

CHAPTER 26A
RECYCLING RULES

Authority

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

Source and Effective Date

R.2002 d.182, effective May 17, 2002.
See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26A, Recycling Rules, was extended by gubernatorial directive from May 16, 2008 to January 7, 2009. See: 40 N.J.R. 3718(b).

Chapter Historical Note

Chapter 26A, Recycling Rules, was adopted as R.1991 d.529, effective November 18, 1991. See: 22 N.J.R. 3088(a), 23 N.J.R. 3452(a).

Subchapter 6, Used Motor Oil, was adopted as R.1993 d.342, effective July 6, 1993. See: 24 N.J.R. 2382(a), 25 N.J.R. 2863(a).

Pursuant to Executive Order No. 66(1978), Chapter 26A, Recycling Rules, was readopted as R.1996 d.577, effective November 18, 1996. As part of R.1996 d.577, Subchapter 2, Annual Fees for a General or Limited Approval to Operate a Recycling Center For Class B Recyclable Material, was changed to Annual Fees for a General or Limited Approval to Operate a Recycling Center For Class B, Class C and Class D Recyclable Material; Subchapter 3, Approval of Recycling Centers For Class B Recyclable Materials, was changed to Approval of Recycling Centers For Class B, Class C and Class D Recyclable Materials; Subchapter 4, Operational Standards and General Rules For Recycling Centers Which Receive, Store, Process or Transfer Class A and Class B Recyclable Material; Right of Entry and Inspection, was changed to Operational Standards and General Rules For Recycling Centers Which Receive, Store, Process or Transfer Class A, Class B, Class C and Class D Recyclable Material; Right of Entry and Inspection; Subchapter 6, Used Motor Oil, was repealed, and Subchapter 6, Standards For the Management of Used Oil, was adopted as new rules; and Subchapter 7, Standards For the Management of Class D Universal Waste, was adopted as new rules, effective December 16, 1996. See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

N.J.A.C. 7:26A-1.3, 3.1, and 4.1 were amended by Emergency Adoption R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997), with the amendments to become operative upon final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. See: 29 N.J.R. 4170(a).

The provisions of R.1997 d.404 were readopted by R.1997 d.510, effective October 31, 1997, with changes upon adoption effective December 1, 1997. The concurrent amendments to N.J.A.C. 7:26A-1.3, 3.1, and 4.1 became operative on November 10, 1997, the date of final disposition (denial of certiorari by the United States Supreme Court) of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. All changes upon adoption became operative on December 1, 1997. See: 29 N.J.R. 5084(a).

Chapter 26A, Recycling Rules, was readopted as R.2002 d.182, effective May 17, 2002. As a part of R.2002 d.182, Subchapter 7, Standards for the Management of Class D Universal Waste, was repealed and Subchapter 7, Standards for the Management of Class D Universal Waste, was adopted as new rules. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26A, Recycling Rules, was extended by gubernatorial directive from May 17, 2007, to November 18, 2007. See: 39 N.J.R. 2248(d).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26A, Recycling Rules, was scheduled to expire on May 16, 2008. See: 40 N.J.R. 7(a).

Law Review and Journal Commentaries

Counties scramble to meet U.S. Court's trash mandate. Cheryl Winokur, 150 N.J.L.J. 609 (1997).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department governing the operation of recycling centers pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

(b) This chapter shall not apply to hazardous waste, except for universal waste exempted from hazardous waste regulation as provided at N.J.A.C. 7:26A-7.

(c) The use or reuse of material that would otherwise become solid waste pursuant to N.J.A.C. 7:26 as fill material, aggregate substitute, fuel substitute, or landfill cover which in some cases may be recycling, are reviewed and approved in accordance with N.J.A.C. 7:26-1.7(g).

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

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

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

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

In (b), deleted N.J.A.C. references and inserted exception; added (c).

7:26A-1.2 Construction and severability

(a) This chapter shall be liberally construed to permit the Department to effectuate the purposes of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

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

(c) The Department may amend, repeal or rescind this chapter as necessary and in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the meanings set forth below. All terms which are used in this chapter and which are not defined herein but which are defined in N.J.A.C. 7:26 shall have the same meanings as in that subchapter.

“Aboveground tank” means a tank used to store or process used oil that is not an underground storage tank as defined in 40 C.F.R. 280.12 or N.J.A.C. 7:14B.

“Act” means the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

“Applicant” means any person seeking a general or limited approval to operate a recycling center.

“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.

“Beneficial use” means the use or reuse of a material, which would otherwise become solid waste, as landfill cover, aggregate substitute, fuel substitute or fill material or the use or reuse in a manufacturing process to make a product or as an effective substitute for a commercial product. Beneficial use of a material shall not constitute recycling or disposal.

“Biodegradable plastic” means plastic products that are designed to biodegrade and compost and which meet the specifications of the American Society for Testing and Materials document—ASTM D 6400-99—entitled “Standard Specifications for Compostable Plastics,” incorporated herein by reference.

“Brush” means branches, woody plants and other like vegetative material. Leaves and grass do not constitute brush.

“Class A recyclable material” means a source separated non-putrescible recyclable material specifically excluded from Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, which material currently includes source separated non-putrescible metal, glass, paper, plastic containers, and corrugated and other cardboard.

“Class B recyclable material” means a source separated recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, the following:

1. Source separated, non-putrescible, waste concrete, asphalt, brick, block, asphalt-based roofing scrap and wood waste;
2. Source separated, non-putrescible, waste materials other than metal, glass, paper, plastic containers, corrugated and other cardboard resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures;
3. Source separated whole trees, tree trunks, tree parts, tree stumps, brush and leaves provided that they are not composted;
4. Source separated scrap tires; and
5. Source separated petroleum contaminated soil.

“Class C recyclable material” means a source separated compostable material which is subject to Department approval prior to the receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, organic materials such as:

1. Source separated food waste;
2. Source separated biodegradable plastic; and
3. Source separated yard trimmings.

“Class D recyclable material” means, but is not limited to, the following:

1. Used oil, as defined in this section, which is subject to Department approval prior to the receipt, storage or processing at a Class D recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, the following:
 - i. Used lubricant oil;
 - ii. Used coolant oil (non-contact heat transfer fluids);
 - iii. Used emulsion oil; and
 - iv. Any other synthetic oil or oil refined from crude oil, which has been used, and as a result of such use is contaminated by physical or chemical impurities;
2. Antifreeze;
3. Latex paints;
4. Thermostats;
5. Lamps (light bulbs);
6. Oil-based finishes;
7. Batteries;
8. Mercury-containing devices; and
9. Consumer electronics.

"Class D recycling center" means a facility that receives, stores, processes, or transfers Class D recyclable materials as defined in this section.

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as concrete, glass and/or clay or ceramic products. Clean fill does not mean processed or unprocessed mixed construction and demolition debris including, but not limited to, wallboard, plastic, wood or metal. The non-water soluble, non-decomposable inert products generated from an approved Class B recycling facility are considered clean fill.

"Commingled" means a combining of source separated recyclable materials for the purpose of recycling.

"Compostable" means able to undergo physical, chemical, thermal and/or biological degradation under aerobic conditions such that the material to be composted enters into and is physically indistinguishable from the finished compost (humus), and which ultimately mineralizes (biodegrades to carbon dioxide, water, and biomass) in the environment at a rate like that of known compostable materials such as paper and yard trimmings.

"Composting" means the controlled biological degradation of organic matter to make compost.

"Consumer" means any New Jersey resident who uses or purchases lubricating or other automotive oil for personal use, or who generates used motor oil through personal use of lubricating or other automotive oil.

"Consumer electronics" means any appliance used in the home or business that includes circuitry. Consumer electronics includes the components and sub-assemblies that collectively make up the electronic products and may, when individually broken down, include batteries, mercury switches, capacitors containing PCBs, cadmium plated parts and lead or cadmium containing plastics. Examples of consumer electronics include, but are not limited to, computers, printers, copiers, telefacsimiles, VCRs, stereos, televisions, and telecommunication devices.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Contaminant" means solid waste which adheres to, or which is otherwise contained on or in, source separated recyclable materials.

"Curing" means the last stage of composting that occurs after much of the readily metabolized material has decomposed. Curing provides for additional stabilization of the composted material.

"Department" or "NJDEP" means the New Jersey Department of Environmental Protection.

"Designated district or municipal recycling coordinator" means the individual designated pursuant to N.J.S.A. 13:1E-99.13 or 13:1E-99.16, respectively.

"Do-it-yourselfer used oil collection center" means any site or facility that accepts and/or aggregates and stores used oil collected only from household do-it-yourselfer used oil generator.

"End-market" means any person which receives processed or unprocessed source separated recyclable material and utilizes the material as a finished product or as a raw material for a manufacturing process.

"Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to December 16, 1996. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin installation of the tank and if either:

1. A continuous on-site installation program has begun; or
2. The owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for installation of the tank to be completed within a reasonable time.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 through 136y.

"General approval" means an approval to operate a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable material.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in N.J.A.C. 7:26G-5 or whose act first causes a hazardous waste to become subject to regulation.

"Household do-it-yourselfer used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

"Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

"Lamp" or "universal waste lamp" means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

“Large quantity handler of universal waste” means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more, total, of universal waste (calculated collectively) at any time. Such designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

“Leachate” means a liquid which has come in contact with or percolated through a porous solid and extracted dissolved and suspended material. Condensate from gases that pass through a porous solid may also contain dissolved or suspended material.

“Limited approval” means an approval to operate a recycling center for the receipt, storage, processing or transfer of Class B recyclable material for a period of time not to exceed 180 days.

“Manufacturer” means any person which utilizes Class A recyclable material or non-container plastic materials as raw materials in the production of new paper, metal, glass or plastic products.

“Mercury-containing device” means any product component which uses elemental mercury, sealed in an ampule or other container, as a functional component. Examples of mercury containing devices include, but are not limited to, mercury switches and thermometers.

“Mobile recycling equipment” is equipment which processes Class B, Class C or Class D recyclable material and which does not operate from a permanent location but which is capable of being transported from site to site.

“Motor oil retailer” means any person who annually sells to consumers more than 500 gallons of lubricating and/or other automotive oil in container for use off the premises where sold.

“New tank” means a tank that will be used to store or process used oil and for which installation has commenced after December 16, 1996.

“Non-container plastic materials” means source separated nonputrescible plastic materials other than plastic containers.

“Off-site” means any site other than the specific site or point of generation of recyclable materials.

“Oil-based finishes” means any paint or other finish which may exhibit, or is known to exhibit, a hazardous waste characteristic, or which contains a listed hazardous waste, and is in its original packaging, or otherwise appropriately contained and clearly labeled. Examples of oil-based finishes include, but are not limited to, oil-based paints, lacquers, stains, and aerosol paint cans.

“On-site” means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by

crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which such person controls and to which the public does not have access, are also considered on-site property.

“Person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), corporate official, partnership, association, Federal agency, state, municipality, commission, political subdivision of a state, county or municipality, or any interstate body.

“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 the Federal Food Drug and Cosmetic Act (FFDCA) section 201(w); or
2. Is an animal drug that has been determined by regulation of the U.S. 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 at paragraph 1 or 2 above.

“Plastic container” means any formed or molded and hermetically sealed, or made airtight with a metal or plastic cap, rigid container, other than a plastic bottle, intended for single-use and having a capacity of at least eight ounces, but less than five United States gallons, with a minimum wall thickness of not less than 0.010 inches, and composed primarily of thermoplastic synthetic polymeric material.

“Processing” means the treatment of source separated recyclable materials so as to conform to end-market specifications, including, but not limited to, separating material by type, grade or color, crushing, grinding, shredding or bailing or removing contaminants. (See also “used oil processing” below.)

“Product” means the material or the good generated as a result of processing source separated recyclable materials for which no further processing is required prior to final utilization.

“Rebuttable presumption for used oil” means used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Part 261, subpart D, as incorporated by reference at N.J.A.C. 7:26G-5. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5). The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluid are recycled in any other manner or disposed. The rebuttable presumption does not apply to

used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. (202) 512-1800 (Document number: 955-001-00000-1.)

“Recover” means to remove refrigerant fluid in any condition from a refrigerator, freezer, air conditioner, chiller, or similar appliance and store it in an external container without necessarily testing or processing it in any way.

“Recyclable material” means those materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

“Recycling” means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable materials (Class A, Class B, Class C and/or Class D recyclable material). Recycling centers shall not include recycling depots, manufacturers, or scrap processing facilities.

“Recycling center for Class A recyclable materials” or “Class A recycling center” means a facility that receives, stores, processes, or transfers Class A recyclable materials as defined in this section.

“Recycling center for Class B recyclable materials” or “Class B recycling center” means a facility that receives, stores, processes, or transfers Class B recyclable materials as defined in this section.

“Recycling center for Class C recyclable materials” or “Class C recycling center” means a facility that receives, stores, processes, or transfers Class C recyclable materials as defined in this section.

“Recycling depot” means a facility designed and operated for receiving and temporarily storing, for a period not to exceed two months, Class A recyclable materials and/or non-container plastic materials prior to their transport to a recycling center or end-market.

“Refrigerant fluid” means the following Class I or Class II substance as defined by section 602 of Title VI of the Clean Air Act Amendments of 1990 (42 U.S.C. 7671) and additional substances that are listed by the United States Environmental Protection Agency that are used as a refrigerant in any appliance including any personal, household, commercial or industrial air conditioner, refrigerator, chiller, freezer or similar appliance:

Class I

Group I

chlorofluorocarbon-11 (CFC-11)
 chlorofluorocarbon-12 (CFC-12)
 chlorofluorocarbon-113 (CFC-113)
 chlorofluorocarbon-114 (CFC-114)
 chlorofluorocarbon-115 (CFC-115)

Group II

halon-1211
 halon-1301
 halon-2402

Group III

chlorofluorocarbon-13 (CFC-13)
 chlorofluorocarbon-111 (CFC-111)
 chlorofluorocarbon-112 (CFC-112)
 chlorofluorocarbon-211 (CFC-211)
 chlorofluorocarbon-212 (CFC-212)
 chlorofluorocarbon-213 (CFC-213)
 chlorofluorocarbon-214 (CFC-214)
 chlorofluorocarbon-215 (CFC-215)
 chlorofluorocarbon-216 (CFC-216)
 chlorofluorocarbon-217 (CFC-217)

Group IV

carbon tetrachloride

Group V

methyl chloroform

Class II

hydrochlorofluorocarbon-21 (HCFC-21)
 hydrochlorofluorocarbon-22 (HCFC-22)
 hydrochlorofluorocarbon-31 (HCFC-31)
 hydrochlorofluorocarbon-121 (HCFC-121)
 hydrochlorofluorocarbon-122 (HCFC-122)
 hydrochlorofluorocarbon-123 (HCFC-123)
 hydrochlorofluorocarbon-124 (HCFC-124)
 hydrochlorofluorocarbon-131 (HCFC-131)
 hydrochlorofluorocarbon-132 (HCFC-132)
 hydrochlorofluorocarbon-133 (HCFC-133)

- hydrochlorofluorocarbon-141 (HCFC-141)
- hydrochlorofluorocarbon-142 (HCFC-142)
- hydrochlorofluorocarbon-221 (HCFC-221)
- hydrochlorofluorocarbon-222 (HCFC-222)
- hydrochlorofluorocarbon-223 (HCFC-223)
- hydrochlorofluorocarbon-224 (HCFC-224)
- hydrochlorofluorocarbon-225 (HCFC-225)
- hydrochlorofluorocarbon-226 (HCFC-226)
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- hydrochlorofluorocarbon-244 (HCFC-244)
- hydrochlorofluorocarbon-251 (HCFC-251)
- hydrochlorofluorocarbon-252 (HCFC-252)
- hydrochlorofluorocarbon-253 (HCFC-253)
- hydrochlorofluorocarbon-261 (HCFC-261)
- hydrochlorofluorocarbon-262 (HCFC-262)
- hydrochlorofluorocarbon-271 (HCFC-271)

“Refrigerant reprocessing facility” means a facility which receives captured refrigerant fluid, stored and transported in the appropriate containers, and cleans or otherwise reprocesses these refrigerant fluids to a level of purity consistent with industry standards for the use to which the reprocessed refrigerant fluid will be put, and which then returns the reprocessed refrigerant fluid to commerce.

“Re-refining distillation bottoms” means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

“Residue” means any solid waste generated as a result of processing source separated recyclable materials at a recycling center which must be disposed of as solid waste in accordance with the waste plan of the district in which the recycling center is located or if classified as a hazardous waste pursuant to N.J.A.C. 7:26G, shall be disposed of in accordance with the applicable hazardous waste regulations set forth at N.J.A.C. 7:26G.

“Retail service station” means any person whose on-going automotive maintenance and/or repair business entails the removal and/or replacement of automotive lubricating oils.

“Scrap processing facility” means a commercial industrial facility designed, and operated for receiving, storing and transferring source separated, nonputrescible ferrous and nonferrous metal, which materials are purchased by the owner or operator thereof, and which are altered or reduced in volume or physical characteristics onsite by mechanical methods, including, but not limited to, baling, cutting, torching, crushing, or shredding, for the purposes of resale for remelting, refining, smelting or remanufacturing into raw materials or products.

“Small quantity handler of universal waste” means a universal waste handler, as defined in this section, who accumulates less than 5,000 kilograms total of universal waste (all types of universal wastes calculated collectively) at any time.

“Solid waste” means that which is defined as solid waste in N.J.A.C. 7:26-1.6.

“Source separation” or “source separated” means the process by which recyclable materials are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling.

“Surface water” means water at or above the land’s surface which is neither ground water nor contained within the unsaturated zone, including, but not limited to, the ocean and its tributaries, all springs, streams, rivers, lakes, ponds, wetlands, and artificial waterbodies.

“Tank” means any stationary device designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials (for example, wood, concrete, steel, plastic) which provides structural support.

“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.

“Universal waste” means any of the following hazardous wastes that are subject to the universal waste requirements of N.J.A.C. 7:26A-7, whether incorporated by reference from 40 C.F.R. Part 273 or listed additionally by the Department:

1. Batteries;
2. Pesticides;
3. Thermostats;
4. Lamps;
5. Mercury-containing devices;

6. Oil-based finishes; and
7. Consumer electronics.

“Universal waste handler” means a generator, as defined in this section, 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)1 or 3, or N.J.A.C. 7:26A-7.3(d)1 or 3), 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 transfer facility” means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

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

“Used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities, or unused oil that is contaminated by physical or chemical impurities through storage or handling and is determined to be a solid waste by the generator.

“Used oil aggregation point” means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfer used oil generators.

“Used oil burner” means a facility where used oil not meeting the specification requirements in N.J.A.C. 7:26A-6.2 is burned for energy recovery in devices identified in N.J.A.C. 7:26A-6.8(b).

“Used oil collection center” means any site or facility that is registered or approved by the municipality or county to manage used oil and accepts and/or aggregates and stores used oil collected from used oil generators regulated under N.J.A.C. 7:26A-6.4 that bring used oil to the collection center in shipments of no more than 55 gallons pursuant to N.J.A.C. 7:26A-6.4(e). Used oil accumulation centers may also accept used oil from household do-it-yourselfer used oil generators.

“Used oil fuel marketer” means any person who conducts either of the following activities:

1. Directs a shipment of off-specification used oil from such person’s facility to a used oil burner; or
2. First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in N.J.A.C. 7:26A-6.2.

“Used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

“Used oil handler” means a generator of used oil, or the owner or operator of a facility that receives used oil.

“Used oil processing” means chemical or physical operations designed to produce from used oil, or make used oil more amenable for the production of, fuel oils, lubricants, or other used oil-derived products. Used oil processing includes, but is not limited to, blending used oil with virgin petroleum products, blending used oils to meet the used oil fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

“Used oil processor or re-refiner” means a facility that processes used oil.

“Used oil transfer facility” means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under N.J.A.C. 7:26A-6.7 as used oil processors.

“Used oil transporter” means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

“Yard trimmings” means grass clippings, leaves, wood chips from tree parts, and brush.

