# NEW JERSEY REGISTER

*THE JOURNAL OF STATE AGENCY RULEMAKING*





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**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 16, 1988**
**See the Register Index for Subsequent Rulemaking Activity.**

**NEXT UPDATE: SUPPLEMENT JUNE 20, 1988**

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**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **August 31, 1988.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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**October 17 issue:**
**Proposals** ..... **September 19**
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**NEW JERSEY REGISTER**

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# RULE PROPOSALS

## AGRICULTURE

## (a)

### STATE AGRICULTURE DEVELOPMENT COMMITTEE

### Acquisition of Development Easements Residual Dwelling Site Opportunities

### Reproposed New Rule: N.J.A.C. 2:76-6.16 Reproposed Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.9 and 6.15

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Authority: N.J.S.A. 4:1C-5f.
Proposal Number: PRN 1988-371.

Submit comments by August 31, 1988 to:
Donald D. Applegate, Executive Director
The State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The acquisition of development easements as provided for in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. (P.L. 1983, c.32), is an effort to encourage the preservation of agricultural lands to protect the State's diminishing farmland resources. Landowners that satisfy the eligibility requirements, as provided in N.J.A.C. 2:76-6, may voluntarily apply to a county agriculture development board (board) to sell a development easement. The value of the development easement is determined through an appraisal and review process outlined in N.J.A.C. 2:76-6.8. Ultimately, the fair market value of the development easement shall be certified by the State Agriculture Development Committee (Committee). The actual purchase of the development easement occurs by a cost-share between the State and the county and/or local government.

Once a development easement has been purchased, a Deed of Easement is recorded which permanently prohibits any nonagricultural development on the premises The restriction runs with the land and is binding upon every successor to the land. Any areas which the landowner wishes to be exempt from the deed restrictions must be identified in detail prior to the appraisal process and excluded from the application.

These proposed amendments and new rule supersede and replace the proposed new rule and amendments concerning residual dwelling site opportunities published in the February 16, 1988 New Jersey Register at 20 N.J.R. 324(a). This new rule and amendments is directly the result of the numerous comments received in response to the February proposal.

Under the proposed new rule and amendments, the board and Committee may allow residual dwelling site opportunities on the premises at a net density of up to one unit per 50 acres, including existing residential buildings on the premises. A residual dwelling site opportunity gives landowners the ability to construct a single-family residential unit and other appurtenant structures on a contiguous two-acre site within the premises and exempt from the provisions of the deed restrictions. Residual dwelling sites and residential units shall be located in accordance with Committee standards designed to minimize any adverse impact on the agricultural operation.

The board will determine the number of residual dwelling site opportunities to be allocated to an application at the time of its preliminary review. The board may allocate residual dwelling site opportunities at a density less than one unit per 50 acres in consideration of other factors identified by the Committee as having potential for negative impact on the long-term viability of the agricultural operation.

Under the proposed new rule and amendments, the Committee and the board will continue to purchase development easements only on those portions of the premises which are subject to the deed restrictions. Appraisals shall reflect consideration of a landowner's acceptance or rejection of any residual dwelling site opportunities allocated to an application, and the purchase price of the easement shall be adjusted accordingly. In summary, the Committee and the board will not purchase a development easement on any land allocated to the residual dwelling site opportunities.

Upon his or her intent to exercise a residual dwelling site opportunity, the landowner shall notify the board. The board may review the proposed location of the dwelling site and residential unit and submit to the landowner and municipal planning review body pertinent comment on the impact of the proposed location. The municipal planning review body may approve or disapprove the location in accordance with standards designed by the Committee to minimize any adverse impact on the agricultural operation.

Two other sets of proposed new rules and amendments to this subchapter have also recently been published. The first, appearing in the June 20, 1988 New Jersey Register at 20 N.J.R. 1319(a), would bring procedural rules into conformity with the amended Agriculture Retention and Development Act to raise the State's cost-share cap for easement purchase from 50 to 80 percent. The other, published in the July 5, 1988 New Jersey Register at 20 N.J.R. 1503(a), would establish prioritization criteria for the evaluation and ranking of landowner applications to sell development easements on farmland.

**Social Impact**

The proposed new rule and amendments will have a positive social impact. Under the current procedural rule, landowners interested in selling a development easement and wishing to construct a residential unit must exempt a tract before applying to sell the development easement. This, however, has proved to be a time-consuming and costly process because of the prohibitive engineering and subdivision costs associated with designating such a site and has acted as a disincentive to enter the easement purchase program. Furthermore, exempting out tracts from the application does not meet the needs of landowners who wish to retain the ability to construct a residential unit for children, other family members or for future non-related owners of the farmland. Such decisions to locate a site are best left until the actual need to construct the residential unit arises. Because of this uncertainty, many current owners of farmland have not applied to sell a development easement for fear of being "locked in" to the physical layout of their current operation.

While the Committee determined in previous rule proposals and amendments that it should not encourage further residential development on the premises for the purpose of providing a residence for someone who may or may not be operating the farm and that residential conversion of farmland should be minimized whenever possible, it also recognizes that the provision of additional residential units at an established low density not to exceed one unit per 50 acres will add substantial incentive for increased participation in the easement purchase program while effectively preserving the majority of the farmland in the application.

Current owners of farmland will not be forced into trying to predict the residential needs of their families at some time in the future. Nor will the physical layout of their current farming operation limit the future structural organization or economic viability of subsequent agricultural uses and operations on the same deed restricted land. For these reasons, residual dwelling site opportunities will provide greater long range planning flexibility for current farmland owners, with a cumulative effect of more farmland entered into the easement purchase program.

Under the proposed new rule and amendments, the Committee and board will continue to retain the right to give final approval to any subdivision of the premises to ensure that the resulting farm operation(s) is(are) a viable agricultural unit(s).

**Economic Impact**

The proposed new rule and amendments will have a positive economic impact on the agricultural industry and on participation in the easement purchase program. Landowners will retain the right to develop a small portion of their property at some future time, but be able to delay decisions regarding the exercising of residual dwelling site opportunities allocated and the location of residential structures which would not be an integral part of their existing operation until a time when such decisions may be appropriate. Landowners will not be compensated for the development easement on that portion of their property. Through this incentive, the State will see more and more farmland permanently preserved from nonagricultural development through the easement purchase program.

**Regulatory Flexibility Statement**

The majority of the land potentially subject to development easements is owned by small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendments benefit such landowners by providing residential dwelling site opportunities on land subject to development easements which would otherwise prohibit such opportunities. Since the allocation of residual dwelling site opportunities is determined by an appropriate board from the application submitted by a landowner seeking to sell a development easement, no expenditures beyond those involved in the easement application are contemplated for the landowner in obtaining residual dwelling site opportunities. While acceptance by the owner of such opportunities may reduce the purchase price of the development easement, the acceptance or rejection of the opportunities is completely at the landowner's discretion. The actual economic impact upon the landowner shall be based more upon when or if the opportunities are exercised than upon their existence alone. Upon exercise of the residual dwelling site opportunities, the landowner shall incur subdivision, engineering and construction costs as appropriate for the dwelling.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

2:76-6.2 Definitions

. . .

**"Municipal planning review body" means the municipal planning board or zoning board of adjustment.**

. . .

**"Residual dwelling site opportunity" means the right to construct a residential unit and other appurtenant structures within a residual dwelling site in accordance with N.J.A.C. 2:76-6.16.**

**"Residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.**

. . .

**"Residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses.**

. . .

2:76-6.5 Preliminary board review

(a)-(b) (No change.)

**(c) The board shall review the application pursuant to N.J.A.C. 2:76-6.16(a) and determine the number of residual dwelling site opportunities to be allocated to the premises.**

**(d) The board shall inform the landowner of the number of residual dwelling site opportunities allocated to the premises.**

[(c)](e) The board shall, concerning an application submitted in accordance with N.J.A.C. 2:76-6.4(b)1 and which has received preliminary board approval, enter into an option agreement with the landowner. **The option agreement shall:**

**1. Contain the deed restrictions identified in N.J.A.C. 2:76-6.15.**

**2. Identify the number of dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.16(a); and**

**3. Contain the deed restriction identified in N.J.A.C. 2:76-6.16(h).**

[(d)](f) (No change in text.)

2:76-6.6 Preliminary committee review

(a) (No change.)

**(b) The Committee shall review the application to ensure that residual dwelling site opportunities have been allocated in accordance with the provisions of N.J.A.C. 2:76-6.16(a).**

**(c) The Committee may remand the application to the board if the number of allocated residual dwelling site opportunities appears excessive in view of factors listed in N.J.A.C. 2:76-6.16(a)1i through iii.**

[(b)](d) (No change in text.)

2:76-6.9 Final board review

(a) The board shall inform the landowner of the fair market value certification and shall proceed to negotiate a purchase price of the development easement with the landowner. In no case shall the committee make a grant to the board for more than 50 percent of the fair market certification.

**1. The purchase price of the development easement shall be adjusted according to the landowner's acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.16.**

2:76-6.15 Deed restrictions

(a)-(c) (No change.)

**(d) The deed restriction contained in N.J.A.C. 2:76-6.16(h) shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities.**

**2:76-6.16 Residual dwelling site opportunity**

**(a) Residual dwelling site opportunities may be allocated to the premises by the board pursuant to the following conditions:**

**1. The number of residual dwelling site opportunities may be allocated at an overall gross density not to exceed one residential unit per 50 acres, including existing residential buildings located on the premises. The board may decrease this density in consideration of the following conditions:**

**i. Proposed residential units which have received preliminary or final approval from a municipal planning review body on the premises at the time of the landowner's submission of an application to sell a development easement;**

**ii. Exceptions of tracts of land from the application to sell a development easement; and**

**iii. Related situations not otherwise listed above.**

**2. A landowner may reject the allocation of one or more residual dwelling site opportunities.**

**(b) Residual dwelling sites and residential units shall be located in accordance with the following standards established by the Committee:**

**1. The boundaries and configuration of a residual dwelling site shall minimize the adverse impact on the agricultural operation; and**

**2. The location of a residential unit within a residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production.**

**(c) Upon the intent of the landowner to exercise a residual dwelling site opportunity, the board shall be notified by the landowner of the following:**

**1. The intent to exercise a residual dwelling site opportunity; and**

**2. The proposed location of the residual dwelling site.**

**(d) The board may review the proposed location of the residual dwelling site and submit comments to the landowner and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the continued viability of the agricultural operation.**

**(e) Approval of the location of the residual dwelling site and the residential unit shall be made by the municipal planning review body.**

**(f) Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:**

**1. Prepare, or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site. The area occupied by the residual dwelling site and further described by the legal metes and bounds description shall be exempt from the terms and conditions of the deed of easement;**

**2. Appropriately record the legal metes and bounds description as an addendum to the deed of easement; and**

**3. Submit a copy of the legal metes and bounds description to the board and the Committee for general recordkeeping purposes.**

**(g) In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the landowner.**

**(h) The following restriction shall be incorporated in the easement when there has been an award of one or more residual dwelling site opportunities:**

> **(____) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.16. Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the farm operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:**

**1. The boundaries and configuration of the residual dwelling site shall minimize the adverse impact on the agricultural operation; and**

**2. The location of the residential unit within the residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production.**

**Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:**

**1. Prepare, or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site. The area occupied by the residual dwelling site and further described by the legal metes and bounds description shall be exempt from the terms and conditions of this easement;**

**2. Appropriately record the legal metes and bounds description as an addendum to this easement; and**

**3. Submit a copy of the legal metes and bounds description to the Grantor and the Committee for general recordkeeping purposes.**

**In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantor.**

**For the purpose of this easement, a residual dwelling site means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.**

# COMMUNITY AFFAIRS

The following proposals are authorized by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Submit comments by August 31, 1988 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

## (a)

## OFFICE OF THE COMMISSIONER

## Nonpublic Records

## Proposed Readoption with Amendment: N.J.A.C. 5:3

Authority: N.J.S.A. 52:27D-3(f).

Proposal Number: PRN 1988-364.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:3 will expire on September 1, 1988.

The Department has reviewed this rule and has found it to be generally necessary, reasonable and proper for the purpose for which it was originally promulgated. An amendment has been proposed to N.J.A.C. 5:3-2.1 to correctly designate the Division of Local Government Services; to eliminate reference to the Division of State and Regional Planning, which no longer exists; to eliminate a subsection that is redundant in that it merely states that the rule continues in effect until repealed or amended; and to add to the list of nonpublic records those records required to be kept confidential under the Public Employees Occupational Safety and Health Act (PEOSHA).

Under the "Right-to-Know Law," P.L. 1963, c.73, all records not designated as nonpublic by statute or regulation are open to public inspection and copying. N.J.A.C. 5:3-2.1, the only section in N.J.A.C. 5:3, enumerates those categories of records which must be assured of confidentiality so that the Department may obtain necessary information from persons who might not otherwise provide it.

In conjunction with the readoption, the Department proposes to amend the rule to delete reference to the now defunct Division of State and Regional Planning; to use the current name of the Division of Local Government Services instead of the old name (Division of Local Finance); and to include as nonpublic records program correspondence and records of the Division of Local Government Services prior to contract execution, resource recovery contracts under review, PEOSHA complaints filed with the Division of Housing and Development, and information concerning affordable housing applications.

**Social Impact**

Readoption of the rule will enable the Department to continue to obtain information necessary for the evaluation of local administration, of boarding house license and loan applications, and of rental assistance applications. Addition of the provision concerning PEOSHA complaints will protect the confidentiality of complainants, as required by law. Addition of the provision concerning affordable housing applicants will encourage submission of complete and truthful applications.

**Economic Impact**

There will be no apparent economic changes resulting from either readoption or the amendments. The right of PEOSHA complainants to confidentiality is already established by law.

**Regulatory Flexibility Statement**

Neither the readoption nor the amendment imposes any burden upon small businesses. Failure to readopt the provisions concerning boarding house licenses and loans might burden boarding house owners, who generally, if not invariably, are "small businesses."

**Full text** of the readoption with amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

CHAPTER 3
OFFICE OF THE COMMISSIONER

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. NONPUBLIC RECORDS

5:3-2.1 Nonpublic records

(a) Throughout the entire Department of Community Affairs, the following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to P.L. 1963, c.73:

1. All confidential reports, executive memoranda and evaluations submitted to the Commissioner or any other State agency;

2. All personnel records, job applications and statements filed pursuant to the Department of Community Affairs' Code of Ethics.

(b) The following records of the Division of Local [Finance] **Government Services** are also deemed to be nonpublic records:

1. Those reports entitled "Special Confidential Reports" which are filed by any registered municipal accountant;

2. Those reports pertaining to the inspection of local administration and inquiry into financial affairs pursuant to N.J.S.A. 52:27BB and Titles 46 and 47 of [N.J.S.A.] **the New Jersey Statutes**;

3. "Questionnaire" for registered municipal accountants;

4. Auditor evaluations conducted as a continuing program by municipal registered accountants;

5. Internal management reports concerning plans, programs and methods of the Division of Local [Finance] **Government Services**.

[(c) The following records of the Division of State and Regional Planning are also deemed to be nonpublic records:]

[1.]**6.** Any correspondence and records dealing with specific programs prior to execution of the intended contract;

**7. All resource recovery contracts submitted to the Division of Local Government Services during the period of time in which such contracts are undergoing staff review for compliance with the appropriate regulations.**

[2. All records concerned with loan negotiations pursuant to the EDA program;

3. All technical reports and studies prepared by the Division prior to publication;

4. All correspondence relating to contracts with practicing professional.]

[(d)]**(c)** The following records of the Division of Housing and Development are also deemed to be nonpublic records:

1. All records containing personal or financial information submitted by applicants for rooming or boarding house owner's or

operator's licenses or for loans under the Boarding House Life Safety Loan Program or submitted by public agencies or other persons with respect to such applicants.

2. All records containing personal or financial information submitted by applicants for rental assistance under the Section 8 Existing Housing, Section 8 Moderate Rehabilitation and Boarding House Life Safety Loan programs or submitted by public agencies or other persons with respect to such applicants.

**3. All records containing the name of a complainant which are submitted to or maintained by the Department pursuant to the Public Employees Occupational Safety and Health Act (P.L. 1983, c.516; N.J.S.A. 34:6A-25 et seq.).**

**4. All records containing applicant information submitted to the Affordable Housing Management Service for inclusion on the referral waiting list.**

[(e) This regulation shall take effect November 3, 1969, and shall remain in effect and force until amended, modified, repealed or terminated by the action of the Department of Community Affairs or by the Governor.]

# (a)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Construction Code
### Assumption of Local Enforcement Powers by the Department
### Proposed Amendment: N.J.A.C. 5:23-4.3

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1988-373.

The agency proposal follows:

**Summary**

P.L. 1985, c.21 amended the State Uniform Construction Code Act by giving the Commissioner of the Department of Community Affairs the power to enforce the Code directly and, when necessary, to order corrective action when a local enforcing agency is failing to discharge its duties properly or to supplant and replace a local enforcing agency either for a specific project or entirely. N.J.A.C. 5:23-4.3, which predates P.L. 1985, c.21, is being amended in order to bring the rule into conformity with that statute.

The proposed amendment would also eliminate certain "interim procedures" which were meant to be followed in the period following the effective date of the State Uniform Construction Code Act in 1977 and have long since ceased to have any applicability.

**Social Impact**

The existence of a rule that is at variance with a statute is a source of confusion. This amendment will be socially beneficial in that it will eliminate that source of confusion. The legislative change permitting this amendment serves to protect and improve the public welfare by allowing Departmental enforcement of the Uniform Construction Code when a local enforcing agency fails to do so.

**Economic Impact**

Where confusion exists as a result of a rule not having been amended in response to statutory change, litigation may well result. A timely rule change can reduce the likelihood of such litigation.

Where the Department finds it necessary to assume local enforcement responsibility for the Code, a positive economic impact will inure to the public by way of proper construction necessitating fewer future repair expenses. Construction businesses would benefit from a properly operating permitting and inspection process.

**Regulatory Flexibility Statement**

This rule concerns local governmental agencies and has no direct effect upon small business, except that removal of a local enforcing agency, either from a specific project or entirely, would affect any private enforcing agency with whom the local enforcing agency might contract for subcode enforcement services. Since the issue of proper enforcement of the State Uniform Construction Code is a matter that directly affects the health, safety and welfare of the public, no differential treatment for local enforcing agencies that contract with private enforcing agencies is warranted.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

5:23-4.3 Municipal enforcing agencies—establishment

(a)-(d) (No change.)

(e) [Interim Procedures:

1. If for any reason, except as provided in subparagraph ii of this paragraph, no enforcing agency has been established on the effective date of the regulations, the municipality shall enforce the regulations adopted by the commissioner with its existing administrative structure; however, such shall be deemed a violation of the act and the regulations, for which the department may apply to a court of competent jurisdiction for such relief as is described in paragraph g of this subsection.

2. In the case of municipalities for whom it is a legal impossibility to establish an enforcing agency within the adoption and effective date of the regulations, such shall be established as soon thereafter as is possible, and shall not be deemed a violation of the regulations. Such municipalities shall enforce the regulations under their existing enforcement structure during such interim period.

3. This section shall not be construed as a limitation upon the right of an aggrieved individual to initiate independent action pursuant to the act or regulations.]

Redesignate (f) as **(e)** (No change in text.)

[(g)]**(f)** [Failure to perform] **Departmental intervention**:

1. Whenever the department shall have reasonable cause to believe that a [municipality] **local enforcing agency** is not carrying out its functions as intended by the act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body [of any such municipality] **having jurisdiction over the local enforcing agency**, a notice stating the nature of the alleged [municipal] failure **of the local enforcing agency** to perform, the implications of such failure, and a statement [of intention to seek the order of a court of competent jurisdiction requiring that the municipality act in accordance with the regulations; or in the alternative, if warranted, that the department be established as the enforcing agency in such municipality; or for any other relief that the court may deem appropriate] **setting forth the corrective action required to be taken by the local enforcing agency or, in the case of a local enforcing agency which the department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, ordering the dissolution of the local enforcing agency and its replacement by the department.**

2. [The department may seek an order pursuant to this subsection after the expiration of 10 days from the mailing of such notice.] **In any case in which it may find it to be in the public interest to do so, the department may supplant or replace a local enforcing agency for a specific project.**

Redesignate (h) as **(g)** (No change in text.)

# (b)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Construction Code
### Barrier Free Subcode: Recreation Standards
### Proposed Amendments: N.J.A.C. 5:23-7.104 and 7.116

Authority: N.J.S.A. 52:27D-123 and 52:32-5.

Proposal Number: PRN 1988-372.

The agency proposal follows:

**Summary**

These proposed amendments would require that the edges of ramps or steps required by the Barrier Free Subcode at N.J.A.C. 5:23-7.104 for access to swimming pools be marked with a distinguishing color for the safety of the visually-impaired, and that the height for mounting platforms at equestrian facilities designated at N.J.A.C. 5:23-7.116 be lowered from 42 inches to 32 inches, at the suggestion of the North American Riding for the Handicapped organization. In addition, a new Figure 7.104b is proposed setting forth requirements for interior/exterior pool steps (see N.J.A.C. 5:23-7.104(a)2). The rules proposed for amendment are adopted as new elsewhere in this issue of the New Jersey Register.

**Social Impact**

These proposed amendments are intended to enhance the ability of the disabled to enjoy recreational opportunities by promoting safety.

**Economic Impact**

There is no significant economic impact of these proposed amendments, as the cost of the ramp or stair painting and platform lowering required should be minimal. While the new Figure 7.104b provides somewhat different stair requirements than does the present figure, construction/installation costs should be approximately the same.

**Regulatory Flexibility Statement**

The proposed amendments will impact mostly upon county park commissions, schools and other entities which own and/or operate outdoor recreational facilities. The Department does not consider a differentiation of requirements for any small businesses that may be affected would be appropriate as to do so would be to defeat the objective of providing uniform access to recreational facilities throughout the State. The costs and actions required are, in any event, minimal or the same as the present rules require.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

5:23-7.104 Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.104a:

i. Designed by its manufacturer for independent operation by the user;

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of N.J.A.C. 5:23-7.81. A wheelchair shall be provided to the user if this option is used.

iii. Adjoining a clear level floor area meeting the criteria of N.J.A.C. 5:23-7.17 whose minimum dimensions are five feet by five feet;

iv. Having controls which meet the criteria of N.J.A.C. 5:23-7.81;

v. Located to meet the criteria of Figure 7.104a.

2. Interior/exterior steps meeting the criteria of Figure 7.104b.

**i. The edge of the steps shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.**

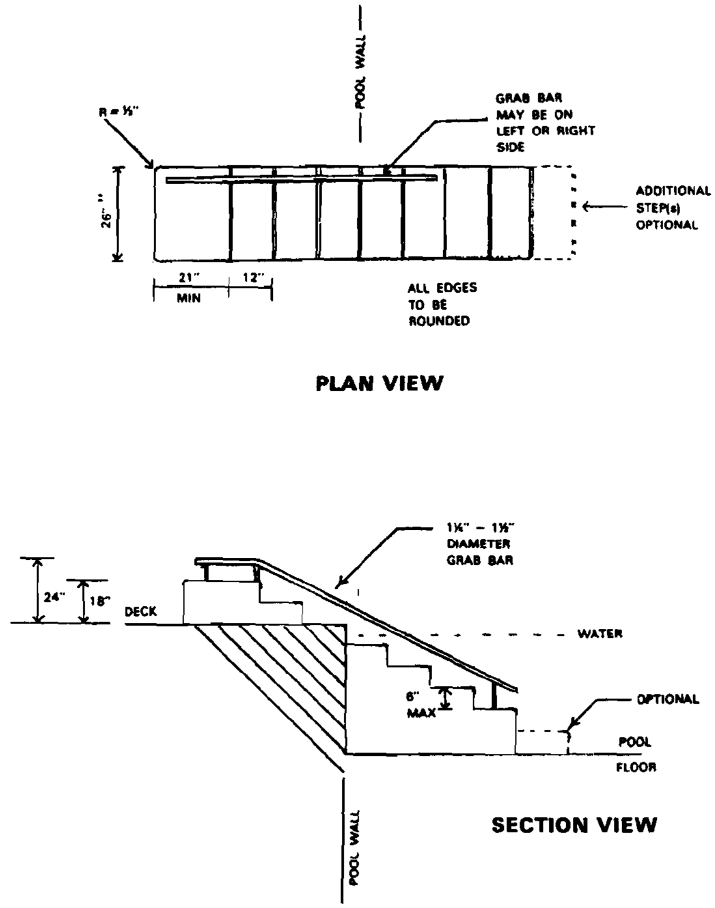
3. A ramp meeting the criteria of Figure 7.104c.

i. A wheelchair shall be provided to the user if this option is used.

**ii. The edge of the ramp shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.**

OAL NOTE: Figures 104a and c of N.J.A.C. 5:23-7.104 are not reproduced as part of this proposal notice as they are not affected by the amendment. Figure 7.104b now in effect is reproduced elsewhere in this issue of the New Jersey Register in the adoption of N.J.A.C. 5:23-7.104. The following is proposed new Figure 7.104b.

