated by reference at N.J.A.C. 7:26G-5) intended to receive the waste shall be sufficient to containerize the total amount of hazardous waste involved in the transfer; and

8. The newly consolidated waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit as determined by the component of the waste load which has been at the transfer facility the longest.

(i) The commingling of hazardous wastes of different USDOT shipping descriptions is prohibited.

(j) 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.

(k) 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), (i) and (j) 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 Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

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

Rewrote the section.

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 up to July 31, 1998 and prospectively incorporates by reference 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, as amended and supplemented, except as provided in (b), (c) and (d) 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;
4. 40 C.F.R. 264 Appendix VI Political Jurisdictions in which compliance with § 264.18(a) must be demonstrated;
5. 40 C.F.R. 264.1030(d);
6. 40 C.F.R. 264.1050(g); and
7. 40 C.F.R. 264.1080(e).

(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).

(i) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be substituted by a State term, but shall retain its meaning: 40 C.F.R. 264.12(a)(2) and 264.71(d).

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).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b), added 5 through 7; and added (i).

SUBCHAPTER 9. INTERIM 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 up to July 31, 1998 and prospectively incorporates by reference 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, as amended and supplemented, 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, 265.150, 265.1030(c), 265.1050(f) and 265.1080(e).

(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. 40 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).

(h) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be sub-

stituted by a State term, but shall retain its meaning: 40 C.F.R. 265.12(a)2 and 265.71(d).

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).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b), changed C.F.R. references; and added (h).

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 up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 266 (including all appendices), Federal regulations on the management of specific hazardous waste, as amended and supplemented, 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 incinerators, 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.

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a).

SUBCHAPTER 11. LAND DISPOSAL RESTRICTIONS

7:26G-11.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 268, Federal regulations on Land Disposal Restrictions, and the Appendices to 40 C.F.R. Part 268, as amended and supplemented, 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 USEPA 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, paragraphs (a) through (g), national variances, and (n) through (p), constituent concentrations.

(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).

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b)2, substituted "USEPA" for "EPA" in the introductory paragraph, and added ", paragraphs (a) through (g), national variances, and (n) through (p), constituent concentration" at the end of iv.

SUBCHAPTER 12. HAZARDOUS WASTE PERMIT PROGRAM

7:26G-12.1 Incorporation by reference

(a) This subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 270, Federal regulations on USEPA administered permit programs: the hazardous waste permit program, as amended and supplemented, 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)1i 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).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a).

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 products 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 (LD₅₀, 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 subchapter incorporates by reference up to July 31, 1998 and prospectively incorporates by reference 40 C.F.R. Part 124, as amended and supplemented, except as provided in (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 text of 40 C.F.R. Part 124 is 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 C.F.R. 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.";

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";

9. 40 C.F.R. 124.31(a), after "The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units" delete "over which EPA has permit issuance authority";

10. 40 C.F.R. 124.31(a), delete "For the purposes of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.";

11. 40 C.F.R. 124.32(a), after "The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units" delete "over which EPA has permit issuance authority";

12. 40 C.F.R. 124.32(a), delete, "For the purposes of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271."; and

13. 40 C.F.R. 124.33(a), after "The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units" delete "over which USEPA has permit issuance authority. For the purposes of this section only, 'hazardous waste management units over which USEPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. Part 271."

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); and in (c), added 9 through 13.

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;