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

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

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

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

Added numerous definitions; amended definitions of “class B recyclable material”, “department”, “general approval”, “manufacturer”, “mobile recycling equipment”, “processing”, “recycling center”, and “residue”.

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

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

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

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

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

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

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote the section.

7:26A-1.4 Exemptions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. Such person shall also meet the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Leaves shall be removed from the site within 45 days of receipt;

ii. Grass shall be placed promptly in nonleaking containers, such as roll-offs, upon receipt at the facility. The container shall be covered immediately following loading and shall remain fully covered until removed from the site;

iii. No grass clippings or leachate shall remain on the ground after loading into non-leaking containers as specified in (a)22ii above;

iv. Containers shall be removed from the site within two days of the placement of any grass in the container; and

v. Records of the daily volume of leaves and grass clippings received and transferred, including the name and address of the site to which the leaves are transferred, shall be kept and maintained at the facility for three years from the date that the records were generated. The required records shall be made available to the Department during an inspection and shall be submitted to the Department upon request.

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

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

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

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

4. With the exception of the exempted activities set forth at (a)5, 7, 8, 19 and 22 above, tonnage reports shall be submitted in accordance with N.J.A.C. 7:26A-4.4(b);

5. All persons operating pursuant to an exemption in (a) above except for small quantity handlers of universal waste operating pursuant to N.J.A.C. 7:26A-7.2 shall provide a written notice of such operation to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, PO Box 414, Trenton, New Jersey 08625-0414, the host municipality, and host county prior to the commencement of operations.

i. Any person submitting a written notice of an exempt operation shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I further certify that the operation described herein satisfies the criteria for exemption as set forth in N.J.A.C. 7:26A-1.4. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C 7:26-5 and that submitting false information may be grounds for termination of any exemption.”

ii. The certification shall be signed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Substantially amended section.

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

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

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

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote the section.

Petition for Rulemaking.

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

Administrative correction.

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

Petition for Rulemaking.

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

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

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

In (a), added 22; in (b), rewrote 4.

7:26A-1.5 Burden of proof

(a) In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in this chapter or that they are not otherwise subject to the rules in this chapter shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Rule, R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).
See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

SUBCHAPTER 2. ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER FOR CLASS B, CLASS C AND CLASS D RECYCLABLE MATERIAL

7:26A-2.1 Fees for general or limited approval

(a) The following apply to the application fee for general or limited approval:

1. All applicants for a general approval to operate a recycling center for Class B recyclable material shall submit an application fee of \$5,281 at the time of application.

i. The application fee for general approval will cover the Department's costs of conducting county and Statewide recycling plan consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

2. All applicants for a limited approval to operate a recycling center for Class B recyclable material shall submit an application fee of \$2,400 at the time of application.

i. The application fee for limited approval will cover the Department's costs of conducting municipal law consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.4, 3.7 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

3. All applicants for a general approval to operate a recycling center for Class C recyclable material shall submit an application fee of \$11,582 at the time of application.

i. The application fee for general approval will cover the Department's costs of conducting county and Statewide recycling plan consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.18, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

4. All applicants for a general approval to operate a recycling center for Class D recyclable material shall submit an application fee of \$15,700 for used oil facilities and \$5,233 for all other types of Class D facilities at the time of application.

i. The application fee for general approval will cover the Department's costs of conducting county and statewide recycling plan consistency reviews, reviewing

information submitted in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.19, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

(b) The following apply to the annual fee for general approval and the monthly fee for limited approval:

1. All persons who possess a general approval to operate a recycling center for Class B recyclable material shall be billed an annual fee of \$4,724 on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

i. The annual fee for general approval will cover the Department's costs of advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, review and analysis of annual report data and other technical analyses required to implement the recycling center program.

2. All persons who possess a general approval to operate a recycling center for Class C recyclable material shall be billed an annual fee of \$7,928 on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

i. The annual fee for general approval will cover the Department's costs of advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, review and analysis of annual report data and other technical analyses required to implement the recycling center program.

3. All persons who possess a general approval to operate a recycling center for Class D recyclable material shall be billed an annual fee of \$7,106 on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

i. The annual fee for general approval will cover the Department's costs of advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, review and analysis of annual report data and other technical analyses required to implement the recycling center programs.

4. All persons who possess a general approval to operate a recycling center for Class B, Class C or Class D recyclable material shall be billed the following amounts for Research Demonstration and Development (RD & D) approvals, renewal of general approval, transfers of ownership, and modifications.

	Class B	Class C	Class D
i. RD & D approvals	\$ 2,400	\$9,652	estimated fee per N.J.A.C. 7:26A-2.1(e)
ii. Renewals	\$960.00	\$4,826	\$3,140
iii. Modifications	\$ 2,400	\$4,826	\$3,140
iv. Transfer of ownership	\$ 1,440	\$3,378	\$2,093

(c) The fee schedule for recycling center annual compliance monitoring services is as follows:

1. For State fiscal year 2006:

i. Each recycling center shall pay the applicable annual fee listed in the following table for compliance monitoring services. The fees are billable in equal quarterly installments, during July, October, January and April of State fiscal year 2006. Each invoice shall be payable within 30 days following issuance of the invoice. For newly approved recycling centers, the first annual fee is due on the first July immediately following the issuance of the general approval.

<u>Type of Center</u>	<u>State Fiscal Year 2006 Compliance Monitoring Fees</u>
Class B – General Approval	\$9,130
Class C – General Approval	\$9,130
Class D – General Approval: Used Oil	\$12,175
Class D – General Approval: Other than Used Oil	\$12,175
Exempt composting facilities compliance inspection	\$1,015

ii. All persons that possess a limited approval to operate a recycling center for Class B recyclable material shall submit a fee of \$700.00 per month for each month of operation authorized by the limited approval. The fee for the total number of months of authorized operation shall be billed during July for the previous one year period. The monthly fee for limited approval shall be applied to offset the Department’s costs of advising recycling center owners or operators on technical compliance matters, and to facility compliance inspections.

iii. All persons that are in the business of removing automotive mercury switches shall pay an annual fee of \$445.00 for compliance monitoring services. The fee will be billed during July of each year. The fee is payable within 30 days of billing.

2. For each State fiscal year following State fiscal year 2006, the fees set forth at (c)1 above shall be annually

adjusted pursuant to N.J.A.C. 7:26A-2.4 and 2.5. The billing schedule for the annually adjusted fees shall be the same as the billing schedule for the fees that are assessed under (c)1 above.

(d) The omission of any type of service from the fee schedules set forth in (a), (b) or (c) above, the omission of a fee for a modified type of facility, or if the Department determines that performing its services will exceed the fee the Department charges for annual compliance monitoring services listed at (c) above, shall not prevent the Department from assessing a reasonable fee such services at any time whether prior to, during or after the Department has performed its services. An applicant/permittee that believes a service is not included in (a) above may request the Department to provide an estimate of the fee for that service. As part of its initial review, the Department shall charge the fees for performing its services in connection with the submission. An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department shall be based on actual hours worked, multiplied by an hourly rate for recycling center regulation services for State fiscal year 2006 of \$115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26A-2.4. The Department will calculate the fee for performance of the Department’s services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a) above, the amount of the fee shall be equal to the amount listed in (a) above.

2. If the Department determines, in its discretion, that such activity is not of a type listed in (a) 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 for recycling center regulation services for State fiscal year 2006 of \$115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26A-2.4.

(e) A determination of an estimated fee made pursuant to (d) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee may request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (d) above, as applicable.

(f) The Department may refrain from commencing work on the activity which is the subject of a fee determined pursuant to (a), (b), (c) or (d) above until the Department receives full payment of the fee. If the Department has commenced work, the Department may suspend such work until it receives full payment of such fee.

Amended by R.1995 d.205, effective April 17, 1995.

See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

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

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

Raised fees throughout; inserted (a)3 and (a)4; in (b)1, inserted payable in 30 days provision and amended activities covered by fee; in (b)2, changed fee due date and amended activities covered by fee; inserted (b)3 and (b)4; in (c), deleted text relating to period which fee is applicable.

Administrative change.

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

Amended by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Rewrote the section.

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

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

Deleted (b)5; rewrote (c), and the introductory paragraph of (d); in (d)2, substituted "recycling center regulation services for State fiscal year 2006 of \$115.00" for "of \$106.00", and inserted the last sentence; in (e), substituted "an estimated" for "a" and "may" for "shall" preceding "request a redetermination"; and rewrote (f).

7:26A-2.2 (Reserved)

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

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

Amended name of report throughout; in (a), substituted "may" for "will"; and in (b), report was required annually.

Repealed by R.2003 d.454, effective November 17, 2003.

See: 35 N.J.R. 321(a), 35 N.J.R. 5268(b).

Section was "Adjustment of fees".

7:26A-2.3 Payment of fees

(a) Payment of all fees for activities related to recycling shall be paid in U.S. dollars by certified check, government purchase order or check, or money order, payable to "Treasurer, State of New Jersey" and mailed or hand delivered to the following address, unless the Department authorizes some other means of payment:

New Jersey Department of Environmental
Protection
Solid and Hazardous Waste Management Program
P.O. Box 414
401 East State Street
Trenton, NJ 08625-0414

(b) The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant has paid the designated fee.

(c) All compliance monitoring fees shall be paid in U.S. dollars by certified check, government purchase order or check, or money order, payable to "Treasurer, State of New Jersey" and mailed, along with the fee invoice, to the following address:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

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

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

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

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

Inserted designation (a); rewrote (a); and added (b) and (c).

7:26A-2.4 Recycling center fee hourly rate calculation

(a) The Department shall calculate the recycling center fee hourly rate in accordance with (b) below and shall be used in calculating compliance monitoring fees in accordance with N.J.A.C. 7:26A-2.5.

(b) The Department shall calculate the recycling center fee hourly rate for the upcoming State fiscal year (SFY) as of the December 1 that precedes the upcoming SFY as follows:

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

Where:

AS = The average annual salary of the Direct Program staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to a Direct Program Staff position. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program staff funded through the various fee programs.

BH = 1,428. The billable hours, which is the average number of hours each Direct Program staff position spends annually performing activities for which fees are assessed, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by seven hours per workday equals the 1,428 billable hours used for most calculations).

(c) Each year, the Department shall prepare a Recycling Center Fee Hourly Rate Calculation Report detailing the factors used to calculate the hourly rate and the excess hourly rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and excess hourly rate. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at www.state.nj.us/dep.

New Rule, R.2008 d.16, effective January 7, 2008.
See: 38 N.J.R. 5227(a), 40 N.J.R. 133(a).

7:26A-2.5 Compliance monitoring fee calculation

(a) This section shall apply to all compliance monitoring fees for recycling centers.

(b) The Department shall calculate compliance monitoring fees for the upcoming State fiscal year as of December 1 prior to that State fiscal year calculated, as follows:

1. Calculate task hours by determining the number of hours (determined from time coding and/or workload analysis) required to perform the specific program function for which the Direct Program staff are being employed.

2. Multiply the hourly rate derived pursuant to N.J.A.C. 7:26A-2.4 by the specific task hours for each type of activity for which a fee is listed pursuant to (b)1 above to derive the compliance monitoring fee.

(c) Each year, the Department shall prepare an Annual Compliance Monitoring Fee Calculation Report detailing the factors used to calculate each fee. During the month of

February, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and the task hours used to calculate each fee. The notice shall state the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at www.state.nj.us/dep.

(d) Fees under this subchapter are assessed per occurrence and shall not be prorated or refunded.

New Rule, R.2008 d.16, effective January 7, 2008.
See: 38 N.J.R. 5227(a), 40 N.J.R.133(a).

SUBCHAPTER 3. APPROVAL OF RECYCLING CENTERS FOR CLASS B, CLASS C OR CLASS D RECYCLABLE MATERIALS

Law Review and Journal Commentaries

Hazardous Wastes. Steven P. Bann, 135 N.J.L.J. 66 (1993).

7:26A-3.1 General requirements applicable to all recycling centers which receive, store, process or transfer Class B, Class C or Class D recyclable material

(a) No recycling center shall receive, store, process or transfer any Class B, Class C or Class D recyclable material without the prior written approval of the Department. The procedures for obtaining approval are set forth at N.J.A.C. 7:26A-3.2, 3.4, 3.5, 3.7, 3.8, and 3.18 through 3.20. All persons issued a general or limited approval to operate a recycling center for Class B, Class C and/or Class D recyclable material pursuant to this subchapter shall comply with all conditions of the approval.

(b) Any person who operates a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D, recyclable material without the prior written approval of the Department shall be considered to be operating an unlicensed solid waste facility and shall be subject to penalties as set forth in N.J.S.A. 13:1E-9 and N.J.A.C. 7:26-5 in addition to penalties which may be assessed by other regulatory agencies pursuant to their authority. That person may also be subject to penalties for violations of any other Department rules and the statutes under which such rules are promulgated.

(c) Any facility which received written Departmental approval to receive, store, process or transfer any source separated Class B recyclable materials prior to November 18, 1991 may continue to do so if all other requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and this chapter have been met.

(d) Prior to filing an application with the Department for recycling center general approval, and concurrent with or subsequent to filing for inclusion in the applicable district Solid Waste Management Plan, the applicant shall publish a notice in a newspaper of general circulation within the host municipality which indicates that the applicant will apply to the county for inclusion of a recycling center in the solid waste management plan of the district in which the recycling center is located and will apply to the Department for recycling center approval. The notice shall include the following:

1. The name of the proposed recycling center, the name of the owner or operator of the proposed recycling center and the nature of the project;
2. The generally recognized address of the proposed recycling center, as well as the block and lot of the proposed recycling center;
3. An indication that a copy of the application for county plan inclusion may be examined at the office of the

solid waste or recycling coordinator of the county in which the recycling center is located or at the applicable municipal clerk's office; and

4. An indication that comments regarding the application for county plan inclusion can be made at the public hearing which shall be held by the board of chosen freeholders, submitted to the county clerk's office or submitted to the office of the solid waste or recycling coordinator of the county in which the recycling center is located.

(e) The notice shall be published two times by the applicant with the second publication being no less than 15 days prior to the public hearing held by the applicable board of chosen freeholders. The applicant shall forward a copy of the notice to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, and to the municipality in which the recycling center will be operating, upon its publication.

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

Inserted references to class C and D throughout; in (a), inserted additional N.J.A.C. references; inserted (d)1 through (d)3; in (e), inserted "general" preceding "approval" and substituted "concurrent with or subsequent to" for "prior to"; and in (f), changed name of the Department and the Division.

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

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

Deleted (d); and recodified existing (e) and (f) as (d) and (e). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Case Notes

Operating unlicensed recycling activity triggers civil administrative penalties. Department of Environmental Protection v. Voorhees Environmental Corporation, 97 N.J.A.R.2d (EPE) 43.

7:26A-3.2 Application procedure for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class b, Class C or Class D recyclable material

(a) Prior to commencing receipt, storage, processing or transfer of any Class b, Class C or Class D recyclable materials at a recycling center, the owner or operator of the recycling center shall submit to the Department the information set forth in this subsection. All maps of the proposed recycling center shall be prepared in a manner and format consistent with N.J.A.C. 7:1D, Appendix A. The applicant shall submit a minimum of three complete sets of the application. Additional complete sets may be required based upon the type, scale, location, and potential environmental impacts of the proposed recycling center. The owner or operator of a recycling center for Class C recyclable materials shall submit the additional information required to N.J.A.C. 7:26A-3.18. The owner or operator of a recycling center for Class D recyclable materials shall submit the additional information required pursuant to N.J.A.C. 7:26A-3.19 and 3.20.

1. The name, address and telephone number of the person or persons seeking to own and operate the proposed recycling center, and the address of the recycling center if different from the above;
2. A description of the geographical location of the recycling center identified by the name of the municipality in which the recycling center is located, by a tax map showing the lot and block numbers of the recycling center site and of all adjoining properties, and by a zoning map showing the current land use of the recycling center site and of all adjoining properties;
3. A listing, by name, address and telephone number, of all persons owning five percent or more of corporation stock in the recycling center, or a listing of the general and limited partners where applicable. In the case where no persons own five percent or more of corporation stock in the recycling center, the names of the corporation principals shall be listed. The owner or operator of the recycling center shall list any intra-corporate relationships

between the recycling center and any solid waste hauler or disposal operation registered with the Department;

4. A listing of the material or materials, including the types of any reasonably anticipated contaminants, to be received, stored, processed or transferred at the recycling center;
5. The maximum amount of each material, including contaminants, to be received, stored, processed or transferred at the recycling center per day, expressed in tons, cubic yards, cubic feet or gallons per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the materials from cubic yards to tons;
6. A listing of all products and residue resulting from the proposed recycling activities, and the amount of such products and residue expressed in tons, cubic yards, cubic feet or gallons per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the material from cubic yards to tons;
7. The name, address and telephone number of planned end-markets for the materials received, stored, processed or transferred by the recycling center.
 - i. End-market contracts or agreements shall be submitted as evidence of the applicant's ability to sell the products resulting from the proposed activities of the recycling center;
 - ii. Where end-market contracts or agreements are not available at the time of application for a general approval to operate a recycling center, the applicant shall submit letters of interest from prospective end-market users of the products resulting from the applicant's recycling operation. Letters of interest may be based on information provided by the applicant to prospective end-market users such as a description of the equipment to be used at the recycling center and the specifications of the products resulting from recycling center operation;
8. A description, including manufacturer's specification sheets, of all equipment to be utilized for the receipt, storage, processing or transferring of each Class B, Class C, or Class D recyclable material received, stored, processed or transferred, including the name of the equipment manufacturer, model number and operating capacity of the equipment. Also, a written statement by the applicant that no Class B, Class C, or Class D recyclable material will be received, stored, processed, or transferred at the recycling center until the equipment identified by the applicant is installed or situated at the recycling center site;
9. A site plan map, prepared, signed and sealed in accordance with N.J.S.A. 45:8-35.1 et seq. by a licensed professional engineer or surveyor, which identifies (plots) the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and trans-

ferring of all unprocessed and processed recyclable materials. This site plan shall also:

- i. Be drawn to scale no smaller than one inch equals 100 feet;
 - ii. Indicate the routing of vehicles between the recycling center and all nearby roadways serving the site, as well as the traffic flow within the site, and indicate the provisions incorporated into the site plan to ensure safe and efficient vehicular and pedestrian circulation, parking, loading and unloading;
 - iii. Delineate the floodplain as defined at N.J.A.C. 7:13-1.2;
 - iv. Delineate the incidence of wetlands, New Jersey Pinelands, prime agricultural lands, historic sites (where applicable) and other environmentally sensitive areas;
 - v. Identify the direction of water runoff both on and off-site and the screening and landscaping provisions which may be incorporated at the site;
 - vi. Indicate topographic contours drawn at two-foot intervals;
 - vii. Indicate the location and dimensions, in feet, of the unprocessed and processed materials stockpile areas. Also, based on this information, the total cubic yard storage capacity of the unprocessed and processed materials stockpile areas shall be indicated. The applicant shall also indicate whether the applicant wishes to reserve the right to use unprocessed material stockpile space as processed material stockpile space in certain instances;
 - viii. Indicate the site access controls to be employed at the recycling center; and
 - ix. Delineate the location of all utilities including, but not limited to, water sanitary sewer, and storm water systems.
10. An original 7.5 minute USGS Quadrangle map which includes the boundary of the recycling center plotted on the map. The map shall delineate any public access roads to the site and any streams or ponds and sensitive receptors (for example, hospitals, schools, playgrounds, homes, etc.) within a one-half mile radius of the site;
11. A copy of the deed of record establishing ownership of the recycling center property or, if the applicant is other than the landowner, a legal agreement (for example, a legal lease agreement) to use the real property in question for the intended purpose;
12. A description of the design capacity of the recycling center setting forth the number and types of vehicles bringing material to the recycling center for receipt, storage or processing, and the number and types of vehicles transferring products and residue from the site on a daily basis;

13. A copy of a New Jersey air pollution control permit application required pursuant to N.J.A.C. 7:27-8.2(a)1 where applicable;

14. A written narrative explanation of the recycling center operation from the receipt of recyclable materials to the point of transfer of end-products;

15. Documentation establishing that the recycling center is included in the solid waste management plan of the solid waste management district within which the recycling center is located;

16. An operations plan which shall include, at a minimum, the following:

- i. Hours of operation of the recycling center;
- ii. An incoming materials specification sheet which shall be provided to all persons bringing, delivering or sending Class B, Class C, or Class D recyclable material to the recycling center and which shall include the following information:
 - (1) A listing of the source separated materials to be received by the recycling center;
 - (2) The size, weight, or other restrictions regarding materials to be received; and
 - (3) A notice that vehicles delivering materials to the recycling center will be inspected and, if found to contain more than allowable amounts of contaminants as specified per N.J.A.C. 7:26A-3.5(e)3i, will be barred from offloading vehicle payload; and
 - (4) A notice that persons bringing materials to the recycling center shall certify the amount of material per load, the municipality of origin of that material, and other information contained on the Recyclable Materials Receipt Form.
- iii. A Recyclable Materials Receipt Form which shall be provided to all persons bringing recyclable material to the recycling center and which shall maintain the following information for each vehicle delivering recyclable material to the recycling center:
 - (1) The amount of source separated recyclable material received, expressed in tons, cubic yards, cubic feet or gallons. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;
 - (2) The municipality of origin of the material received;
 - (3) The name of the person bringing source separated recyclable materials to the facility;
 - (4) The vehicle license plate number, NJDEP registration number, if an NJDEP registered vehicle is used and EPA ID number, if an EPA registered vehicle is used; and

(5) A certification, to be completed and signed by the person delivering recyclable material to the recycling center at the time of delivery, that the information contained on the Recyclable Materials Receipt Form is true, accurate and complete.

iv. An incoming materials inspection plan which shall detail the manner by which all vehicles entering the facility with recyclable materials to be stored, processed or transferred will be inspected to determine the contents of the vehicle payload area, including the incidence of or extent of contaminants which may be present in the truckload of recyclable materials received;

17. A description of the methods to be used to control traffic and to expedite unloading;

18. A description of the leachate and storm water runoff and drainage control measures;

19. A description of the methods that will be used to control soil erosion and meet the New Jersey Soil Erosion and Sediment Control Regulations, N.J.S.A. 4:24-43;

20. A description of the methods that will be used to minimize, manage and monitor noise at nearby residential and/or commercial property lines demonstrating the ability to meet the New Jersey noise control rules, N.J.A.C. 7:29. Manufacturer specifications on sound level ranges for all equipment to be used shall be provided; and

21. A description of the impact that traffic associated with the proposed recycling center will have on existing transportation patterns.