**Figure 7.104b**




5:23-7.116 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height [42] **32** inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.24 except that a maximum slope of 1:9 shall be allowable.

---

## (a)

## OFFICE OF THE COMMISSIONER

### Handicapped Persons' Recreational Opportunities Act

### Proposed Readoption with Amendments and Recodification: N.J.A.C. 5:51

Authority: N.J.S.A. 52:27D-173.

Proposal Number: PRN 1988-374.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:51 will expire on September 1, 1988.

The Department has reviewed this rule and has found it to be generally necessary, reasonable and proper for the purpose for which it was originally promulgated. Amendments have been proposed to reflect the transfer of this program to the Office of the Commissioner, where it is administered in cooperation with the Governor's Council on Physical Fitness and

Sports, and which clarify the procedure for demonstrating the existence of required matching funds.

Readoption of this chapter is necessary in order to keep in existence eligibility requirements and procedures for applications for grants to support recreational programs for handicapped persons. In Fiscal Year 1988, the Department, under this program, awarded 49 grants, in the aggregate amount of $300,000, to municipal and county governments for this purpose.

**Social Impact**

Readoption of the rule will enable the Department to continue to process in an orderly manner applications for grants to support recreational programs for the handicapped.

**Economic Impact**

Failure to readopt this chapter might impede the Department's ability to distribute the funds which the Legislature has made available for recreational programs for the handicapped.

**Regulatory Flexibility Statement**

Neither the readoption nor the amendments impose any burden upon small businesses. This rule affects local governments and handicapped persons and has no direct or measurable impact on businesses.

**Full text** of the readoption with amendment follows (additions indicated in boldface **thus**: deletions indicated in brackets [thus]).

CHAPTER [51] **2**
MANAGEMENT ASSISTANCE PROGRAMS

SUBCHAPTER 1. HANDICAPPED PERSONS' RECREATIONAL OPPORTUNITIES ACT

5:[51]**2**-1.1 Introduction and general provisions

(a) (No change.)

(b) The Handicapped Persons' Recreational Opportunities Act of 1978 is administered by the [Division of Community Resources in the] Department of Community Affairs through the [Bureau of Community Programs] **Office of Recreation and in cooperation with the Governor's Council on Physical Fitness and Sports.** All correspondence and inquiries should be addressed to the [Director, Division of Community Resources] **Office of Recreation**, Department of Community Affairs, [363 West State Street] **101 South Broad Street, CN 005**, Trenton, New Jersey 08625.

(c) (No change.)

5:[51]**2**-1.2 Definitions

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

["Bureau" means the Bureau of Community Programs within the Division of Community Resources]

...

**"Commissioner" means the Commissioner of the Department of Community Affairs or his or her designee.**

...

["Director" means the Director of the Division of Community Resources.

"Division" means the Division of Community Resources within the New Jersey Department of Community Affairs.]

...

**"Office" means the Office of Recreation of the Department of Community Affairs.**

...

5:[51]**2**-1.3 Eligible applicants

(a) (No change.)

(b) The following activities for the handicapped [will] **shall** be accepted as eligible activities for participation in the program.

1.-2. (No change.)

(c) Grants to be awarded for Special Events or Comprehensive Recreational Services [will] **shall** be subject to the following limitations:

1.-2. (No change.)

3. Grants to be awarded for Special Events or Comprehensive Recreational Services to local governments [will] **shall** be made in the amount of $5.00 for each $1.00 appropriated by local government. The $1.00 **per $5.00** match [requirement] **required** of a local government must be a cash match contribution under the provisions of the grant formula, **to be made in accordance with N.J.A.C. 5:2-1.5(d).** In-kind services or costs of other on-going services [will] **shall** not be allowed as a substitute for the $1.00 **per $5.00** cash match requirement.

5:[51]**2**-1.4 (No change in text.)

5:[51]**2**-1.5 Application processing and review procedure

(a) Professional staff of the [Bureau of Community Programs will] **Office shall** register and review the application for conformity with application procedures and regulations established by the Department.

(b) Upon review of the [Director] **Commissioner**, applications [will] **shall** be processed in accordance with standard departmental procedures.

(c) A contract [will] **shall** be offered by the Department to the approved local government for the review and signature of the local chief executive.

(d) Prior to any payment being made, a local government shall submit **one of the following documents**:

[a] **1.** A copy of the resolution providing for the insertion of a special item of revenue in the current [years'] **year's** budget pursuant to N.J.S.A. 40A:4-87 as approved by the Director, Division of Local Government Services, which also indicates that the match requirement of N.J.A.C. 5:[51]**2**-1.3(c)3 has been met;

**2. A certificate of appropriated funds;**

**3. A letter from the Chief Financial Officer or the Chief Executive Officer stating that, upon adoption of its budget, the local government shall comply with N.J.S.A. 52:27D-170 et seq.; or**

**4. A certificate guaranteeing that the local government will include in its budget an appropriation for the necessary matching funds and, upon adoption of the budget, will comply with N.J.S.A. 52:27D-170 et seq.**

5:[51]**2**-1.6 Additional determinations

The [Director will] **Commissioner shall**, as may be required, make such additional determinations as [shall] **may** be necessary to determine eligible activities or other matters pertaining to the most effective conduct of this program.

# HEALTH

## (a)

### DRUG UTILIZATION REVIEW COUNCIL

### Interchangeable Drug Products

### Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert Kowalski, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1988-362.

A **public hearing** concerning this proposal will be held on August 22, 1988 at 2:00 P.M. at:

Board Room, Room 103
First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit comments by August 31, 1988 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

### Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed sulindac tablets could then be used as a less expensive substitute for Clinoril, a branded prescription medicine. Similarly, the proposed cyclobenzaprine tablets could be substituted for the more costly branded product, Flexeril.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

### Social Impact

The social impact of this proposal would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

### Economic Impact

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by this proposal accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. This saving also cannot be estimated accurately.

### Regulatory Flexibility Statement

The proposed amendment impacts many small businesses: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

**Full text** of the proposed additions follows:

| | |
|---|---|
| APAP/codeine elix 120/12/5 ml | Naska |
| Amiloride/HCTZ tabs 5/50 | Par |
| Amitriptyline/CDP tabs 5/12.5, 10/25 | Par |
| Baclofen tabs 10, 20 mg | Vitarine |
| Carisoprodol/aspirin tabs 200/325 mg | Par |
| Cephalexin caps 250, 500 mg | Stevens |
| Cephradine for susp 125/5, 250/5 ml | Barr |
| Chlorthalidone tabs 25, 50 mg | Superpharm |
| Choline/mag. salicylate tabs 500, 750 mg | Copley |
| Clorazepate tabs 3.75, 7.5, 15 mg | Purepac |
| Cyclobenzaprine tabs 10 mg | Par |
| Diazepam tabs 10 mg | Pharbita |
| Dipyridamole tabs 25, 50, 75 mg | Lederle |
| Disopyramide ER caps 100, 150 mg | KV |
| Divalproex EC tabs 125, 250, 500 mg | Par |
| Doxepin caps 10, 25, 50 mg | Danbury |
| Doxepin caps, 75, 100, 150 mg | Purepac |
| Doxepin caps 75, 150 mg | SKF |
| Doxycycline hyclate caps 50 mg | Vitarine |
| Doxycycline tabs 100 mg | Superpharm |
| Ergotamine/caffeine suppositories | G & W |
| Erythromycin E.C. pellet caps 250 mg | Abbott |
| Erythromycin E.C. tabs 250, 333 mg | Abbott |
| Erythromycin solution 2% | Naska |
| Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg | Chelsea |
| Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg | Duramed |
| Fenoprofen calcium caps 200, 300 mg | Par |
| Fenoprofen calcium caps 200, 300 mg | Quantum |
| Fenoprofen calcium tabs 600 mg | Chelsea |
| Fenoprofen calcium tabs 600 mg | Par |
| Fenoprofen calcium tabs 600 mg | Quantum |
| Fenoprofen caps 200, 300 mg | Halsey |
| Fenoprofen caps 200, 300 mg | Watson |
| Fenoprofen caps 200, 300 mg; tabs 600 mg | Amer. Ther. |
| Fenoprofen tabs 600 mg | Halsey |
| Fenoprofen tabs 600 mg | Watson |
| Fluphenazine tabs 1, 2.5, 5, 10 mg | Par |
| Haloperidol oral solution 2 mg/ml | Roxane |
| Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg | Chelsea |
| Hydrocodone/APAP tabs 5 mg/500 mg | Central |
| Hydrocortisone cream 1%, 2.5% | Naska |
| Hydrocortisone lotion 1% | Naska |
| Hydrocortisone oint 1% | Naska |
| Hydroxyzine HCl tabs 10, 25, 50 mg | Halsey |
| Ibuprofen tabs 400, 600 mg | Danbury |
| Lidocaine viscous solution 2% | Naska |
| Loxapine succinate caps 5, 10, 25, 50 mg | Watson |
| Maprotiline tabs 25, 50, 75 mg | Watson |
| Meclizine HCl tabs 50 mg | Par |
| Meclofenamate caps 50, 100 mg | Par |
| Meclofenamate sodium caps 50, 100 mg | PharmBasics |
| Mefenamic acid caps 250 mg | Vitarine |
| Megestrol acetate tabs 20, 40 mg | Par |
| Metaproterenol tabs 10, 20 mg | Amer. Ther. |
| Metaproterenol tabs 10, 20 mg | Par |
| Metaproterenol tabs 20 mg | Quantum |
| Methocarbamol/Aspirin tabs 400/325 | Par |
| Methyldopa tabs 125, 250, 500 mg | Halsey |
| Methyldopa tabs 125, 250, 500 mg | Sidmak |
| Methylprednisolone tabs 2, 4, 8, 16, 24, 32 mg | Par |
| Metoclopramide tabs 5 mg | Quantum |
| Minoxidil tabs 2.5 mg | Quantum |
| Norethindrone/ethin. estradiol 10/11-21 | Watson |
| Norethindrone/mestranol 1 mg/50 mcg tabs | Watson |
| Norethindrone/ethinyl estr 1 mg/35 mcg tab | Searle |
| Norethindrone/mestranol 1 mg/50 mcg tab | Searle |
| Nystatin cream 100,000 U/g | Naska |
| Oxacillin for susp 250/5 ml | Biocraft |
| Oxybutynin tabs 5 mg | PharmBasics |
| Pramoxine 1%/HC 1% rectal foam | Copley |
| Promethazine suppositories 50 mg | G & W |
| Propranolol tabs 10, 20, 40, 60, 80, 90 mg | Sidmak |
| Propranolol/HCTZ tabs 40/25, 80/25 | Sidmak |
| Quinine sulfate tabs 260 mg | Chelsea |
| SMZ/TMP susp. 400/80/5 ml | Naska |
| SMZ/TMP tabs 400/80, 800/160 | Pharbita |
| Sulindac tabs 150, 200 mg | Par |
| Tetracycline caps 250, 500 mg | Superpharm |
| Theophylline elixir 80 mg/15 ml | Naska |
| Trazodone tabs 150 mg | Sidmak |
| Trazodone tabs 50, 100 mg | TEVA |
| Triamcinolone cream 0.5% | Naska |
| Triamcinolone oint 0.025, 0.1, 0.5% | Naska |
| Triamcinolone/nystatin oint 1 mg/100 MU | Naska |
| Triameterene/HCTZ tabs 75/50 | Par |
| Triple sulfa vaginal cream | G & W |

# HIGHER EDUCATION

For the following proposals, submit comments by August 31, 1988 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

## (a)

## BOARD OF HIGHER EDUCATION

### Facilities Planning Standards and Approval Procedures for New Jersey Public Colleges and Universities

### Proposed Readoption: N.J.A.C. 9:3

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:3-14q.
Proposal Number: PRN 1988-376.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:3 expires on October 17, 1988. Previously, the Department of Higher Education formed a Statewide Task Force on Facilities Planning which included several representatives from the public sectors of higher education within New Jersey. That group was charged with the task of presenting to the Department of Higher Education recommendations with regard to amendments and revisions to this chapter of the administrative code. The task force has not been able to complete its work in sufficient time to allow for the adoption of a revised chapter prior to the October 17, 1988 expiration date pursuant to the Executive Order. Further, the Department has been advised by the State Treasurer and the Director of the Office of Management and Budget that a consulting firm is conducting an advisability study of the State's capital planning, construction and management processes. This study should be completed by September 1988. Department staff will actively participate in this study and the task force will take the study's recommendations into account when formulating its recommendations to the Department for revisions of this chapter.

For the above reasons, the Department will not be able to adopt a revised chapter prior to the above-mentioned expiration date. Rather than allow the rules in this chapter to lapse and thus have no regulatory powers in this area, the Board of Higher Education has determined to readopt this chapter without change. Prior to the end of this year, upon receipt of recommendations from the statewide Task Force on Facilities Planning, the Board will notice for public comment proposed regulations which shall replace this readopted chapter.

This chapter is designed to assist the public institutions of higher education of New Jersey in developing and presenting proposals for new facilities. The role of the Department of Higher Education is threefold: (1) to administer the allocation and distribution of capital construction funds; (2) to review and evaluate project proposals according to sound planning and design standards; and (3) to monitor and stimulate progress in the Statewide construction program.

Each public institution shall maintain and update an educational master plan that has the approval of the institution's governing board and conforms to the New Jersey Master Plan for Higher Education. All facilities programming will take place within the context of the State Master Plan.

Subchapter 1 describes the approval procedures necessary to carry a project from its formal proposal to completion of construction. The approval procedures apply to all public institutions, except as noted in the text. A separate Appendix to Subchapter 1 is addressed to the particular needs of the two-year public community colleges.

Subchapter 2 contains space planning standards to be followed in projecting capital needs and in developing specific project proposals. The space standards apply to all institutions, and take into account both graduate and undergraduate needs.

Subchapter 3 describes the procedures for reporting physical space inventories and utilization on an annual basis. Examples of reporting formats are shown in separate appendices to the chapter.

**Social Impact**

The Board of Higher Education is statutorily charged with the supervision and coordination of public higher education within the State of New Jersey. Included within this responsibility is the duty to review and approve the construction of capital facilities at such institutions with certain exceptions as set forth in statute.

As part of this review process, the Board determines the need for such construction, the extent to which the proposed construction is consistent with the educational mission of the institution of higher education, the ability of the institution to finance the construction and maintenance of the building, and other related issues. Failure of the Board to exercise this responsibility as set forth in this proposed readoption could result in haphazard construction of higher education facilities or duplicative construction of facilities as no one entity would be exercising planning oversight on a system wide basis.

Thus, this proposed readoption benefits the public by ensuring that public funds for the construction of capital facilities for higher education within the State are appropriately utilized in a fashion which most benefits the citizens of this State and the students attending the State's public institutions of higher education.

**Economic Impact**

The rules proposed for readoption state various requirements with regard to the nature of analyses, plans, documents and other preparations which must be completed prior to final approval of a project by the Board. These include site plans, utilization analyses, cost estimates, architectural drawings and other related documentation. In order to provide such documentation, the institutions must often hire various professionals to assist in the preparation of those materials.

In addition, the rules mandate certain requirements with regard to the size of particular buildings or space within such buildings. Such requirements can affect the cost of construction of the project by increasing those costs.

**Regulatory Flexibility Statement**

The rules proposed for readoption will have no reporting, recording or compliance requirements for small businesses. The rules are only applicable to public institutions of higher education within the State of New Jersey.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:3.

## (b)

## EDUCATIONAL OPPORTUNITY FUND

### Student Eligibility

### Proposed Amendment: N.J.A.C. 9:11-1.1

Authorized By: The Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.
Authority: N.J.S.A. 18A:71-33.
Proposal Number: PRN 1988-377.

The agency proposal follows:

**Summary**

The Educational Opportunity Fund (EOF) Program is a State program of financial aid for students attending an institution of higher education within the State of New Jersey. Directed at students who come from an economically and educationally disadvantaged background, the program provides financial grants and other support services to program participants while attending college.

The proposed amendment allows a student to receive an EOF grant when that student owes a refund on any grant or scholarship monies or if he or she is in default on a student loan if the student has made arrangements to repay the debt. Previously, the existence of such a debt prohibited the receipt of an EOF grant.

**Social Impact**

The proposed amendment allows students who are in default and have made repayment arrangements with the appropriate agency to receive State financial assistance under the EOF program. This amendment will make it possible for students to receive State financial assistance while repaying an outstanding obligation. Previously, such students, even if they were in the process of paying such debts, were not allowed to receive aid through the EOF program. The lack of continued EOF aid often resulted in the student interrupting his or her collegiate education.

**Economic Impact**

The proposed amendment has no adverse economic impact on the EOF program or other State financial aid programs, as the amendment requires that the student be in the process of repaying the debt in order to receive the EOF aid. The amendment has a beneficial impact on students as it allows a student to continue to receive EOF grants while repaying other student aid debts. Continued receipt of EOF aid will enable a greater number of such students to remain in college.

**Regulatory Flexibility Statement**

The proposed amendment does not require a regulatory flexibility analysis, since they do not impose any requirements on small businesses.

The proposed amendment allows EOF grants to be made to students who owe student loans, or refunds for scholarships or grants, and who are repaying such debts or have made satisfactory arrangements to repay.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

9:11-1.1 Student eligibility

(a)-(b) (No change.)

(c) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-5. (No change.)

[6.](**d**) Students may not receive assistance under the programs administered by the Educational Opportunity Fund Board if [information is made known that] they owe a refund on a grant or scholarship previously received from a State or [f]Federal program through any institution, or are in default on any [student] loan made [or insured by the federal government] **under any State or Federal student financial assistance program** at any institution. **Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements with the appropriate office to repay the debt.**

[7.](**e**) (No change.)

## (a)

## EDUCATIONAL OPPORTUNITY FUND

### Verification of Financial Eligibility; Duration of Student Eligibility; Non-Funded Students; Application Procedures for EOF Graduate and Undergraduate Grants; Refunds and Repayments of Disbursements Made to Students.

### Proposed Amendments: N.J.A.C. 9:11-1.6, 1.8, 1.9, 1.20; 9:12-2.6 and 2.9

Authorized By: Board of Directors, Educational Opportunity Fund, T. Edward Hollander, Chairman.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1988-382.

The agency proposal follows:

**Summary**

The Educational Opportunity Fund (EOF) Program is a State program of financial aid for students attending an institution of higher education within the State of New Jersey. Directed at students who come from an economically and educationally disadvantaged background, the program provides financial grants and other support services to program participants while attending college.

The proposed amendments remove the current requirement within the rules that a particular financial aid eligibility form be utilized for determining eligibility to receive an EOF grant, but that the form shall be that designated by the EOF Board. Further, the proposal removes the requirement that the Uniform Methodology be utilized to determine eligibility. Lastly, the proposal modifies the definition of the payment period utilized in N.J.A.C. 9:12-2.9 to determine refunds of grant monies.

**Social Impact**

The proposed amendment will allow the Educational Opportunity Fund Board of Directors (EOF Board) to approve the form utilized to determine financial aid eligibility for State student assistance under the EOF Program. Recent changes to the federal government's method of determining financial aid eligibility for federal funds concomitant with changes in the national financial aid form necessitate the EOF Board being provided with the flexibility it needs to best serve the needs of New Jersey students and institutions. It is anticipated that this flexibility will reduce the number of students who would have been ineligible for State student assistance under the federal methodology of determining financial aid eligibility.

**Economic Impact**

The proposal does not increase the costs of the EOF program as the appropriation for the program has not been increased as a result of this proposal. The proposal will allow for greater utilization of EOF grant funds by institutions of higher education as students who demonstrate financial need will not be precluded from receiving such aid because of changes in the Uniform Methodology formula.

The proposal will benefit certain students who because of changes made in the Uniform Methodology formula would not have qualified for an EOF grant despite demonstrating financial need. Provision of grants as a result of this proposal will result in a great number of students receiving EOF grants and therefore being able to remain in college and complete their education.

**Regulatory Flexibility Statement**

The proposed amendments do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses.

The proposed amendments provide the EOF Board with flexibility to determine whether students are eligible for EOF grants depending upon financial need.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

9:11-1.6 Verification of financial eligibility

(a) (No change.)

(b) It is required that all recipients of undergraduate EOF grants apply for the Federal Pell Grant and the New Jersey Tuition Aid Grant and all students' files shall contain information from [the New Jersey Financial Aid Form] **a financial aid form approved by the EOF Board and Student Assistance Board** indicating application for the above.

(c) Students who have been found eligible to receive student assistance must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on [the New Jersey Financial Aid Form] **a financial aid form approved by the EOF Board and Student Assistance Board** will be verified through the comparison of information reported on income tax returns. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

(d) (No change.)

(e) [In every case, a student's file must contain evidence that the College Scholarship Service, Uniform Methodology, which forms the basis on which the financial aid officer has recommended the EOF grant, has been performed.] **In order to receive an EOF grant, students must demonstrate eligibility through submission of a financial aid form approved by the Educational Opportunity Fund Board of Directors in accordance with established deadline dates. This information must be in the student's file prior to granting an award.**

(f) (No change.)

9:11-1.8 Duration of student eligibility

(a) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study as long as he or she maintains full-time enrollment or has been approved in writing for a part-time E.O.F. grant by the campus E.O.F. Program Director. Part-time grant eligibility will be available only at those institutions approved to award part-time EOF grants by the EOF Board of Directors. In addition, students shall retain eligibility for an E.O.F. grant as long as the student has demonstrated financial need as determined by the institution through submission of a [New Jersey Financial Aid

Form,] **financial aid form approved by the Educational Opportunity Fund Board of Directors** in accordance with annually established deadline dates. [The information on the Financial Aid Form will be evaluated by employing the National Uniform Methodology, as represented in the College Scholarship Service System or by approaches modified to meet the purpose of New Jersey student assistance programs.]

(b)-(e) (No change.)

9:11-1.9 Non-funded students

(a)-(c) (No change.)

(d) **To retain eligibility for program services non-funded** [Non-funded] students must continue to file the [New Jersey Financial Aid Form,] **financial aid form approved by the Educational Opportunity Fund Board of Directors** and have been determined eligible and received Article III academic year funds during initial enrollment into the program.

(e)-(f) (No change.)

9:11-1.20 Application procedures for EOF graduate and undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate EOF must complete a [New Jersey Financial Aid Form and submit it to the College Scholarship Service, Princeton, New Jersey for processing.] **financial aid form in accordance with N.J.A.C. 9:11-1.6(e).** Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey Department of Higher Education.

(c) (No change.)

(d) Applicants for graduate EOF must complete a [Graduate and Professional School Financial Aid Service (GAPSFAS) form or a Financial Aid Form (FAF)] **a financial aid form approved by the Educational Opportunity Fund Board of Directors in accordance with established deadline dates and procedures.** [to be submitted to the campus aid officer.]

9:12-2.6 Verification of financial eligibility

(a) Entering students participating in the summer program must have filed [the New Jersey Financial Aid Form] **a financial aid form approved by the Educational Opportunity Fund Board of Directors** prior to summer program enrollment or as part of summer program enrollment procedures (to be established prior to the summer program).

(b) (No change.)

9:12-2.9 Refunds and repayments of disbursements made to students

(a) (No change.)

(b) [The payment period is] **Payment period as used in (a) above shall mean** the time between the **first** day [a student registers] **of classes** for a summer term and the end of that term according to the institutional calendar.

[(c) The enrollment period is the time between the day a student registers for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his academic course load such that he is no longer eligible for State assistance.]

[(d)](c) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

## (a)

## EDUCATIONAL OPPORTUNITY FUND
### Grant Amounts
### Proposed Amendments: N.J.A.C. 9:11-1.7

Authorized By: The Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.
Authority: N.J.S.A. 18A:71-33.
Proposal Number: PRN 1988-381.

The agency proposal follows:

**Summary**

The Educational Opportunity Fund (EOF) Program is a State program of financial aid for students attending an institution of higher education within the State of New Jersey. Directed at students who come from an economically and educationally disadvantaged background, the program provides financial grants and other support services to program participants while attending college.

The proposed amendment will permit students to receive Educational Opportunity Fund (EOF) grants within the context of need, as long as EOF in combination with other financial aid does not exceed the cost of attendance. This amendment will allow institutional financial aid officers to use their professional judgment in selecting the appropriate methodology in determining student need. Institutions would be able to identify EOF students according to their own financial aid packaging policies and individual student assessment, as long as minimum EOF eligibility criteria are maintained.

**Social Impact**

The proposed amendment grants flexibility to institutions of higher education within the State with regard to the amount of EOF grants received by their students. This flexibility will reduce the number of students who would have been ineligible for EOF aid through the application of the Uniform Methodology standard set forth in the current rule. This increase in the receipt of EOF aid will allow a greater number of students to remain in college and allow them to finish their collegiate education.

**Economic Impact**

The proposed amendment does not increase the costs of the EOF program.

The amendment will allow for greater utilization of EOF grant funds by institutions of higher education, as students who demonstrate financial need will not be precluded from receiving such aid because of changes in the Uniform Methodology formula.

The amendment will benefit certain students who, because of changes made in the Uniform Methodology formula, would not have qualified for an EOF grant, despite demonstrating financial need. Provision of grants as indicated in this amendment will result in a great number of students receiving EOF grants and therefore being able to remain in college and complete their education.

**Regulatory Flexibility Statement**

The proposed amendment does not require a regulatory flexibility analysis since it does not impose any requirements on small businesses.

The proposed amendment provides institutions of higher education in New Jersey with flexibility to award EOF grants to eligible students in various amounts, depending upon financial need.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

9:11-1.7 Grant amounts

(a) (No change.)

(b) [Financial need is to be ascertained through the use of the College Scholarship Service, Uniform Methodology. Financial need is to be defined as the difference between a student's cost of education and his expected family contribution.] **The exact amount of the E.O.F. award shall be determined by the institution's E.O.F. and financial aid directors. Priority for determining need and awarding E.O.F. grants shall be given first to students who meet the educational and income criteria in accordance with N.J.A.C. 9:11-1.1(a) and (c) and 9:11-1.5(a) through (d), followed by those students admitted using N.J.A.C. 9:11-1.5(e) through (g).**

(c) Once it is determined that a student is eligible, he **or she** shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstance shall an E.O.F. award be granted which, in combination with other aid, exceeds [documented financial need, as defined above] **the cost of attendance as determined by the institution**.

(d)-(f) (No change.)

# HUMAN SERVICES

The following proposals are authorized by Drew Altman, Commissioner, Department of Human Services.

## (a)

## CONTRACT POLICY AND MANAGEMENT UNIT

### Contract Administration

### Proposed Readoption with Amendments: N.J.A.C. 10:3

### Proposed New Rules: N.J.A.C. 10:3-1.13, 2.4

Authority: N.J.S.A. 30:1-12.

Proposal Number: PRN 1988-379.

Submit comments by August 31, 1988 to:
Henrietta Small, Manager
Contract Policy and Management Unit
Department of Human Services
CN 700
Trenton, NJ 08625

The agency proposal follows:

**Summary**

N.J.A.C. 10:3 is due to expire September 19, 1988, in accordance with the sunset provisions of Executive Order No. 66. The Department of Human Services proposes to readopt N.J.A.C. 10:3. The Department has reviewed the rules set forth in Chapter 3 and has found that they continue to be necessary and proper for the purposes for which they were originally promulgated. In addition, the Department of Human Services proposes new rules at N.J.A.C. 10:3-1.13 (an appeals statement for debarment, suspension and disqualification), and at N.J.A.C. 10:3-2.4 (an additional standard language document used throughout the Department for the purchase of planning and design services for contemplated capital construction projects).

On March 7, 1978, Ann Klein, then Commissioner of the Department of Human Services, adopted N.J.A.C. 10:3 in accordance with Executive Order 34. These rules were adopted to ensure that all persons supplying goods or services to the Department of Human Services meet a standard of responsibility which ensures the State and its citizens honest performance and avoidance of secret or illicit dealings.

N.J.A.C. 10:3-1 Debarment, Suspension and Disqualification of Person(s) sets forth rules governing the exclusion of a provider from eligibility for consideration in the granting of contracts for goods or services by the Department of Human Services. The rules specify that a permanent exclusion must be based on past performance and a history of lack of responsibility evidenced by offense, failure or inadequacy of performance for a period of time appropriate to the circumstances. A suspension, on the other hand, is a temporary exclusion that may be imposed pending completion of an investigation or legal proceeding. The Department proposes to readopt the current text of N.J.A.C. 10:3-1 and propose an amendment providing for an appeal of a notice of debarment, suspension or disqualification, pursuant to "The New Jersey Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 10:3-2 sets forth the agreements to be used by the Department for capital planning projects. The New Jersey Public Purpose Buildings Construction Bond Act of 1980 (P.L. 1980, c.119) authorized the issuance of $159 million in state Bonds, of which a total of $75 million was allocated for the improvement, rehabilitation and construction of community-based facilities to benefit Department of Human Services clients classified as mentally retarded, mentally ill, or children in need of supervision. In response to the Bond Act, the Department established a capital funding program entailing contracting with private vendors and local government agencies to carry out the purposes of the Act.

When the capital funding program was instituted, different contract documents were developed and employed by the Department divisions involved in the program. In 1982, a decision was made to consolidate these division-specific documents into standard versions usable across division lines. The standard contract document for construction, purchase or purchase and renovation of community-based facilities was a part of proposed N.J.A.C. 10:3-2.2, published in the Register on September 19, 1983 as a notice of adoption (see 15 N.J.R. 1580(a)). The standard contract document for capital funding for renovation, remodeling, extension or other improvements to agency-owned or leased community facilities was a part of proposed N.J.A.C. 10:3-2.3, published in the Register on December 5, 1983 as a notice of adoption (see 15 N.J.R. 2042(b)).

The "New Jersey Public Purpose Buildings Construction Bond Act of 1984", (P.L. 1984, c.157) created the "Human Services Construction Fund" for the continuation of funding for planning, construction, reconstruction, development, erection, acquisition, extension, improvement, rehabilitation and equipping of human services facilities. A review of the current capital funding agreements revealed the continued need for the current consolidated standardized contract documents. In addition, the Department proposes a new rule at N.J.A.C. 10:3-2.4, which includes a standard contract document for planning and design services for community-based facilities. The Department has amended the rules to more clearly reflect the current agency name and address and to clarify certain references.

**Social Impact**

This proposed readoption has potential social impact on two segments of the public: first, the community and the agencies with which the Department contracts; and secondly, the Department clients who benefit from such facilities.

With regard to the community and the agencies with which the Department contracts, the social impact of Chapter 3, while minimal, can be considered favorable. Debarment, suspension and disqualification provisions protect the community and citizens from illicit dealings and provide for uniform application of policy. Additionally, consolidated standardized contract documents provide consistency and eliminate confusion, specifically for those agencies which contract with more than one division, and incorporating terms and conditions applicable to all divisions. The contract documents have been developed with input from and final approval by the Office of the Attorney General.

With regard to Department clients, the social impact of the readoption and addition of the proposed rules is negligible. Clients have no direct involvement in the debarment, suspension or disqualification of agencies of the contract documents used; and the proposed changes are not anticipated to alter the continuing development of community-based facilities for the mentally retarded, mentally ill, or children in need of supervision.

**Economic Impact**

The proposed readoption will have no economic impact on Department clients nor on any other members of the public at large.

The economic impact of this proposal on the Department of Human Services and community agencies, while difficult to quantify, is positive. The protection provided by debarment, suspension and disqualification of agencies and the consolidated standard contract document will ensure that contracts are administered and agencies treated consistently across division lines. The necessary forms are provided free of charge to agencies or businesses contracting with the State of New Jersey.

**Regulatory Flexibility Statement**

Both Subchapters 1 and 2 affect small business in that many organizations that contract with the Department may be categorized as small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq. (P.L. 1986, c.169). The proposed readoption with amendments, however, continues existing rules that have already been in effect for a number of years, and it is not anticipated that this proposal will result in any change in impact on small businesses. The proposed new rules add a reference to the Administrative Procedure Act and the Uniform Administrative Procedure Rules and add provisions regarding the use of an additional standard document. The current effect of the rules is to enable businesses, of any size, to contract with the State of New Jersey. All forms are provided free of charge to businesses and advice or consultation is also available free of charge.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:13.

**Full text** of the proposed amendments to the readoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

**10:3-1.13 Appeals**

**Any appeals under the provisions of this Subchapter shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.) and the Uniform Administrative Procedure rules (N.J.A.C. 1:1).**

10:3-2.2 Capital Funding Agreement for Construction, Purchase, or Purchase and Renovation of Community-Based Facilities

(a) The Departmental efforts to consolidate [heretofore existent] division-specific contracts/agreements has culminated in the development of a Standard Contract/Agreement Document for the Construction, Purchase, or Purchase and Renovation of Community-Based Facilities. Copies of the Standard Document and updates may be obtained from:

Contract Policy and Management Unit
Department of Human Services
CN 700
Trenton, New Jersey 08625

(b) In the event of **a** conflict between the [Standard Document] **standard document referred to in (a) above** [referenced in this subchapter] and any other agency rule in title 10, [this Standard Document] **the standard document** shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the [Standard Document referenced in this subchapter] **standard document**.

OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the Standard Contract/Agreement Document **in (a) above** was submitted as part of this proposal but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, [88 East State Street, Trenton] **9 Quakerbridge Plaza, Trenton, New Jersey 08625** or the [Office of Community Management Services,] **Contract Policy and Management Unit,** 222 South Warren Street, Trenton. This document will not be reproduced in the New Jersey Administrative Code.

10:3-2.3 Capital Funding Agreement for Renovation, Remodeling, Extension or Other Improvements to Agency-Owned or Leased Community Facilities

(a) The Department efforts to consolidate [heretofore existent] division-specific contracts/agreements has culminated in the development of a Standard Contract/Agreement Document for Renovation, Remodeling, Extension or Other Improvements to Agency-Owned or Leased Community Facilities. Copies of the Standard Documents and updates may be obtained from:

Contract Policy and Management Unit
Department of Human Services
CN 700
Trenton, New Jersey 08625

(b) In the event of a conflict between the [Standard Document referenced in this subchapter] **standard document referred to in (a) above** and any other agency rule in title 10, [this Standard Document] **the standard document** shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the [Standard Document referenced in this subchapter] **standard document**.

**OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the standard contract/agreement document in (a) above was submitted as part of this proposal, but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625 or the Contract Policy and Management Unit, 222 South Warren Street, Trenton, New Jersey 08625.**

**10:3-2.4 Capital Funding Agreement for Community-Based Facility Planning and Design Services**

**(a) The Department, continuing in its efforts to consolidate contracts and agreements, has developed the Funding Agreement for Community-Based Facility Planning and Design Services document to be used by all divisions for preliminary planning/design services. Copies of the standard documents and updates may be obtained from:**

**Contract Policy and Management Unit**
**Department of Human Services**
**CN 700**
**Trenton, New Jersey 08625**

**(b) In the event of conflict between the standard document referred to in (a) above and any other agency rule in Title 10, the standard document shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the standard document.**

**OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the standard contract/agreement in (a) above was submitted as part of this proposal, but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625 or the Contract Policy and Management Unit, 222 South Warren Street, Trenton, New Jersey 08625.**

# CORRECTIONS

## THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by August 31, 1988 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

## (a)

### Medical and Health Services
### Inmate/Therapist Confidentiality
### Proposed Amendment: N.J.A.C. 10A:16-4.4

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and *In the Matter of Rules Adoption Regarding Inmate-Therapist Confidentiality (N.J.A.C. 10A:16-4.4)*, Docket No. A-4205-86T1 (App. Div. 1988).

Proposal Number: PRN 1988-368.

The agency proposal follows:

**Summary**

The proposed amendment modifies N.J.A.C. 10A:16-4.4 to more clearly specify the circumstances under which communication between a clinical practitioner and an inmate must be disclosed in accordance with the Appellate Division's decision regarding inmate therapist confidentiality, *In the Matter of Rules Adoption Regarding Inmate-Therapist Confidentiality (N.J.A.C. 10A:16-4.4)*, Docket No. A-4205-86T1 (App. Div. 1988), which mandated the deletion of subsection (b) and a more stringent exception standard in paragraphs (c)3 and 5.

**Social Impact**

The proposed amendment will have no significant social impact because it clarifies the rule relating to inmate/therapist confidentiality by clearly identifying the types of communication which must be disclosed by the clinical practitioners.

**Economic Impact**

The proposed amendment will have no economic impact because additional funding is not necessary to implement or maintain the amendment.

**Regulatory Flexibility Statement**

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10A:16-4.4 Inmate/therapist confidentiality

(a) (No change.)

[(b) Privileged communication are subject to certain exceptions where it is found or believed that disclosure is more important to the present and future interests of substantial justice or safety of persons, than protection from injury to the clinical practitioner/patient relationship or to the inmate or others whom disclosure is likely to harm.]

[(c)](**b**) The following exceptions to privileged communications are applicable only in situations which present a clear and imminent danger to the inmate or others[.]**:**

1. Where the inmate discloses planned action which involves a clear and substantial risk of imminent serious injury, disease or death to the inmate or [another] **other** identifiable [person] **persons**;

2. Where an escape plan is disclosed to the clinical practitioner;

3. Where drug trafficking for profit or illicit influence on others, involving Controlled Dangerous Substances (C.D.S.) or drug paraphernalia [which may result in:

i. Injury (for example, transmission of disease by sharing of hypodermic needles, etc.);

ii. Disorder; or

iii. Other interference with the orderly operation of the correctional facility is disclosed.] **, presents a clear and imminent danger to the inmate or other identifiable persons;**

4. (No change.)

5. Where the inmate discloses a past, previously unreported murder, aggravated sexual assault [or arson which resulted in a death. For the purpose of this Subsection, aggravated sexual assault shall mean those offenses set forth in N.J.S.A. 2C:14-2(a). Past crimes shall be disclosed only where circumstances present a reasonably foreseeable danger in the present or future due to the nature of the past crime.] **(meaning those offenses set forth in N.J.S.A. 2C:14-2(a)) or arson which resulted in a death, under circumstances which present a clear and imminent danger to other identifiable persons.**

Redesignate existing (d) through (k) as (**c**) **through** (**j**) (No change in text.)

## (a)

## Medical and Health Services
## Special Medical Unit
## Proposed Amendments: N.J.A.C. 10A:16-11.4 and 11.5
## Proposed Repeal and New Rule: N.J.A.C. 10A:16-11.14

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-365.

The agency proposal follows:

**Summary**

The proposed amendments and new rule modify the rules of the Special Medical Unit related to staff, orientation and recreation. N.J.A.C. 10A:16-11.4(c) has been modified to limit equal consideration of the concerns of both the custody and professional staff in decision-making to matters related to program development, instead of equal consideration in decision-making on matters related to both program development and the management of the Special Medical Unit. N.J.A.C. 10A:16-11.5 has been modified to specify the staff member(s) who provide orientation to inmates upon admission to the Special Medical Unit. N.J.A.C. 10A:16-11.14 has been repealed and a new rule proposed to authorize the Medical Director of the Department and the attending physician(s) to determine the amount of exercise and recreation that is provided in the Special Medical Unit, based upon the physical condition and other medical considerations of the inmate(s).

**Social Impact**

The proposed amendment to N.J.A.C. 10A:16-11.4(c) and new rule N.J.A.C. 10A:16-11.14 will provide a flexibility that is necessary in the management of the Special Medical Unit and minimize the occurrence of conflict between custody and professional staff members. The proposed amendment to N.J.A.C. 10A:16-11.5 makes the rule consistent with the desired practice related to orientation.

**Economic Impact**

The proposed amendments will have no significant economic impact because additional staff and resources are not required to implement and maintain these rules.

**Regulatory Flexibility Statement**

The proposed amendments impact upon inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10A:16-11.4 Special Medical Unit (S.M.U.) staff

(a)-(b) (No change.)

(c) The concerns of both the custody and the Professional Services staff members shall be given equal consideration in decision-making regarding the development of programs [and the management of the] **for the** Special Medical Unit.

10A:16-11.5 Orientation

(a)-(d) (No change.)

(e) The Professional Service staff shall be advised by the [Special Medical Unit Classification Committee] **Custody Supervisor** that an inmate has been assigned to the Special Medical Unit. [A representative from each professional discipline] **The social worker** shall meet with the newly assigned inmate during orientation and advise the inmate of the programs and services available within the [representative's discipline] **Special Medical Unit**.

(f)-(g) (No change.)

10A:16-11.14 Recreation

[(a) Each inmate shall be permitted a minimum of two hours of exercise and recreation daily.

(b) When there is a need to keep certain inmates separate, the Director of the Special Medical Unit may schedule the yard recreation periods into one hour sessions.

(c) Selections with respect to the composition of an inmate recreation group shall be the responsibility of the Special Medical Unit Classification Committee based upon infection control guidelines established by the Office of Institutional Support Services (O.I.S.S.), Director of Medical Services and the attending physician.]

**Inmates in the Special Medical Unit shall be permitted exercise and recreation activity to the extent of their physical abilities to participate, dependent upon medical factors as determined by the Director of Medical Services of the Department of Corrections and the attending physician(s).**

# INSURANCE

## DIVISION OF ACTUARIAL SERVICES

## (b)

## Group Coordination of Benefits
## Reproposed New Rules: N.J.A.C. 11:4-28

Authorized By Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:48-1.7, 17:48A-9, 17:48C-13, 17:48D-23, 17:48E-44 and 17B:27-49.

Proposal Number: PRN 1988-370.

Submit comments by August 31, 1988 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Proposed new subchapter N.J.A.C. 11:4-28 concerns the coordination of benefits (COB) among group health plans. COB provisions are designed to discourage overinsurance and to avoid duplication of benefits where an insured is covered under more than one group health plan. The

proposed new rules establish uniform procedures for claim payment to prevent claim delays and misunderstandings which result from the use of incompatible provisions among plans.

Until now, the Department has relied on the forms approval process to ensure that nonduplication provisions in group health contracts were consistent with the guidelines of the National Association of Insurance Commissioners (NAIC) Model Group COB provisions. Contract provisions that did not conform to the NAIC Model were disapproved pursuant to N.J.S.A. 17B:27-49.

Over the years, multiple revisions were made in the NAIC Model. Several recent revisions, including the "birthday rule," require significant changes in outstanding, as well as new, contracts. The proposed new rules incorporate most of the current (1987) NAIC Model provisions and impose a time period for implementing the new procedures. Significantly, this proposed subchapter adopts the current NAIC Model respecting the issue of copayments and requires that benefit payments be maintained at 100 percent of allowable expenses.

Several differences exist between the proposed new rules and the current NAIC Model. One difference is the treatment of "always secondary" self-insurance coverage. The current NAIC Model utilizes methods of allocations which the Department finds unacceptable and the Department has retained its current procedures for "always secondary" coverage (see N.J.A.C. 11:4-28.9). Another difference is the exclusion from the definition of "plan" of group or group-type coverage where the cost of coverage is paid solely by the employee, member or subscriber (see N.J.A.C. 11:4-28.2).

New rules concerning the coordination of health benefits were first proposed in the May 18, 1987 New Jersey Register at 19 N.J.R. 845(a). In response to that proposal, comments were received from various persons and entities, which comments remain on file with the Department. As a result of the comments received, as well as the Department's own internal review, the Department has determined to publish this reproposal. It should be noted that this reproposal supersedes the original proposal, which has expired, and that any comments received in response thereto have either been accepted or rejected. Accordingly, any interested person who wishes to respond to the reproposal should timely submit written comments which are responsive to the current text of the proposed new rules.

The proposed new rules include several changes to the former proposal. The most significant changes include the following: 1. The deletion of a special operative date for the implementation of the "birthday rule" (see Social Impact below); 2. The utilization of different methods of allocation in the treatment of "always secondary" or "excess" self-insurance coverage; and 3. Omitting from the definition of "plan" group or group-type coverage where the cost of coverage is paid solely by the employee, member or subscriber.

A brief summary of the individual sections of the proposed subchapter follows.

N.J.A.C. 11:4-28.1 states the purpose and applicability of the proposed new rules.

N.J.A.C. 11:4-28.2 is a definitions section including definitions of key terms such as "allowable expenses" and "plan." Where necessary due to the highly technical nature of the proposed new rules, and for clarity, an example or explanatory information is provided as part of a definition.

N.J.A.C. 11:4-28.3 provides that COB provisions are permissive in nature and states the conditions for their use.

N.J.A.C. 11:4-28.4 addresses a model COB contract provision and incorporates same by reference to the extent permitted by and consistent with the proposed new rules.

N.J.A.C. 11:4-28.5 provides that coordination is prohibited in certain circumstances and that contracts cannot contain "excess" or "always secondary" provisions except as may be permitted by the proposed new rules.

N.J.A.C. 11:4-28.6 provides the rules concerning the order for coordinating the payment of benefits.

N.J.A.C. 11:4-28.7 provides the procedures to be followed by a secondary plan to reduce its benefits. These procedures do not incorporate the copayment alternatives of the 1985 NAIC Model.

N.J.A.C. 11:4-28.8 provides that a secondary plan may receive from the primary plan the reasonable monetary value of providing services under certain circumstances.

N.J.A.C. 11:4-28.9 addresses "excess" and other nonconforming provisions.

N.J.A.C. 11:4-28.10 sanctions the use of certain substitute terminology in contracts.

N.J.A.C. 11:4-28.11 establishes compliance requirements.

**Social Impact**

The proposed new rules provide a procedure to establish the order in which claims are paid when more than one insurance plan is involved. The subchapter permits plans to include a COB provision, which determines whether the plan is primary or secondary. By establishing a predictable order of payment, claim payment delays should be reduced since there will be no confusion as to which insurer is responsible for paying first. The promulgation of an administrative rule to replace unpublished guidelines and forms review procedures will provide both insurers with clear, concise and easily secured information and guidance on COB.

The present guidelines for the coordination of benefits, which are based on the gender of the individuals, give the appearance of sex discrimination and have precipitated many complaints. In response to this situation on a nationwide basis, the NAIC developed the "birthday rule," which uses the birthdate of the individuals involved to determine the primary plan. The proposed new rules adopt this approach. Since the purpose of the COB rules is to establish a uniform method for determining the order of payment, the birthday rule will accomplish this goal and, at the same time, eliminate the appearance of sex discrimination.

The Department may experience a decrease in complaint-oriented work since the incorporation of COB provisions in published rules should clarify procedures and reduce the number of inquiries and complaints with regard to claim payment delays. However, the proposed new rules will result in an increase in form processing since the Department staff will have to receive, review and approve group contracts adhering to the new requirements (for example, the "birthday rule").

**Economic Impact**

As a result of establishing an order of payment, duplicate benefit payments will be reduced. Thus, in general, insureds will receive only the amount to which they are entitled, and insurers will not have to pay benefits in excess of their responsibility. Accordingly, the cost of health care coverage will not be raised by allowing some to profit by incurring health care.

Most health insurance plans include some copayment features. Excluding copayment alternatives will enable subscribers with duplicate coverage to secure 100 percent of allowable expenses.

There will be no economic impact upon the Department other than that associated with and concomitant to the decrease in the complaint-oriented workload and the increase in form processing noted in the Social Impact statement above. The Department anticipates that these will be offsetting.

**Regulatory Flexibility Statement**

Some insurers affected by these proposed new rules may be "small businesses" as that term is defined in the "New Jersey Regulatory Flexibility Act", N.J.S.A. 52:14B-16 et seq. As these rules are designed to provide uniform procedures for claim benefit payment where an insured is covered under more than one group health insurance contract, a different procedure for insurers who are small businesses would negate the very purpose of a COB provision and the procedural consistency sought to be established, and would further obscure what is, at present, an area of confusion in the insurance industry. Accordingly, differential treatment is not permitted.

Beyond the mandated coverage provisions identified in the proposed new rules, there are no other compliance requirements for insurers who are small businesses. To a great extent, insurers are presently complying with the proposed new rules by adhering to current Departmental guidelines. In so complying, the industry has already developed the internal professional expertise needed to abide by the proposed new rules.

Since the use of COB is permissive, insurers are not required to employ COB provisions in their group contracts.

**Full text** of the proposed new rules follows.

SUBCHAPTER 28. GROUP COORDINATION OF BENEFITS

11:4-28.1 Purpose; applicability

(a) The purpose of this subchapter is to:

1. Discourage overinsurance and avoid duplication of benefits by permitting a reduction of benefits when a person is covered by more than one plan providing benefits or services for medical, dental, or other care or treatment;

2. Avoid claims payment delays and misunderstandings that result from the use of inconsistent or incompatible nonduplication provisions; and

3. Establish uniformity in the order in which plans pay their claims, and provide the authority for the orderly transfer of information needed to pay claims promptly.

(b) This subchapter applies to group contracts providing health care benefits which are issued, amended, or renewed by health insurers, health service corporations, hospital service corporations, medical service corporations, dental service corporations, dental plan corporations and all similar organizations.

11:4-28.2 Definitions

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

"Allowable expense" means the necessary, reasonable, and customary item of expense for health care when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition.

1. Notwithstanding the above definition, items of expense under coverages such as dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expenses to like items of expense.

2. When a plan provides benefits in the form of services, the reasonable monetary value of each service shall be considered as both an allowable expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of allowable expense shall include only the corresponding expenses or services to which COB applies.

"Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

1. Services (including supplies);
2. Payment for all or a portion of the expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Claim determination period" means the period of time, which shall not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB, to determine whether benefit duplication exists and how much each plan will pay or provide.

1. The claim determination period shall generally be a calendar year, but a plan may use some other period of time that fits the coverage of the plan. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.

2. As each claim is submitted, each plan shall determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. This determination shall be subject to adjustment as later allowable expenses are incurred in the same claim determination period.

"COB" means coordination of benefits.

"Group type coverage" means coverage which is not available to the general public and which can be obtained and maintained only because of membership in, or connection with, a particular organization or group.

"Plan" means coverage with which coordination is allowed. The definition of "plan" in the group contract must state the coverages which will be considered in applying the COB provision of that contract. The right to include a coverage shall be limited by 1 through 3 below.