(b) The information required pursuant to (a) above shall be accompanied by the written certification in (b)1 below.

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

2. The certification in (b)1 above shall be signed by the applicant as follows:

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

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

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

(c) One original and two copies of the information required pursuant to (a) above shall be submitted to:

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

(d) One copy of the information required pursuant to (a) above shall be submitted by the applicant to the solid waste or recycling coordinator of the county in which the recycling center is located. The applicant shall also forward one copy of the information required pursuant to (a) above to the municipal clerk of the municipality in which the recycling center is located. The applicant may delete confidential end-market information, required pursuant to (a)7 above, from these submittals.

(e) Every owner or operator of a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable material seeking approval pursuant to this subchapter shall submit a fee as required by N.J.A.C. 7:26A-2.

(f) All persons who seek a general approval to operate a recycling center for tires, tree stumps, tree parts or wood waste pursuant to this subchapter shall also comply with the requirements at N.J.A.C. 7:26A-3.8.

(g) All persons who submit an application for a general approval to operate a recycling center for the receipt, storage, processing or transfer of any Class B recyclable material pursuant to this subchapter shall submit information demonstrating compliance with the design and operational requirements of N.J.A.C. 7:26A-4.8.

(h) All persons who submit an application for a general approval to operate a recycling center for the receipt, storage, processing or transfer of Class C recyclable material pursuant to this subchapter shall submit information demonstrating compliance with the design and operational requirements of N.J.A.C. 7:26A-4.5.

(i) All persons who submit an application for a general approval to operate a recycling center for the receipt, storage, processing or transfer of any Class D recyclable materials pursuant to this subchapter shall submit information demonstrating compliance with the operational requirements of N.J.A.C. 7:26A-4.6 and 4.7.

(j) All persons who submit an application for a general approval to operate a recycling center for the receipt, storage, processing or transfer of any Class B, C or D recyclable materials pursuant to this subchapter shall submit

information demonstrating compliance with the design and operational requirements of N.J.A.C. 7:26A-4.1(a)4 and 10 through 14.

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

Inserted references to Classes C and D throughout; substantially amended (a); in (a)9, inserted N.J.S.A. reference; in (a)9vii, added last sentence; in (a)16iii(4), inserted EPA ID reference; in (b)1, added last sentence; and added (g) and (h).

Administrative change.

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

Administrative change.

See: 32 N.J.R. 1796(a).

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

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

In (a)9i, substituted "smaller" for "larger"; in (b)1, inserted "recycling center approval (general or limited)" in last sentence.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote the section.

Case Notes

Statutory policy of encouraging uniform statewide solid waste management scheme, which precludes municipalities from imposing local land use regulations on solid waste facilities, applies equally to regulations governing establishment and operation of recycling centers. *Township of Howell v. Fred McDowell, Inc.*, 300 N.J.Super. 491, 693 A.2d 490 (A.D.1997).

7:26A-3.3 Mobile recycling equipment

(a) Persons operating mobile recycling processing equipment for Class B, Class C or Class D recyclable material shall operate such equipment only as follows:

1. At a site which possesses a general or limited approval from the Department and in manner which conforms to the approval for the site; or
2. Pursuant to an exemption at N.J.A.C. 7:26A-1.4(a) and in a manner which conforms to the criteria of the exemption.

(b) Persons operating mobile recycling processing equipment for Class B, Class C or Class D recyclable material shall comply with all applicable statutes and regulations, including, but not limited to, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and 26:2D-1 et seq., and the New Jersey Noise Control Act of 1971, N.J.S.A. 13:1G-1 et seq.

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

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

Inserted references to Classes C and D throughout.

7:26A-3.4 Supplemental requirements for a general approval

(a) Prior to the issuance of a general approval to operate a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable materials, and where the Department determines that additional information is needed to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department.

(b) Prior to the receipt of Class B, Class C or Class D recyclable materials and commencement of operations at the recycling center, the applicant must receive all other applicable local, State, or Federal permits or approvals.

(c) Prior to issuance of approval to operate a recycling center, the Department may require an applicant to obtain and submit to the Department evidence of financial assurance in an amount determined by the Department as necessary to effectuate the proper removal, transportation and disposition of all materials which may be abandoned on a recycling center site. For privately-owned facilities, the financial assurance shall be a performance bond or letter of credit. The wording of the performance bond or letter of credit must be identical to the wording specified in (d) or (e) below, respectively. For publicly-owned facilities, the financial assurance may be an identification of specific funds which are to be wholly dedicated to ensure payment of the financial obligation. The criteria to be evaluated by the Department to determine if financial assurance is needed, and to be used in establishing the financial assurance amount, are the following:

1. The history of enforcement actions taken by the Department against the applicant involving violations of any environmental statutes of the State, of the Department's solid waste management rules, N.J.A.C. 7:26, of this chapter, and of all other rules contained in Title 7 of the New Jersey Administrative Code, and the history of enforcement actions taken by the State, county or local government or any political subdivision of the State, county or local government;
2. The current cost of disposal, including site preparation and transportation costs, at a permitted solid waste facility which would receive the materials which may be abandoned on a site based on the maximum storage capacity of the recycling center;
3. The amount of material to be received, stored, processed or transferred at the recycling center over the duration of the general approval;
4. The types of materials to be received, stored, processed or transferred at the recycling center;
5. Whether the lease agreements related to property or equipment are less than three years in duration;
6. Whether the lease agreements related to property or equipment restrict the operation of the proposed recycling center; and
7. An analysis of the stability of end-markets for the Class B, Class C or Class D recyclable material received, stored, processed or transferred at the recycling center, which analysis shall consider the following:
 - i. The length of time the end-market has been in business;

(b) Within 90 days of issuance of the letter of administrative completeness, the Department will issue a general approval to operate a recycling center for a period not to exceed five years where the Department determines the following:

1. That the application meets the criteria for a general approval of N.J.A.C. 7:26A-3; and
2. That the applicant fails to meet any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.12 and 3.13.

(c) Within 90 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the application to operate a recycling center where the Department determines the following:

1. That the application fails to meet the criteria for a general approval of N.J.A.C. 7:26A-3; or
2. That the applicant meets any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(d) No recycling center shall receive Class B, Class C or Class D recyclable materials and commence operation until it has received written approval from the Department, unless operating pursuant to an exemption as set forth at N.J.A.C. 7:26A-1.4.

(e) The general approval will accomplish the following:

1. Authorize the receipt, storage, processing or transferring of Class B, Class C or Class D recyclable materials at the recycling center;
2. Indicate the conditions of operation which shall be met by the recycling center owner or operator prior to the receipt, storage, processing or transfer of the source-separated recyclable materials approved to be received, stored, processed or transferred at the recycling center; and
3. Indicate the limitations on recycling center operation, including, but not limited to:
 - i. Limitation on the amount of contaminants which may be present in any truckload of source-separated recyclable materials received at the recycling center;
 - ii. Limitation on the amount of residue which may be produced as a result of receiving, storing, processing or transferring source-separated recyclable materials at the recycling center; and
 - iii. Limitation on the commingling of Class B, Class C or Class D materials at the recycling center.

(f) All recycling centers receiving a general approval to operate a recycling center shall prominently post and maintain a legible sign, at or near the entrance to the recycling center, indicating that it is an approved New Jersey Department of Environmental Protection recycling center. In

addition, the sign shall also indicate those items detailed in N.J.A.C. 7:26A-3.2(a)16i and ii.

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

In (a), inserted additional N.J.A.C. references and added last sentence; in (a)1, inserted 30 day time limitation; in (a)2, inserted specific information to include in report and added last three sentences; inserted (a)3 and (a)4; and in (e), inserted references to Classes C and D. Administrative change.

See: 30 N.J.R. 3948(a).
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a), amended N.J.A.C. reference.
Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).
In (b)2, amended the N.J.A.C. reference.

7:26A-3.6 Application for renewal of a general approval to operate a recycling center

(a) Applications for renewal of general approvals issued pursuant to this subchapter shall be submitted at least three months prior to expiration of the current approval and shall comply with all requirements for renewal set forth in this subchapter. One copy of the application for renewal of a general approval shall be submitted by the applicant to the municipal clerk of the municipality in which the recycling center is located, and to the solid waste or recycling coordinator of the county in which the recycling center is located.

(b) Applicants for renewal of existing general approvals shall certify in writing to the Department that there have been no changes in the operations of the recycling center since the issuance of the general approval in order to renew the approval in its existing form. In the event that there have been changes in the design or operations of the recycling center or where either design or operational changes are planned, the application for renewal of a general approval shall be accompanied by a written notification of the modification for which the applicant intends to apply, in accordance with the requirements for modifications of general approvals at N.J.A.C. 7:26A-3.10, and payment of the designated modification fee at N.J.A.C. 7:26A-2. The Department will not incorporate modifications into general approvals for recycling centers through the approval renewal process without a designated fee being paid with the initial written notification of said modifications.

(c) In a case where the person who has received the general approval pursuant to this subchapter does not comply with (a) and (b) above and continues to operate without renewal of its general approval, the Department may take actions which include, but are not limited to, the following:

1. Appropriate enforcement action including the assessment of penalties under N.J.S.A. 13:1E-9; and
2. Require the person who has received the general approval to file an application as a new applicant for a

general approval in accordance with N.J.A.C. 7:26A-3.2, 3.4 or 3.8 and pay the annual fee as per N.J.A.C. 7:26A-2.

(d) Within 30 days of receipt of an application for renewal of a recycling center approval, the Department will determine whether the application is administratively complete. An application for renewal is administratively complete where it satisfies the requirements for renewal set forth in this subchapter, including the requirements for modification of a recycling center application set forth in N.J.A.C. 7:26A-3.10, where modifications will be made. Also, a fee must be submitted in accordance with N.J.A.C. 7:26A-2 for an application to be administratively complete.

1. If a renewal application is deemed administratively complete in accordance with paragraph (d) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If a renewal application fails to meet the criteria for administrative completeness in accordance with paragraph (d) above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(e) Within 60 days of issuance of the letter of administrative completeness, the Department will grant an extension of the approval for a period not to exceed five years where the Department determines the following:

1. That the renewal application meets the criteria of N.J.A.C. 7:26A-3; and

2. That the applicant fails to meet any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.12 and 3.13.

(f) Within 60 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the renewal application where the Department determines the following:

1. That the application fails to meet the criteria of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.12 and 3.13.

(g) No recycling center shall receive Class B, Class C or Class D recyclable material and commence operation until it has received written approval from the Department.

(h) All persons granted a renewal pursuant to (d) above shall continue to pay the annual fee as specified in N.J.A.C. 7:26A-2.

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

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

In (g), inserted references to Classes C and D.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (e)2 and (f)2, amended the N.J.A.C. references.

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

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

Rewrote (b).

7:26A-3.7 Application procedure for limited approval to operate a recycling center for the receipt, storage, processing or transfer of Class B recyclable material

(a) A person may operate a recycling center for the receipt, storage, processing or transferring of Class B recyclable materials for a period of time not to exceed 180 days provided that prior approval of the Department has been obtained and a fee has been submitted in accordance with N.J.A.C. 7:26A-2 to the Department. The following information shall be submitted to the Department in order to obtain limited approval:

1. The information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, and 16(i). The application shall include a site map that identifies the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials and meets the requirements of N.J.A.C. 7:26A-3.2(a)9ii, v, vii and viii;

2. A written schedule for completion of the recycling operation; and

3. The application shall be certified with the certification described at N.J.A.C. 7:26A-3.2(b)1 signed by the appropriate person as described at N.J.A.C. 7:26A-3.2(b)2.

(b) Persons applying to the Department for a limited approval to operate a recycling center for Class B recyclable materials shall submit one copy of the application for limited approval to the municipal clerk of the municipality in which the recycling center is located and one copy to the solid waste or recycling coordinator of the county in which the recycling center is located.

(c) The Department may require the issuance of a performance bond or letter of credit for persons granted a limited approval to operate a recycling center in accordance with the criteria of N.J.A.C. 7:26A-3.4(c).

(d) Prior to the issuance of a limited approval to operate a recycling center for Class B recyclable materials, and where the Department determines that additional information is needed to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department.

(e) Within 30 days of receipt of an application for a limited approval submitted pursuant to (a) above, the Department will determine whether the application is administratively complete. An application is administratively complete where it satisfies the information submission requirements of

(a) through (d) above and where a fee has been submitted in accordance with N.J.A.C. 7:26A-2.

1. If an application is deemed administratively complete in accordance with paragraph (e) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If an application fails to meet the criteria for administrative completeness in accordance with paragraph (e)

above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(f) Within 30 days of the issuance of the letter of administrative completeness, the Department will issue to the applicant a limited approval to operate a recycling center, valid for a specified period of time, not to exceed 180 days, where the Department determines the following:

1. That the application meets the criteria of N.J.A.C. 7:26A-3; and

2. That the applicant fails to meet any of the criteria for denial or revocation of a limited approval set forth at N.J.A.C. 7:26A-3.12 and 3.13.

(g) Within 30 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the application where the Department determines the following:

1. That the application fails to meet the criteria of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a limited approval set forth at N.J.A.C. 7:26A-3.12 and 3.13.

(h) No recycling center shall commence operation until it has received written approval from the Department.

(i) The limited approval will indicate the conditions, if any, which must be met by the recycling center owner or operator for the approval to remain in effect for a time period not to exceed 180 days.

(j) Within 45 days after the expiration of the time period covered by the limited approval to operate a recycling center, a final report shall be prepared by the person issued the limited approval and submitted to the Department, the solid waste or recycling coordinator of the county in which the recycling center is located, and to the applicable municipal planning board. The final report shall contain the following information:

1. The name, address and telephone number of the person or persons to whom the Department has issued the limited approval to operate a recycling center;

2. The location of the approved recycling center, if different than in (j)1 above, including the street address, lot and block, municipality and county;

3. A listing of the total amount of each Class B recyclable material stored, processed or transferred during the period of approved operation, expressed in tons, cubic yards, cubic feet or in gallons. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

4. The amount of residue disposed of, expressed in tons, cubic yards, cubic feet or gallons, including the name and New Jersey Department of Environmental Protection solid waste registration number of the solid waste collector/hauler which provided the haulage/disposal service. Those persons specifying the total amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons;

5. A written certification by the person issued a limited approval that, to the best of her or his knowledge after diligent inquiry, all residue has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26-6; and

6. The name, address and telephone number of the end-markets for all Class B recyclable materials transported from the recycling center, including the amounts, in tons, cubic yards, cubic feet or gallons, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(k) All persons operating a recycling center pursuant to a limited approval shall take such measures as are necessary to ensure that no illegal and unauthorized dumping occurs at the recycling center site.

(l) One original and two copies of the information required pursuant to (a) and (j) above shall be submitted to:

The New Jersey Department of Environmental Protection
 Division of Solid and Hazardous Waste
 PO Box 414
 Trenton, New Jersey 08625-0414

(m) The Department may extend the duration of the approval where the holder of the limited approval petitions the Department in writing explaining the need for an extension and where the Department determines that an extension is necessary to protect the public or environmental health, safety or welfare. Petitions shall be submitted to the address set out in (1) above. Concurrent with the submission of the petition to the Department, the petitioner shall also notify the applicable municipal planning board and county solid waste or recycling coordinator of its request for an extension of the limited approval. In no event will the Department:

1. Extend the duration of the limited approval for more than 50 percent of the time of the original limited approval; or

2. Issue more than one limited approval to the same applicant for the same site within one calendar year commencing on the date of issuance of the limited approval.

(n) All persons who seek limited approval to operate a recycling center for tires, tree stumps, tree parts or wood waste pursuant to this subchapter must also comply with the requirements at N.J.A.C. 7:26A-3.8.

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

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

In (a)1, changed N.J.A.C. references; substantially amended (a)3; in (l), changed Department and Division names; and in (m), deleted reference to limited approvals and added text "Concurrent with ... Department,".

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)1 and added 4.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).
Rewrote the section.

7:26A-3.8 Tire, tree stump, tree parts or wood waste recycling centers: additional requirements for general or limited approval

(a) The methods of processing tires that may be approved by the Department are limited to slicing, shredding, chipping, crumbing or other activities as determined by the Department. At no time shall incineration, landfilling, abandonment or other disposal of tires, in whole or in part, occur at the recycling center.

(b) The owner or operator of a tire recycling center shall take all steps necessary to ensure that no mosquito colony formation or development is allowed to occur on the recycling center site.

(c) A fire control plan for the recycling center shall be filed with and approved by the local fire official or other person of competent jurisdiction and shall be filed with the local municipal code enforcement officer prior to operation of a recycling center for tires, tree stumps, tree parts or wood waste.

7:26A-3.9 Storage of Class B and Class D materials

(a) The temporary storage of unprocessed and processed Class B or Class D recyclable material at recycling centers shall be limited to the amount indicated in the general or limited approval to operate.

(b) Notwithstanding (a) above, in no event shall unprocessed Class B or Class D recyclable material be stored at recycling centers approved pursuant to this subchapter for a period in excess of one year from the date of its receipt.

(c) The storage of petroleum contaminated soil at a recycling center approved to receive this material shall be subject to additional storage requirements as indicated in the approval issued pursuant to N.J.A.C. 7:26A-3.5.

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

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

Inserted references to Class D throughout.

7:26A-3.10 Modifications of general or limited approvals

(a) All owners and operators of recycling centers which have received a general or limited approval to operate a recycling center pursuant to this subchapter shall obtain prior approval from the Department for any modification of the general or limited approval.

(b) Modifications to the general or limited approval to operate a recycling center which require the prior approval of the Department include the following:

1. Any change affecting the conditions of the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 7:26A-3.7; and

2. Any change to the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), 3.4, 3.7, 3.8, 3.18, 3.19 or 3.20, except that changes in end-market information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7 shall not require the prior approval of the Department but shall be handled in accordance with (f) below.

(c) The owner or operator shall notify the Department in writing of the intended modification and shall update the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), 3.4, 3.7, 3.8, 3.18, 3.19 or 3.20. The owner or operator shall also submit one copy of the written request for modification to the municipal clerk of the municipality in which the recycling center is located and one copy to the solid waste or recycling coordinator of the county in which the recycling center is located.

(d) The Department will review the information submitted in accordance with (c) above and will determine whether additional information is necessary to adequately address public or environmental health, safety or welfare. If such additional information is required, the Department will notify the owner or operator in writing within 30 days of receipt of the request. Thereafter, the owner or operator shall submit to the Department in writing the additional information.

(e) Upon determining that the information submitted for modification review is complete, the Department will approve or deny the modification according to the criteria of (a) through (d) above and will notify the owner or operator in writing. The owner or operator shall not institute the modification until it receives written approval from the Department.

(f) Within one week of any change to the end-market information submitted to the Department pursuant to N.J.A.C. 7:26A-3.2(a)7, the owner or operator shall submit to the Department a written notification which details any change in the use of the recyclable material transferred from the recycling center to an end-market or in the end-market location to which the recyclable material is transferred. The written notification shall be sent to:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

PO Box 414

Trenton, New Jersey 08625-0414

(g) The Department will notify the solid waste or recycling coordinator of the county in which the recycling center is located, and the applicable municipal planning board, of any approval or denial of modification to a general or limited approval.

(h) Applicants shall pay fees pursuant to the requirements at N.J.A.C. 7:26A-2 at the time that the applicant submits an application for modifications of general or limited approvals, including those modifications referenced during approval renewals pursuant to the requirements of N.J.A.C. 7:26A-3.6(b).

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

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

In (b)2 and (c), inserted additional N.J.A.C. references; and in (f), changed Department and Division names.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (c), rewrote the second sentence.

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

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

Added (h).

7:26A-3.11 Increase in design capacity at recycling centers for Class B, Class C, and Class D recyclable materials

(a) An owner or operator seeking approval of an increase in design capacity at an approved recycling center for Class B, Class C, or Class D recyclable materials shall submit a request to the Department, in writing, for the proposed increase and shall submit updated information pursuant to the requirements of N.J.A.C. 7:26-3.2(a), 3.4, or 3.8, as applicable. The owner or operator shall also provide written notice of the request to the solid waste or recycling coordinator of the applicable district.

(b) The Department shall review the request and determine whether additional information is necessary to adequately address issues of public or environmental health, safety or welfare. If such additional information is required, the Department shall so notify the owner or operator in writing within 30 days of receipt of the request for approval. The owner or operator shall submit, in writing, the additional information requested by the Department within 15 days of receipt of the request for additional information.

(c) No later than 60 days following receipt of the request for approval and any additional information submitted pursuant to (b) above, the Department shall deny the request for approval or declare its intent to approve the request and shall so notify the owner or operator in writing.

(d) Within five days of receipt of the Department's notice of intent to approve a request for an increase in design capacity, the owner or operator shall notify the district solid waste or recycling coordinator of its receipt of such notice and shall also publish notice thereof in a newspaper of general circulation in the county where the facility is located.

1. The notice shall be published not less than 30 calendar days prior to the proposed effective date of the Department's approval and shall contain the following:

i. A description of the location by municipality, street address, lot and block number, of the recycling

center, the waste types received and the proposed increase in capacity;

ii. A statement justifying the necessity for the increase in design capacity; and

iii. The name and address of the district solid waste or recycling coordinator and the Department to which comments on the request for approval may be submitted.

(e) The proposed increase in design capacity shall become effective within 30 days following the publication of the newspaper notice pursuant to (d) above unless:

1. The Department determines that there is sufficient public interest to necessitate a public hearing; or

2. The district plan implementation agency of the district in which the facility is located passes a resolution expressly challenging the proposed increase in design capacity at the recycling center in question and initiates the solid waste management plan amendment process pursuant to N.J.A.C. 7:26-6.

(f) In the event that a public hearing is required pursuant to (e) above, the Department shall schedule and conduct a public hearing in accordance with the requirements of N.J.A.C. 7:26-6.10(c).

(g) The district plan implementation agency shall approve or deny the request for an increase in design capacity within three months following the public hearing held pursuant to (f) above. In the event the district plan implementation agency fails to take action on a request for an increase in capacity within such three month period, the Department may approve or deny an increase in design capacity in accordance with the provisions of (a) through (c) above.

(h) The Department shall approve any request for an increase in design capacity unless it determines that the increase poses a threat to the environment or public health, safety or welfare.

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

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

Former section recodified to N.J.A.C. 7:26A-3.12.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (a), inserted reference to Class C or Class D.

7:26A-3.12 Criteria for denial of a general or limited approval to operate a recycling center

(a) The following constitutes the criteria for denial of a general or limited approval and will result in the issuance of a letter of denial of general or limited approval to operate a recycling center:

1. Failure to submit any of the information required pursuant to this subchapter;

2. Failure of a recycling center operating pursuant to a general approval to maintain inclusion in the applicable district solid waste management plan;

3. Failure to correct any deficiencies in information submitted pursuant to this subchapter as determined by the Department, within 45 days of receipt of a letter detailing said deficiencies;

4. Failure to demonstrate that only source separated recyclable materials will be received, stored, processed or transferred at the recycling center; and

5. Failure to submit the appropriate fee required pursuant to N.J.A.C. 7:26A-2.

(b) In addition to the criteria for denial of a general or limited approval set out in (a) above, the Department may also deny a general or limited approval on the basis of the following criteria:

1. The applicant has been denied a license or registration pursuant to N.J.S.A. 13:1E-1 et seq.;

2. The applicant has been denied a certificate of public convenience and necessity pursuant to N.J.S.A. 48:13A-1 et seq.;

3. The applicant has had its registration, license or certificate of public convenience and necessity revoked by the DEP; or

4. The applicant has committed any of the acts which are criteria for approval revocation set forth at N.J.A.C. 7:26A-3.13(a)1 through 8.

(c) If the Department denies an application for a general or limited approval to operate a recycling center and bases the denial on a written determination that the facility for which the application was made is a solid waste facility for which a registration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5, the owner or operator of the facility, in any appeal of the Department's denial, shall have the burden to show by a preponderance of the evidence that the facility for which the application was made is not a solid waste facility for which a registration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5.

Recodified from 7:26A-3.11 and amended by R.1996 d.577, effective December 16, 1996.

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

In (a), deleted reference to renewal of general approval; in (a)3, changed filing deadline from 45 days; deleted (a)4; recodified former (a)5 and (a)6 as (a)4 and (a)5; and in (b)3, deleted reference to revocation by Board of Public Utilities. Former section recodified to N.J.A.C. 7:26A-3.13.

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

7:26A-3.13 Procedures and criteria for revoking a general or limited approval

(a) The Department may revoke a general or limited approval upon a determination that a person holding a general or limited approval has:

1. Violated any provision of N.J.S.A. 13:1E-1 et seq., the Act, or any rule, regulation or administrative order

promulgated pursuant to N.J.S.A. 13:1E-1 et seq. and the Act;

2. Violated any solid waste utility law at N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq., or any rule, regulation or administrative order promulgated pursuant to N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq.;

3. Violated any provision of any laws related to pollution of the waters, air or land surfaces of the State or of any other State or Federal environmental laws including criminal laws related to environmental protection;

4. Refused or failed to comply with any lawful order of the Department;

5. Failed to comply with any of the conditions of the general or limited approval issued by the Department;

6. Transferred a general or limited approval to a new owner or operator pursuant to N.J.A.C. 7:26A-3.15 without the prior approval of the Department;

7. Has failed to obtain any required permit or approval from the Department or other State or Federal agency; or

8. Has committed any of the acts which are criteria for denial of a general or limited approval set forth in N.J.A.C. 7:26A-3.11.

(b) The Department will revoke a general or limited approval by providing the holder of an approval with written notice of the action which details the reasons for the action. The Department will also notify the solid waste or recycling coordinator of the county in which the recycling center is located of any revocation of a general approval or the applicable municipal planning board of any revocation of a limited approval.

Recodified from 7:26A-3.12 by R.1996 d.577, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26A-3.14.

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

7:26A-3.14 Appeal procedure

(a) An applicant who believes himself or herself to be aggrieved with respect to the following decisions made by the Department may appeal the decision within 20 calendar days after the date of the decision and request an administrative hearing:

1. Denial of a general or limited approval, or any part thereof; or

2. Revocation or modification of a previously issued approval.

(b) Requests for an administrative hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
 Department of Environmental Protection
 401 East State Street, PO Box 402
 Trenton, New Jersey 08625-0402

Recodified from 7:26A-3.13 and amended by R.1996 d.577, effective December 16, 1996.
 See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).
 In (b), changed Department name. Former section recodified to N.J.A.C. 7:26A-3.15.

7:26A-3.15 Transfer of a general or limited approval to operate a recycling center

(c) All requests for an administrative hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making the request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the applicant's appeal;
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included; and
5. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).

(d) A hearing request not received by the Department within 20 calendar days after the date of the Department decision being appealed will be denied by the Department.

(e) If the applicant or interested party fails to include all the information required by (c) above, the Department may deny the hearing request.

(f) Following receipt of a complete request for a hearing pursuant to (c) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(g) If the Department determines that the matter is a contested case, the Department will file the request for an administrative hearing with the Office of Administrative Law. Such hearings will be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules N.J.A.C. 1:1. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

(a) A general or limited approval to operate a recycling center shall not be transferred to a new owner or operator without the Department's prior approval.

1. Any transfer of an approval must be pre-approved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 60 days in advance of the proposed transfer of ownership or operational control of a recycling center. The request for approval shall include the following:

- i. The name, address and social security number of all prospective new owners or operators;
- ii. A written certification by the proposed transferee that the terms and conditions contained in the general or limited approval will be met by the proposed transferee; and
- iii. A written agreement between the current owner or operator of the recycling center and the proposed new owner or operator containing a specific future date for transfer of ownership or operational control.

2. A new owner or operator may commence operations at the recycling center only after the existing approval has been revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

3. The owner or operator of record of the approved recycling center remains liable for ensuring compliance with all conditions of the approval unless and until the existing approval is revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the owner or operator of record of the approved recycling center from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

(b) For the purposes of this section, the transfer of a controlling interest in the stock or assets of a recycling center holding a general or limited approval from the Department shall constitute the transfer of a general or limited approval pursuant to (a) above.

(c) One copy of the application to transfer a general or limited approval shall be submitted to the municipal clerk of the municipality in which the recycling center is located and one copy to the solid waste or recycling coordinator of the county in which the recycling center is located. The Depart-

ment shall notify county and municipal officials of determinations concerning the transfer of general or limited approvals.

Recodified from 7:26A-3.14 by R.1996 d.577, effective December 16, 1996.

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

Former section recodified to N.J.A.C. 7:26A-3.16.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote (c).

7:26A-3.16 (Reserved)

Recodified from 7:26A-3.15 and amended by R.1996 d.577, effective December 16, 1996.

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

Substantially amended section. Former section recodified to N.J.A.C. 7:26A-3.17.

Administrative change.

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

Repealed by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Section was "Filing requirements for existing recycling centers which receive, store, process or transfer Class C recyclable material".

7:26A-3.17 Record keeping and annual report; confidentiality of records

(a) All recycling centers holding a general approval shall maintain daily records of all materials received, stored, processed or transferred. Said records shall indicate, at a minimum:

1. A daily record of the amounts of each recyclable material by type and municipality of origin which are received, stored, processed or transferred each day, expressed in tons, cubic yards, cubic feet or gallons. Those operators specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

2. The name, address and telephone number of the end-markets for all recyclable materials transported from the recycling center, including the amounts, in tons, cubic yards, cubic feet or gallons, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

3. The amount of residue disposed of, expressed in tons, cubic yards, cubic feet or gallons, including the name and New Jersey Department of Environmental Protection solid waste registration number of the solid waste collector/hauler contracted to provide the haulage/disposal service. Those persons specifying the amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons.

(b) All recycling centers holding a general approval shall retain the information required pursuant to N.J.A.C. 7:26A-3.2(a)16iii for three calendar years following the calendar year for which reporting is required pursuant to (c) and (d) below.

(c) All recycling centers operating pursuant to a general approval shall submit an annual report containing monthly summary statements of the information required pursuant to (a) above to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, on or before March 1 of each year, for the previous calendar year. The summaries shall include the following:

1. Monthly totals of the amount of recyclable material received from each customer by municipality of origin;
2. Monthly totals of the amount of recyclable product transferred to each end-market; and
3. The amount of residue disposed of during each month.

(d) As a condition of approval to operate a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable materials, the Department may require the filing of the information required in (a) above at more frequent intervals which shall be specified in the general approval to operate a recycling center issued by the Department.

(e) All recycling centers operating pursuant to a general approval shall certify in writing to the Department that all residue generated at the recycling center has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26. The certification shall be submitted annually as part of the annual report required pursuant to (c) and (d) above.

(f) All information submitted to the Department pursuant to this chapter shall be handled in accordance with the requirements of the Public Records law, N.J.S.A. 47:1-1 et seq. The Department will hold confidential all end-market information, as well as information pertaining to the municipality of origin of recyclable material, submitted pursuant to N.J.A.C. 7:26A-3.2, 3.7, and 3.17 through 3.20 for a period of two years from the date on which the information is submitted to the Department, where specified as confidential by the applicant and where there are no health, safety or environmental concerns which require the release of the information, as determined by the Department.

Recodified from 7:26A-3.16 and amended by R.1996 d.577, effective December 16, 1996.

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

In (c), changed report submission date; in (d), inserted reference to Classes C and D; and in (f), inserted N.J.A.C. references.

7:26A-3.18 Additional application requirements for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class C recyclable materials

(a) Prior to the receipt, storage, processing or transfer of any Class C recyclable material at a recycling center, the owner or operator shall submit to the Department, in addition to the information required pursuant to N.J.A.C. 7:26-3.2, the following information:

1. A description of the plans for monitoring, sampling and testing the composting materials for process control and product quality assurance as specified in N.J.A.C. 7:26A-4.5;

2. A description of the contingency operations plan in the event of wind, heavy rain, snow, freezing or other inclement weather conditions;

3. A description of fire protection and control procedures to be employed at the site;

4. A description of vector, dust and litter controls;

5. A description of the nearest sensitive neighboring receptor(s) (residential, commercial, institutional), providing approximate distances to property lines from the recycling center;

6. A description of the soil characteristics for the site according to the soil surveys published by the appropriate Natural Resource Conservation Service District;

7. A description of the methods that will be used to minimize, manage and monitor odors to prevent detection of odors off site and meet the New Jersey Air Pollution Control rules, N.J.A.C. 7:27;

8. A description of the impact that the proposed facility will have on surface and ground water quality and any existing wetlands; and

9. A description of the impact that the proposed facility will have on applicable Federal, State or local land uses including the Pinelands area and agricultural development areas, dedicated recreational or open space areas, floodways and endangered or threatened wildlife and vegetation.

(b) In addition to the requirements of N.J.A.C. 7:26A-3.2(a), the owner or operator of a recycling center receiving Class C recyclable materials other than or in addition to yard trimmings shall submit a facility design plan, including the following:

1. A flow diagram of the proposed processing steps for all material received, along with a total mass balance;

2. A description of all equipment to be utilized consistent with the requirements of N.J.A.C. 7:26A-3.2(a)8, including a demonstration that the proposed equipment to be used is compatible with the proposed process and throughput; and

3. Profile views of the site indicating access roads, water drainage (swales, ditches, etc.), existing and final grade, facility superstructure, utilities, and other structures.

New Rule, R.1996 d.577, effective December 16, 1996.
 See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).
 Administrative change.
 See: 30 N.J.R. 3948(a).
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a)1, amended N.J.A.C. reference; in (b), deleted "above" preceding ", the owner" in the introductory paragraph; in (b)1, substituted "all material received" for "food waste material".

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote (a).

7:26A-3.19 Additional application requirements for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class D recyclable materials

(a) Prior to commencing receipt, storage, processing or transfer of used oil at a recycling center, the owner or operator of the recycling center shall submit to the Department, in addition to the information required pursuant to N.J.A.C. 7:26A-3.2, the following information:

1. The EPA ID number assigned to the facility;

2. A description of the preparedness and prevention procedures and equipment required by N.J.A.C. 7:26A-6.7(c)1;

3. A copy of the contingency plan as required by N.J.A.C. 7:26A-6.7(c)2;

4. A description of the secondary containment system for containers or tanks to demonstrate compliance with N.J.A.C. 7:26A-6.7(e)4, 5 or 6, including at least the following:

i. Drawings and a description of the basic design parameters, dimensions and materials of construction of the containment system;

ii. The capacity of the containment system relative to the number and volume of containers or tanks within the system;

iii. A description of how the design promotes drainage or how the containers or tanks are protected from contact with standing liquids in the containment system;

iv. Provisions for preventing or managing accumulated precipitation or run-on; and

v. A description of how accumulated liquids will be analyzed and removed to prevent overflow;

5. A demonstration of compliance with labeling requirements of N.J.A.C. 7:26A-6.7(e)7;

6. A description of closure procedures and/or copy of the closure plan to demonstrate compliance with N.J.A.C. 7:26A-6.7(e)9;

7. A copy of an analysis plan as required by N.J.A.C. 7:26A-6.7(f);

8. A description of the method used to comply with the tracking requirements of N.J.A.C. 7:26A-6.7(g); and

9. A demonstration of compliance with the residue management requirements in accordance with N.J.A.C. 7:26A-6.7(j).

(b) Prior to commencing the receipt, storage, processing or transfer of any latex paints, antifreeze, thermostats, lamps (light bulbs), oil-based paints, batteries, mercury-containing devices and consumer electronics at a recycling center, the owner or operator of the recycling center shall submit to the Department, in addition to the information required pursuant to N.J.A.C. 7:26A-3.2, the following information:

1. The EPA ID number assigned to the facility;
2. A description of the preparedness and prevention procedures and equipment required by N.J.A.C. 7:26A-4.6(b);
3. A copy of the contingency plan as required by N.J.A.C. 7:26A-4.6(c);
4. A description of the secondary containment system for containers or tanks to demonstrate compliance with N.J.A.C. 7:26A-4.6(d)1iii or (d)2ii, including at least the following:
 - i. Drawings and a description of the basic design parameters, dimensions and materials of construction of the containment system;
 - ii. The capacity of the containment system relative to the number and volume of containers or tanks within the system;
 - iii. A description of how the design promotes drainage or how the containers or tanks are protected from contact with standing liquids in the containment system;
 - iv. Provisions for preventing or managing accumulated precipitation or run-on; and
 - v. A description of how accumulated liquids will be analyzed and removed to prevent overflow;
5. A description of the design and operation of process buildings to demonstrate compliance with N.J.A.C. 7:26A-4.6(d)3, if applicable. The description shall include at least the following:
 - i. Drawings and a description of the basic design parameters, dimensions and materials of construction of the process building;
 - ii. The design capacity of the building relative to the volume of recyclable materials to be stored or processed within the building; and
 - iii. A description of the liquid collection and removal system required by N.J.A.C. 7:26A-4.6(d)3iii (if applicable), including a discussion of how accumulated liquids will be characterized and removed;
6. A demonstration of compliance with labeling requirements of N.J.A.C. 7:26A-4.6(e); and
7. A description of closure procedures and/or copy of the closure plan to demonstrate compliance with N.J.A.C. 7:26A-4.6(g).

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

Administrative change.

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

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (a), substituted "Prior to commencing receipt" for "Prior to the receipt" preceding "storage," and substituted "used oil" for "any Class D recyclable materials" following "or transfer of" in the introductory paragraph; added (b).