1. Any definition that satisfies the substance of this definition at N.J.A.C. 11:4-28.2 may be used. The definition of "plan" shown in the Model COB Provision in Appendix A of this subchapter is an example of what may be used.

2. This subchapter uses the term "plan." However, a group contract may, instead, use "program" or a comparable term.

3. A "plan" may include:

i. Group insurance and group subscriber contracts;
ii. Uninsured arrangements of group or group-type coverage;
iii. Group or group-type coverage through HMOs and other prepayment, group practice and individual practice plans;
iv. Group hospital indemnity benefit amounts exceeding $150.00 per day;
v. The medical benefits coverage in automobile "no-fault" and traditional automobile "fault" type contracts; and
vi. Medicare or other governmental benefits, except those benefits as provided in 4vii below. This part of the definition of "plan" may be limited to the hospital, medical and surgical benefits of the governmental program.

4. "Plan" shall not include:

i. Individual or family insurance contracts;
ii. Individual or family subscriber contracts;
iii. Individual or family coverage through Health Maintenance Organizations (HMOs);
iv. Individual or family coverage under other prepayment, group practice and individual practice plans;
v. Group or group-type coverage where the cost of coverage is paid solely by the employee, member or subscriber;
vi. Group hospital indemnity benefits of $150.00 per day or less;
vii. School accident-type coverages. This coverage provides benefits for students, headstart and day care enrollees, campers, and similar participants for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;
viii. A State plan under Medicaid; and
ix. A plan when, by law, its benefits are in excess of those of any private insurance plan or other nongovernmental plan.

"Hospital indemnity benefits" means those benefits not related to expenses incurred. The term does not include expense-incurred benefits, even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking into consideration the existence of any other plan. There may be more than one primary plan. A plan shall be a "primary plan" if either 1 or 2 below exists:

1. The plan has no order of benefit determination rules, or it has rules which differ from those permitted by this subchapter;

2. All plans which cover the person use the order of benefit determination rules required by this subchapter, and under those rules the plan determines its benefits first.

"Secondary plan" means a plan which is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter shall decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under this subchapter, has its benefits determined before those of that secondary plan.

"This Plan" in a COB provision means the part of the group contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the group contract providing health care benefits shall be separate from "This Plan." A group contract may apply one COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

11:4-28.3 Coordination permissive

(a) The use of COB provisions in group contracts providing health care benefits shall be permissive; any plan may elect to be always "primary". Where COB is used, it shall be included in group contracts providing health care benefits subject to the following conditions:

1. If a group contract includes a COB provision, it shall be consistent with the requirements of this subchapter.

2. A plan that does not include a COB provision shall not take the benefits of another plan into account in determining its benefits

(b) Group coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of a plan provided by the same contract holder.

11:4-28.4 Model COB contract provision

(a) Appendix A of this subchapter contains Model COB Provisions for use in group contracts, and is incorporated herein by reference as part of this subchapter. The use of the Model COB Provisions shall be subject to the provisions of (b) below, N.J.A.C. 11:4-28.5 and N.J.A.C. 11:4-28.6.

(b) A group contract's COB provision shall not be required to use the words and format shown in Appendix A of this subchapter. Changes may be made to fit the language and style of the rest of the group contract or to reflect the differences among plans which provide services, pay benefits for expenses incurred, and which indemnify. No other changes to the Model COB Provisions in Appendix A shall be permitted.

11:4-28.5 Prohibited coordination; benefit design

(a) A group contract shall not reduce benefits on the basis that:

1. Another plan exists;

2. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or

3. A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

(b) A contract shall not contain a provision that its benefits are "excess" or "always secondary" to any plan as defined in this subchapter, except as may be permitted by this subchapter. This prohibition shall not apply to group student excess accident or health contracts where no part of the premium is paid by the student or his family.

11:4-28.6 Rules for coordination of benefits

(a) The general order of benefit determination shall be as follows:

1. The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.

2. A secondary plan shall take the benefits of another plan into account only when, under this subchapter, it is secondary to that other plan.

3. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) shall be determined before those of the plan which covers the person as a dependent.

(b) The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows:

1. The benefits of the plan of the parent whose birthday falls earlier in a year shall be determined before those of the plan of the parent whose birthday falls later in that year.

2. If both parents have the same birthday, the benefits of the plan which covered the parent longer shall be determined before those of the plan which coverd the other parent for a shorter period of time.

3. The word "birthday" refers only to month and day in a calendar year and not the year in which the person was born.

4. If the other plan does not follow the rules described in (b) 1, 2 and 3 above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule based upon the gender of the parent shall determine the order of benefits.

(c) If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child shall be determined according to the provisions of this subsection:

1. The plan of the parent with custody of the child shall have its benefits determined first;

2. The plan of the spouse of the parent with the custody of the child shall have its benefits determined next;

3. The plan of the parent not having custody of the child shall have its benefits determined last.

4. If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and if the plan of that parent is a secondary plan, and further, if the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, then the benefits of that plan shall be determined first. The plan of the other parent shall be considered the secondary plan. This paragraph shall not apply to any claim determination period or plan year during which any benefits are actually paid or provided before the entity that has actual knowledge.

(d) The benefits of a plan which covers a person as an employee who is neither laid-off nor retired (or as that employee's dependent) shall be determined before those of a plan which covers that person as a laid-off or retired employee (or as that employee's dependent). If the other plan does not have this particular provision, and if, as a result, the plans do not agree on the order of benefits, this subsection shall be ignored.

(e) If none of the provisions of (c) and (d) above determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer shall be determined before those of the plan which covered that person for the shorter term.

1. To determine the time a person has been covered under a plan, successive plans of a given group shall be treated as one if the claimant was eligible under the second plan within 24 hours after the first plan ended.

2. The start of a new plan shall not include:

i. A change in the amount or scope of a plan's benefits;

ii. A change in the entity which pays, provides or administers the plan's benefits; and

iii. A change from one plan to another (such as, from a single employer plan to that of a multiple employer plan).

3. The claimant's time covered under a plan shall be measured from the claimant's initial date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the time of the claimant's coverage under the present plan.

11:4-28.7 Procedure to be followed by secondary plan to reduce benefits

(a) A plan determined to be a secondary plan pursuant to N.J.A.C. 11:4-28.6 may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than the total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan shall determine its obligation to pay for allowable expenses based on all claims which were submitted up to that time during the claim determination period.

(b) The benefits of the secondary plan shall be reduced when the sum of the benefits that would be payable for the allowable expenses under the secondary plan in the absence of this COB provision, and the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not a claim is made, exceeds those allowable expenses in a claim determination period. In this case, the benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

(c) When the benefits of This Plan are reduced as described in (a) or (b) above, each benefit shall be reduced in proportion, and the amount paid shall then be charged against any applicable benefit limit of This Plan.

(d) The requirements of (c) above may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

11:4-28.8 Reasonable monetary value of services

A secondary plan which provides benefits in the form of services may recover from the primary plan the reasonable monetary value of providing the services to the extent that benefits for the services are covered by the primary plan. Nothing in this section shall be interpreted to require a plan to pay a covered person money for the value of services provided by a plan which provides benefits in the form of services.

11:4-28.9 Excess and other nonconforming provisions

(a) Where a plan has order of benefits determination rules which are inconsistent with this subchapter and declares that the plan's coverage is "excess" or "always secondary" the following shall apply. Such inconsistencies and declarations can occur because certain plans may not be subject to this subchapter or because some group contracts have not yet conformed to the requirements of this subchapter pursuant to N.J.A.C. 11:4-28.11.

1. A plan with order of benefit determination rules which comply with this subchapter (complying plan) shall coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this subchapter (noncomplying plan) on the following basis:

i. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis;

ii. If the complying plan is the secondary plan, it shall attempt to coordinate in the secondary position with benefits available through the noncomplying plan. The complying plan shall attempt to secure the necessary information from the noncomplying plan. If the noncomplying plan is unwilling to act as primary plan or to supply the necessary information, the complying plan shall assume the primary position and pay its benefits as the primary plan.

11:4-28.10 Substitute terminology in contracts

A term such as "usual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary" in a contract. Terms such as "medical care" or "dental care" may be substituted for "health care" in a contract to describe the coverages to which the COB provisions apply.

11:4-28.11 Compliance

(a) Every group contract which provides health care benefits and which is issued on or after January 1, 1989, shall comply with this subchapter.

(b) A group contract which provides health care benefits and which has been issued before January 1, 1989, shall be brought into compliance with this subchapter by the later of:

1. The next anniversary date or renewal date of the group contract following January 1, 1989; or

2. The expiration, following January 1, 1989, of any applicable collectively-bargained contract under which it was written.

11:4-28.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX A

MODEL COB PROVISIONS

COORDINATION OF THE GROUP CONTRACT'S BENEFITS WITH OTHER BENEFITS

(I) APPLICABILITY

(A) This Coordination of Benefits ("COB") provision applies to This Plan when an employee or the employee's covered dependent has health care coverage under more than one Plan. "Plan" and "This Plan" are defined below.

(B) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of This Plan are determined before or after those of another plan. The benefits of This Plan:

i. Shall not be reduced when, under the order of benefit determination rules, This Plan determines its benefits before another plan; but

ii. May be reduced when, under the order of benefits determination rules, another plan determines its benefits first. The above reduction is described in Section (IV) Effect on the Benefits of This Plan.

(C) If this COB provision applies, but the other plan assumes an always secondary position or refuses to follow the order of benefit determination rules, the benefits of This Plan shall not be reduced.

(II) DEFINITIONS

(A) "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment:

i. Group insurance or group or group-type coverage. This includes prepayment, group practice or individual practice coverage. It also includes coverage other than school accident-type coverage.

ii. Coverage under a governmental plan, or coverage required or provided by law. This does not include a State plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program.

Each contract or other arrangement for coverage under ii. is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

(B) "This Plan" is the part of the group contract that provides benefits for health care expenses.

(C) "Primary Plan/Secondary Plan." The order of benefit determination rules state whether This Plan is a Primary Plan or Secondary Plan as to another plan covering the person.

When This Plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits.

When This Plan is a Secondary Plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

When there are more than two plans covering the person, This Plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.

(D) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.

The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an Allowable Expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, or as specifically defined in the plan.

When a plan provides benefits in the form of services, the reasonable monetary value of each service rendered will be considered both an Allowable Expense and a benefit paid.

(E) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under This Plan, or any part of a year before the date this COB provision or a similar provision takes effect.

(III) ORDER OF BENEFIT DETERMINATION RULES.

(A) General. When there is a basis for a claim under This Plan and another plan, This Plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:

i. The other plan has rules coordinating its benefits with those of This Plan; and

ii. Both those rules and This Plan's rules, in subparagraph (B) below, require that This Plan's benefits be determined before those of the other plan.

(B) Rules. This Plan determines its order of benefits using the first of the following rules which applies:

i. Nondependent/Dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

ii. Dependent Child/Parents not Separated or Divorced. Except as stated in subparagraph (B)iii below, when This Plan and another plan cover the same child as a dependent of different persons called "parents":

a. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

b. If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described in a. immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

iii. Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

a. First, the plan of the parent with custody of the child;

b. Then, the plan of the spouse of the parent with the custody of the child; and

c. Finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and if the plan of that parent is a secondary plan, and further, if the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or Plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

iv. Active/Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule (iv) is ignored.

v. Longer/Shorter Length of Coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the Plan which covered that person for the shorter term.

(IV) EFFECT ON THE BENEFITS OF THIS PLAN.

(A) When This Section Applies. This Section (IV) applies when, in accordance with Section (III) Order of Benefit Determination Rules, This Plan is a Secondary Plan as to one or more other plans. In that event the benefits of This Plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in (B) immediately below.

(B) Reduction in This Plan's Benefits. The benefits of This Plan will be reduced when the sum of:

i. The benefits that would be payable for the Allowable Expenses under This Plan in the absence of this COB provision; and

ii. The benefits that would be payable for the Allowable Expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made; exceeds those Allowable Expenses in a Claim Determination Period. In that case, the benefits of This Plan will be reduced so that they and the benefits payable under the other plans do not total more than those Allowable Expenses.

When the benefits of This Plan are reduced as described above, each benefit is reduced in proportion. The amount paid is then charged against any applicable benefit limit of This Plan.

(V) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

Certain facts are needed to apply these COB rules. (Insurer) has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. (Insurer) need not tell, or get the consent of, any person to do this. Each person claiming benefits under This Plan must give (Insurer) any facts it needs to pay the claim.

(VI) FACILITY OF PAYMENT.

A payment made under another plan may include an amount which should have been paid under This Plan. If it does, (Insurer) may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under This Plan. (Insurer) will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable monetary value of the benefits provided in the form of services.

(VII) RIGHT OF RECOVERY

If the amount of the payments made by (Insurer) is more than it should have paid under this COB provision, it may recover the excess from one or more of:

(A) The persons it has paid or for whom it has paid;

(B) Insurance companies; or

(C) Other organizations.

The "amount of the payments made" includes the reasonable monetary value of any benefits provided in the form of services.

# TRANSPORTATION

## TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by August 31, 1988 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

## (a)

### Restricted Parking and Stopping
### Route N.J. 7 in Essex County
### Proposed Amendment: N.J.A.C. 16:28A-1.6

Authority: N.J.S.A. 27:A-5, 27:A-6, 39:4-197.5 and 39:4-199.

Proposal Number: PRN 1988-366.

The agency proposal follows:

**Summary**

The proposed amendment will establish restricted parking spaces along Route 7 (Washington Avenue) in the Town of Belleville, Essex County for the exclusive use of handicapped persons who have been issued special vehicle identification cards. Additionally, this amendment establishes a time limit along the avenue's east side, wherein the west side is applicable 24 hours for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the parking restrictions along Route 7 in the Town of Belleville, Essex County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.6 based upon the request from the local government officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish restricted parking spaces along Route 7 (Washington Avenue) in the Town of Belleville, Essex County for the exclusive use of handicapped persons who have been issued special vehicle identification cards. Additionally, this amendment will provide for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and benefit handicapped persons in that their best interests are being cared for. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for "handicapped parking only" signs and appropriate markings. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

16:28A-1.6 Route 7

(a) (No change.)

(b) The certain parts of State highway Route 7 described in this **sub**section shall be designated and established as restricted parking spaces for the use of persons who have been issued special [V]**v**ehicle [I]**i**dentification cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5 **Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:**

1. Restricted parking in the Town of Belleville, Essex County:

**i. Washington Avenue:**

[i.](**1**) Along the west side [(#221 Washington Avenue)]:

[(1)](**A**) Beginning at a point 44 feet **south** [from] **of** the southerly curb line of Academy Street [and extending] **to a point** 22 feet southerly therefrom.

[ii.](**2**) Along the east side [(#228 Washington Avenue)]:

[(2)](**A**) Beginning at a point 45 feet **north** [from] **of** the northerly curb line of Academy Street [and extending 22 feet] **to a point 66 feet** northerly therefrom[.]**, Monday through Friday 9:00 A.M. to 10:00 A.M. and 2:00 P.M. to 3:00 P.M.**

(c) (No change.)

## (a)

## Turns
## Route N.J. 10 in Essex County
## Proposed New Rule: N.J.A.C. 16:31-1.25

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6, 39:4-123.

Proposal Number: PRN 1988-367.

The agency proposal follows:

**Summary**

The proposed new rule will prohibit turns to Skyline Drive southbound along Route N.J. 10 in the Township of West Orange, Essex County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government officials in the interest of safety the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of no left or right turns along Route N.J. 10 in the Township of West Orange, Essex County was warranted.

The Department therefore proposes new rule N.J.A.C. 16:31-1.25 based upon the request from local government officials and the traffic investigation.

**Social Impact**

The proposed new rule will prohibit left or right turns to Skyline Drive southbound along Route N.J. 10 in the Township of West Orange, Essex County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and the local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs of the installation of no left and right turn signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

Since the proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

**Full text** of the proposal follows.

16:31-1.25 Route 10

(a) Turning movements of traffic on the parts of State highway Route 10 described below are regulated as follows:

1. In the Township of West Orange, Essex County:

i. No left turn westbound to Skyline Drive southbound.

ii. No right turn eastbound to Skyline Drive southbound.

# TREASURY-GENERAL

## (b)

## STATE INVESTMENT COUNCIL
## Loan Participation Notes
## Proposed New Rules: N.J.A.C. 17:16-41

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1988-363.

Submit comments by August 31, 1988 to:

Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rules provide for investment in loan participation notes with maturities not exceeding 180 days. Loan participation notes are loans by commercial banks to companies which sell the loans, in whole or part, to other investors.

**Social Impact**

The social impact of the proposed new rules would be the potential for increased sales by banks of this type of security for the funds under the jurisdiction of the Division of Investment.

**Economic Impact**

The additional choice available for investment as a result of the proposed new rules offers the possibility of additional profit for the beneficiaries of the funds under the control of the Division. The yield for this type of investment is competitive with other securities offered.

**Regulatory Flexibility Statement**

The proposed new rules do not impose compliance requirements on small businesses. Therefore, no regulatory flexibility analysis is required.

**Full text** of the proposal follows (deletions indicated in brackets [thus]; additions shown in boldface **thus**).

SUBCHAPTER 41. [(RESERVED)]**LOAN PARTICIPATION NOTES**

**17:16-41.1 Definition**

**As used in this subchapter, "loan participation notes" means a short term, unsecured promissory note.**

**17:16-41.2 Permissible investments**

**(a) Subject to the maturity limitations contained in this subchapter, the Director may invest and reinvest the moneys of any fund in loan participation notes which are not in default as to either principal or interest when acquired and which have been issued by a company incorporated within and transacting business within the United States.**

**(b) The Director shall submit a list of issuers of loan participation notes to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved List of Issuers of Loan Participation Notes".**

**(c) The Director may purchase loan participation notes only from originating banks which meet the requirements as permitted under N.J.A.C. 17:16-27 of the rules of the State Investment Council.**

17:16-41.3 Eligible funds

**The Director may purchase "loan participation notes" for the State of New Jersey Cash Management Fund and any fund under the supervision of the State Investment Council, providing the maturity purchased does not exceed 180 days.**

17:16-41.4 Legal papers

**(a) Prior to any commitment to purchase loan participation notes, the Director shall obtain:**

**1. Evidence that the note issuer has a commercial paper rating of A-1 by "Standard & Poor's Commercial Paper Division"; and**

**2. Approval by the Attorney General of each "Master Participation Agreement" which specifies the terms and conditions between the investor and the originating bank.**

## (a)

## AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

### Affirmative Action Rules

### Proposed Readoption with Amendments: N.J.A.C. 17:27

Authorized By: Feather O'Connor, State Treasurer.
Authority: N.J.S.A. 10:5-31 et seq., especially N.J.S.A. 10:5-36k.
Proposal Number: PRN 1988-369.

Submit comments by August 31, 1988 to:
William Parrish, Chief
State Affirmative Action Office
(Public Contracts)
Department of the Treasury
CN 207
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 17:27 governs the affirmative action employment standards and practices required of public agencies awarding contracts, public work contractors, and subcontractors to comply with equal employment opportunity, as mandated by N.J.S.A. 10:5-36 et seq. (P.L.1975, c. 127). The rules define the public agency's responsibilities in awarding contracts, the contractor's responsibilities for compliance with these rules, and the Affirmative Action Office's administrative procedures.

In accordance with the "sunset" provision of Executive Order No. 66(1978), N.J.A.C. 17:27 expires on November 7, 1988. The State Affirmative Action Office (Public Contracts) proposes to readopt the chapter with amendments designed to simplify requirements for public agencies and contractors, to bring these rules into accord with other related affirmative action rules, and to clarify some of its provisions. The Department of the Treasury has reviewed this chapter and has determined that N.J.A.C. 17:27 continues to be reasonable, necessary, and proper for the reasons it was originally adopted.

Subchapter 1 delineates the policy of the Department regarding affirmative action in the awarding of contracts funded by the State of New Jersey.

Subchapter 2 contains definitions used in this chapter.

Subchapter 3 contains general requirements for public agencies which award contracts.

Subchapter 4 outlines affirmative action plan requirements for procurement and service contractors and subcontractors.

Subchapter 5 delineates minority and female employment goal obligations for procurement and service contractors and subcontractors.

Subchapter 6 outlines the affirmative action plan for construction contractors and subcontractors.

Subchapter 7 delineates minority and female employment goal obligations for construction contractors and subcontractors.

Subchapter 8 contains provisions regarding local advisory board recommendations.

Subchapter 9 contains provisions regarding the monitoring of public works contracts.

Subchapter 10 delineates the compliance requirements and sanctions which apply to public works contracts.

Subchapter 11 contains provisions regarding the furnishing of reports to the Department by public works contractors, subcontractors and public agencies.

Subchapter 12 outlines requirements for training and outreach to minorities and women.

As part of the readoption, the Affirmative Action Office is proposing amendments which will streamline the procedures required of public agency compliance officers and contractors, thereby making those requirements easier to administer and reducing the probability of confusion and error. These changes are not substantive in effect and do not represent an increase or decrease in the requirements. Under the existing rules, agencies have to choose between two versions of the mandatory contract language for procurement and service contracts and two versions of the contract language for construction contractors. Using the greatly condensed, alternate language often caused confusion for agency personnel as well as contractors. The existing rules also require that public contracting officials make a determination of which of two forms should be completed by procurement and service contractors, based on the number of people employed. The proposed amendments would eliminate that choice and small contractors will no longer be required to include a notarized affidavit with each contract award. Instead, small businesses will be issued a certificate by the Treasury Department, in accordance with the provisions of this chapter valid for one or two years, to facilitate the bidding process. Amendments also include the deletion of the $50,000 contract value threshold for construction contracts, in order to eliminate confusion in multiple prime situations.

Amendments being proposed to clarify some of the provisions of the rules include the deletion of the word "approval" from the title of the Certificate of Employee Information Report. This certificate is issued to denote receipt of the report, not approval of the report. The inclusion of contracts awarded under a waiver of the competitive bidding requirements has always been clearly stated in N.J.A.C. 17:20-3.2. The definition of public works contracts has been expanded to make this continuing provision more explicit.

The definition of minority worker has been expanded to include the categories of Portuguese and Alaskan American to bring N.J.A.C. 17:27 into conformity with the definition adopted March 16, 1987 as part of N.J.A.C. 17:12-6.2 (elements of an affirmative action plan for construction contractors and subcontractors), regarding minority businesses. In subchapter 7, a separate goal has been established for females working on construction contracts. Under the current rules, females are defined as "minorities" in determining compliance with the goals. The change is being proposed to reflect the current application of a separate female goal under the Department of Transportation rules. A 6.9 percent Statewide female employment goal is being proposed. Unlike other employment goals in this chapter, the female worker construction goal is being adopted from a study commissioned by the New Jersey Department of Transportation and was not derived from county demographic data. Other goals used in this chapter have been updated to reflect current New Jersey Department of Labor demographic statistics based on the latest census.

**Social Impact**

The State Affirmative Action Office anticipates that a positive social impact will result from the readoption of this chapter with the proposed amendments. The readoption will assure continued progress in the employment and upgrading of minorities and females within the workforce. The addition of a separate female goal for construction contractors should help increase the number of women entering this traditionally male area of employment. No negative impact is anticipated.

**Economic Impact**

No change in economic impact on public works contractors is anticipated, because there is no increase in requirements. The rule changes that affect public agencies should result in the elimination of paperwork and should further reduce the time impact of these rules on public contracting.

The current economic impact of the rules cannot be determined exactly, due to the number and variety of businesses involved. The impact of the required recordkeeping on larger businesses can be substantial, although it is derived from the personnel records customarily maintained by each company. In addition, the documentation maintained as required by this chapter is consistent with that required by the Federal government. The impact on smaller businesses (those employing 50 or fewer people) is negligible, and consists primarily of the costs involved in securing a notarized document each year for each governmental agency with which the small business has a contract.

**Regulatory Flexibility Statement**

The proposed amendments will have an impact on those small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 (P.L. 1986, c.169), which contract with public agencies. The number and kind of small businesses fluctuate, depending upon the work required. Discontinuing the use of notarized affirmative action affidavits as a requirement for contractors who employ 50 or less people will have the effect of streamlining the bid process for these small businesses. The form used is given to the business by the agency, at no cost to the business. The form to be used in lieu of the affidavit can be executed on the spot and does not require notarizing, thus the award process will be made less time consuming. The use of the Employee Information Report will also mean that small businesses will have a certificate to use in the bidding process, with each agency thereby eliminating the need to have an affidavit on file with each public agency with which they have contracts. This provision has the effect of easing requirements for those small businesses employing 50 or fewer people. Those small businesses employing more than 50 people are required to comply with the provisions of this chapter, due to overriding public policy concerns regarding the implementation of the affirmative action in the State of New Jersey.

**Full text** of the proposed readoption appears on the New Jersey Administrative Code at N.J.A.C. 17:27.

**Full text** of the amendments to the readoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

17:27-2.1 Definitions

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

...

"Minority worker" means a worker who is [either] Black [or] [Spanish-American], **Hispanic,** Asian, [or] American Indian, **Portuguese,** or **Alaskan Native defined as follows:**

**1. Black American means a person having origins in any of the black racial groups of Africa.**

**2. Hispanic Americans means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.**

**3. Asian American means a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.**

**4. American Indian or Alaskan native means a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.**

**5. Portuguese means a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.**

...