7:26A-3.20 Filing requirements for existing used oil facilities which receive, store, process or transfer of Class D recyclable material

(a) Any facility processing used oil under the terms and conditions of a hazardous waste facility permit or existing facility status issued prior December 16, 1996 may continue to operate under such terms and conditions until the Department approves or denies the facility owner and/or operator's application for general approval. By June 14, 1997, the Department shall assess the information currently on file for each such facility, and will provide the owner and/or operator of each such facility with a written list of additional information required to be submitted to the Department to obtain a recycling center approval pursuant to N.J.A.C. 7:26A-3.2(a), 3.4 and 3.19.

(b) Within 180 days of receipt of notice requesting additional information pursuant to (a) above, the owner or operator of the facility shall submit the requested information, along with any applicable fees, to the Department at the address specified at N.J.A.C. 7:26A-3.2(c).

(c) A recycling center operating for the receipt, storage, processing or transfer of Class D recyclable materials, and for which a hazardous waste facility permit or existing facility status was issued prior to December 16, 1996, shall not modify its operation unless such modification is approved by the Department pursuant to N.J.A.C. 7:26A-3.10.

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

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

SUBCHAPTER 4. DESIGN AND OPERATIONAL STANDARDS AND GENERAL RULES FOR RECYCLING CENTERS WHICH RECEIVE, STORE, PROCESS OR TRANSFER CLASS A, CLASS B, CLASS C AND CLASS D RECYCLABLE MATERIAL; RIGHT OF ENTRY AND INSPECTION

7:26A-4.1 Design and operational standards for recycling centers which receive Class A, Class B, Class C and Class D recyclable materials

(a) All owners or operators of recycling centers which receive, store, process or transfer Class A, Class b, Class C, or Class D recyclable material shall comply with the following design and operational standards:

1. All recyclable materials received, stored, processed or transferred at all recycling centers shall conform to the following criteria:

i. The recyclable materials shall have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream;

ii. The recyclable materials shall consist only of Class A recyclable materials, or of Class B, or Class C or Class D recyclable materials which the Department has approved pursuant to N.J.A.C. 7:26A-3 for receipt, storage, processing or transfer at the recycling center; and

iii. Class A recyclable materials maybe commingled only with other Class A recyclable materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 3.7. Class C recyclable materials may be commingled only with other Class C recyclable materials and only to the extent authorized in the general approval issued pursuant to N.J.A.C. 7:26A-3.5.

2. Residue shall not be stored on-site for a period in excess of six months;

3. All residue shall be removed from the recycling center site in accordance with each district's waste plan;

4. All residue shall be stored separately from recyclable material and in a manner which prevents run-off, leakage or seepage from the residue storage area into, on or around the soil of the residue storage area;

5. At no time shall any hazardous waste, as defined in N.J.A.C. 7:26, be received, stored, processed or transferred at any recycling center as defined in N.J.A.C. 7:26A-1.3 except for used oil and universal waste as provided pursuant to N.J.A.C. 7:26A-4.7, 6 and 7;

6. At no time shall capacitors or electronic components which contain polychlorinated biphenyls (PCBs) and which are attached to, or detached from, appliances or other scrap metal be shredded, sheared or baled;

7. The operation and related activities of a recycling center shall be in conformance with all applicable Federal and State laws and regulations;

8. Recycling centers shall be operated in such a manner that the recycling center property is maintained free of litter and debris and such that tracking of mud into nearby streets is prevented;

9. All recycling centers located within the Pinelands Protection Area shall be operated in a manner consistent with the goals of the comprehensive management plan developed by the Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and shall obtain all approvals required by the Pinelands Commission;

10. Traffic associated with the operation of the recycling center shall not result in an unacceptable decrease in

the existing level of service described and defined in the New Jersey Department of Transportation Highway Access Management Code at N.J.A.C. 16:47 of any major intersection or public roadway within a one-half mile radius of the recycling center;

11. Recycling center operations shall be separated from any and all adjacent residential, commercial and/or other sensitive land uses through the establishment of an effective visual screen buffer;

12. The entrance to the access road shall be fenced or otherwise secured to prevent unauthorized access to the site;

13. To provide sufficient support for vehicles, to prevent the tracking of soil onto public roads and to minimize the generation of dust, those areas of the recycling center subject to vehicular usage shall be suitably compacted and where necessary paved; and

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

(b) The construction of all recycling centers shall be in conformance with the New Jersey Uniform Construction Code, N.J.S.A. 52:27D-119 et seq., and the rules promulgated pursuant thereto.

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

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

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

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

Inserted references to Classes C and D throughout; in (a) 5, added exception.

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

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

Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (a), inserted "design and" preceding "operational" in the introductory paragraph, rewrote 7 and added 10 through 14.

7:26A-4.2 Inclusion in district solid waste management plans

No recycling center, as defined in N.J.A.C. 7:26A-1.3, with the exception of those recycling centers operating pursuant to an approval granted under N.J.A.C. 7:26A-3.7, shall commence operations unless and until it is included in the applicable district solid waste management plan.

7:26A-4.3 Right of entry

(a) The New Jersey Department of Environmental Protection or an authorized representative acting pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-1 et seq. shall have the right to enter and inspect any building or other portion of a recycling center, recycling depot or any site at which an exempted activity is conducted pursuant to N.J.A.C. 7:26A-1.4(a), at any time in order to determine compliance with the provisions of all applicable laws or rules and regulations adopted pursuant thereto. This right to inspect includes, but is not limited to:

1. Sampling any materials on site;
2. Photographing any portion of the recycling center;
3. Investigating an actual or suspected source of pollution of the environment; and
4. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the recycling center approval issued by the Department.

(b) The right of entry specified in (a) above shall be limited to normal operating hours for the purpose of reviewing and copying all applicable records, which shall be made available to the Department during an inspection and submitted to the Department upon request.

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

In (a), changed Department name and inserted "recycling depot".

7:26A-4.4 Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by February 1 of each year to the county of origin (if requested) and all municipalities from which recyclable material is received in the previous calendar year. For operators of Class A recycling centers, this report shall also be submitted to the Department. The report shall detail the amount of each source of separated recyclable material, expressed in gallons, tons or cubic yards, accepted from each municipality. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons. Those persons reporting the recycling of lamps shall also report the volume of the received materials in linear feet. Non-tubular lamps may be reported as individual units. Those persons reporting on mercury-containing devices shall also report the number of devices received. Lamps or mercury containing devices which are shipped using a hazardous waste manifest may be reported in pounds or gallons.

(b) Except as otherwise provided in N.J.A.C. 7:26A-1.4(b)4, all persons operating pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4 shall provide recycling tonnage reports by February 1 of each year to the applicable municipalities, to the county and to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, P.O. Box 414, Trenton, New Jersey 08625-0414 for the previous calendar year. The report shall detail the amount of each source separated recyclable material, expressed in tons, cubic yards, cubic feet, or gallons received, stored, processed or transferred. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons. Those persons reporting the recycling of lamps shall also report the volume of the received materials in linear feet. Non-tubular lamps may be reported as individual units. Those persons reporting on mercury-containing devices shall also report the number of devices received. Lamps or mercury containing devices which are shipped using a hazardous waste manifest may be reported in pounds or gallons.

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

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

In (c), inserted text "Except as otherwise provided in N.J.A.C. 7:26A-1.4(b)4."

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); deleted former (b) and recodified former (c) as (b).

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote the section.

7:26A-4.5 Additional design and operational requirements for recycling centers which receive, store process or transfer Class C recyclable materials

(a) In addition to the requirements of N.J.A.C. 7:26A-4.1, the following operational and design criteria apply to recycling centers receiving Class C recyclable materials consisting only of yard trimmings:

1. A recycling center shall not be located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A-1, 13:8A-20 and 13:8A-35, and N.J.A.C. 7:36, unless the approval of the Department and of the State House Commission has been received and any and all conditions of said approvals are complied with. Evidence of those approvals shall be submitted to the Department as part of the application for general approval to operate.

2. The recycling center shall have sufficient capacity to handle projected incoming volumes of yard trimmings.

3. Operation of the recycling center shall be under the supervision and control of a properly trained individual during all hours of operation, and access to the recycling center shall be prohibited when the recycling center is closed.

4. Yard trimmings shall be received only during times when the recycling center operator or owner is present.

5. All yard trimmings delivered to the recycling center for processing shall be removed from bags, boxes or similar containers prior to any processing steps except that yard trimmings in paper or biodegradable plastic bags need not be removed from such bags if the processing equipment provides for a shredding or cutting action. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in the staging area of the recycling center for removal to an off-site disposal facility in accordance with N.J.A.C. 7:26-6.

6. If the incoming material contains grass, it shall be accepted only in areas of the site that are at least 1,000 feet from any areas of human use or occupancy, and processing of such material shall begin on the day of receipt.

7. Recycling centers which provide composting of the Class C material shall operate in accordance with the following:

i. Within one year of the start up of the recycling center, the recycling center operator shall attend a composting course sponsored by the Rutgers Cooperative Extension, the appropriate county agricultural or resource management agents or any other similar course recognized by the Department;

ii. The active composting surface shall be an improved surface, such as compacted clay, gap-graded crushed aggregate, asphalt or other such surface that can withstand heavy equipment use. The surface shall be sloped to prevent ponding of liquids and to prevent surface runoff from directly entering any surface waters;

iii. Prior to windrow formation, dry yard trimmings shall be moistened to saturation without producing excessive runoff;

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

v. A windsock shall be installed at the recycling center in order to indicate wind direction so that the recycling center operator may determine appropriate times for windrow turning operations;

vi. The recycling center shall employ one of the following methods of windrow composting as defined below, or any other composting method approved by the Department:

(1) A minimal technology method, in which windrows are constructed and reconstructed after each turning to a maximum height of 12 feet with a corresponding base not to exceed a maximum of 24 feet. A minimum separation of 16 feet measured from the pile base of the windrow to the next adjacent pile base shall be maintained to provide ample working space. Windrows shall be turned and reconstructed, at a minimum, one time per year during the three year composting cycle;

(2) A low level technology method, in which windrows are constructed and reconstructed after each turning to a maximum height of 6 feet with a corresponding base not to exceed a maximum of 14 feet in width. A minimum separation of 16 feet measured from the pile base of the windrow to the next adjacent pile base shall be provided along at least one side of the longest dimension of each windrow pile to provide ample working space. Windrows shall be turned and reconstructed, at a minimum, three times during the 12 to 18 month compost cycle, once during the first two months of the composting cycle,

at four to six months into the composting cycle and final again at the tenth month;

(3) An intermediate technology method, in which windrows are constructed and reconstructed after each turning to a maximum height and base width which corresponds to the specific windrow turning equipment used. The minimum separation distance between windrows shall also correspond to the recommended operation of the specific windrow turning equipment used. After initial windrow formation and aeration, windrows shall be turned and reconstructed, at a minimum, once per week for the first month. During the remainder of the 12 month composting cycle, temperature and oxygen concentration within the windrows shall be monitored, and further turnings shall be scheduled to prevent temperatures from exceeding 140 degrees Fahrenheit and to prevent oxygen levels from dropping below five percent for prolonged periods; or

(4) A high level technology method, in which windrows are constructed and reconstructed within an enclosed facility with air flow controlled venting. Forced aeration or mechanical agitation shall be controlled to complete the compost cycle in three to six months;

vii. Materials staging and processing shall be done in areas on the site which meet the following buffer distance requirements:

Level of technology	Buffer with leaves only (FT)	Use for grass	Buffer with grass (FT)
(1) Minimal	2500 ¹	No	N/A
(2) Low	50/500 ²	No	N/A
(3) Intermediate	50/150/250 ³	Yes	1000 ⁴ ; or
(4) High	50 ⁵	Yes	50 ⁵

Notes:

1. From operations to sensitive land uses.
2. From operations to property line/to sensitive land uses.
3. From operating to property line/to sensitive land uses/to inhabited structure.
4. From grass clipping staging and handling areas to sensitive land uses.
5. Building setback for enclosed operations.

viii. Finished compost shall be tested once each year, at a minimum, in accordance with an appropriate monitoring and sampling plan established by the Department as part of the recycling center approval. Samples of the compost produced at the recycling center shall be analyzed for the parameters listed in Appendix A to this subchapter, incorporated herein by reference, according to the indicated method. Results of all laboratory analysis for each parameter specified in Appendix A shall be recorded and maintained at the recycling center;

ix. The laboratory used to perform the analysis of the finished compost product shall be certified in accordance with N.J.A.C. 7:18 for the equipment and testing procedures required in (a)7viii above;

x. The Department shall approve an alternate sampling schedule if the recycling center can demonstrate that less frequent testing will adequately monitor the quality of the finished compost in an equivalent manner. Such demonstration provision may be based on the recycling center's operational history, the quality of the finished compost and the quality of the incoming material;

xi. In addition to the recordkeeping requirements of N.J.A.C. 7:26A-3.17, the recycling center shall maintain the following records:

- (1) The quantity of yard trimmings received daily, expressed as cubic yards of leaves, grass and/or brush;
- (2) The source of yard trimmings received daily; and
- (3) The results of laboratory analyses of finished compost;

xii. The following information shall be made available for inspection by the Department pursuant to N.J.A.C. 7:26A-4.3:

- (1) The results of compost analyses and name(s) of certified laboratory(ies);
- (2) The quantity, type and source of incoming material;
- (3) The quantity and types of recovered recyclables;
- (4) The quantity of disposed residue, and sites receiving residue; and
- (5) The standard procedures employed to ensure data reliability.

8. The recycling center shall submit to the Department within one year of receipt of its general approval to operate, a final closure plan containing a schedule and description of the steps necessary to close the recycling center including the estimated cost of closure and a description of the means by which the closure will be financed.

9. The recycling center shall notify the Department in writing at least 60 days prior to the proposed closure date for the recycling center.

10. The recycling center shall publish a notice of closure in a newspaper of general circulation in the district where the recycling center is located and in districts or communities sending at least 25 percent of their yard trimmings to the recycling center. Such notice shall be published at least 15 days prior to closure.

11. Within 30 days of ceasing operation, all residuals, unprocessed yard trimmings and recyclables shall be removed from the site and recycled or disposed as appropriate.

12. The Department shall determine that a recycling center is considered closed when all the requirements of the closure plan have been met.

(b) In addition to the requirements of N.J.A.C. 7:26A-4.1, the following operational and design criteria apply to recycling centers receiving Class C recyclable material other than or in addition to yard trimmings:

1. The recycling center shall have sufficient capacity to handle projected incoming volumes of Class C recyclable material.

2. The composting structure shall withstand wear and tear of normal operations. The floor shall be impermeable (10^{-5} cm/sec or greater) and be sloped to prevent ponding of liquids and to direct leachate to a leachate collection system. Leachate control shall be provided wherever leachate is generated.

3. The recycling center operations shall be fully enclosed except in those cases where vegetative food material is the only food material received.

4. Any recycling center not fully enclosed shall meet the buffer requirements for recycling centers handling grass clippings described in (a)6 above.

5. An operations and maintenance (O&M) manual specific to the recycling center shall be prepared, updated as needed, and available at the recycling center for inspection by Departmental pursuant to N.J.A.C. 7:26A-4.3. The O&M manual shall include any and all information to enable supervisory and operating personnel to determine the sequence of operations, routine maintenance schedules, plans, policies, procedures, and legal requirements that must be adhered to. The O&M manual shall include a quality assurance/quality control (QA/QC) plan which outlines the monitoring, sampling and analysis plans for testing the compost process and product.

6. The recycling center equipment shall be operated in conformance with the manufacturer and/or vendor specifications or appropriately documented modifications. Such equipment specifications, including modifications, shall be included in the operations and maintenance manual.

7. Employees shall be properly trained in the recycling center operations, maintenance procedures, and safety and emergency procedures.

8. A recycling center-specific training manual shall be developed and made available to each employee.

9. Operation of the recycling center shall be under supervision and control of a properly trained individual during all hours of operation.

10. Access to the recycling center shall be prohibited when the recycling center is closed.

11. Processing of incoming material shall begin within three days of receipt. If the incoming material contains grass and/or other highly putrescible materials, processing of such material shall begin on the working day of receipt of such material.

12. Incoming, unprocessed material shall not be mixed with finished compost.

13. The composting process shall meet the criteria for a process to further reduce pathogens (PFRP) in accordance with 40 C.F.R, Part 503. One of the three following methods shall be used:

i. Windrow method, which meets PFRP as follows:

(1) Maintenance of aerobic conditions; and

(2) A minimum of five turnings over 15 consecutive days, maintaining a temperature of not less than 55 degrees Celsius (131 degrees Fahrenheit).

ii. Aerated static pile method, which meets PFRP as follows:

(1) Pile insulated with six to 12 inches of insulating material (for example, sawdust, cured compost, or wood chips); and

(2) Temperature of at least 55 degrees Celsius (131 degrees Fahrenheit) maintained throughout the mixture for three consecutive days; or

iii. Enclosed (within) vessel composting method, which meets PFRP as follows:

(1) Temperature maintained at 55 degrees Celsius (131 degrees Fahrenheit) throughout the mixture for at least three consecutive days.

14. The recycling center shall monitor the temperature of the material in the composting process to ensure that pathogen reduction criteria are met. Temperature readings shall be recorded daily during PFRP.

15. The design capacity of the finished compost storage area shall not exceed 15 months of production, in accordance with the marketing plan prepared and submitted in accordance with N.J.A.C. 7:26A-3.

16. Finished compost shall not be stored at the recycling center for more than 15 months.

17. Stored finished compost that is not used or sold within 15 months shall be removed or reprocessed for use or sale.

18. The Department shall establish an appropriate monitoring and sampling schedule for a one-year start-up period as part of the recycling center approval.

19. Using information gained during the one-year start-up period, a monitoring and sampling schedule for

ongoing operations shall be developed, as part of the recycling center approval, in consultation with the Department based on statistical methods for quality assurance.

20. Compost samples shall be obtained in accordance with the approved QA/QC plan. Samples of the compost produced at the facility shall be analyzed for the compost quality monitoring parameters listed in Appendix A in accordance with the appropriate methods as approved in the sampling plan. Results of all laboratory analysis for each parameter specified in Appendix A shall be recorded and maintained at the facility. Quality assurance results shall be reported to the Department pursuant to (b)23 below.

21. The laboratory used to perform the analysis of the finished compost product shall be certified in accordance with N.J.A.C. 7:18 for the equipment and testing procedures required pursuant to (b)20 above.

22. In addition to the recordkeeping requirements of N.J.A.C. 7:26A-3.17, the recycling center shall maintain the following records:

i. Daily temperature and moisture monitoring of the composting process;

ii. The quantity of material received daily expressed as cubic yards;

iii. The source of material received daily;

iv. The results of laboratory analyses of finished compost;

v. The retention time of the finished compost; and

vi. The sale and distribution of recovered materials.

23. Quarterly reports shall be submitted to the Department within 30 days after the end of each calendar quarter. Such reports shall include the following:

i. Results of compost analyses and name(s) of certified laboratory(ies);

ii. The quantity, type and source of incoming materials;

iii. The quantity and types of recovered recyclables;

iv. The quantity of compost produced;

v. The quantity of compost sold and/or distributed, and the end markets to which the compost is sold or distributed;

vi. The quantity of disposed residue, and sites receiving residue;

vii. Daily temperature readings and retention times during PFRP;

viii. A summary of leachate management (collected and reused or treated and disposed);

ix. A summary of major maintenance on leachate, temperature or other monitoring and control systems in operation; and

x. The standard procedures employed to ensure data reliability.

24. The recycling center shall, after one year of approval, submit to the Department a final closure plan containing a schedule and description of the steps necessary to close the recycling center including the estimated cost of closure and the plans to finance.

25. An update to the final closure plan as needed shall be submitted in writing at least 180 days prior to the proposed closure date for the recycling center.

26. The recycling center shall notify the Department in writing at least 60 days prior to the proposed closure date for the recycling center.

27. The recycling center shall publish a notice of closure in a newspaper of general circulation in the district where the recycling center is located and in districts or communities sending at least 25 percent of their Class C recycling material to the recycling center. Such notice shall be published at least 30 days prior to closure.

28. Within 10 days of ceasing operation, all residuals and unprocessed Class C recyclable material shall be removed from the site and recycled or disposed, as appropriate, and the recycling center shall arrange for a final cleaning of any containers, equipment, machines, floors and recycling center surfaces in which Class C recyclable materials or residue was processed or stored.

29. The Department shall determine that a recycling center is closed when all of the requirements of the closure plan have been met.

(c) Compost produced by recycling centers which process Class C recyclable materials shall be subject to the following:

1. Compost given away or offered for sale by the recycling center must contain a label describing the recommended safe uses and application rates, and restrictions, if any, on use of the product. If compost is offered for bulk sale, signs or printed literature containing the above information shall be available on the bill of lading to the purchaser or persons receiving the compost.

2. Compost given away or offered for sale shall satisfy the following requirements:

i. Compost derived from yard trimmings shall satisfy the requirements established at 40 C.F.R. 503.13(b)3; and

ii. Compost derived from other than or in addition to yard trimmings shall satisfy the requirements established at 40 C.F.R. 503.13(b)3, the Class A pathogen requirements at 40 C.F.R. 503.32(a), and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)1 through 8.

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

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

Administrative change.

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

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

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

In (a)15viii, substituted "vii" for "viii"; rewrote (c)2.

Amended by R.2002 d.182. effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Rewrote the section.

7:26A-4.6 Additional design and operational standards for recycling centers which receive, store, process, or transfer Class D recyclable materials—latex paints, antifreeze, thermostats, lamps (light bulbs), oil-based finishes, batteries, mercury-containing devices and consumer electronics, including universal waste

(a) Provisions of this section apply to recycling centers which receive, store, process, or transfer latex paints, antifreeze, thermostats, lamps, oil-based finishes, batteries, mercury-containing devices and consumer electronics. Some thermostats, lamps, oil-based finishes, batteries, mercury-containing devices and consumer electronics may also be universal wastes. Provisions of this subsection apply equally to those materials which are being handled as universal wastes and those which are not. Universal wastes, when not recycled or destined for recycling under the provisions of this chapter shall not be handled by a Class D recycling center.

(b) Owners and operators shall comply with the following preparedness and prevention requirements:

1. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of Class D recyclable materials to air, soil, or surface water which could threaten human health or the environment;

2. All facilities shall be equipped with the following, unless none of the hazards posed by the recyclable materials handled at the facility could require a particular kind of equipment specified in (b)2i through iv below:

i. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

ii. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(h) Owners and operators shall maintain, as part of the daily record required by N.J.A.C. 7:26A-3.17(a), summary reports and details of all incidents that require implementation of the Contingency Plan specified in (c) above.

New Rule, R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Section was "Operational standards for recycling centers for Class D recyclable materials" (Reserved).

7:26A-4.7 Additional design and operational standards for recycling centers which receive, store and process Class D recyclable materials—used oil

For the purposes of this chapter, a used oil processor or re-refiner is a recycling center for Class D recyclable materials—used oil. Such recycling center shall be designed and operated in accordance with the requirements of N.J.A.C. 7:26A-6.7.

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

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

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

7:26A-4.8 Additional design and operational standards for recycling centers which receive, store, process or transfer Class B recyclable materials

(a) In addition to the requirements of N.J.A.C. 7:26A-4.1, recycling centers receiving Class B recyclable material shall be designed with a buffer zone around the entire perimeter of the recycling center of at least 25 feet.

(b) In addition to the requirements of N.J.A.C. 7:26A-4.1 and (a) above, the following operational and design criteria apply to recycling centers receiving Class B petroleum contaminated soil:

1. The facility shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of contaminants to air, soil, or surface water, which could threaten human health or the environment.

2. The facility shall be equipped with the following, unless none of the hazards posed by the petroleum contaminated soil handled at the facility could require a particular kind of equipment specified below:

i. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

ii. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

iii. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such

as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

iv. Water at adequate volume and pressure to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems.

3. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of an emergency.

4. Owners and operators of petroleum contaminated soil facilities shall have a contingency plan for the facility. The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants which could threaten human health or the environment. The contingency plan shall contain at a minimum:

i. A description of the actions facility personnel shall take in response to fires, explosions, or any unplanned sudden or non-sudden release of contaminants to air, soil, or surface water at the facility;

ii. If the owner or operator has already prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 C.F.R. Part 112 or 40 C.F.R. Part 1510, or a Discharge Prevention, Containment, and Countermeasures (DPCC) Plan per N.J.A.C. 7:1E, the owner or operator need only amend that plan to incorporate petroleum contaminated soil management provisions that are sufficient to comply with the requirements of this section;

iii. The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services;

iv. The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates;

v. The plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

vi. The plan shall include an evacuation plan for facility personnel where there is the possibility that evacuation could be necessary. This plan shall describe

signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of contaminants or fires).

5. A copy of the contingency plan and all revisions shall be maintained at the facility and submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

6. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

- i. Applicable regulations are revised;
- ii. The plan fails in an emergency;
- iii. The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of contaminants, or changes the response necessary in any emergency;
- iv. The list of emergency coordinators changes; or
- v. The list of emergency equipment changes.

7. All portions or areas of a facility (indoors or outdoors) in which petroleum contaminated soils are routinely stored, handled, processed, or transferred shall be equipped with primary containment structures and/or equipment which are designed and operated so that any leak will be prevented from becoming a discharge.

i. If petroleum contaminated soil is to be stored indoors, the primary containment system shall be a containment building which is designed and operated as follows:

(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (for example, precipitation, wind, run-on), and to assure containment of managed petroleum contaminated soils;

(2) The floor and containment walls of the unit shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the petroleum contaminated soil, and any personnel and heavy equipment that operate within the unit. The containment walls shall also be able to prevent failure due to the pressure gradients, settlement, compression, or uplift, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with the containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure; and

(3) The primary containment system shall be equipped with a liquid collection and removal system to minimize the accumulation of liquid on the primary containment system of the building:

(A) The primary containment system shall be sloped to drain liquids to the associated collection system; and

(B) Leaked wastes or other liquids shall be collected and removed in as timely a manner as is necessary to minimize hydraulic head on the containment system and to prevent overflow of the sump or collection system.

ii. If petroleum contaminated soil is to be stored outdoors, the primary containment system shall be designed and operated as follows:

(1) The soil shall be underlined by a base which is free of cracks or gaps and is sufficiently impervious to contain leaked waste and accumulated precipitation until the collected material is detected and removed;

(2) The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks or precipitation;

(3) Run-on into the containment system shall be prevented;

(4) Leached wastes, accumulated precipitation or other liquids shall be collected and removed in as timely a manner as is necessary to minimize hydraulic head on the containment system and to prevent the overflow of the sump or collection system; and

(5) All petroleum contaminated soils, with the exception of the working pile, shall be covered with either six inches of soil containing less than 1,000 ppm TPH, or a tarpaulin panel. If a tarpaulin panel is used, it shall be manufactured with 16-mil woven fabric or equivalent, as approved by the Department.

8. Upon detection of a release of contaminants to the environment, the facility shall perform the following cleanup steps:

- i. Stop the release;
- ii. Contain the released contaminants;
- iii. Clean up and properly manage the released contaminants and other materials; and
- iv. If necessary, repair or replace any leaking soil containment systems prior to returning them to service.

9. Upon closure of the facility, the owner or operator shall remove or decontaminate petroleum contaminated soils, containment system components, and structures and equipment and manage them as hazardous waste, unless the materials are not hazardous waste under N.J.A.C. 7:26G-5.

10. All equipment and portions of the facility designated for the storage or processing of petroleum contaminated soils shall be visually inspected each operating day for integrity and leaks.

11. The facility shall sample and test all incoming soil and all processed soil in accordance with the sampling protocol specified in the general approval issued pursuant to N.J.A.C. 7:26A-3.5.

12. Records shall be maintained for all visual inspections. These records shall document that inspections were performed, any problems found, and the subsequent correction of such problems. All records shall be kept for a minimum of three years.

13. The facility shall maintain on-site, a written operating record showing analysis records, tracking records, and summary reports of incidents requiring implementation of the contingency plan. This information shall be made available to Department personnel upon request and shall be kept for a minimum of three years.

New Rule. R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).
See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

APPENDIX A

COMPOST QUALITY MONITORING PARAMETERS

Parameter	Unit
Stability—respirometry	mg O ₂ /kg
O ₂ consumed	VS/hr
Soluble salts—electrical	mmhos/cm
Fecal coliform	MPN/g
Salmonella	MPN/4g
pH	
Regulated parameters:	
Arsenic (As)	mg/kg dry wt.
Cadmium (Cd)	mg/kg dry wt.
Chromium (Cr)	mg/kg dry wt.
Copper (Cu)	mg/kg dry wt.
Lead (Pb)	mg/kg dry wt.
Mercury (Hg)	mg/kg dry wt.
Molybdenum (Mo)	mg/kg dry wt.
Nickel (Ni)	mg/kg dry wt.
Selenium (Se)	mg/kg dry wt.
Zinc (Zn)	mg/kg dry wt.
Man-Made Inerts >4 mm,	visual
<13 mm	
Film plastic >4 mm	cm ² /m ³
Sharps	PRS

Notes:

1. VS means volatile solids.
2. MPN means most probable number per gram of total solids in the sewage sludge or compost. MPN is an index of the number of coliform bacteria, reported by the multiple-tube fermentation procedure of the coliform test, that, more probably than any other number, would give the results shown by the laboratory examination; it is not an actual enumeration.
3. Mmhos is a unit of electrical conductivity; it is the reciprocal of ohm.

4. Man-made inert material includes glass shards and metal fragments that pose a human and animal safety hazard with unprotected exposure or through direct ingestion.
5. Film plastic can be a potential hazard to small animals through direct ingestion.

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. REQUIREMENTS FOR PROCESSING DISCARDED APPLIANCES THAT CONTAIN REFRIGERANT FLUID

7:26A-5.1 Requirements for processing discarded appliances, motor vehicles, machines or other goods which contain refrigerant fluid

(a) No shearing, shredding, baling or other actions which could cause release of refrigerant fluid shall take place prior to recovery of such refrigerant fluid.

(b) Recovery of refrigerant fluid shall be performed in a manner such that no venting of refrigerant fluid occurs.

(c) Recovered refrigerant fluid shall be delivered to a facility which has agreed to reprocess the refrigerant fluid to specifications suitable for reentry into commerce. If arrangements cannot be made with a reprocessing facility to accept recovered refrigerants, or if the refrigerants cannot be otherwise made suitable for reuse, the person who recovered the refrigerant shall store or dispose of the material in accordance with applicable laws and regulations.

(d) Recovery and disposition of refrigerant fluid must comply with all applicable laws, regulations and guidelines, including, but not limited to, the following:

1. Safety standards of the Occupational Safety and Health Administration (OSHA), including standards for handling compressed gases at 29 C.F.R. 1910.101 and standards for air contaminants at 29 C.F.R. 1910.1000;
2. Persons transporting recovered chlorofluorocarbons mixed or combined with a hazardous waste shall comply with the Department's hazardous waste rules at N.J.A.C. 7:26G, particularly N.J.A.C. 7:26G-5 and 7:26G-6;
3. Recovered refrigerant fluid shall be stored and transported in containers in accordance with the requirements at 49 C.F.R., particularly Chapter 1 and Subchapter C; and
4. Recovery, storage and transport of refrigerants shall comply with Air Conditioning and Refrigerant Institute (ARI) guideline K for containers for recovered refrigerants, incorporated herein by reference.
5. The provisions of Title VI of the Clean Air Act Amendments of 1990.

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

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

SUBCHAPTER 6. STANDARDS FOR THE MANAGEMENT OF USED OIL

7:26A-6.1 Applicability

(a) This section identifies those materials which are subject to regulation as used oil under this subchapter. This section also identifies some materials that are not subject to regulation as used oil under this subchapter, and indicates whether these materials may be subject to regulation as hazardous waste under 40 C.F.R. Parts 260 through 266, 268, 270, and 124, as incorporated by reference at N.J.A.C. 7:26G.

1. The Department presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in N.J.A.C. 7:26A-6.2, the rules of this subchapter apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 C.F.R. Part 261, subpart C, as incorporated by reference at N.J.A.C. 7:26G-5.

2. The following requirements apply to mixtures of used oil and hazardous waste:

i. The following requirements apply to mixtures of used oil and listed hazardous waste:

(1) Mixtures of used oil and hazardous waste that are listed in 40 C.F.R. Part 261, subpart D, as incorporated by reference at N.J.A.C. 7:26G-5 are subject to regulation as hazardous waste under 40 C.F.R. Parts 260 through 266, 268, 270, and 124, as incorporated by reference at N.J.A.C. 7:26G, rather than as used oil under this subchapter;

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Part 261, subpart D, as incorporated by reference at N.J.A.C. 7:26G-5. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of 40 C.F.R. Part 261 as incorporated by reference at N.J.A.C. 7:26G-5);

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in N.J.A.C. 7:26A-6.4(f)3, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed; and

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

ii. Mixtures of used oil and hazardous waste that solely exhibit one or more of the hazardous waste characteristic identified in 40 C.F.R. Part 261, subpart C, as incorporated by reference at N.J.A.C. 7:26G-5 and mixtures of used oil and hazardous waste that is listed in 40 C.F.R. Part 261, subpart D, as incorporated by reference at N.J.A.C. 7:26G-5 solely because it exhibits one or more of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, subpart C, as incorporated by reference at N.J.A.C. 7:26G-5 are subject to the following:

(1) Except as provided in (a)2ii(3) below, the mixture is subject to regulation as hazardous waste under 40 C.F.R. Part 260 through 266, 268, 270, and 124, as incorporated by reference at N.J.A.C. 7:26G rather than as used oil under this subchapter, if the resultant mixture exhibits any characteristics of hazardous waste identified in 40 C.F.R. Part 261, subpart C, as incorporated by reference at N.J.A.C. 7:26G-5;

(2) Except as specified in (a)2ii(3) below, the mixture is subject to regulation as used oil under this subchapter, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under 40 C.F.R. Part 261, subpart C, as incorporated by reference at N.J.A.C. 7:26G-5; or

(3) The mixture is subject to regulation as used oil under this subchapter, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability and is not listed in N.J.A.C. 7:26G (for example, mineral spirits), provided that the mixture does not exhibit the characteristic of ignitability under 40 C.F.R. 261.21, as incorporated by reference at N.J.A.C. 7:26G-5; and

iii. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 C.F.R. 261.5, as incorporated by reference at N.J.A.C. 7:26G-5 are subject to regulation as used oil under this subchapter.

3. The following requirements apply to materials containing or otherwise contaminated with used oil:

i. Except as provided in (a)3ii below, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(1) Are not used oil and thus not subject to this subchapter; and

(2) If applicable are subject to the hazardous waste regulations of 40 C.F.R. Parts 260 through 266, 268, and 270, as incorporated by reference at N.J.A.C. 7:26G;

ii. Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this subchapter; and

iii. Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this subchapter.

4. The following requirements apply to mixtures of used oil with products:

i. Except as provided in (a)4ii below, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this subchapter; and

ii. Mixtures of used diesel engine crankcase oil and diesel fuel mixed on-site by the generator of the used diesel engine crankcase oil for use in the generator's own vehicles are not subject to this subchapter once the used diesel engine crankcase oil and diesel fuel have been mixed and provided that the blending is less than or equal to a maximum rate of five percent (that is, a 19 to 1 virgin fuel to used diesel engine crankcase oil dilution). Prior to mixing, the used diesel engine crankcase oil is subject to the requirements of N.J.A.C. 7:26A-6.4.

5. The following requirements apply to materials derived from used oil:

i. Materials that are reclaimed from used oil that are beneficially used or reused and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are:

(1) Not used oil and thus are not subject to this subchapter; and

(2) Not solid wastes and are thus not subject to the hazardous waste regulations of 40 C.F.R. Parts 260 through 266, 268, 270 and 124, as incorporated by reference at N.J.A.C. 7:26G;

ii. Materials produced from used oil that are burned for energy recovery (for example, used oil fuels) are subject to regulation as used oil under this subchapter;

iii. Except as provided in (a)5iv below, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(1) Not used oil and thus are not subject to this subchapter; and

(2) Are solid wastes and thus are subject to the hazardous waste regulations of 40 C.F.R. Parts 260 through 266, 268, 270, and 124, as incorporated by reference at N.J.A.C. 7:26G if the materials are listed or identified as hazardous wastes; and

iv. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this subchapter.

6. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this subchapter. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception shall not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

7. Used oil that is placed directly into a crude oil or natural gas pipeline is subject to the management standards of this subchapter only prior to the point of introduction to the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of this subchapter.

8. Used oil produced on vessels from normal ship-board operations is not subject to this subchapter until it is transported ashore.

9. In addition to the requirements of this subchapter, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 C.F.R. 761.20(e).

7:26A-6.2 Used oil specifications

(a) Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is considered to be off-specification used oil and is subject to regulation under this subchapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1 below. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with N.J.A.C. 7:26A-6.9(c), (d) and (e)3, the used oil is considered to be on-specification used oil and is no longer subject to this subchapter, except for (b) below and N.J.A.C. 7:26A-6.3(d) and (e).

TABLE 1

Used Oil not exceeding any specification level is not subject to this subchapter when burned for Energy Recovery (except as noted below).¹

<u>Constituent/property</u>	<u>Allowable level</u>
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100°F minimum
Total halogens	1,000 ppm maximum ²

NOTE: Applicable standards for the burning of used oil containing PCBs are also imposed by 40 C.F.R. 761.20(e).

1. The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see N.J.A.C. 7:26A-6.1).
2. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under N.J.A.C. 7:26A-6.1(a)2i. Such used oil is subject to 40 C.F.R. Part 266, subpart H, as incorporated by reference at N.J.A.C. 7:26G-10 rather than this subchapter when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

(b) On-specification used oil may be directly burned for energy recovery in any device, furnace, or boiler, provided a "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" or other required authorization is obtained for the device in accordance with N.J.A.C. 7:27-8, 20, or 22 prior to burning.

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), inserted "or other required authorization" and amended N.J.A.C. reference.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (a), inserted references to off-specification and on-specification used oil and inserted ", except for (b) below and N.J.A.C. 7:26A-6.3(d) and (e)" following "no longer subject to this subchapter".

7:26A-6.3 Prohibitions

(a) Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under 40 C.F.R. Part 264 or 265, as incorporated by reference at N.J.A.C. 7:26G-8 or 9.

(b) The use of used oil as a dust suppressant is prohibited.

(c) Off-specification used oil fuel shall not be burned for energy recovery except in the devices specified below, and provided a "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" or other authorization is obtained for such device prior to burning in accordance with N.J.A.C. 7:27-8 or 22:

1. Industrial furnaces as defined in N.J.A.C. 7:26-1.4;
2. Boilers, as defined in N.J.A.C. 7:26-1.4, that are identified as follows:

i. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

ii. Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; and

3. Hazardous waste incinerators subject to regulation under 40 C.F.R. Parts 264 or 265, as incorporated by reference at N.J.A.C. 7:26G-8 or 9.

(d) On-specification used oil shall not be directly burned for energy in any residential or Category I institutional device, furnace or boiler defined pursuant to N.J.A.C. 7:27-8.

(e) The burning of on-specification used oil in oil-fired space heaters is prohibited except if the used oil fired space heaters meet the requirements of N.J.A.C. 7:26A-6.4(e).

(f) The burning of off-specification used oil in a space heater is prohibited in accordance with N.J.A.C. 7:27-20.7(a).

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

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

In (c), rewrote the introductory paragraph; in (e), inserted a reference to burning of on-specification used oil; added (f).

7:26A-6.4 Standards for used oil generators, DIY generators and motor oil retailers

(a) Except as provided in (a)1 through 4 below, this section applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

1. Except as provided in (f) below, household do-it-yourselfer used oil generators are not subject to regulation under this subchapter.