"Public works contract" means any contract to be performed for on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration or repair of any building or public work for the acquisition of materials, equipment, supplies, or services. **Contracts qualifying for a waiver or an exemption from bidding requirements are included in this definition.**

...

"Treasurer" means the Treasurer of the State of New Jersey or [his] **his or her** designee.

17:27-3.3 Mandatory bid specification language

(a) A public agency shall include in any bid specifications for a public works contract the language required by N.J.A.C. 17:27-3.4(a) [or (b)]. Also, for procurement and service contracts which are not subject to a [f]Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-5.3, and the following language:

**1.** [Bidders with 50 or more employees or contractors with 50 or more employees and who are negotiating for a contract,] **All bidders and all contractors who are negotiating for a contract** as a precondition to entering into a valid and binding procurement or service contract with the public agency, are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

[(1)]**i.** (No change in text.)

[(2)]**ii.** A certificate of employee information report approval issued in accordance with [subchapter 4 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127] **N.J.A.C. 17:27-4;**

[(3)]**iii.** An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with [subchapter 4 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127.] **N.J.A.C. 17:27-4.**

[1. Also, for]**(b) For** construction contracts which are not subject to a [f]Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-7.4 and the following language:

**1.** No later than three (3) days after signing a construction contract said bidders or contractors are required to submit to the public agency compliance officer and the affirmative action office an initial project manning table consisting of forms provided by the affirmative action office and completed by the contractor in accordance with [subchapter 7 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127.]**N.J.A.C. 17:27-7.**

[2.](**c**) (No change in text.)

[(b) A public agency, in lieu of including the mandatory language required by this section, in bid specifications or statements to contractors negotiating for a contract, may include in the bid specifications and said statements to contractors negotiating for a contract the following language:

Any contractor or subcontractor entering into a contract subject to the mandatory language for bid specifications and negotiated contracts as required by N.J.A.C. 17:27-3.3 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time shall be obligated to comply with the applicable requirements contained in said mandatory language of N.J.A.C. 17:27-3.3.]

17:27-3.4 Mandatory contract language and additional mandatory bid specification language

(a) Public agencies shall include in all public works contracts, and in all bid specifications and in statements to certain contractors negotiating contracts, as prescribed in [section 3 of this subchapter], **N.J.A.C. 17:27-3.3** the following language:

**1.** During the performance of this contract, the contractor agrees as follows:

Redesignate (1)-(4) as **i.-iv.** (No change in text.)

[(b) A public agency, in lieu of including in a contract, bid specification, and statement to a contractor negotiating a contract that mandatory language required by subsection (a) of this section, may include in the contract, bid specifications, and statements to parties negotiating a contract, the following language:

The parties to this contract agree to incorporate into this contract the mandatory language of N.J.A.C. 17:27-3.4(a) promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said N.J.A.C. 17:27-3.4(a), provided that said subsection shall be applied subject to the terms of N.J.A.C. 17:27-3.4(d).]

[(c)](**b**) (No change in text)

[(d)](**c**) A public works contract for a subcontractor with **a total work force of** four or fewer employees or for a contractor or subcontractor performing under an existing [f]Federally approved or sanctioned affirmative action program shall contain as mandatory language required by P.L. 1975, c.127, all of the language of [subsection (a) of this section] **(a) above,** except for the language contained in [provision (4) of said subsection] **(a)1iv above,** and said contract shall not contain any other mandatory language prescribed by these **rules.** [regulations; and this restriction on the application of subsection (a) shall apply when said section is incorporated by reference pursuant to subsection (b) of this section.]

17:27-3.5 Designation of public agency compliance officers

Each public agency shall **annually** designate an office or employee, who may be an existing officer or employee, to serve as its public agency compliance officer **and shall notify the Department of the Treasury, State Affirmative Action Office, of the designation by January 10.** [Said] **the** officer[s] shall perform the duties prescribed in these [regulations] **rules, shall be responsible for ensuring the agencies' compliance with these rules** and may perform any other liaison and assistance functions as may be requested by the affirmative action office.

17:27-4.2 Elements of an affirmative action plan for procurement and service contractors and subcontractors

(a) An affirmative action plan for procurement and service contractors and subcontractors shall consist of the following elements.

1. Generally:

i. Provisions in the procurement or service contract, containing the language required by N.J.A.C. 17:27-3.4(a) [or (b)] and 17:27-5.3; and

ii. An initial employee information report, submitted in accordance with [section 3 of this subchapter] **N.J.A.C. 17:27-1.3** or a certificate of employee information report [approval] issued in accordance with [section 5 of this subchapter] **N.J.A.C. 17:27-4.5**; or

2. (No change.)

17:27-4.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a procurement or service contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-5.3. As a precondition to entering into a valid and binding contract, said contractor shall submit to the public agency either appropriate evidence that the contractor is operating under an existing [f]**F**ederally approved or sanctioned affirmative action program; or a certificate of employee information report [approval] issued in accordance with this subchapter; or an initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with this subchapter; provided, however, that if the contractor submits appropriate evidence of an existing [f]**F**ederally approved or sanctioned affirmative action program, the contract shall not include the mandatory language required by N.J.A.C. 17:27-3.4(a)[(4)]**1iv** and by N.J.A.C. 17:27-5.3; and further provided that a contractor shall not be eligible to submit an initial employee information report unless the contractor, in an additional provision to the public works contract, is able to certify and agrees as follows: "The contractor, or subcontractor, where appropriate, certifies that [is has] **he or she has** never before applied for a certificate of employee information report [approval pursuant to regulations] **in accordance with rules** promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time; and agrees to submit immediately to the affirmative action office a copy of the initial employee information report." [Any contractor who provides the public agency with an affidavit, which affidavit may be provided by the public agency, stating that the contractor has fewer than 50 employees is exempt from the precondition requirement established by this section.]

(b) (No change.)

17:27-4.4 Affirmative action plan requirement for procurement and service subcontractors

A procurement or service contractor operating under a public works contract pursuant to the provisions of [these regulations]**this chapter** shall not enter into a subcontract with a procurement or service subcontractor, unless the subcontractor has submitted to said contractor one of the three documents which is also required from contractors [by section 3 of this subchapter and in accordance with the provisions of said section and the contract contains the language required by section 3 of this subchapter] **in accordance with all provisions of N.J.A.C. 17:27-4.3**; provided, however, that any subcontractor located outside of the State of New Jersey and subcontractors with four or fewer employees shall be exempt from the requirements of [this subchapter.] **N.J.A.C. 17:27-4.**

17:27-4.5 Procedures for the issuance and renewal of a certificate of employee information report [approval]

(a) A contractor that has submitted an initial employee information report to a public agency pursuant to [section 3 of this subchapter] **N.J.A.C. 17:27-4.3** and any subcontractor that has submitted an initial employee information report pursuant to [section 4 of this subchapter] **N.J.A.C. 17:27-4.4** shall immediately provide a copy of said report to the affirmative action office.

(b) The affirmative action office shall approve or reject an initial employee information report within 40 days of its submission, provided, however, that such a rejection, if it is independent of a noncompliance determination pursuant to [subchapter 10 of this chapter] **N.J.A.C. 17:27-10,** shall in no way affect the validity of a contract for which said initial employee information report was presented to satisfy the precondition required by [section 3 of this subchapter] **N.J.A.C. 17:27-4.3.** Failure of the affirmative action office to so act within 40 days shall constitute approval of the employee information report. If an initial employee information report submitted by a contractor is rejected, a contractor or subcontractor may submit a corrected initial employee information report to the affirmative action office. Upon approval of an initial employee information report submitted by a procurement or service contractor or subcontractor who, prior to its submission, had never received a certificate of employee information report [approval], the affirmative action office shall issue to said contractor or subcontractor an initial certificate of employee information report [approval] which shall be valid for one year from the date it is issued by the affirmative action office.

(c) Additional [rules] **procedures** are as follows.

1. As early as 90 days prior to the expiration of a certificate of employee information report [approval], a procurement or service contractor may submit an application for renewal of the certificate of employee information report [approval] to the affirmative action office. Said renewal application, in the form specified by the affirmative action office, shall be made available to procurement and service contractors by [public agency compliance officials and] the affirmative action office.

2. In accordance with the form specified by the affirmative action office, the procurement or service contractor shall submit along with his **or her** application for renewal an updated employee information report which shall contain current employee data, the employee data contained in the prior employee information report approved by the affirmative action office, the employment goals under which the contractor or subcontractor has been operating during the period covered by the certificate or employee information report approval for which renewal is requested, any additional information requested by the affirmative action office; if necessary, an explanation of why the hiring and other personnel procedures employed by the contractor have failed to achieve the employment goals established pursuant to N.J.A.C. 17:27-5.2; and an explanation of changes in hiring and personnel practices, if any, which the contractor plans to implement expeditiously to increase minority employment opportunities in pursuit of the applicable employment goals. Notwithstanding the content and scope of said procedures which a contractor states in an employee information report that he will implement in pursuit of the applicable employment goals, said contractor is obligated to implement and comply with any hiring procedures and personnel practices required by [these regulations] **this chapter** including, but not limited to, procedures required by the affirmative action office pursuant to [these regulations] **this chapter**.

3. The affirmative action office shall approve or reject an application for renewal of a certificate of employee information report [approval] within 60 days of its submission, and the failure of the affirmative action office to so act within 60 days shall constitute approval of the renewal application. If a renewal application submitted by a contractor is rejected, the affirmative action office shall state in writing reasons for the rejection and allow the contractor or subcontractor who submitted the rejected application to respond in writing, or if the affirmative action office agrees, to meet with an official of the affirmative action office. Said contractor or subcontractor also may resubmit a renewal application accompanied by a revised, current employee information report pursuant to the same procedures and conditions applicable to the original submission, provided, however, that any such resubmission shall serve to terminate any reconsideration by the affirmative action office of a rejection of a renewal application, which reconsideration has been commenced by the affirmative action office on the basis of a contractor's or subcontractor's response to its rejection of a renewal application. Upon approval of a renewal application, the affirmative action office shall issue to the contractor a certificate of employee information

report [approval] which shall be valid for two years from the date it is issued by the affirmative action office. Any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to [subchapter 10 of this chapter] **N.J.A.C. 17:27-10,** shall in no way affect the validity of an existing contract which has already been signed in accordance with [section 3 of this subchapter] **N.J.A.C. 17:27-4.3.**

(d) Where necessary to manage an exceptionally difficult administrative schedule, the affirmtive action office may issue a temporary certificate of employee **information** report [approval], valid for a time period less than the authorized time period, but at the time the temporary certificate expires, the affirmative action office shall either issue a certificate of [employement] **employee information** report [approval] which is valid for the appropriate time period as authorized by [subsections] (b) and (c) **above** [of this section], or reject said application, provided however, that any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to [chapter 10 of this chapter] **N.J.A.C. 17:27-10,** shall in no way affect the validity of an existing contract which has already been signed in accordance with [section 3 of this subchapter] **N.J.A.C. 17:27-4.3.**

17:27-4.7 Emergency purchases

A public agency may award a public contract without an approved affirmative action plan in an emergency situation. In such a situation, the public agency shall document that an actual or imminent emergency exists, which requires the agency immediately to award a contract for the delivery of an article or performance of a service, and that to delay the award of the contract would endanger public health, safety, welfare or property. **The contractor shall be required to comply with the affirmative action rules no later than 14 days after the award.**

SUBCHAPTER 5. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

17:27-5.1 Exemptions

The requirements of this subchapter shall not apply to any procurement or service contractor or subcontractors performing under an existing [f]Federally approved or sanctioned affirmative action program or to any subcontractor which is exempted under N.J.A.C. 17:27-4.1 from the affirmative action plan requirements of [subchapter 4 of this chapter] **N.J.A.C. 17:27-4.**

17:27-5.2 Establishment of goals

The employment goals for any procurement or service contractor or subcontractor shall be the employment goals for the county in which the procurement or service contractor's or subcontractor's plant, distribution center, or service area is primarily located.[and if]**If** the procurement or service contractor has plants, distribution centers, and service areas located in more than one county[;], goals for each plant, distribution center, and service area workforce shall be the goals of the county in which it is located. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker in writing submits a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding. The employment goals for each county, which goals are based on county workforce characteristics and data and analysis provided by the New Jersey Department of Labor [and Industry], Division of Research and Planning are as follows:

**MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS**

| County | Minority Percentage | Female Percentage |
|---|---|---|
| Atlantic | 20 | [43]**45** |
| Bergen | [ 6]**10** | [39]**43** |
| Burlington | [10]**16** | [38]**40** |
| Camden | [13]**16** | [38]**42** |
| Cape May | [10]**8** | [40]**42** |
| Cumberland | [18]**21** | [42]**45** |
| Essex | [32]**42** | [42]**46** |
| Gloucester | [16]**10** | [36]**40** |
| Hudson | [21]**38** | [42]**44** |
| Hunterdon | [ 5] **2** | [37]**46** |
| Mercer | [18]**20** | [42]**43** |
| Middlesex | [ 8]**12** | [39]**41** |
| Monmouth | 11 | [37]**42** |
| Morris | 5 | [37]**40** |
| Ocean | [ 5] **6** | [36]**40** |
| Passaic | [16]**24** | [41]**43** |
| Salem | 15 | [37]**40** |
| Somerset | [ 5] **8** | [38]**42** |
| Sussex | [ 5] **3** | [36]**40** |
| Union | [15]**24** | [40]**43** |
| Warren | [ 5] **3** | [38]**40** |

17:27-5.3 Mandatory contract language for employment goal compliance

(a) Public agencies shall include in all contracts the following language:

[(1)]**1.** The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by [section] N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

Redesignate (2)-(4) as **2.-4.** (No change in text.)

[(b) A public agency, in lieu of including in a contract the mandatory language required by this section may include in the contract the following language:

The parties to this contract agree to incorporate into this contract the mandatory language of N.J.A.C. 17:27-5.3 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of N.J.A.C. 17:27-5.3.]

17:27-5.5 Contractor and subcontractor compliance obligations

A procurement or service contractor or subcontractor shall be deemed to be in compliance with the employment goals prescribed in accordance with this subchapter if the contractor or subcontractor is employing minority and female workers in the percentages established as employment goals pursuant to this subchapter, and achievement of said employment percentages shall constitute compliance for purposes of [these regulations] **this Chapter,** regardless of any other percentages established by a public agency, or the contractor or subcontractor has acted and continues to act in good faith, including the use of the procedures required by the mandatory language prescribed by [section 3 of this subchapter,] **N.J.A.C. 17:27-5.3** to achieve the minority and female employment goal percentages established in accordance with this subchapter; provided, however, that nothing provided in [these regulations] **this chapter** shall prevent a municipality or other unit of local government from enforcing municipal or local government enforcement goal obligations involving employment goals which are higher than those applied under [these regulations] **this chapter.**

17:27-5.6 Criteria for determining [the] good faith

(a) When compliance challenges are initiated pursuant to [subchapter 10 of this chapter]**N.J.A.C. 17:27-10,** the affirmative action office shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. The general availability of minorities and women having requisite skills in the immediate labor area;
2. The percentages of minority and female workers in the total workforce in the immediate labor area;
3. The availability of promotable minority and women employees within the contractor's or subcontractor's organization;
4. The anticipated expansion, contraction and turnover of the contractor's or subcontractor's workforce;
5. The existence of training institutions capable of training minorities and women in the requisite skills;
6. The degree of training which the contractor or subcontractor is reasonably able to undertake as a means of making all job classifications available to minorities and women;
7. The availability and use of recruitment resources to attract minorities and women[.]; **and**
8. **The contractor's documentation of attempts to attain the goals.**

SUBCHAPTER 6. AFFIRMATIVE ACTION PLAN FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

17:27-6.1 Construction contracts subject to affirmative action plan requirements

All construction contractors bidding for public agency public works contracts and all contractors entering into negotiated public works contracts subject to the requirements of N.J.A.C. 17:27-3.3 shall satisfy the affirmative action plan requirements of [these regulations] **this chapter,** with the exception of construction subcontractors with **a total workforce of** four or fewer employees, which shall be exempt from said requirements.

17:27-6.2 Elements of an affirmative action plan for construction contractors and subcontractors

(a) An affirmative action plan for construction contractors and subcontractors shall consist of the following elements.

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3.4(a)[or (b)] and N.J.A.C. 17:27-7.4; or
2. Any existing [f]Federally approved or sanctioned affirmative action program.

17:27-6.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a construction contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-7.4, except that the language required by N.J.A.C. 17:27-3.4(a)[(4)] and by **1iv** and by N.J.A.C. 17:27-7.4 shall not be included in a contract with a contractor which submits to the public agency, prior to or at the time the contract is submitted by the public agency for signing, appropriate evidence that the contractor is operating under an existing [f]Federally approved or sanctioned affirmative action program.

(b) If a contractor refuses to sign said contract when it is submitted for signing by the public agency, then the public agency shall reject the contractor's bid as non-responsive, and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contracting laws and procedures.

17:27-6.4 Affirmative action plan requirement for construction subcontractors

A construction contractor operating under a public works contract pursuant to the provisions of **this chapter** [these regulations] shall not enter into a subcontract with a construction subcontractor, unless the contract contains the language required by [section 3 of this subchapter] **N.J.A.C. 17:27-6.3;** provided, however, that subcontractors with **a total workforce of** four or fewer employees shall be exempt from the requirements of this subchapter.

17:27-6.5 State-approved public agency affirmative action construction programs

(a) (No change.)

(b) The affirmative action office may designate a public agency's affirmative action construction program as State-approved only if the program requires the public agency's construction contracts to conform to the mandatory contract language requirements of N.J.A.C. 17:27-3.4(a), except for the language contained in [provision (4) of said subsection] **N.J.A.C. 17:27-3.4(a)1iv;** said program requires the public agency's advertisement and solicitation of construction contract bids to contain the following language: "Bidders are required to comply with requirements of P.L. 1975, c.127,"; and said program establishes an employment goal which is not lower that the applicable goal established by [subchapter 7 of this chapter] **N.J.A.C. 17:27-7.**

17:27-7.2 [Definition of minority](**Reserved**)

[For purposes of this subchapter, the term "minority" shall include females in addition to the other population groups included in the term "minority worker" as defined by subchapter 2 of this chapter.]

17:27-7.3 Establishment of goals

[(a) The employment goal for any construction contractor or subcontractor shall be the employment goal for the county in which the construction project is located; provided, however, that the affirmative action office may, in appropriate cases, designate a regional goal for minority membership in a union which has regional jurisdiction. In cases which a public agency, contractor, subcontractor, or affected minority worker or union submits a request in writing to the affirmative action office for a determination of what employment goal or goals should apply for a construction contractor or subcontractor, the affirmative action office shall determine the proper employment goal or goals. Any such employment goal determination by the affirmative action office shall be binding. The employment goals for each county, subject to the provisions of section 4 of this subchapter, which goals are based on county workforce characteristics and data and analysis provided by the New Jersey Department of Labor and Industry, Division of Planning Research, are as follows:]

**(a) The minority employment goal for any construction contractor or subcontractor shall be the employment goal for the county in which the construction project is located and minority females within the workforce shall be considered when determining compliance. The minority employment goals for each county, subject to the provisions of N.J.A.C. 17:27-7.4, are based on county workforce characteristics and data and analysis provided by the New Jersey Department of Labor, Division of Planning and Research. The female goal is a Statewide goal based on a February 1988 study made by Stanwick Associates, a public policy research firm, commissioned by the New Jersey Department of Transportation. The affirmative action office may, in appropriate cases, designate a regional goal for minority and female membership in a union which has regional jurisdiction. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits a request in writing to the affirmative action office for a determination of what employment goal or goals should apply for a construction contractor or subcontractor, the affirmative action office shall determine the proper employment goal or goals.**

MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

| County | **Female Percentage** | Minority Percentage |
|---|---|---|
| Atlantic | **6.9** | [20]**19** |
| Bergen | **6.9** | [15]**20** |
| Burlington | **6.9** | [15]**10** |
| Camden | **6.9** | [20]**16** |
| Cape May | **6.9** | [15]**16** |
| Cumberland | **6.9** | [20]**10** |
| Essex | **6.9** | [32]**21** |
| Gloucester | **6.9** | [10]**42** |
| Hudson | **6.9** | [20]**10** |

| | | |
|---|---|---|
| Hunterdon | **6.9** | [10]**38** |
| Mercer | **6.9** | [25]**10** |
| Middlesex | **6.9** | [15]**19** |
| Monmouth | **6.9** | [10]**10** |
| Morris | **6.9** | [10]**12** |
| Ocean | **6.9** | [10]**11** |
| Passaic | **6.9** | [20]**10** |
| Salem | **6.9** | [15]**24** |
| Somerset | **6.9** | [15]**15** |
| Sussex | **6.9** | [10]**10** |
| Union | **6.9** | [20]**24** |
| Warren | **6.9** | [10]**10** |

17:27-7.4 Mandatory language for employment goal compliance

(a) Public agencies shall include in all construction contracts the [following] language **set forth in (b) through (e) below.**

[1.](**b**) When hiring workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority **and female** workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the affirmative action office may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by [the following provisions (1), (2), and (3)]**1, 2 and 3 below,** as long as the affirmative action office is satisfied that the contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the affirmative action office, that its percentage of active "card carrying" members who are minority **and female** workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

[(1)]**1.** If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three [(3)] days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the [regulations]**rules** promulgated by the Treasurer pursuant to P.L. 1975, c.127, as [it is] supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five [(5)] days prior to the commencement of construction work, the contractor or subcontractor agrees [directly] to attempt to hire minority **and female** workers **directly,** consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority **and female** workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared [directly] to hire minority **and female** workers **directly**, consistent with the applicable employment goal, by complying with [following]**the** hiring procedures prescribed under [(2)](**c**) **below;** and the contractor or subcontractor further agrees [immediately] to take said action **immediately** if it determines or is so notified by the affirmative action office that the union is not referring minority **and female** workers consistent with the applicable employment goal.

[(2)](**c**) If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of [the preceding provision (1)](**b**) **above,** or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

[a.]**1.** To notify the public agency compliance officer, affirmative action office, and at least one approved minority referral organization of its manpower needs, and request referral of minority **and female** workers;

[b.]**2.** To notify any minority **and female** workers who have been listed with it as awaiting available vacancies;

[c.]**3.** Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority **and female** workers to fill job openings;

[d.]**4.** To leave standing requests for additional referral to minority **and female** workers with the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

[e.]**5.** If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority **and female** employees remain on the site consistent with the employment goal; and to employ any minority **and female** workers so laid off by the contractor or any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to [regulations]**rules** implementing P.L. 1975, c.127;

[f.]**6.** To adhere to the following procedure when minority **and female** workers apply or are referred to the contractor or subcontractor:

[(i)]**i.** If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker skills and experience classification determination which may have been made by a public agency compliance officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the affirmative action office and provided further, that, if necessary, the contractor or subcontractor shall hire minority **and female** workers who qualify as trainees pursuant to these [regulations] **rules.** All of [the] **these** requirements [of this paragraph], however, are limited by the provisions of [paragraph (3)](**d**) below.

[(ii)]**ii.** If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of said **female or** minority group individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

[(iii)]**iii.** If, for any reason, said contractor or subcontractor determines [said] **that a** minority **individual or a female** [group individual] is not qualified or if [said] **the** individual qualifies as an advanced trainee or apprentice, [said] **the** contractor or subcontractor shall inform [said] **the** individual in writing with the reasons for the determination [and], maintain a copy in its files, and send a copy to the public agency compliance officer and to the affirmative action office.

[g.]**7.** To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, [and said records shall be kept] on forms made available by the affirmative action office and [shall be] submitted promptly to that office upon request.

[(3)](**d**) The contractor or subcontractor agrees that nothing contained in [the preceding provision (2)] (**c**) **above** shall preclude the contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of [minority persons] **minorities and females** or the failure to refer [minority group persons] **minorities and females** consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to [said provisions (2)](c) **above** without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ **female and** minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of [the preceding provision (2)] **(c) above**, it shall, where applicable, employ minority **and female** workers residing within the geographical jurisdiction of the union.

[(b)](**e**) The contractor agrees to complete [monthly] **an Initial** Project Manning [Reports] **Report** on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit an [initial] copy of said form no later than three [(3)] days after signing a construction contract; provided, however, that the Public Agency may extend in a particular case the allowable time for submitting the [initial] form to no more than [fourteen (14)]**14** days; and to submit a copy of [said form] **the Monthly Project Manning Report** once a month thereafter for the duration of this contract to the Affirmative Action Office and to the Public Agency Compliance Officer, [provided however, that for construction projects with a total cost of less than $50,000, the initial [and monthly] Project Manning [Reports] **Report** shall not be submitted except when requested by the Affirmative Action Office.] The contractor agrees to cooperate with the Public Agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority **and female** trainees employed on the construction projects.

[(c) A public agency, in lieu of including in a contract the mandatory language required by subsection (a) of this section, may include in the contract the following language:

The parties to this contract agree to incorporate into this contract the mandatory language of N.J.A.C. 17:27-7.4(a) promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of N.J.A.C. 17:27-7.4(a).]

17:27-7.5 Financing minority worker outreach and training programs

When the total cost of a construction project by any public agency except a municipality, county, or school district, is equal to or greater than $1,000,000, or when the total cost of a construction project by a municipality, county, or school district is equal to or greater than $2,500,000, the authorized appropriation of the public agency or the total project development cost recognized by the public agency shall include one half of one percent of the total project cost from which amount the public agency shall pay out to an approved training agency or to an affected contractor or subcontractor for payment to an approved training agency, during the course of the construction project, as much of said amount as is necessary for on-the-job and off-the-job programs for outreach and training programs for minority **and female** trainees employed on the construction project, provided that said funds shall not be used to pay the salary for any trainees. Whenever the [public agency] **Affirmative Action Office** determines that an amount less than one half of one percent of the total program cost is sufficient for funding said outreach and training programs, the public agency may reallocate such residual funds as appropriate. If said allocation would impose an extraordinary burden on the feasibility of a construction project and it was not possible to take advance action to avoid extraordinary feasibility problems, the affirmative action office, in response to a request from a public agency, may take said factors into account to grant a waiver from some or all of said requirements to allocate funds for minority **and female** outreach and training programs. Off-the-job training programs eligible for this funding include programs designed to increase the skills of trainees in a particular trade or craft, skills relating to contracting work, related academic or remedial education programs; and eligible agencies for these funds include State, regional or local public or private training institutions, agencies or organizations as approved by the affirmative action office. A public agency may apply to the affirmative action office for funds to use to satisfy the training program requirements of this section; and the affirmative action office, from such funds which may be available for said purpose, may allocate said funds among such applicants. Failure to receive such funds from the affirmative action office shall in no way relieve a public agency of its training program obligations under this section.

17:27-10.2 Alert notices

[The public agency compliance officer] **A public agency operating under a State approved affirmative action construction program** may issue a written alert notice to a contractor or subcontractor or the affirmative action office, acting on its own initiative or in response to a written statement from an interested party, may issue a written alert notice to a contractor or subcontractor whenever, in the agency's or office's opinion, the contractor or subcontractor has violated [these regulations] **this chapter** or the applicable affirmative action plan. The alert notice shall explain in sufficient detail the facts of the alleged violation.

17:27-10.4 Written statements; violations

Upon either receiving a copy of a notice of violation from a public agency compliance officer or after issuing a notice on its own, the affirmative action office shall notify the alleged violator that it shall submit within four days after it is received by the contractor or subcontractor a written statement explaining why it is not in violation of [these regulations]**this chapter** or the affirmative action plan or any explanation of how it will correct any such violation. If the affirmative action office determines there is a substantial probability that a violation is occurring, it may direct the withholding of some or all of the contract payments then due and owing pending a determination pursuant to [sections 6 and 7 of this subchapter.] **N.J.A.C. 17:27-10.6 and 10.7.**

17:27-10.6 Determination of violations

Upon completion of the procedures required and authorized pursuant to [section 3 of this subchapter]**N.J.A.C. 17:27-10.3**, but no later than 30 days after a violation notice has been submitted to the affirmative action office, the affirmative action office shall issue a determination of whether the contractor or subcontractor is in violation of [these regulations]**this chapter** or an affirmative action plan; and if the affirmative action office determines that there is a current violation, it shall prescribe, where appropriate, corrective measures.

17:27-10.7 Enforcement; violations

(a) If the affirmative action office determines that a contractor or subcontractor is in violation of [these regulations]**this chapter** or the affirmative action plan, it may enforce the obligations of P.L. 1975, c.127, as implemented by [these regulations]**this chapter** and the requirement of the affirmative action plan by ordering or taking part in any or all of the following remedial actions:

1. (No change.)
2. Debarment of the contractor from all public contracts for a period of up to five years and/or until the contractor complies with the required obligations or agrees to adhere to a compliance schedule approved by the affirmative action office; provided, however, that a debarment may only be ordered after [the Treasurer, or his designee, who is not a member of the affirmative action office, holds a hearing for the contractor or subcontractor, and the Treasurer, or said designee, determines that a debarment would be appropriate;] **a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;**

3.-5. (No change.)

(b) If at the end of the 30-day period prescribed in [section 6 of this subchapter,]**N.J.A.C. 17:27-10.6,** the affirmative action office has not determined that a contractor or subcontractor is in violation of [these regulations]**this chapter** or an affirmative action plan, the public agency shall immediately pay to said contractor or subcontractor all payments then due and owing.

# TREASURY-TAXATION

## DIVISION OF TAXATION

### Local Property Tax
### Real Property Defined
### Proposed New Rules: N.J.A.C. 18:12-10

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:4-1(b) and 54:4-1.12.
Proposal Number: PRN 1988-383.

Submit comments by August 31, 1988 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

**Summary**

Proposed new rules N.J.A.C. 18:12-10.1, 10.2 and 10.3 clarify the application of the taxation of certain personal property used in business, define real property for the purposes of N.J.S.A. 54:4-1, and define certain other words and terms necessary for its correct application.

N.J.A.C. 18:12-10.2(a) defines real property, for the purposes of N.J.S.A. 54:4-1, to include not only lands and improvements thereon, but also personal property affixed to real property or to an appurtenance thereto unless the personal property so affixed can be removed or severed without material injury to the real property itself, can be removed or severed without material injury to the personal property itself, and is of a class of property which is not ordinarily intended to be affixed permanently to the real property. In addition, personal property affixed to real property or to an appurtenance thereto shall not be taxed as real property if it is machinery, apparatus, or equipment used in production which is neither functionally essential to a structure the personal property is within or to which the personal property is affixed nor constitutes a structure itself. Where a New Jersey statute may already classify property as either real or personal, that classification remains effective. In accordance with N.J.S.A. 54:4-1.12, N.J.A.C. 18:12-10.3 classifies tanks with a capacity in excess of 30,000 gallons as real property, notwithstanding the provisions of N.J.S.A. 54:4-1 and N.J.A.C. 18:12-10.2.

N.J.A.C. 18:12-10.4 provides that security interests are unaffected by a classification for real property taxes under this subchapter. N.J.A.C. 18:12-10.5 provides examples of real and personal property for the purposes of this subchapter.

**Social Impact**

Proposed new rules N.J.A.C. 18:12-10.1 through 10.5 will have a positive social impact in that they will clearly set out terms by which real property may be defined for local property tax purposes. Implementation of these rules will benefit the public by providing clarification of policies adopted by the Legislature through enactment of P.L. 1986, c.117 (N.J.S.A. 54:4-1 et seq.).

The New Jersey Supreme Court stated in *City of Bayonne v. Port Jersey Corp.*, 79 N.J. 367 (1979), that it discerned a legislative intent to create in New Jersey a fiscal climate that would contribute to the attraction of business and industry. Support for this conclusion is found in the legislative history of the Business Personal Property Tax Act, N.J.S.A. 54:11A-1 et seq. As the Court pointed out, beginning at page 378, "One of the avowed purposes sought to be achieved by this Act and other companion legislation adopted at or about the same time, was the creation of a fiscal climate in New Jersey that would be attractive to corporations and industry generally. Hitherto, machinery and equipment used in business had been taxed at the local level at disparate rates and with unpredictable results. . . . [T]he proposed new tax would be uniformly applied at the state level and would be designed to raise less money than theretofore. These characteristics were openly designed to attract industry. To the extent that machinery and equipment may continue to be taxed at the local level, quite clearly this endeavor is frustrated. The aims and purposes of the legislation would seem to receive maximum support from a judicial interpretation of the statute favoring imposition of tax at the state rather than at the municipal level."

One should also be mindful that production machinery and other equipment used in business has been previously granted exemption from tax under State tax laws. N.J.S.A. 54:32B-13(a) of the Sales and Use Tax Act provides a sales and use tax exemption for the purchase or use of "machinery, apparatus or equipment for use directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining." This same taxing statute also provides tax exemptions for utility equipment; machinery, apparatus and equipment and building materials used directly and primarily for cogeneration in a cogeneration facility; tangible personal property used in research and development; tangible personal property used in production on farms; and, finally, newspaper and commercial printing production equipment. See N.J.S.A. 54:32B-8.13; 54:32B-8.14; 54:32B-8.16; and 54:32B-8.29.

Similarly, P.L. 1977, c.4, codified at N.J.S.A. 54:11A-3.1, provided an exemption from business personal property tax for machinery and equipment acquired on and after January 1, 1977. The statement of purpose attached to this legislation at the time it was introduced stated, "This bill as amended . . . is intended by its proponents to make capital investment in New Jersey more attractive. . . ."

Thus, unlike many areas of State policy, the Legislature has clearly expressed a State tax policy designed to stimulate and foster capital investment by business enterprises in New Jersey. These rules will further the provisions of P.L. 1986, c.117, in a manner consistent with that policy.

**Economic Impact**

The New Jersey Supreme Court decision in *City of Bayonne v. Port Jersey Corp.*, 7 N.J. 367 (1979), caused some confusion with respect to the classification of certain real and personal property for local property tax purposes. As a result, taxpayer complaints over local property tax assessment practices have increased. These rules will provide guidelines which distinguish real from personal property under State Law, and should therefore eliminate the need for expensive litigation in order to appropriately classify property for local property tax purposes.

**Regulatory Flexibility Statement**

These proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. As proposed, N.J.A.C. 18:12-10.1 through 10.5 are only intended to provide definitions as well as clarify the application of N.J.S.A. 54:4-1 for local tax assessors and will serve to guide them as well as all local property taxpayers in the assessment classification process. Since small businesses are not required to comply with the provisions of these proposed rules, a regulatory flexibility analysis is not required.

**Full text** of the proposed new rules follows.

SUBCHAPTER 10. REAL PROPERTY DEFINED

18:12-10.1 Definitions

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

"Affixed" means fastened or attached physically.

"Appurtenance" includes any tangible personal property affixed to land or improvements thereon.

"Functionally essential" refers to machinery, apparatus or equipment and any other property necessary for the habitability of the structure, including, but not limited to, such items as air conditioning and heating equipment or apparatus, lighting and bathroom fixtures, elevators, escalators, electrical wiring, plumbing, etc.

"Machinery, apparatus or equipment" means any machine, device, mechanism, instrument, tool or other item of property directly used in the manufacture, assembly, refining or processing of property or in the sale of services or goods in the regular course of business. The term includes, but is not limited to, that machinery, apparatus or equipment described in N.J.A.C. 18:24-4.2. The term also includes machinery, apparatus or equipment directly used in the production for sale of gas, water, steam, electricity or telecommunication services and such items directly used in the production of property on farms as defined in N.J.S.A. 54:32B-8.16.

"Material injury" in the case of real property means serious physical damage to the real property. Some of the factors which can be considered in determining whether "serious physical damage" has occurred are any change in the market value of the real property as a result of removal; the amount of time and the cost required to repair the condition caused by removal; and the hazard or dislocation caused by the removal.

"Material injury" in the case of property severed or removed from the real property means physical damage to the personal property sufficient to destroy its utility.

"Not ordinarily intended to be affixed permanently to real property" means that, in the custom and usage of the trade, like personal property is not intended to be permanently affixed. Indicators that personal property of a like kind is not ordinarily intended to be affixed permanently to real property include the following:

1. In the event of sale of the realty, the personal property would not ordinarily pass with title to the realty;

2. In the case of a business, the personal property ordinarily would be removed from the real property in the event of the relocation of the business;

3. Similar items of personal property are frequently resold separate from the real property.

"Structure" means any assemblage of building or construction materials fixed in place for the primary purpose of supporting, sheltering, containing, or enclosing persons or property. The term "structure" does not include machinery, apparatus or equipment which the structure is designed to hold in place, shelter, contain or enclose. The term structure does not include any item of machinery, apparatus or equipment used directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining.

18:12-10.2 Real property

(a) Real property means all lands and improvements thereon and includes personal property affixed to real property or an appurtenance thereto, unless personal property so affixed meets all of the following conditions:

1. It can be removed or severed without material injury to the real property;

2. It can be removed or severed without material injury to the personal property itself; and

3. It is not ordinarily intended to be affixed permanently to the real property.

(b) If the conditions of (a) above are not satisfied, nevertheless, machinery, apparatus, or equipment which is neither functionally essential to a structure the personal property is within or to which the personal property is affixed nor constitutes a structure itself is personal property.

(c) The provisions of this section shall not be construed to repeal or alter in any way the classification of property as either real or personal where that classification is otherwise provided by statute.

18:12-10.3 Tanks with a capacity in excess of 30,000 gallons

Any tank having a capacity of more than 30,000 gallons is deemed to be real property.

18:12-10.4 Security interests

The classification of property as real property under this subchapter shall not affect any transaction or security interest provided for in N.J.S.A. 12A:9-101 et seq.

18:12-10.5 Examples of real and personal property

(a) The following list is illustrative of the application of this subchapter to various items of property.

1. Real property:

Air conditioning system, central
Antenna tower, television or radio network
Banks,
  Drive-up teller's booth (does not include equipment)
Barns
Billboards
Carpeting (wall to wall tacked)
Ceilings, suspended
Chimneys
Concrete pavement or flooring
Control room structure
Doors
Electric wiring
Electric generating equipment installed in shopping center
Elevators
Escalators
Fences, affixed to real property
Floors, including raised floors
Garages
Heating system, central
Henhouse or chicken coop
Hot water system, central
Lighting fixtures, wired directly to electrical system
Paneling, affixed to real property
Partitions
Paved parking areas
Plumbing and plumbing fixtures, connected to plumbing system
Silos, on a foundation
Sprinkler systems, connected to central water supply
Stables
Stairs
Windows

2. Personal property:

Banks,
  Drive-up tellers' windows
  Night depository facilities
  Safety deposit boxes
  Tellers' counters
  Walk-up tellers' windows
Booths, seating
Bowling lanes
Computer peripheral equipment, including but not limited to:
  card punches
  card readers
  card sorters
  data entry devices
  disc drives, packs, files
  keypunches
  magnetic tape feeds
  mass storage units
  optical character readers
  paper tape equipment
  printers, high speed
  tape cassettes
  teleprinters
  terminals
Computers, personal and mainframe
Conveyors
Counters, display racks and shelves
Crane, overhead
Dry-kiln
Electrical and non-electrical machinery, equipment used to manufacture or rebuild
Food and beverage manufacturing, special handling devices, including, but not limited to:
  fish processing equipment
  baskets
  boxes
  carts
  flaking trays
  palletized containers
  returnable pallets
Furnaces, blast
Furniture, office
Gas stations,
  gasoline pumps
  gasoline storage tanks (less than 30,000 gallons)
  hydraulic car lift
Glass products, equipment used in production of
Glass products, manufacture of: special tools, including, but not limited to:
  molds
  pallets
  patterns
  specialty transfer and shipping devices
  steel racks
Grocery counters
Milk storage refrigerators and freezers
Motor vehicles, equipment used in manufacture and assembly of
  Motor Vehicles, manufacture of: special tools, including, but not limited to:

dies
fixtures
gauges
jigs
molds
patterns
specialty transfer and shipping devices
Office equipment
Plastic products, finished, equipment used in manufacture of
Plastic products, finished, manufacture of: special tools, including, but not limited to:
dies
gauges
jigs
molds
patterns
specialty transfer and shipping devices
Plumbing connections used directly with items of machinery
Printing, equipment used in
Printing presses
Production machinery
Propane gas storage tanks (less than 30,000 gallons), water heaters and water softeners (leased)
Publishing, equipment used in
Refrigeration equipment
Rubber products, equipment used in production of
Rubber products, manufacture of: special tools, including, but not limited to:
jigs and dies
lasts, mandrels, molds, patterns
specialty containers
pallets, shells, tire molds
Vending machines
Washers, coin-operated

(b) Subsection (a) above is not intended to be inclusive of all items of property required to be classified. For the specific item listed, the classification shown should be followed unless there are persuasive distinguishing facts which warrant the other classification.

# OTHER AGENICES

# (a)

## CASINO CONTROL COMMISSION

## Procedure For Exchange Of Checks Submitted By Gaming Patrons

## Verification of Cash Equivalents

## Proposed Amendment: N.J.A.C. 19:45-1.25

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-69(c), 5:12-70(g) and (m) and 5:12-99.
Proposal Number: PRN 1988-361.

Submit comments by August 31, 1988 to:
Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

### Summary

The proposed amendment to N.J.A.C. 19:45-1.25(e) originated in a joint petition for rulemaking filed by Marina Associates ("Marina") and Trump's Castle Associates. The proposed amendment prescribes a single set of procedures to be followed by a licensee's general cashier prior to the acceptance of any cash equivalent. Under the proposed amendment, "verification" would be accomplished in all circumstances by: visual inspection of the cash equivalent; comparison to cash equivalents previously accepted by the casino licensee; and reference to a banking directory to verify the bank name, address and ABA number of the issuing bank. Petitioners assert that the proposed amendment is intended to clarify the meaning and scope of the verification procedures currently required of a casino licensee by N.J.A.C. 19:45-1.25(e) by expressly permitting the verification and acceptance of all cash equivalents during both banking and non-banking hours.

The Commission notes that there are various forms of cash equivalents and that some types may require special verification procedures. The Commission has authorized publication of the instant proposed amendment in the hope that interested persons will provide the Commission with information which will prove useful in the resolution of this and any other issues relevant to the amendment.

### Social Impact

Petitioners assert that adoption of the proposed amendment would have little or no social impact, since it would merely codify the existing verification procedures of casino licensees. Petitioners allege that the amendment will benefit the casino industry and patron by permitting the safe, secure and assured means of transferring funds to the casinos by the use of cash equivalents during all operating hours of the casinos.

### Economic Impact

Petitioners allege that the proposed amendment will not impose additional costs upon the casino industry, the Commission, the Division of Gaming Enforcement or the public.

### Regulatory Flexibility Statement

This proposed amendment will only affect the operations of casino licensees and therefore will not impact upon any small business protected under the Regulatory Flexibility Act.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

19:45-1.25 Procedures for exchange of checks submitted by gaming patrons

(a)-(d) (No change.)

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. [Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent.] Prior to the acceptance of a cash equivalent made payable to the presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

**1. Prior to acceptance of a certified check, cashiers check, treasurers check or recognized money order from a patron, the general cashier shall verify its validity by:**

**i. Comparing the cash equivalent to other cash equivalents which have been previously accepted by the casino licensee;**

**ii. Examining the cash equivalent for any other signs of tampering, forgery or alteration;**

**iii. Referring to the Directory of Banking Institutions to verify the bank name, address and ABA number of the institution which issued the cash equivalent;**

**iv. Photocopying and filing the cash equivalent in a cash equivalent log or book to be maintained in the cashiers cage; and**

**v. Where the cash equivalent is a recognized money order, performing any other procedures which the issuer of the cash equivalent requires in order to indemnify the acceptor against loss.**

[1.]**2.** Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

i. Requiring the patron to countersign the travelers check in his or her presence;

ii. Comparing the countersignature with the original signature on the travelers check;

iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and

iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.

(f)-(p) (No change.)

# ENVIRONMENTAL PROTECTION

## (a)

## DIVISION OF WATER RESOURCES

### Standards for Individual Subsurface Sewage Disposal Systems

### Proposed Repeals: N.J.A.C. 7:9-2
### Proposed New Rules: N.J.A.C. 7:9A

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:11-23 et seq., N.J.S.A. 58:10A-1 et seq., including 58:10A-16 et seq., N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:3A-2.21 et seq.

DEP Docket Number: 026-88-07.

Proposal Number: PRN 1988-380.

A **public hearing** concerning this proposal will be held on:
September 9, 1988 at 10:00 A.M.
Labor Education Center
Rutgers, The State University
Ryders Lane
New Brunswick, New Jersey

Submit written comments by September 12, 1988 to:
Rachel Lehr, Esq.
New Jersey Department of Environmental Protection
Office of Regulatory Services
CN 402
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

Standards for construction of individual subsurface sewage disposal systems were first promulgated pursuant to the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq. Subsequent rule revisions have been relatively minor and so the existing standards reflect essentially what was the knowledge or "state of the art" in 1954. In the current proposal, the standards have been completely revised. The purpose of proposed new rules is to establish new standards which reflect current scientific knowledge and engineering practice in order to protect groundwater and surface water quality and to minimize the risk of septic system malfunctions. The proposed standards were developed by the Department in conjunction with an ad-hoc committee composed of professional engineers, health officers, sanitarians, builders, soil scientists and others with knowledge and experience related to the use of septic systems in different areas of the State. Proposal of these standards is made in accordance with the recommendation of the Advisory Committee appointed by the Commissioner pursuant to N.J.S.A. 58:11-35. The proposed new standards are briefly described below.

Proposed Change in Format:

The existing standards are contained within one subchapter of the New Jersey Administrative Code and consist of 98 separate sections, consecutively numbered. Although the various sections are roughly arranged so that groups of related standards follow consecutively, there are no formal subdivisions. Due to the increased length and complexity of the proposed new standards, the format has been modified to facilitate use. The proposed new standards are to occupy a full chapter in the New Jersey Administrative Code and will be divided into 12 subchapters, each dealing with a specific subject. This format allows the various administrative provisions to be separated from the technical design and construction standards with all closely related sections grouped together under appropriate subchapter headings.

Proposed Changes in Administrative Provisions:

The basic purpose of the Realty Improvement Sewerage and Facilities Act (1954) ("RISF Act") was to protect public health and safety and this purpose is reflected in the existing standards. In the proposed new rules, the authority of the Water Pollution Control ("WPC") Act, N.J.S.A. 58:10A-1 et seq., is cited along with the RISF Act to expand the purpose as indicated in N.J.A.C. 7:9A-1.1, to include prevention of water pollution and protection of the environment in addition to protection of public health and safety. The scope of the proposed rules will be expanded to cover operation and maintenance of subsurface sewage disposal systems as well as design and construction. Substantially higher penalties for violations of the proposed new rules are established due to the higher maximum penalties available under the WPC Act.

The existing standards were last revised in 1978. Since that time, a number of new rules have been promulgated which further regulate the discharge of septic tank effluent into the groundwaters of the State. Failure of the standards to reflect these newer rules has often resulted in inappropriate approvals granted by local agencies and construction without the necessary State permits. Such discrepancies have often been difficult and costly to resolve. A number of provisions in the proposed new rules have been included to reflect the requirements of other applicable rules. N.J.A.C. 7:9A-1.8 limits approval by the local board of health to subsurface sewage disposal systems with a design flow below the 2,000 gallons per day ("gpd") threshold for NJPDES permits required in N.J.A.C. 7:14A-1 et seq. The proposed new rules, at N.J.A.C. 7:9A-3.3(e) and (f), 7:9A-3.9, 7:9A-3.10 and 7:9A-3.11 indicate what types of subsurface wastewater disposal systems require treatment works approvals or NJPDES permits and direct owners of existing systems which are so regulated to apply. N.J.A.C. 7:9A-3.8 reflects requirements applied by the Pinelands Commission within its area of jurisdiction.

General prohibitions have been grouped together in one section (N.J.A.C. 7:9A-1.6) with several important modifications. The prohibition against construction of septic systems within 100 feet of an "available" sanitary sewer line has been clarified by the inclusion of specific criteria for determination of sewer availability. The prohibition against use of a subsurface sewerage disposal system by more than one realty improvement (unless a TWA or NJPDES permit is issued) has been made absolute to eliminate the granting of routine "exceptions" for new high density development which is inappropriate for use of septic systems. The prohibition against construction of new cesspools has been extended to include seepage pits which discharge the same type of pollutants, function in a hydraulically similar manner and pose essentially the same threat to public health and the environment. Also included in this section are newly added prohibitions concerning failure to obtain permits and inappropriate issuance of permits.

Proposed N.J.A.C. 7:9A-3.3 clarifies the requirements for repairs and alterations to existing subsurface sewage disposal systems. The word "alter" is defined in the existing standards to mean "repair or replace" and the problem of how to apply standards to alterations of existing systems is addressed in a single sentence: "Alterations to individual subsurface sewage disposal systems shall be acceptable to the Authorized Agent." (Proposed repeal, N.J.A.C. 7:9-2.5) As a result, Department staff are often questioned by local health officials, professional engineers and the general public regarding which standards apply to existing systems and the extent to which the standards apply. The proposed new standards clarify applicability to existing systems as opposed to new construction. A logical distinction is made between the words "alteration" and "repair" and a further distinction is made between alterations proposed to accommodate an expansion or change of use of the realty improvement served and alterations proposed to correct an existing malfunctioning system. In the case of an expansion, alterations are required to meet the same standards as new construction. In the case of a malfunctioning system, alterations must be made in a manner that will eliminate the cause of the malfunction and not result in future malfunctions, but full compliance with the standards is not necessarily required to meet this criterion. New sections have also been included to address emergency repairs to malfunctioning systems, the temporary use of a holding tank while repairs or alterations are being made and permanent use of a holding tank, as a last resort, where attempts to correct the malfunctioning septic system have been unsuccessful.