(1) Suspended from the ceiling, or affixed to a wall, shelf, or freestanding display, at a height no greater than eight feet above the ground at its highest point and no less than four feet above the ground at its lowest point; and

(2) Adjacent to the motor oil display area of the sales counter.

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)1, substituted "(f)1 or 2" for "(e)1 and 2" following "provisions of"; rewrote (b)3; in (e), inserted "on-specification" preceding "used oil" in the introductory paragraph; added (e)4.

Administrative correction.

See: 34 N.J.R. 923(a).

7:26A-6.5 Standards for used oil collection and aggregation points

(a) Pursuant to N.J.S.A 13:1E-99.36, owners or operators of all reinspection stations permitted by the Division of Motor Vehicles in the Department of Law and Public Safety and all retail service stations that have used oil collection tanks on the premises shall accept do-it-yourselfer used oil for recycling in accordance with the following:

1. Owners and operators of such reinspection and service stations shall post and maintain a durable and legible sign, as required at (c)2iii below.

2. Owners and operators shall not be required to accept used oil that they reasonably suspect to contain water, antifreeze, industrial waste or any other contaminant.

3. Owners and operators shall not be required to accept more than two gallons of DIY used oil from any person at one time.

4. Owners and operators may charge a reasonable fee to defray the costs of managing the DIY used oil.

5. Owners and operators of such reinspection and service stations shall notify the Department of their regulated status as follows:

- i. They shall notify once, upon commencing reinspection or retail auto service, or, if already operating, by March 17, 2003;
- ii. They shall notify upon ceasing such business;
- iii. They shall send such notifications to:

Bureau of Recycling and Planning
 Division of Solid and Hazardous Waste
 PO Box 414
 Trenton, NJ 08625-0414

iv. Notification shall include the name and location of the business.

(b) Do-it-yourselfer used oil collection centers are subject to the following:

1. This subsection applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfer generators.

2. Owners or operators of all DIY used oil collection centers shall comply with the generator standards in N.J.A.C. 7:26A-6.4.

(c) Used oil collection centers are subject to the following:

1. This subsection applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under the provisions of N.J.A.C. 7:26A-6.4(f)1. Used oil collection centers may also accept used oil from household do-it-yourselfers;

2. Owners or operators of all used oil collection centers shall:

i. Comply with the generator standards in N.J.A.C. 7:26A-6.4;

ii. Be registered or recognized by the county or municipality to manage used oil; and

iii. Within 90 days of becoming subject to this subchapter, post and maintain a durable and legible sign, no less than 11 inches high by 15 inches wide, containing the following statement in characters no less than one inch in height:

USED OIL COLLECTION CENTER

RECYCLE YOUR USED MOTOR OIL HERE

LIMIT: (if the used oil collection center sets a limit on the amount of used oil accepted, it shall be displayed as part of the sign)

FEE: (If the used oil collection center charges a fee for this service, the fee shall be displayed as part of the sign.)

(1) The sign shall be posted on an outside wall of the collection center, or other appropriate location, facing a public thoroughfare, to provide the public with an unobstructed view of the sign. This sign shall be displayed at a height no greater than eight feet above ground at its highest point and no less than four feet above the ground at its lowest point.

(d) The standards for used oil aggregation points owned by the generator are as follows:

1. This subsection applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of

the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of this subchapter. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

2. Owners or operators of all used oil aggregation points shall comply with the generator standards in N.J.A.C. 7:26A-6.4.

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)1. amended the N.J.A.C. reference.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

Added a new (a); recodified former (a) through (c) as (b) through (d).

7:26A-6.6 Standards for used oil transporter and transfer facilities

(a) The standards that apply to used oil transporters and transfer facilities are as follows:

1. Except as provided in (a)1i through iv below, this section applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities;

i. This section does not apply to on-site transportation;

ii. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in N.J.A.C. 7:26A-6.4(f)1;

iii. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owner or operated by the same generator as specified in N.J.A.C. 7:26A-6.4(f)2; or

iv. This section does not apply to transportation of used oil from household do-it-yourselfer used oil generators to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this subchapter. Except as provided in 1i through 1iii above, this section does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected;

2. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this section from the time the used oil enters and until the time it exits the United States;

3. Unless trucks previously used to transport hazardous waste are emptied as described in 40 C.F.R. 261.7, as incorporated by reference at N.J.A.C. 7:26G-5 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of N.J.A.C. 7:26A-6.1(a)2, the hazardous waste/used oil mixture is determined not to be hazardous waste;

4. Used oil transporters shall comply with the applicable Federal Motor Carrier Safety and Federal Hazardous Materials Transportation regulations. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this subchapter as indicated in (a)4i through v below:

i. Transporters who generate used oil shall also comply with N.J.A.C. 7:26A-6.4;

ii. Transporters who process or re-refine used oil, except as provided in (b) below, shall also comply with N.J.A.C. 7:26A-6.7;

iii. Transporters who burn off-specification used oil for energy recovery shall also comply with N.J.A.C. 7:26A-6.8;

iv. Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in N.J.A.C. 7:26A-6.2 shall also comply with N.J.A.C. 7:26A-6.8; and

v. Transporters who dispose of used oil shall also comply with N.J.A.C. 7:6A-6.10;

5. A used oil transporter, who transports used oil or collects and transports used oil, and who is not exempted from this section as provided at (a)1 above, shall also comply with the standards concerning solid waste transportation at N.J.A.C. 7:26-3, including approved registration statement and vehicle registration requirements; and

6. A person transporting used oil from mobile field changing operations shall not be subject to the standards concerning solid waste transportation at N.J.A.C. 7:26-3.

(b) The following are restrictions on transporters who are not also processors or re-refiners:

1. Used oil transporters shall consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in (b)2 below, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in N.J.A.C. 7:26A-6.7; and

2. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in N.J.A.C. 7:26A-6.7.

(c) Notification standards for used oil transporters and transfer facilities are as follows:

1. Used oil transporters shall comply with this subsection and obtain an EPA identification number unless they have already notified the USEPA of their hazardous waste management activities in accordance with the requirements of Resource Conservation and Recovery Act (RCRA) section 3010;

2. A used oil transporter who has not received an EPA identification number may obtain one by notifying the USEPA Region II of its used oil activity by submitting either:

i. A completed EPA Form 8700-12 (To obtain ordering information for EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

ii. A letter requesting an EPA identification number. Call the RCRA/ Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following:

- (1) The transporter company name;
- (2) The owner of the transporter company;
- (3) The mailing address for the transporter;
- (4) The name and telephone number for the transporter point of contact;
- (5) The type of transport activity (that is, transport only, transport and transfer facility, transfer facility only);
- (6) The location of all transfer facilities at which used oil is stored; and
- (7) The name and telephone number for a contact at each transfer facility; and

3. Owners or operators of used oil transfer facilities shall notify the Department in writing of the location of the transfer facility prior to conducting any used oil activities at the transfer facility. The notification shall be mailed to the New Jersey Department of Environmental Protection, Waste Compliance and Enforcement and Release Prevention, bureau of Hazardous Waste Compliance and Enforcement, 300 Horizon Center, PO box 407, Trenton, New Jersey 08625-0407.

(d) The standards for used oil transportation are as follows:

1. A used oil transporter shall off load all used oil received at or to:

- i. Another used oil transporter, provided that the transporter has obtained an EPA identification number;
- ii. A used oil processing/re-refining facility who has obtained an EPA identification number;

iii. An off-specification used oil burner facility who has obtained an EPA identification number; or

iv. An on-specification used oil burner facility;

2. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 C.F.R. Parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 C.F.R. 171.8 shall comply with all applicable regulations in 49 C.F.R. Parts 171 through 180.

3. Standards for a used oil discharge during transportation are as follows:

i. In the event of a discharge of used oil during transportation, the transporter shall comply with the applicable requirements of N.J.A.C. 7:1E and take appropriate immediate action to protect human health and the environment (for example, notify local authorities, dike the discharge area);

ii. If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers;

iii. An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 C.F.R. 171.15 to the National Response Center (800-424-8802 or 202-426-2675); and

(2) Report in writing as required by 49 C.F.R. 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590;

iv. A water transporter who has discharged used oil shall give notice as required by 33 C.F.R. 153.203; and

v. A transporter shall clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

(e) The rebuttable presumption for used oil applies as follows to used oil transporters.

1. To ensure that used oil is not a hazardous waste under the rebuttable presumption of N.J.A.C. 7:26A-6.1(a)2i(2), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is equal to and less than or more than 1,000 ppm;

2. The transporter shall make this determination by:

i. Testing the used oil; or

ii. Applying knowledge of the halogen content or the used oil in light of the materials or processes used;

3. If the used oil contains more than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Part 261, subpart D, as incorporated by reference at N.J.A.C. 7:26G-5. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, or later) to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5.

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in N.J.A.C. 7:26A-6.4(e)3, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed; and

ii. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units;

4. If rebuttal is unsuccessful, the used oil transporter shall ensure further transportation or reshipment of this hazardous waste is accomplished by a licensed New Jersey hazardous waste transporter; and

5. Records of analyses conducted or information used to comply with (e)1 through 4 above shall be maintained on-site by the transporter for at least three years.

(f) The standards for used oil storage at transfer facilities are as follows:

1. Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures regulations (40 C.F.R. Part 112) as well as the applicable requirements of N.J.A.C. 7:1E, regulations adopted pursuant to the Federal Clean Air Act, and N.J.A.C. 7:27 in addition to the requirements of this section. Used oil transporters are also subject to the Underground Storage Tank standards (40 C.F.R. Part 280 and N.J.A.C. 7:14B) for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section;

2. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under N.J.A.C. 7:26A-6.7;

3. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under 40 C.F.R. Parts 264 or 265, as incorporated by reference at N.J.A.C. 7:26G-8 or 9;

4. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

i. In good condition (no severe rusting, apparent structural defects or deterioration); and

ii. Not leaking (no visible leaks).

5. Containers used to store used oil at transfer facilities shall be equipped with a secondary containment system meeting the following:

i. The secondary containment system shall consist of, at a minimum:

(1) Dikes, berms or retaining walls; and

(2) The floor shall cover the entire area within the dikes, berms, or retaining walls; or

(3) An equivalent secondary containment system; and

ii. The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water;

6. Existing aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system meeting the following:

i. The secondary containment system shall consist of, at a minimum:

(1) Dikes, berms or retaining walls; and

(2) The floor shall cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(3) An equivalent secondary containment system; and

ii. The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water;

7. New aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

i. The secondary containment system shall consist of, at a minimum:

- (1) Dikes, berms or retaining walls; and
- (2) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or
- (3) An equivalent secondary containment system.

ii. The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

8. The following are the standards for labels for used oil storage:

i. Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil"; and

ii. Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil".

9. Upon detection of a release of used oil to the environment not subject to the requirements of 40 C.F.R. Part 280, subpart F or N.J.A.C. 7:14B, the owner/operator of a transfer facility shall perform the following cleanup steps:

- i. Stop the release;
- ii. Contain the released used oil;
- iii. Clean up and manage properly the released used oil and other materials; and
- iv. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(g) The tracking standards for used oil transporters are as follows:

1. Used oil transporters shall keep a record of each used oil shipment accepted for transport. These records shall be available for inspection at all times while the used oil is being transported. Records for each shipment shall include:

- i. The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
- ii. The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
- iii. The quantity of used oil accepted;

iv. The date of acceptance; and

v. The signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

2. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. These records shall be available for inspection at all times while the used oil is being transported. Records of each delivery shall include:

- i. The name and address of the receiving facility or transporter;
- ii. The EPA identification number of the receiving facility or transporter;
- iii. The quantity of used oil delivered;
- iv. The date of delivery; and
- v. The signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter;

3. Used oil transporters shall maintain the records described in paragraphs (g)2i through iv above for each shipment of used oil exported to any foreign country.

4. The records described in (g)1 through 3 above shall be maintained for at least three years.

(h) Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in N.J.A.C. 7:26A-6.1(a)5.

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

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

In (a)1ii and (a)1iii, amended the N.J.A.C. references; added (a)5 and (a)6.

Amended by R.2002 d.182, effective June 17, 2002 (operative December 17, 2002).

See: 33 N.J.R. 4273(a), 34 N.J.R. 2088(a).

In (c), inserted "and transfer facilities" following "oil transporters" in the introductory paragraph and added 3; in (g), inserted the second sentence in the introductory paragraphs of 1 and 2.

7:26A-6.7 Standards for used oil processors and refiners

(a) Standards for used oil processors and re-refiners and used oil processing and re-refining facilities are as follows:

1. The requirements of this section apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this section do not apply to:

i. Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in N.J.A.C. 7:26A-6.6(b); or

ii. Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in (b) below.

2. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this subchapter as indicated in (a)2i through v below;

i. Processors/re-refiners who generate used oil shall also comply with N.J.A.C. 7:26A-6.4;

ii. Processors/re-refiners who transport used oil shall also comply with N.J.A.C. 7:26A-6.6;

iii. Except as provided in (a)2iii(1) below, processors/re-refiners who burn off-specification used oil for energy recovery shall also comply with N.J.A.C. 7:26A-6.8. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to N.J.A.C. 7:26A-6.8:

(1) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;

iv. Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in N.J.A.C. 7:26A-6.2 shall also comply with N.J.A.C. 7:26A-6.8; and

v. Processors/re-refiners who dispose of used oil also shall comply with N.J.A.C. 7:26A-6.9;

vi. Processors/re-refiners shall comply with the requirements for a Class D recycling facility of this subchapter and all applicable requirements of N.J.A.C. 7:27 and the regulations promulgated pursuant to the Federal Clean Air Act.

(b) The standards for notification for used oil processors and re-refiners are as follows:

1. Used oil processors and re-refiners shall comply with these requirements and obtain an EPA identification number unless they have already notified the USEPA of their hazardous waste activities in accordance with the requirements of RCRA section 3010;

2. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of USEPA Region II of their used oil activity by submitting either:

i. A completed EPA Form 8700-12 (To obtain EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

ii. A letter requesting an EPA identification number. Call the RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following:

(1) The processor or re-refiner company name;

(2) The owner of the processor or re-refiner company;

(3) The mailing address for the processor or re-refiner;

(4) The name and telephone number for the processor or re-refiner point of contact;

(5) The type of used oil activity (that is, process only, process and re-refine); and

(6) The location of the processor or re-refiner facility.

(c) General facility standards for used oil at processing facilities and re-refining facilities are as follows:

1. Owners and operators of used oil processing and re-refining facilities shall comply with the following preparedness and prevention requirements:

i. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment;

ii. All facilities shall be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in (c)lii(1) through (4) below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems;

iii. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) The estimated quantity and disposition of recovered material that resulted from the incident.

(d) The standards for rebuttable presumption for used oil processors and re-refiners are as follows:

1. To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of N.J.A.C. 7:26A-6.1(a)2i(2), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm;

2. The owner or operator shall make this determination by:

- i. Testing the used oil; or
- ii. Applying knowledge of the halogen content of the used oil in light of the materials or processes used;

3. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Parts 261.31, 261.32, and 261.33 as incorporated by reference at N.J.A.C. 7:26G-5. The owner or operator may rebut the presumption, except as set forth in (d)3i and ii below, by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5.

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed; or

ii. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units; and

4. If rebuttal is unsuccessful, hazardous waste shall be shipped off-site by a licensed New Jersey hazardous waste transporter as required by 40 C.F.R. 262.34, as incorporated by reference at N.J.A.C. 7:26G-6.

(e) The used oil management standards for used oil processors and re-refiners are as follows:

1. Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 C.F.R. Part 112) and N.J.A.C. 7:1E in addition to the requirements of this section. Used oil processors/re-refiners are also subject to the Underground Storage Tank (40 C.F.R. Part 280 and N.J.A.C. 7:14B) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section as follows:

2. Used oil processors/re-refiners shall not store used oil in units other than tanks, containers, or units subject to regulation under 40 C.F.R. Parts 264 or 265, as incorporated by reference at N.J.A.C. 7:26G-8 or 9;

3. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be:

- i. In good condition (no severe rusting, apparent structural defects or deterioration); and
- ii. Not leaking (no visible leaks);

4. Containers used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system meeting the following:

i. The secondary containment system shall consist of, at a minimum:

- (1) Dikes, berms or retaining walls; and
- (2) The floor shall cover the entire area within the dike, berm, or retaining wall; or
- (3) An equivalent secondary containment system; and

ii. The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water;

5. Existing aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system meeting the following:

i. The secondary containment system shall consist of, at a minimum:

- (1) Dikes, berms or retaining walls; and
- (2) The floor shall cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
- (3) An equivalent secondary containment system; and

ii. The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment

system from migrating out of the system to the soil, groundwater, or surface water;

6. New aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system meeting the following:

i. The secondary containment system shall consist of, at a minimum:

- (1) Dikes, berms or retaining walls; and
- (2) The floor shall cover the entire area within the dike, berm, or retaining wall; or
- (3) An equivalent secondary containment system; and

ii. The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water;

7. The following are the label standards for used oil transfer facilities:

i. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil"; and

ii. Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil";

8. Upon detection of a release of used oil to the environment not subject to the requirements of 40 C.F.R. Part 280, subpart F or N.J.A.C. 7:14B, an owner/operator shall perform the following cleanup steps:

- i. Stop the release;
- ii. Contain the released used oil;
- iii. Clean up and manage properly the released used oil and other materials; and
- iv. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service; and

9. The closure standards for used oil processors and re-refiners are as follows:

i. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(1) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under 40 C.F.R. Parts 260 through 266, 268, 270 and 124, as incorporated by reference at N.J.A.C. 7:26G; and

(2) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in 8i(1) above, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills found at 40 C.F.R. 265.310, as incorporated by reference at N.J.A.C. 7:26G-9.

ii. Owners and operators who store used oil in containers shall comply with the following requirements:

(1) At closure, containers holding used oils or residues of used oil shall be removed from the site; and

(2) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5.

(f) The following are the analysis plan standards for used oil processors and re-refiners.

1. Owners or operators of used oil processing and re-refining facilities shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of N.J.A.C. 7:26A-6.7(d) and, if applicable, N.J.A.C. 7:26A-6.8(d). The owner or operator shall keep the plan at the facility as follows:

2. At a minimum, where the owner or operators is making a rebuttable presumption for used oil in N.J.A.C. 7:26A-6.7(d), the plan shall specify the following:

i. Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination,

ii. If sample analyses are used to make this determination, the plan shall contain the following:

(1) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using one of the sampling methods in Appendix I of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5 as follows:

(A) One of the sampling methods in Appendix I of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5; or

(B) A method shown to be equivalent under 40 C.F.R. 260.2 and 260.21, as incorporated by reference at N.J.A.C. 7:26G-4;

(2) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(3) The methods used to analyze used oil for the parameters specified in N.J.A.C. 7:26A-6.7(d); and

iii. The type of information that will be used to determine the halogen content of the used oil; and

3. At a minimum, the plan shall specify the following if N.J.A.C. 7:26A-6.8(d) is applicable:

i. Whether sample analyses or other information will be used to make this determination;

ii. If sample analyses are used to make this determination, the plan shall contain the following:

(1) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of 40 C.F.R. Part 261, as incorporated by reference at N.J.A.C. 7:26G-5; or

(B) A method shown to be equivalent under N.J.A.C. 7:26G-4;

(2) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(3) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(4) The methods used to analyze used oil for the parameters specified in N.J.A.C. 7:26A-6.8(d); and

iii. The type of information that will be used to make the on-specification used oil fuel determination.