The RISF Act does not preclude municipalities from establishing ordinances which differ from the Department's standards provided that such ordinances prescribe "higher" standards. The result has been a proliferation of widely differing requirements between municipalities throughout the State and sometimes between adjacent municipalities. In some cases, the differences are improvements over the present State standards or are intended to address special limitations resulting from soils or geologic phenomena which are unique to a given geographic region or locality. In other cases, local ordinances appear to be more restrictive with no apparent technical basis. To discourage unnecessary differences and to insure a sound technical basis for those differences which do occur, the Department is proposing that the new standards be established as uniform requirements throughout the State. When municipalities propose special ordinances containing different standards, such ordinances would have to be submitted to the Department along with supporting facts and data. This process is expected to improve the standards as a result of special ordinance reviews. In cases where a new or modified standard proposed as part of a special ordinance is found to be applicable on a Statewide or regional basis, the Department may consider revision of the State standards accordingly.

As mentioned earlier, the scope of the rules has been broadened to include requirements for the operation and maintenance of subsurface sewage disposal systems to minimize risk of septic system malfunctions as a result of improper operation or lack of maintenance. The regulatory mechanism proposed at N.J.A.C. 7:9A-3.14 is the issuance of an operation license to owners of newly constructed or altered septic systems and the periodic renewal of licenses only after submission of evidence that septic tank pumping and other essential maintenance has been performed. Maintenance tasks can be carried out by private contractors with a minimum of direct government involvement. Standards for maintenance of the various septic system components as well as procedures for inspection and evaluation of system performance are provided in N.J.A.C. 7:9A-12. Public education relative to septic system maintenance would be served by distribution of operation and maintenance guidance manuals provided by the Department to all individuals who receive operation licenses.

With the exception of certain administrative sections, the proposed new standards represent a consensus of the ad-hoc committee. Exceptions include those sections providing information regarding NJPDES permits, treatment works approvals and Department certifications for subdivisions of 50 or more realty improvements. These sections have been developed by the Department to accurately reflect current requirements, with little or no ad-hoc committee participation. A more significant departure from the ad-hoc committee's recommendations involves the proposal of a voluntary registration and training program in lieu of the mandatory certification program which was recommended by the committee for design engineers, site evaluators, installers and regulatory officials. Lack of explicit regulatory authority for such a mandatory certification requirement, availability of existing license requirements as a mechanism to control qualifications and successful experience with voluntary training courses sponsored by the Department in conjunction with Rutgers University were factors in the Department's decision to propose the voluntary registration program.

Proposed Changes to Technical Standards:

Revised and expanded requirements are proposed at N.J.A.C. 7:9A-4.1 and 4.2 for site evaluation and septic system location. New standards specify natural geomorphic as well as culturally modified land features to be avoided in site selection. New restrictions on slope are proposed for various disposal field types. Minimum distance requirements have also been revised. Specifically, the required setback distances for seepage pits have been increased, the distance required between water service suction lines and building sewers has been reduced, several drywell setback requirements have been removed, setback distances between various system components and swimming pools have been added, and the 100 foot setback requirement between wells and disposal fields has been applied to water supply reservoirs and their tributaries.

New sections have been included at N.J.A.C. 7:9A-4.6 and 4.7 to address the use of septic systems in flood-prone and wetland areas. Criteria for recognition of these site limitations are based primarily upon the use of Soil Conservation Service soil survey maps in conjunction with onsite soil evaluation. The primary purpose of these new sections is to use available site/soil evaluation data to identify cases where the need for special permits or approvals is likely and to insure that these requirements have been complied with before any septic system approval is granted.

The existing standards rely heavily on the percolation test as a measure of soil suitability. Soil descriptions are currently required but no specific criteria are given other than the percolation test to define soil suitability or to interpret the soil characteristics observed. Determination of the depth to the seasonally high water table is now required but, other than direct measurement during the months of January through April, no specific criteria are given regarding how this determination is to be made. Soil evaluation is viewed by the Department as one of the primary areas in which the present standards are deficient and, to address this deficiency, major modification and expansion of the standards are proposed.

Proposed new standards for determination of soil suitability are set forth in N.J.A.C. 7:9A-5 and are based on the identification of soil "limiting zones" which limit necessary purification or disposal of septic tank effluent by the soil. A soil suitability classification system is proposed at N.J.A.C. 7:9A-5.4 which relates information obtained from onsite investigation or from Soil Conservation Service soil survey maps to acceptable disposal field design options. Specific criteria are given for identification of soil limiting zones based upon soil morphological features described using the U.S. Department of Agriculture (U.S.D.A.) system of classification. To deal with soil variability, a minimum of two soil logs are required at opposite ends of the disposal field. Since some of the soil morphological features needed to identify soil limiting zones cannot be adequately described from a soil boring, a minimum of one soil profile pit is required. Additional soil suitability criteria are proposed for determination of soil suitability in areas of previously disturbed soils.

Major changes are also proposed at N.J.A.C. 7:9A-6 in the requirements for soil testing. A new requirement for pre-soaking heavy textured soils is proposed to improve the reliability of the percolation test. In addition to the percolation test, several permeability testing options are proposed which are considered to be more reliable than the percolation test. Test options are included for use in fractured rock substrata when the percolation test is inappropriate and below the water table where the percolation test is physically impossible.

The existing standards are focused primarily on conventional septic systems designed for soils with only slight limitations. The applicability of such designs has become greatly limited due to the decreasing availability of land without severe limitations. The proposed new standards involve a shift in focus to disposal field installations which are designed to overcome a variety of soil limitations on sites of marginal suitability. Detailed design standards are provided at N.J.A.C. 7:9A-7 for mounded and soil replacement disposal field installations which involve the use of select fill material to increase the thickness of suitable soil or to replace unsuitable soil and rock strata. These standards control the textural composition of the fill material used and dictate proper placement and compaction procedures to avoid excessive or non-uniform settlement. Standards are also provided to control use of ground water interceptor drains in conjunction with disposal fields installed in areas where soil suitability is limited by perched groundwater moving laterally over hydraulically restrictive soil horizons or substrata.

Soil suitability criteria in the existing standards are limited to a minimum acceptable percolation rate (60 minutes per inch) in the soil horizon immediately below the disposal field bottom, a minimum acceptable depth to impervious formations (10 feet) and a minimum vertical separation distance (four feet) between the bottom of the disposal field and the seasonally high water table. While these basic requirements have not been changed, the conceptual basis has been expanded and improved at N.J.A.C. 7:9A-5.4. The required four feet of unsaturated soil immediately below the disposal field has been identified as the "zone of treatment" and standards have been established for suitable texture and acceptable permeability of soil or fill material within this zone. The "zone of disposal" is identified as the soil or rock material immediately below the zone of treatment and above any impervious formation which may be present. Standards are also established at N.J.A.C. 7:9A-6.3 for acceptable permeability within this zone. The requirement for a minimum percolation rate of 60 minutes per inch (minimum permeability of 0.2 inches per hour) applies to the soil horizon immediately below the disposal field bottom and also to the underlying soil horizons and substrata throughout the entire thickness of the zone of treatment and the zone of disposal. The thickness of the zone of disposal may be reduced to two feet, however, when the permeability exceeds two inches per hour.

Another major conceptual change in the proposed new standards concerns the role of the biological clogging mat which forms at the interface between filter stone and soil along the bottom and sides of the disposal field. This clogging mat was previously considered to be a manifestation of disposal field failure but is now recognized as an essential wastewater treatment mechanism particularly in sandy-textured soils. Research further indicates that acceptable infiltration through the clogging mat can be maintained on a long-term basis provided that hydraulic loading does not exceed a "long term acceptance rate" which varies predictably as a function of soil permeability and texture. In accordance with these principles, new standards are proposed at N.J.A.C. 7:9A-10.2 for disposal field sizing. These changes will result in substantial increases in disposal field sizes on sandy-textured soils and smaller increases on heavier-textured soils but will extend disposal field life indefinitely.

Standards for effluent distribution have also been developed at N.J.A.C. 7:9A-9 to reflect current thinking with regard to soil interface clogging. Use of serial distribution has been eliminated since this method promotes excessive clogging in continually ponded upslope trenches and weak clogging mat development in intermittently loaded downslope trenches which may result in inadequate effluent renovation. Similarly, long term resting of alternately used dual disposal fields is prohibited in sandy-textured soils since this method results in destruction of the clogging mat which is the primary mechanism for effluent renovation in such soils. Pressure distribution is allowed as a means of reducing interface clogging, since this method does not depend upon the presence of a clogging mat for uniform distribution of effluent and the unsaturated flow conditions which are essential for adequate wastewater treatment.

In 1980, the U.S. Environmental Protection Agency published its On-site Wastewater Treatment and Disposal Systems Design Manual which presents design criteria based on review of the current scientific and engineering literature including published results of extensive research carried out at University of Wisconsin and elsewhere during the preceding decade. This manual is probably the most comprehensive single reference for currently accepted septic system design and construction criteria. New and revised standards for design flow estimation as well as design and construction standards for septic tanks, grease traps, dosing tanks and pressure distribution systems at N.J.A.C. 7:9A-7 through 9 are derived primarily from this source.

Construction practices have been identified along with site evaluation, design and maintenance as a major factor affecting septic system performance. New standards in this area at N.J.A.C. 7:9A-5 address such issues as maximum allowable soil moisture content at the time of excavation, compaction of fill material, septic tank and dosing tank installation in sites with seasonally high water tables and control of vehicle traffic during different stages of construction.

### Social Impact

The major social impact of the proposed new rules will be the benefits derived from the reduced risk of septic system malfunctions. Septic system malfunctions have become widespread throughout the State and have resulted in public health hazards or nuisances, reduction in property values and damage to the esthetic and recreational values of ponds, lakes, streams and coastal waters. Common types of septic system malfunctions include surface breakout of sewage or effluent, back-up of sewage into plumbing fixtures, seepage of sewage or effluent into underground portions of buildings, bacterial, viral or chemical contamination of potable water supply wells and surface water bodies, eutrofication of surface water bodies and contamination of shellfish.

A positive social impact will be felt by the general public primarily in those portions of the State where public sewer systems are not available. Based upon 1980 census data provided by the U.S. Bureau of the Census, it is estimated that septic systems are used by approximately one million persons or about 14 percent of the State population. Based upon a survey of county and local health departments conducted by Department staff in 1984, it is estimated that 5,000 to 10,000 new septic systems are approved throughout the State each year.

An indirect effect of the new rules involves land use and development patterns in unsewered areas. A large proportion of the prime soils most suitable for septic systems, which are also the best soils for agriculture, is currently used as farmland. The proposed new standards for use of nonconventional septic systems on marginally suitable soils will allow environmentally sound growth in such areas without sacrifice of the little remaining prime farmland. By shifting development pressure away from prime farmland, these standards may ease public and private efforts for farmland preservation which is generally considered to be a social benefit in these areas.

The proposed new standards will regulate operation and maintenance of septic systems which have traditionally been left to the discretion of homeowners or other septic system users. This may be perceived as a negative social impact. However, the inability of homeowners to adequately maintain septic systems has been well documented and, considering the potential threat to public health and safety and the environment which is posed by septic system malfunctions, the increased level of regulatory control is considered necessary.

### Economic Impact

In development of the proposed new rules, the Department has balanced economic considerations and protection of public health, safety and the environment. Inevitably, when regulatory changes are made in the interest of improving environmental quality and the welfare of the public, some increased financial costs will result. In this case, the overall impact of the new rules is difficult to assess because for every negative impact anticipated there are various compensating factors or secondary economic impacts of a positive nature.

The primary economic impact on the general public derives from changes in design and construction standards which will result in increased costs passed on to the buyers by engineering firms and building contractors. Engineering costs are expected to increase primarily as a result of new site evaluation requirements. The soil profile pit requirement will increase costs in the southern part of the State where soil borings are normally used, but will have little effect in the northern part of the State where the use of profile pits rather than borings is generally dictated by soil conditions. Changes in requirements for soil profile description will increase training costs for engineers and other field personnel. The economic impact of these changes may be over-estimated, however, if it is assumed that the minimum standards currently in effect correspond to current engineering practices. Soil logs currently reviewed by the Department as part of treatment works approval applications indicate that an increasing number of engineering firms are now providing soils data in a form similar to what is required in the proposed new standards. Also, a high level of attendance at training courses in soil evaluation offered by Rutgers University in cooperation with the Department during the past five years indicates that many engineering firms have already begun to train their field personnel in these techniques.

Increased construction costs are expected primarily as a result of new disposal field sizing criteria. The new criteria will result in increases of up to 109 percent when disposal beds are used in extremely permeable soils. The increases will be smaller in more slowly permeable soils and where trenches are used rather than beds. In the case of narrow trenches used in slowly permeable soils, the required disposal field size would actually decrease resulting in a reduction in costs. Even in cases where the new criteria would result in larger disposal areas, the increase in actual costs may not always be as great as one would expect based on a comparison of the present standards with the proposed new standards. In many municipalities, current ordinances require disposal areas substantially larger than those required by the present standards and in some cases a reserve disposal area must be set aside for future disposal field expansion or replacement in the event of disposal field failure.

A purely positive economic impact on the construction industry will result from the development of new standards for permeability testing and construction of non-conventional septic systems. Such standards are of use on sites with limitations precluding the use of the percolation test and the installation of conventional septic systems. Under the present standards, use of such alternate design or test procedures requires special approval from the Department which is granted in the form of a treatment works approval. Adoption of new standards which include alternate designs and test methods will save the applicant State permit review fees and, more importantly, lost time which, in the construction industry, translates to increased costs.

Mandatory septic tank pumping enforced through a licensing program might be considered as another area where the proposed new standards will result in increased costs to the user. The money saved by not pumping the septic tank regularly is, however, no more of a genuine long-term savings than that achieved by the automobile owner who fails to change crankcase oil and is ultimately faced with the cost of replacing an irreparably damaged engine. Here, as with the proposed standards for site evaluation, design and construction, the object is to prevent septic system malfunctions. Increased costs borne by the user must therefore be weighed against the potential costs of septic system repair or replacement.

The economic impact on real estate values must also be considered. Some individuals may feel that clear definition of site limitations and reliable methods for their recognition may result in lost development potential and decreased property values for lands with such limitations. Such arguments were raised in 1978 when the Department adopted standards restricting the installation of conventional disposal fields on sites with shallow depth to bedrock. Failure to minimize potential economic impact by providing a design standard to overcome this widespread limitation led to strong public opposition to the rule. Ultimately, an emergency rule was adopted to delete all provisions related to bedrock. The proposed new standards include definitions and site evaluation requirements which specifically address rock substrata as a soil limiting zone. Unlike the 1978 proposal, the current proposed new rules also include standards for demonstration of adequate rock permeability as well as design standards for disposal field installation using suitable fill material to overcome this limitation. For this reason, lost development potential and decreased property values are not expected to occur.

Increased awareness on the part of the consumer and lending institutions with regard to septic system malfunctions is a major trend which is currently affecting the real estate market. Mandatory inspections and tests now required by lenders prior to approval of mortgage applications have made it virtually impossible to sell a home with a malfunctioning septic system. Any decrease in septic system malfunctions resulting from more comprehensive standards for site evaluation, design, construction and maintenance may be viewed, therefore, as a positive economic impact of the proposed new rules on the real estate industry.

A negative economic impact on county and local health departments is anticipated as a result of the proposed new standards. This impact will result primarily from increased staff training costs due to major expansion and modification of standards for site evaluation, design and construction. Also, increased administrative costs are anticipated as a result of the septic system licensing provisions. To address the staff training needs, the Department intends to provide free or low cost training to health department personnel in conjunction with the proposed registration provisions.

**Environmental Impact**

The proposed new rules are intended to have a positive environmental impact throughout the State. New standards for suitable soil and fill material within the zone of treatment, standards for effluent distribution and disposal field sizing which maintain the clogging mat as an effective wastewater treatment medium and restrictions on the construction of new seepage pits are expected to reduce the adverse impact of septic systems on groundwater quality. Site evaluation and design and construction standards focused on sites of marginal suitability will accommodate current land use and development patterns in a manner that will minimize potentially adverse environmental impact. New provisions addressing operation and maintenance will utilize a septic system licensing program with provision for public education to reduce the threat of groundwater contamination resulting from use of prohibited septic cleaners and improper disposal of toxic substances.

**Regulatory Flexibility Statement**

The proposed new rules will affect businesses wishing to locate in areas where sanitary sewers are not available. N.J.A.C. 7:9A-1.8 limits the daily sewage design flow to 2,000 gallons which, in the case of a commercial establishment, corresponds to a maximum building size of 16,000 square feet and a maximum of 133 employees, calculated based on the design flow criteria given in N.J.A.C. 7:9A-7.4. As a result, the businesses affected will be primarily "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules would not, however, impose reporting, recordkeeping, or other compliance requirements on small businesses other than those associated with the operation license which are minimal. On the contrary, discharges of sanitary sewage from subsurface sewage disposal systems used by small businesses are authorized by rule and are thus spared the costly groundwater monitoring and compliance requirements which must be satisfied by larger businesses regulated under the New Jersey Pollutant Discharge Elimination System at N.J.A.C. 7:14A. Any additional expense imposed upon a small business by this chapter is more than outweighed by the added protection to the environment.

The proposed new rules will affect engineering firms, construction contracting firms and septic system maintenance firms, the majority of which are "small businesses" as defined in the New Jersey Regulatory Flexibility Act. The rules do not impose special reporting or compliance requirements other than those relating to the nature of engineering plans, site evaluation reports, soil testing data and septic system inspection reports submitted as part of applications to construct, alter, repair or operate individual subsurface sewage disposal systems. In complying with these requirements, the small businesses are acting as the applicant's agent and are therefore not directly regulated. Since compliance with the standards increases the quantity and quality of the services provided, any increased costs are expected to be passed on to the client. The only negative effect on small businesses would be some initial increase in staff training costs and this negative impact would be offset by the positive impact resulting from increased demand for services. Compliance by engineering firms with the new site evaluation and design standards will not require the acquisition of expensive or specialized equipment. The only provision which directly regulates small businesses is that establishing a registration program and compliance with this provision is strictly voluntary.

**Full text** of the proposed repeals can be found in the New Jersey Administrative Code at N.J.A.C. 7:9-2.

**Full text** of the proposed new rule follows.

## CHAPTER 9A
## STANDARDS FOR INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEMS

### SUBCHAPTER 1. GENERAL PROVISIONS

7:9A-1.1 Purpose

(a) The purpose of this chapter is to:

1. Prevent pollution of the waters of the State that results from improper location, design, construction, installation, alteration, operation or maintenance of individual subsurface sewage disposal systems;

2. Provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface sewage disposal systems;

3. Protect the public health and safety and the environment;

4. Protect potable water supplies; and

5. Safeguard fish and aquatic life and ecological values.

7:9A-1.2 Scope

(a) This chapter prescribes standards for the location, design, construction, installation, alteration, operation and maintenance of individual subsurface sewage disposal systems.

(b) Except as otherwise provided by N.J.S.A. 58:11-25, the following shall constitute the rules of the New Jersey Department of Environmental Protection and shall be regarded as uniform standards, in force throughout the State, governing individual subsurface sewage disposal systems.

7:9A-1.3 Construction of rules

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

(b) All appendices attached to this chapter are incorporated into this chapter and are made a part hereof.

7:9A-1.4 Practice where rules do not govern

The Commissioner, the Director of the Division of Water Resources, or any other appropriate management employee within the Department, shall exercise his or her discretion in respect to any matters not governed by this chapter.

7:9A-1.5 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this chapter, and to this end, the provisions of this chapter are declared to be severable.

7:9A-1.6 General prohibitions

(a) A person shall not install, construct, alter or operate an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals, certifications or licenses as required by this chapter.

(b) An administrative authority shall not issue an approval, permit, certification, or license for installation, construction, alteration, or operation of an individual subsurface sewage disposal system where such installation, construction, alteration or operation will violate or otherwise not be in compliance with the requirements of this chapter.

(c) The use of a subsurface sewage disposal system for more than one property, dwelling, commercial unit or other premises is prohibited unless a treatment works approval or a NJPDES permit has been issued by the Department.

(d) Individual subsurface sewage disposal systems shall not be located, designed, constructed, installed, altered or operated in a manner that will allow the discharge of an effluent onto the surface of the ground or into any water course.

(e) The administrative authority shall not approve the construction or alteration of individual subsurface sewage disposal systems or other means of private sewage disposal where a sanitary sewer line is available within 100 feet of the property to be served. For the purpose of this subsection, an existing sanitary sewer line shall be considered to be available when the following conditions are met:

1. Connection of the facility to the sanitary sewer line may be accomplished without installing a pump station, blasting bedrock, acquiring an easement or right-of-way to cross an adjoining property,

or crossing a watercourse, railway, major highway or other significant obstacle; and

2. The property to be served is located within the designated sewerage service area of the sewage treatment plant to which the sanitary sewer line is connected.

(f) The discharge of sanitary sewage or the effluent from any individual subsurface sewage disposal system into any abandoned well or any well constructed for the purpose of sanitary sewage disposal is prohibited. The administrative authority shall not approve the discharge of sanitary sewage or septic tank effluent into an existing well or the construction of a new well for the purpose of waste disposal.

(g) The construction or installation of cesspools is prohibited.

(h) The administrative authority shall not approve the construction or installation of seepage pits except as provided by N.J.A.C. 7:9A-7.6.

(i) The discharge of industrial wastes into an individual subsurface sewage disposal system is prohibited unless such discharge has been authorized by a treatment works approval or a NJPDES permit issued by the Department.

(j) The administrative authority shall not approve the construction, installation or alteration of any individual subsurface sewage disposal system used for the discharge of industrial wastes.

7:9A-1.7 Penalties

(a) Violation of any provision of this chapter shall be a violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the violator shall be subject to assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8.

(b) Pursuant to N.J.S.A. 58:10A-10(a), the Commissioner may assess a civil penalty of not more than $50,000 for each violation, and each day during which such violation continues shall constitute an additional, separate, and distinct offense.

(c) Examples of violations of the requirements of this chapter which are subject to the assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8 include but are not limited to:

1. Installing, constructing, altering or operating an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals, certifications or licenses as required by this chapter;

2. Issuance by an administrative authority of a permit, approval, certification or license for installation, construction, alteration or operation of an individual subsurface sewage disposal system where such installation, construction, alteration or operation will violate the requirements of this chapter;

3. Discharge of industrial wastes into an individual subsurface sewage disposal system without a valid NJPDES permit issued by the Department pursuant to N.J.A.C. 7:14A;

4. Distribution, sale, offer or exposure for sale, or use of any sewage system cleaner containing restricted chemical materials, as defined in N.J.S.A. 58:10A-17;

5. Failure of the facility owner to report to the administrative authority any expansion or change in use of a facility which may result in an increase in the volume of sanitary sewage discharged into the individual subsurface sewage disposal system; or

6. Failure of the applicant, or the applicant's agent, to provide complete and accurate information to the administrative authority or its authorized agent, or to the Department, in accordance with the requirements of this chapter.

7:9A-1.8 Limitations

(a) The administrative authority shall not approve the installation, construction or alteration of an individual subsurface sewage disposal system unless the proposed system falls within the limits defined as follows:

1. Systems serving one single family home on one individual property; or

2. Systems serving facilities other than single family homes where the total daily volume of sewage generated, calculated as prescribed in N.J.A.C. 7:9A-7.4, is no greater than 2,000 gallons per day, the type of waste discharged consists of sanitary sewage only, and the system is connected to a single building, commercial unit or other realty improvement on the same individual property.

(b) When an individual subsurface sewage disposal system exceeds the limitations in (a) above, a treatment works approval issued by the Department will be required and a NJPDES permit may also be required.

(c) In cases where the actual volume of sanitary sewage discharged from a facility will be reduced by use of water-saving plumbing fixtures, recycling of renovated wastewater, incineration or composting of wastes, evaporation of sewage effluent or any other process, the requirement for obtaining a treatment works approval and a NJPDES permit shall be based upon the design volume of sanitary sewage, calculated as prescribed in N.J.A.C. 7:9A-7.4, rather than the actual discharge volume as modified by water conservation or special treatment processes.

SUBCHAPTER 2. DEFINITIONS

7:9A-2.1 Definitions

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

"A-horizon" means the uppermost mineral horizon in a normal soil profile. The upper part of the A-horizon is characterized by maximum accumulation of finely divided, dark colored organic residues, known as humus, which are intimately mixed with the mineral particles of the soil.

"Administrative authority" means the board of health having jurisdiction or its authorized agent acting on its behalf.

"Alteration" means any change in the physical configuration of an existing individual subsurface sewage disposal system or any of its component parts, including replacement, modification, addition or removal of system components such that there will be a change in the location, design, construction, installation, size, capacity, type or number of one or more components. The term "alter" shall be construed accordingly.

"Applicant" means the person who signs and submits an application to construct, install or alter an individual subsurface sewage disposal system.

"Approved" means accepted or acceptable under applicable specifications stated or cited in this chapter, or accepted as suitable for the proposed use under the procedures of this chapter. The word "approval" shall be construed accordingly.