(g) The used oil tracking standards for used oil processors and re-refiners are as follows:

1. Used oil processors/re-refiners shall keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

i. The name and address of the transporter who delivered the used oil to the processor/re-refiner;

ii. The name and address of the generator or processor/re-refining from whom the used oil was sent for processing/re-refining;

iii. The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

iv. The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

v. The quantity of used oil accepted; and

vi. The date of acceptance;

2. Used oil processor/re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

i. The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

ii. The name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;

iii. The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

iv. The EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;

v. The quantity of used oil shipped; and

vi. The date of shipment; and

3. The records described in (g)1 and 2 above shall be maintained on-site for at least three years.

(h) The following are the operating record and reporting standards for used oil processors and re-refiners:

1. The owner or operator shall keep a written operating record at the facility. The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

i. Records and results of used oil analyses performed as described in the analysis plan required under N.J.A.C. 7:26A-6.7(f); and

ii. Summary reports and details of all incidents that require implementation of the contingency plan as specified in N.J.A.C. 7:26A-6.7(c)2;

2. A used oil processor/re-refiner shall report to the Department, in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the following information concerning used oil activities during the previous calendar year:

i. The EPA identification number, name, and address of the processor/re-refiner;

ii. The calendar year covered by the report; and

iii. The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

(i) Used oil processors/re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number.

(j) Owners and operators who generate residues from the storage, processing, or re-finishing of used oil shall manage the residues as specified in N.J.A.C. 7:26A-6.1(a)5.

Administrative change.

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

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

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

In (h) i. amended the N.J.A.C. reference.

7:26A-6.8 Standards for used oil burners who burn off-specification used oil for energy recovery

(a) The following are the applicability standards for used oil burners:

1. The requirements of this section apply to used oil burners except as specified in (a) i and ii below. A used oil burner is a facility where used oil not meeting the specification requirements in N.J.A.C. 7:26A-6.2 is burned for energy recovery in devices identified in (b) 1 below. Facilities burning used oil for energy recovery under the following conditions are not subject to this section:

i. The used oil is burned by the generator in an on-site space heater under the provisions of N.J.A.C. 7:26A-6.4(e); or

ii. The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

2. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this subchapter as follows:

i. Burners who generate used oil shall also comply with N.J.A.C. 7:26A-6.4;

ii. Burners who transport used oil shall also comply with N.J.A.C. 7:26A-6.6;

iii. Except as provided in N.J.A.C. 7:26A-6.8(b)2, burners who process or re-refine used oil shall also comply with N.J.A.C. 7:26A-6.7;

iv. Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in N.J.A.C. 7:26A-6.2 shall also comply with N.J.A.C. 7:26A-6.9; and

v. Burners who dispose of used oil shall comply with N.J.A.C. 7:26A-6.10; and

3. This section does not apply to persons burning used oil that meets the used oil fuel specification of N.J.A.C. 7:26A-6.2, provided that the burner complies with the requirements of N.J.A.C. 7:26A-6.9.

(b) Restrictions on burning used oil are as follows:

1. Off-specification used oil fuel shall not be burned for energy recovery except in the devices specified below and provided a "Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment" has been issued for the device in accordance with the provisions of N.J.A.C. 7:27-8 only in the following devices:

i. Industrial furnaces as defined in N.J.A.C. 7:26-1.4;

ii. Boilers, as defined in N.J.A.C. 7:26-1.4, that are identified as follows:

(1) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(2) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

iii. Hazardous waste incinerators subject to regulation under 40 C.F.R. Parts 264 or 265, as incorporated by reference at N.J.A.C. 7:26G-8 or 9;

2. With the following exception, used oil burners shall not process used oil unless they also comply with the requirements of N.J.A.C. 7:26A-6.7:

i. Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but shall not aggregate for purposes of producing on-specification used oil.

(c) Notification standards for used burners are as follows:

1. Used oil burners which have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number;

2. A used oil burner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of EPA Region II of their used oil activity by submitting either:

2. A used oil generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under N.J.A.C. 7:26A-6.2, shall keep copies of analyses of the used oil (or other information used to make the determination) for three years.

(d) The notification standards for used oil fuel marketers are as follows:

1. A used oil fuel marketer subject to the requirements of this section shall comply with these requirements and obtain an EPA identification number unless they have already notified the USEPA of its hazardous waste activities in accordance with the requirements of RCRA section 3010;

2. A used oil marketer who has not received an EPA identification number may obtain one by notifying the Regional Administrator of USEPA Region II of their used oil activity by submitting either:

i. A completed EPA Form 8700-12 (To obtain EPA Form 8700-12 call the RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

ii. A letter requesting an EPA identification number. Call the RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

- (1) The marketer company name;
- (2) The owner of the marketer;
- (3) The mailing address for the marketer;
- (4) The name and telephone number for the marketer point of contact; and
- (5) The type of used oil activity (that is, generator directing shipments of off-specification used oil to a burner).

(e) The tracking standards for used oil fuel marketers are as follows:

1. Any used oil fuel marketer who directs a shipment of off-specification used oil, shall prepare and send the receiving facility an invoice containing the following information:

- i. An invoice number;
- ii. The used oil fuel marketer's own EPA identification number and the EPA identification number of the receiving facility;
- iii. The names and addresses of the shipping and receiving facilities;
- iv. The quantity of off-specification used oil to be delivered;
- v. The date(s) of shipment or delivery; and

vi. The following statement: "This used oil is subject to NJDEP regulation under N.J.A.C. 7:26A-6";

2. Any used oil fuel marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to the used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- i. The name and address of the transporter who delivers the used oil to the burner;
- ii. The name and address of the burner who will receive the used oil;
- iii. The EPA identification number of the transporter who delivers the used oil to the burner;
- iv. The EPA identification number of the burner;
- v. The quantity of used oil shipped; and
- vi. The date of shipment;

3. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under N.J.A.C. 7:26A-6.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

- i. The name and address of the facility receiving the shipment;
- ii. The quantity of used oil fuel delivered;
- iii. The date of shipment or delivery; and
- iv. A cross-reference to the record of used oil analysis used to make the determination that the oil meets the specification as required under N.J.A.C. 7:26A-6.9(c)1.

4. The records described in (e)2 and 3 above shall be maintained on site for at least three years.

(f) The following are the notice standards for used oil marketers:

1. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, her or she shall obtain a one-time written and signed notice from the used oil burner certifying that:

- i. The burner has notified the Department stating the location and general description of used oil management activities; and
- ii. The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in N.J.A.C. 7:26A-6.8(b)1; and

2. The certification described (f)1 above shall be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

7:26A-6.10 Prohibition on the use of used oil as a dust suppressant and disposal of used oil

(a) The requirements of this section apply to all used oils that cannot be recycled and are therefore being disposed.

(b) The following are the disposal standards for used oil:

1. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this subchapter shall be managed in accordance with the hazardous waste management requirements of 40 C.F.R. Parts 260 through 266, 268, 270 and 124, as incorporated by reference at N.J.A.C. 7:26G.

2. Used oils that are not hazardous wastes and cannot be recycled under this subchapter shall be disposed in accordance with the solid waste management requirements of N.J.A.C. 7:26.

(c) The use of used oil as a dust suppressant is prohibited.

SUBCHAPTER 7. STANDARDS FOR THE MANAGEMENT OF CLASS D UNIVERSAL WASTE

7:26A-7.1 Incorporation by reference: standards for the management of universal waste

(a) This subchapter prospectively incorporates by reference up to July 1, 1998 and prospectively incorporates by reference 40 C.F.R. Part 273, Federal Regulations on Universal 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 273 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference, and is also excluded from the process of prospective incorporation by reference:

1. 40 C.F.R. Part 273.6, the definition of "universal waste." The definition at N.J.A.C. 7:26A-1.3 shall apply.

(c) The following provisions of 40 C.F.R. Part 273 are incorporated by reference with the specified changes:

1. 40 C.F.R. 273.1(a), add as (5), (6) and (7):

"(5) Mercury-containing devices

(6) Oil-based finishes

(7) Consumer electronics";

2. 40 C.F.R. 273.1(b), add paragraph (c), State Definitions

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

i. "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 designee, except where specifically noted, then it means the Administrator of the United States Environmental Protection Agency or his or her designee.

ii. "EPA," "EPA Regional Office" and "Regional EPA Office" 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.

iii. "Department of Transportation" or "DOT" means the "U.S. Department of Transportation."

3. 40 C.F.R. 273.1(b), after "regulation under 40 C.F.R. Parts 260 through 272" add "as incorporated by reference at N.J.A.C. 7:26G";

4. 40 C.F.R. 273.6 Definitions;

i. "Large Quantity Handler of Universal Waste," replace parenthetical text "(batteries, pesticides, or thermostats, calculated collectively)" with the phrase "calculated collectively";

ii. "Small Quantity Handler of Universal Waste," replace parenthetical text "(batteries, pesticides, or thermostats, calculated collectively)" with the phrase "calculated collectively";

5. 40 C.F.R. 273.18(g), replace "appropriate regional EPA office" with "the Department of Environmental Protection's Division of Solid and Hazardous Waste" and replace "EPA regional office" with "Division of Solid and Hazardous Waste";

6. 40 C.F.R. 273.32(b)(4) and (5), add "Universal waste shall include all State listed universal wastes, not only those given as examples."

7. 40 C.F.R. 273.60(b), add paragraph (c): "The owner or operator of a destination facility located in the State of New Jersey that recycles universal waste shall obtain, from the Department, prior written approval to operate a Class D recycling center pursuant to N.J.A.C. 7:26A-3 et seq."

(d) The term "EPA" as used in "EPA Identification Number," "EPA Acknowledgment of Consent" and the "notification to EPA as required by 40 C.F.R. Part 165," as used in the Code of Federal Regulations which are incorporated herein by reference, means the United States Environmental Protection Agency.

(e) The following Class D recyclable materials, which are hazardous waste, may either be handled as hazardous waste in accordance with the provisions of N.J.A.C. 7:26G, or as universal waste in accordance with the provisions contained in this chapter:

1. Thermostats;
2. Lamps (light bulbs);
3. Oil-based finishes;
4. Batteries;
5. Mercury-containing devices; and
6. Consumer electronics.

(f) Universal wastes are also Class D recyclable materials when destined for recycling in New Jersey.

7:26A-7.2 State-listed universal wastes; applicability

(a) The Department, pursuant to 40 C.F.R. 273.80 and associated USEPA guidance, herein lists universal wastes additional to the Federal universal waste program at 40 C.F.R. Part 273. The following sections of this chapter set forth standards for the handling of the following additional wastes that may be managed as universal waste in New Jersey, and apply to all persons handling the additional wastes in 1 through 3 below.

1. Mercury-containing devices, as defined in N.J.A.C. 7:26A-1.3, except the following:
 - i. Mercury-containing devices that are not yet discarded, or designated for disposal; and
 - ii. Mercury-containing devices that are not hazardous wastes. A mercury-containing device is a hazardous waste if it exhibits one or more of the characteristics identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5.
2. Oil-based finishes, as defined in N.J.A.C. 7:26A-1.3, except the following:
 - i. Oil-based finishes that are not yet discarded, or designated for disposal; and
 - ii. Oil-based finishes that are not hazardous wastes. An oil-based finish is a hazardous waste if it exhibits one or more of the characteristics identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5.
3. Consumer electronics, as defined in N.J.A.C. 7:26A-1.3, except the following:

- i. Consumer electronics that are not yet discarded, or designated for disposal; and
- ii. Consumer electronics that are not hazardous wastes. A consumer electronic is a hazardous waste if it exhibits one or more of the characteristics identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5.

7:26A-7.3 Mixtures of universal waste with waste of other classification

- (a) Mixtures of universal waste and hazardous waste are subject to regulation as hazardous waste under 40 C.F.R. Parts 260 through 266, 268, 270, and 124, as incorporated by reference at N.J.A.C. 7:26G.
- (b) Mixtures of universal waste and household hazardous waste or conditionally exempt small quantity generator hazardous waste regulated under 40 C.F.R. 261.5, as incorporated by reference at N.J.A.C. 7:26G-5, are subject to regulation as universal waste under this subchapter.

7:26A-7.4 Management standards for small quantity handlers

- (a) A small quantity handler of the State-listed universal wastes in N.J.A.C. 7:26A-7.2 shall comply with all requirements of 40 C.F.R. Part 273 Subpart b pertaining generally to all universal wastes.
- (b) A small quantity handler of universal waste shall manage consumer electronics in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
 1. A small quantity handler of universal waste shall contain any consumer electronic that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the consumer electronic, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
 2. A small quantity handler of universal waste may disassemble ("demanufacture") consumer electronics into its marketable components; this shall exclude any processing or treatment (examples: including, but not limited to, crushing, shredding or thermally altering) of these components; and
 3. A small quantity handler of universal waste who generates solid waste as a result of the activities listed at N.J.A.C. 7:26A-7.4(b), shall determine whether the solid waste exhibits a characteristic of hazardous waste identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5.

(c) A small quantity handler of universal waste shall manage universal waste mercury-containing devices in a way

that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A small quantity handler of universal waste shall contain any universal waste mercury-containing device that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the mercury-containing device, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
2. A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices provided the handler:
 - i. Removes the ampules in a manner designed to prevent breakage of the ampules;
 - ii. Removes ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);
 - iii. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 C.F.R. 262.34 as incorporated by reference at N.J.A.C. 7:26G-6;
 - iv. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 C.F.R. 262.34 as incorporated by reference at N.J.A.C. 7:26G-6;
 - v. Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable Occupational Safety and Health Administration (OSHA) permissible exposure levels for mercury;
 - vi. Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
 - vii. Stores removed ampules in closed, non-leaking containers that are in good condition; and
 - viii. Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and
3. A small quantity handler of universal waste who generates solid waste as a result of the activities listed at N.J.A.C. 7:26A-7.4(c), shall classify that waste and handle it appropriately. The following are the classification standards of residues and other solid waste from the mercury-containing devices:

i. A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following exhibit a characteristic of hazardous waste identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5:

- (1) Mercury or clean-up residues resulting from spills or leaks; and
- (2) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining mercury switches units);

ii. If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable hazardous waste management requirements of N.J.A.C. 7:26G. The handler is considered the generator of the mercury, residues, or other waste and shall manage it subject to N.J.A.C. 7:26G-6; and

iii. If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with N.J.A.C. 7:26.

(d) A small quantity handler of universal waste shall manage oil-based finishes, in its original or otherwise appropriate and labeled packaging, in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A small quantity handler of universal waste shall contain oil-based finishes that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the oil-based finishes, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
2. A small quantity handler of universal waste shall not in any way process any oil-based finishes (examples: including, but not limited to, opening, blending, filtering).

7:26A-7.5 Management standards for large quantity handlers

(a) A large quantity handler of the State-listed universal wastes in N.J.A.C. 7:26A-7.2 shall comply with all requirements of 40 C.F.R. 273 Subpart C pertaining generally to all universal wastes.

(b) A large quantity handler of universal waste shall manage consumer electronics in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste shall contain any consumer electronic that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the consumer electronics, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

2. A large quantity handler of universal waste may not conduct disassembling ("demanufacturing") or processing (examples: including, but not limited to, crushing, shedding or thermally altering) activities on consumer electronics. A large quantity handler who wants to demanufacture or process consumer electronics shall apply for a Class D Approval in accordance with N.J.A.C. 7:26A-3.

(c) A large quantity handler of universal waste shall manage universal waste mercury-containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste shall contain any universal waste mercury-containing device that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the mercury-containing devices, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

2. A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices provided the handler:

i. Removes the ampules in a manner designed to prevent breakage of the ampules;

ii. Removes ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

iii. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 C.F.R. 262.34 as incorporated by reference at N.J.A.C. 7:26G-6;

iv. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 C.F.R. 262.34 as incorporated by reference at N.J.A.C. 7:26G-6;

v. Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable Occupational Safety and Health

Administration (OSHA) permissible exposure levels for mercury;

vi. Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

vii. Stores removed ampules in closed, non-leaking containers that are in good condition; and

viii. Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

3. The following are the classification standards of residues and other solid waste from the mercury-containing devices:

i. A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following exhibit a characteristic of hazardous waste identified in 40 C.F.R. Part 261, subpart C as incorporated by reference at N.J.A.C. 7:26G-5:

(1) Mercury or clean-up residues resulting from spills or leaks; and

(2) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining mercury switches units);

ii. If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable hazardous waste management requirements of N.J.A.C. 7:26G. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it subject to N.J.A.C. 7:26G-6; and

iii. If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with N.J.A.C. 7:26.

(d) A large quantity handler of universal waste shall manage universal waste finishes in its original packaging, in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste shall contain any universal waste finishes that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the universal waste finishes, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

2. A large quantity handler of universal waste may not conduct disassembling ("demanufacturing") or processing

(examples: including, but not limited to, filtering, blending, or tinting) activities on universal waste finishes. A large quantity handler who wants to demanufacture or process universal waste paint shall apply for a Class D Approval in accordance with N.J.A.C. 7:26A-3.

(e) A large quantity handler of universal waste shall submit a report to the Department in the form of a letter, by March 1st, of the types and amounts of universal waste which were received, stored and shipped in the preceding calendar year. This report shall be submitted to the following address:

Universal Waste Project Manager
New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
401 East State Street
PO box 414
Trenton, NJ 08625-0414

7:26A-7.6 Standards for universal waste transporters

Transporters of State-listed universal wastes shall comply with the Federal requirements for Federally listed universal wastes at 40 C.F.R. Part 273, Subpart D, Standards for Universal Waste Transporters, at 40 C.F.R. 273.50 through 273.56 and 40 C.F.R. Subpart F, Import Requirements, at 40 C.F.R. 273.70.

7:26A-7.7 Labeling of containers of additional universal wastes

(a) Universal waste consumer electronics devices shall be clearly labeled or marked clearly, individually or by closed container with the following phrase: "Universal Waste—Consumer Electronics."

(b) Universal waste mercury-containing devices shall be clearly labeled or marked individually or by closed container with the following phrase: "Universal Waste—Mercury-containing Devices."

(c) A container (or multiple container package unit), tank, transport vehicle or other vessel in which oil-based waste finishes contained, shall be labeled or marked clearly with the following phrase: "Universal Waste—Oil-based Finish."

7:26A-7.8 Standards for the processing of universal waste at recycling centers for Class D recyclable materials

Processors of universal wastes, both those listed Federally at 40 C.F.R. 273.9 and those listed by the State of New Jersey at N.J.A.C. 7:26A-7.2, shall comply with the design and operating standards at N.J.A.C. 7:26A-4.6.

7:26A-7.9 Petitions to designate other wastes as universal wastes

(a) Any person may petition USEPA for inclusion of new materials in the Federal universal waste program set forth at 40 C.F.R. Part 273. Procedures may be found at 40 C.F.R. Part 273, Subpart G, specifically, 40 C.F.R. 273.80(a) et seq.

(b) Pursuant to N.J.S.A. 52:14b-4(f) and N.J.A.C. 7:1D-1.1, any person may petition the Department of Environmental Protection for the inclusion of new materials in the State's universal waste program. Petitioners shall send all petitions to:

Office of Legal Affairs
Department of Environmental Protection
Attn: Rulemaking Petitions
PO 402
401 East State Street
Trenton, NJ 08625-0402

SUBCHAPTER 8. REQUIREMENTS FOR TRANSPORTERS OF SOURCE SEPARATED MATERIALS

Authority

N.J.S.A. 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., 58:10A-1 et seq.

Source and Effective Date

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

7:26A-8.1 Reporting requirements

All transporters of source separated recyclable materials transported to manufacturers and recycling centers located in states other than New Jersey shall provide the county(ies) of origin (if requested) and all municipalities of origin, by February 1 of each year, a recycling tonnage report covering all such source separated materials transported the previous calendar year. The report shall detail the municipality of origin, the name and location of the manufacturer or recycling center and the amount of each source separated recyclable material, expressed in gallons, tons or cubic yards, brought to each manufacturer or recycling center from each specific municipality of origin. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

7:26A-8.2 Exemptions

(a) A transporter of source separated Class B, Class C, or noncombustible Class D recyclable materials is not subject to the regulations at N.J.A.C. 7:26A-3 provided the recyclable material is being shipped to any of the following locations:

1. An in-State recycling center holding a general or limited approval pursuant to this chapter;
2. A site operating pursuant to an exemption from the requirement to obtain a general or limited approval in accordance with N.J.A.C. 7:26A-1.4; or

3. A recycling depot. The transport of Class B materials to a recycling depot shall be limited to the transport of non-container plastic materials.

(b) (Reserved)