"Approved engineering design" means the engineering plans and specifications for construction, installation or alteration of the individual subsurface sewage disposal system which have been reviewed and approved by the administrative authority.

"Artesian zone of saturation" means a zone of saturation which exists immediately below a hydraulically restrictive horizon, and which has an upper surface which is at a pressure greater than atmospheric, either seasonally or throughout the year.

"Authorized agent" means a licensed health officer, licensed professional engineer or first-grade sanitarian who is delegated to function within specified limits as the agent of the administrative authority.

"Bedroom" means any room within a dwelling unit, finished or unfinished, which may reasonably be expected to serve primarily as a bedroom or dormitory. The term bedroom shall be considered to include any room or rooms within an expansion attic.

"Blackwater" means any sanitary sewage generated within a residential, commercial or institutional facility which includes discharges from water closets, toilets, urinals or similar fixtures alone or in combination with other wastewater. Blackwater generally does not include laundry or kitchen wastewater.

"Building sewer" means the pipe extending from the outer wall of the building, or as defined in the State Uniform Construction Code, N.J.A.C. 5:23, to the septic tank or approved place of disposal other than a public sewer.

"Certificate of compliance" means a formal determination in writing by the administrative authority or its authorized agent that an individual subsurface sewage disposal system has been constructed, installed or altered in conformance with the requirements set forth in this chapter as well as any other applicable local ordinances.

"Cesspool" means a covered pit with open-jointed lining into which untreated sewage is discharged, the liquid portion of which is disposed of by leaching into the surrounding soil, the solids or sludge being retained within the pit.

"Chroma" means the relative purity or strength of a color, a quantity which increases with increasing grayness. Chroma is one of the three variables of soil color as defined in the Munsell system of classification.

"Clay" means a particle size category consisting of mineral particles which are smaller than 0.002 millimeters in equivalent spherical diameter. Also, a soil textural class having more than 40 percent clay, less than 45 percent sand, and less than 40 percent silt, as shown in Figure 3 of Appendix A.

"Clay loam" means a soil textural class having 27 to 40 percent clay and 20 to 45 percent sand, as shown in Figure 3 of Appendix A.

"Commercial unit" means one or more buildings, or one or more rooms within a building, which will be occupied by a single individual, corporation, company, association, society, firm, partnership or joint stock company, and used for non-residential purposes. Within a commercial building, each room or suite of rooms having its own separate sanitary facilities as well as a separate entrance to the outside, or to a hallway, lobby, foyer or other common area, shall be considered to be a separate realty improvement, as deferred in this section.

"Coarse fragment" means a rock fragment contained within the soil which is greater than two millimeters in equivalent spherical diameter or which is retained on a two millimeter sieve.

"Construct" means to build, install, fabricate or put together onsite one or more components of an individual subsurface sewage disposal system.

"Conventional disposal field installation" means a type of disposal field installation described in N.J.A.C. 7:9A-10.1(b)1.

"Cobble" means a coarse fragment which is rounded or subrounded in shape and which is between 76 millimeters (three inches) and 254 millimeters (10 inches) in diameter.

"County soil survey report" means a report prepared by the U.S. Department of Agriculture, Soil Conservation Service which includes maps showing the distribution of soil mapping units throughout a particular county together with narrative descriptions of the soil series shown and other information relating to the uses and properties of the various soil series.

"D-box" means a distribution box.

"Delineated stream" or "delineated floodplain" means a stream or flood plain for which the flood hazard areas have been officially specified by the State of New Jersey.

"Department" means the Department of Environmental Protection.

"Design permeability" means the permeability or percolation rate measured at the level of infiltration, as prescribed in N.J.A.C. 7:9A-6. For the purpose of this chapter, a percolation rate measured at the level of infiltration, though not a true measurement of permeability, may be considered to be a form of design permeability.

"Direct supervision" means control over and direction of work carried out by others with full knowledge of and responsibility for such work.

"Disposal bed" means an individual subsurface sewage disposal system component consisting of a closed excavation made within soil or fill material to contain filter material in which two or more distribution laterals have been placed for the disposal of septic tank effluent.

"Disposal field" means a disposal bed or a group of one or more disposal trenches. The perimeter of the disposal field corresponds to the perimeter of the disposal bed, or a line circumscribing the outermost edges of the outermost disposal trenches and including the area between the disposal trenches.

"Disposal trench" means an individual subsurface sewage disposal system component of a covered excavation made within soil or fill material to contain filter material in which a single distribution lateral has been placed for the disposal of septic tank effluent.

"Distribution box" means a water-tight structure which receives sanitary sewage effluent from a septic tank and distributes such sewage effluent in equal portions to two or more pipelines leading to the disposal field.

"Distribution lateral" means a perforated pipe or one of several perforated pipes used to carry and distribute septic tank effluent throughout the disposal field. The term "distribution line" is equivalent in meaning.

"Distribution network" means two or more inter-connected distribution laterals.

"Disturbed ground" means any site or portion of a site which has been modified in its suitability for absorption or disposal of septic tank effluent, or its ability to physically support the system components, as a result of activities carried out by man other than those specified in the approved engineering design. Except for artificial drainage, ground disturbed only for cultivation or related agricultural activities, shall not be considered disturbed ground. Disturbed ground includes those conditions set forth in N.J.A.C. 7:9A-5.10(b).

"Dosing tank" means a water-tight receptacle located between the septic tank and the disposal field, equipped with a siphon or pump, and designed to store and deliver doses of septic tank effluent to the disposal field.

"Dry well" means a covered pit with open-jointed lining through which drainage from roofs, basement floors or areaways may seep into the surrounding soil.

"Dwelling unit" means any building or portion of a building, permanent or temporary in nature, used or proposed to be used as a residence either seasonally or throughout the year.

"Encroachment line" means a line encompassing the channel of a natural stream and portions of the 100-year flood plain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. It is approximately equal to the floodway line along delineated streams.

"Equivalent spherical diameter" of a particle means the diameter of a sphere which has a volume equal to the volume of the particle.

"Excessively coarse horizon" means a horizon of limited thickness within the soil profile which provides inadequate treatment of septic tank effluent due to a high coarse fragment content, excessively coarse texture and/or excessively rapid permeability.

"Excessively coarse substratum" means a substratum below the soil profile which extends beyond the depth of soil profile pits and borings and which provides inadequate treatment of septic tank effluent due to a high coarse fragment content, excessively coarse texture and/or excessively rapid permeability.

"Existing ground surface" means the natural surface of the ground at the site of a proposed individual subsurface sewage disposal system after the completion of re-grading in accordance with an approved engineering design.

"Expansion attic" means that part of a dwelling unit left unfinished but which is capable of being finished as a bedroom or bedrooms and which is accessible by permanent stairways or designed so that stairways can be installed.

"Experimental system" means an individual subsurface sewage disposal system which does not conform in location, design, construction or installation to standard engineering practice as set forth in this chapter.

"Extremely firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Fill material" means any soil, rock or other material which is placed within an excavation or over the pre-existing surface of the ground. The term "fill" is equivalent in meaning.

"Filter material" means washed gravel or crushed stone, free of fines such as dust, ashes or clay, and meeting the size requirements of N.J.A.C. 7:9A-10.3(e)2 or 10.7(f).

"Finished grade" means the surface of the ground after completion of final grading.

"Firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Flood fringe" means that portion of the flood hazard area not designated as the floodway. See N.J.A.C. 7:13.

"Flood hazard area" means the floodway and the flood fringe area of a delineated stream. See also N.J.A.C. 7:13.

"Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream.

"Footing drain" means a subsurface drain installed below the foundation of a building to prevent the accumulation of surface and ground water below the foundation of the building.

"Fractured rock substratum" means a rock substratum which contains an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area.

"Gal/day" or "gpd" means U.S. gallons per day, which is a measure of rate of flow or hydraulic loading.

"Gravel" means a rounded or subrounded coarse fragment which is between two millimeters (0.1 inches) and 76 millimeters (three inches) in diameter.

"Gravity dosing" means a type of effluent distribution which is defined in N.J.A.C. 7:9A-9.1(a)2.

"Gravity flow" means a type of effluent distribution which is defined in N.J.A.C. 7:9A-9.1(a)1.

"Grease trap" means a device in which the grease present in sanitary sewage is intercepted, congealed by cooling, accumulated and stored for pump-out and disposal.

"Greywater" means that portion of the sanitary sewage generated within a residential, commercial or institutional facility which does not include discharges from water closets or urinals.

"Ground water" means water below the land surface in a zone of saturation.

"Hard consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Holding tank" means a closed water-tight structure designed and operated in such a manner as to receive and store sanitary sewage or septic tank effluent but not to discharge sanitary sewage or septic tank effluent to the surface or ground water or onto the surface of the land.

"Hue" means the dominant spectral color, one of the three variables of soil color defined within the Munsell system of classification.

"Hydraulically restrictive horizon" means a horizon within the soil profile which slows or prevents the downward or lateral movement of water and which is underlain by permeable soil horizons or substrata. Any soil horizon which has a saturated permeability less than 0.2 inch per hour or a percolation rate slower than 60 minutes per inch is hydraulically restrictive.

"Hydraulically restrictive substratum" means a substratum below the soil profile which slows or prevents the downward or lateral movement of water and which extends beyond the depth of profile pits or borings or to a massive substratum. A substratum which has a saturated permeability less than 0.2 inch per hour or a percolation rate slower than 60 minutes per inch is hydraulically restrictive.

"Individual subsurface sewage disposal system" means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field. The term "system" is equivalent in meaning.

"Industrial wastes" means solid or liquid wastes resulting from processes employed in industrial establishments or in any commercial establishment engaged in processes which use or generate any of the pollutants or any substance containing any of the pollutants regulated under section 307(a), (b), or (c) of the Federal Clean Water Act of 1977, 33 U.S.C. §§1251 et seq., and the regulations promulgated pursuant thereto and any amendments thereto.

"Infiltrative surface" means the interface or contact between the filter material and the soil or fill at the bottom and sidewalls of the disposal bed or each individual disposal trench.

"Install" means to assemble, put in place or connect components of an individual subsurface sewage disposal system in a manner that will permit their use by the occupants of the realty improvement served.

"Interceptor drain" means a subsurface drain designed and constructed to intercept laterally moving perched ground water.

"Invert" means the floor, bottom or lowest portion of the internal cross-section of a closed conduit, used with reference to pipes or fittings conveying sanitary sewage.

"Level of infiltration" means the elevation of the horizontal interface or contact between the filter material and the soil or fill material at the bottom of the filter material.

"Limiting zone" means any horizon or combination of horizons within the soil profile, or any substratum or combination of substrata below the soil profile, which limits the ability of the soil to provide treatment and/or disposal of septic tank effluent. Limiting zones include rock substrata, hydraulically restrictive horizons and substrata, excessively coarse horizons and substrata, perched and regional zones of saturation. Criteria for recognition of limiting zones are given in N.J.A.C. 7:9A-5.5 through 5.9.

"Loamy sand" means a soil textural class, as shown in Figure 3 of Appendix A, that has a maximum of 85 to 90 percent sand with a percentage of silt plus 1.5 times the percentage of clay not in excess of 15; or a minimum of 70 to 85 percent sand with a percentage of silt plus 1.5 times the percentage of clay not in excess of 30.

"Lower plastic limit" means the moisture content corresponding to the transition between the plastic and semi-solid states of soil consistency. This corresponds to the lowest soil moisture content at which the soil can be molded in the fingers to form a rod or wire, one-eighth of an inch in thickness, without crumbling.

"Malfunctioning system" means an individual sewage disposal system which pollutes ground or surface waters or which creates a nuisance or hazard to public health or safety or the environment and includes, but is not limited to, the situations described in N.J.A.C. 7:9A-3.4.

"Massive rock substratum" means a rock substratum which does not contain an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area.

"Massive structure" means one of the soil structural classes which is described in N.J.A.C. 7:9A-5.3(h).

"Mottling" means a color pattern observed in soil consisting of blotches or spots of contrasting color. The term "mottle" refers to an individual blotch or spot. Mottling is an indication of seasonal or periodic and recurrent saturation.

"Mounded disposal field installation" means a type of disposal field installation which is described at N.J.A.C. 7:9A-10.1(b)4.

"Mounded soil replacement disposal field installation" means a type of disposal field installation which is described at N.J.A.C. 7:9A-10.1(b)5.

"Munsell system" means a system of classifying soil color consisting of an alpha-numeric designation for hue, value and chroma, such as "7.5 YR 6/2", together with a descriptive color name, such as "strong brown".

"NJPDES permit" means a permit issued by the Department pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.A.C. 7:14A for a discharge of pollutants.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System as set forth in N.J.S.A. 58:10A-1 et seq. and in N.J.A.C. 7:14A.

"O-horizon" means a surface horizon, occurring above the A-horizon in some soils, which is composed primarily of undecomposed or partially decomposed plant remains which have not been incorporated into the mineral soil.

"One hundred year flood plain" means the area inundated by the 100-year flood. A 100-year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year. See also N.J.A.C. 7:13.

"Operate" means to use or convey a building or facility served by an individual subsurface sewage disposal system or to own a building or facility where such use or occupation exists.

"Perched zone of saturation" means a zone of saturation which occurs immediately above a hydraulically restrictive horizon and which is underlain by permeable horizons or substrata which are not permanently or seasonally saturated.

"Percolation rate" means the rate of fall of water measured in a test hole as prescribed in N.J.A.C. 7:9A-6.4

"Permeability" means the rate at which water moves through a unit area of soil or rock material at hydraulic gradient of one, determined as prescribed in N.J.A.C. 7:9A-6.2, 6.3, 6.5 or 6.6.

"Permeable" means having a permeability of 0.2 inches per hour or faster or a percolation rate of 60 minutes per inch or faster. The terms "permeable soil", "permeable rock" and "permeable fill" shall be construed accordingly.

"Permit" means a written approval issued by the administrative authority or the Department for the construction, installation, alteration or operation of an individual subsurface sewage disposal system.

"Person" means an individual, corporation, company, association, society, firm, partnership and joint stock company as well as the State and any political subdivision thereof.

"Piezometer" means a device consisting of a length of metal or plastic pipe, open at the bottom or perforated within a specified interval, and used for the determination of depth to water, permeability or hydraulic head within a specific soil horizon or substratum.

"Platy structure" means one of the soil structural classes described in N.J.A.C. 7:9A-5.3(g).

"Pre-existing natural ground surface" means the former level of the ground surface in an area of disturbed ground prior to the disturbance.

"Pressure dosing" means a type of effluent distribution which is described in N.J.A.C. 7:9A-9.1.

"Pre-treatment unit" means a septic tank or a grease trap.

"Professional engineer" means a person licensed to practice professional engineering in this State pursuant to N.J.S.A. 48:8-27 et seq.

"Realty improvement" means any proposed new residence, commercial building or other premises (including but not limited to condominiums, garden apartments, town houses, mobile homes, stores, office buildings, restaurants, hotels and so forth) not served by an approved water supply and approved sewerage system, the useful occupancy of which will require the installation or erection of a water supply system or sewerage facilities. Each dwelling unit in a proposed multiple-family dwelling or each commercial unit in a commercial building shall be construed to be a separate realty improvement.

"Regional zone of saturation" means a zone of saturation which extends vertically without interruption below the depth of soil borings and profile pits.

"Re-grading" means modification of a land slope by cutting and filling with the native soil or re-distribution of the native soil which is present at the site.

"Repair" means to fix, refurbish or replace one or more components of an individual subsurface sewage disposal system in a manner that will restore, preserve and not change the original location, design, construction and installation, size, capacity, type, or number of the components of the system.

"Replicate" means one of two or more soil samples or tests taken at the same location (within five feet of each other), and depth, within the same soil horizon or substratum. In the case of fill material, replicate tests are tests performed on sub-samples of the same bulk sample packed to the same bulk density.

"Reservoir" means a surface water body used to store a public drinking water supply or any portion of a tributary water course within one mile upstream of such a surface water body.

"Restricted chemical material" means any chemical material which contains concentrations in excess of one part per hundred, by weight of any halogenated hydrocarbon chemical, aliphatic or aromatic, including but not limited to trichloroethane, trichloroethylene, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; any aromatic hydrocarbon chemical, including but not limited to benzene, toluene and napthalene; any phenol derivative in which a hydroxy group and two or more halogen atoms are bonded directly to a six-carbon aromatic ring, including but not limited to trichlorophenol or pentachlorophenol; or acrolein, acrylonitrile, or benzidine. Restricted chemical material does not, however, include any chemical material which is biodegradable and not a significant source of contamination of the ground waters of the State.

"Rock substratum" means a solid and continuous body of rock, with or without fractures, or a weathered or broken body of rock fragments overlying a solid body of rock, where more than 50 percent by volume of the rock fragments are greater than two millimeters in diameter or large enough to be retained on a two millimeter sieve.

"Sand" means a particle size category consisting of mineral particles which are between 0.05 and 2.0 millimeters in equivalent spherical diameter. Also, a soil textural class having 85 percent or more of sand and a content of silt and clay such that the percentage of silt plus 1.5 times the percentage of clay does not exceed 15, as shown in Figure 3 of Appendix A.

"Sandy clay" means a soil textural class having 35 percent or more of clay and 45 percent or more of sand, as shown in Figure 3 of Appendix A.

"Sanitary sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, or the water carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water carried wastes of human origin or containing putrescible material. This term specifically excludes industrial, hazardous or toxic wastes and materials.

"Scum" means a mass of sewage solids floating at the surface of sewage and buoyed up by entrained gas, grease, or other substances. The term "scum layer" shall be construed accordingly.

"Seasonally high water table" means the upper limit of the shallowest zone of saturation which occurs in the soil, identified as prescribed in N.J.A.C. 7:9A-5.8.

"Seepage pit" means a covered pit with open-jointed lining through which septic tank effluent may seep into the surrounding soil.

"Septic tank" means a water-tight receptacle which receives the discharge of sanitary sewage from a building sewer or part thereof, and is designed and constructed so as to permit settling of settleable solids from the liquid, partial digestion of the organic matter, and discharge of the liquid portion into a disposal field or seepage pit.

"Septic tank effluent" means the primary treated wastewater or sewage discharged through the outlet of a septic tank. The term "effluent" is equivalent in meaning.

"Serial distribution" means a method of distributing septic tank effluent between a series of disposal trenches so that each successive trench receives effluent only after the preceding trenches have become full to overflowing.

"Sewage system cleaner" means any solid or liquid material intended or used primarily for the purpose of cleaning, treating, degreasing, unclogging, disinfecting or deodorizing any part of a sewage system but excluding those liquid or solid products intended or used primarily for manual cleaning, scouring, treating, deodorizing or disinfecting the surface of common plumbing fixtures.

"Sewage system" means any part of a wastewater disposal system, including but not limited to all toilets, piping, drains, sewers, septic tanks, grease traps, distribution boxes, dosing tanks, disposal tanks, disposal fields, seepage pits, cesspools or dry wells.

"Silt" means a particle size category consisting of mineral particles which are between 0.002 and 0.05 millimeters in equivalent spherical diameter. It also means a soil textural class having 80 percent or more of silt and 12 percent or less of clay, as shown in Figure 3 of Appendix A.

"Silty clay" means a soil textural class having 40 percent or more of clay and 40 percent or more of silt, as shown in Figure 3 of Appendix A.

"Silty clay loam" means a soil textural class having 27 to 40 percent of clay and less than 20 percent of sand, as shown in Figure 3 of Appendix A.

"Silt loam" means a soil textural class having 50 percent or more of silt and 12 to 27 percent of clay; or 50 to 80 percent of silt and less than 12 percent of clay, as shown in Figure 3 of Appendix A.

"Single grain structure" means one of the soil structural classes which are described in N.J.A.C. 7:9A-5.3(h).

"Sludge" means a relatively dense suspension of sewage solids which settle to the bottom of a septic tank, are relatively resistant to biological decomposition, and which collect in the septic tank over a period of time. The term "sludge layer" shall be construed accordingly.

"Soil" means any naturally occurring unconsolidated body of mineral and organic particles derived from the weathering in place of consolidated rock or unconsolidated mineral deposits and the decay of living organisms.

"Soil aggregate" means a naturally occurring unit of soil structure consisting of particles of sand, silt, clay, organic matter, and coarse fragments held together by the natural cohesion of the soil.

"Soil color" means the soil color name and Munsell color designation determined by comparison of the moist soil with color chips contained in a Munsell soil color book.

"Soil consistence" means the resistance of a soil aggregate or clod to being crushed between the fingers or broken by the hands. Terms for describing soil consistence described are in N.J.A.C. 7:9A-5.3(h).

"Soil horizon" means a layer within a soil profile differing from layers of soil above and below it in one or more of the soil morphological characteristics including color, texture, coarse fragment content, structure, consistence and mottling.

"Soil log" means a description of the soil profile which includes the depth, thickness, color, texture, coarse fragment content, mottling, structure and consistence of each soil horizon or substratum.

"Soil mapping unit" means an area outlined on a map in a County Soil Survey Report and marked with a letter symbol designating a soil phase, a complex of two or more soil phases, or some other descriptive term where no soil type has been identified.

"Soil material" means soil as well as any naturally occurring unconsolidated mineral deposit which is not a rock substratum.

"Soil phase" means a specific type of soil which is mapped by the Soil Conservation Service and which belongs to a soil series described within the County Soil Survey Report.

"Soil profile" means a vertical cross-section of undisturbed soil showing the characteristic horizontal layers or horizons of the soil which have formed as a result of the combined effects of parent material, topography, climate, biological activity and time.

"Soil profile pit" means an excavation made for the purpose of exposing a soil profile which is to be described.

"Soil replacement disposal field installation" means a disposal field installed as prescribed in N.J.A.C. 7:9A-10.1(b)2 and 3.

"Soil series" means a grouping of soil types possessing a specific range of soil profile characteristics which are described within the County Soil Survey Report. Each soil series may consist of several "soil phases" which may differ in slope, texture of the surface horizon or stoniness.

"Soil structural class" means one of the shape classes of soil structure described in N.J.A.C. 7:9A-5.3(g).

"Soil structure" means the naturally occurring arrangement, within a soil horizon, of sand, silt and clay particles, coarse fragments and organic matter, which are held together in clusters or aggregates of similar shape and size.

"Soil texture" means the relative proportions of sand, silt and clay in that portion of the soil which passes through a sieve with two millimeter openings.

"Soil textural class" means one of the classes of soil texture defined within the USDA system of classification. (Soil Survey Manual, Agricultural Handbook No. 18, U.S.D.A. Soil Conservation Service 1962.)

"Soil suitability class" means one of the classes of soil suitability with regard to the installation of an individual subsurface sewage disposal system which are defined based upon the type and depth of limiting zones present, as prescribed in N.J.A.C. 7:9A-5.4.

"Special ordinance" means an ordinance which sets requirements for the location, design, construction, alteration or use of individual subsurface sewage disposal systems which differ from the requirements of this chapter.

"Stream water level" means the depth below the ground surface or the elevation with respect to some reference level, of the water level observed within a soil profile pit or boring, or within a piezometer, after this level has stabilized or become relatively constant with the passage of time.

"Stone" means a coarse fragment which is rounded or subrounded in shape and greater than 254 millimeters (10 inches) in diameter.

"Subsurface drain" means any open pipe, layer of gravel, stone or coarse sand, or any combination of these elements placed below the surface of the ground and designed or constructed in such a manner as to allow movement of ground water into any surface water body, water course or onto the surface of the ground.

"Substratum" means a layer of soil or rock material present below the soil profile and extending beyond the depth of soil borings or profile pits.

"Suitable soil" means unsaturated soil, above the seasonally high water table, which contains less than 50 percent by volume of coarse fragments and which has a permeability between 0.2 and 20 inches per hour or a percolation rate between three and 60 minutes per inch.

"Suitable fill" means fill material which meets the requirements of N.J.A.C. 7:9A-10.1(f).

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

"System" is an abbreviated designation for "individual subsurface sewage disposal system" and is equivalent in meaning.

"Test replicate" means one of two or more soil tests performed using the same procedure on each of several soil samples taken within the same soil horizon and at the same location within the proposed disposal field. The term "replicate sample" shall be construed accordingly.

"Textural analysis" means the determination of soil texture by means of a hydrometer analysis and a sieve analysis.

"Treatment works approval" means a permit issued by the Department pursuant to N.J.A.C. 7:14A-12.3 for a subsurface sewage disposal system which is beyond the scope or not in strict conformance with the requirements of this chapter.

"Undisturbed soil sample" means a soil sample in which the natural soil structure, porosity and cohesion are preserved intact, and in which the only cracks or planes of separation evident are those occurring naturally between soil aggregates.

"Value" means the relative lightness or intensity of a color, one of the three variables of soil color defined within the Munsell system of classification.

"Very firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

Very hard consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Volume of sanitary sewage" means the maximum volume of sanitary sewage which may reasonably be expected to be discharged from a residential, commercial or institutional facility on any day of operation, determined as prescribed in N.J.A.C. 7:9A-7.4 and expressed in gallons per day. The volume of sanitary sewage shall not be considered as an average daily flow, but shall incorporate a factor of safety over and above the average daily flow which is adequate to accommodate peak sewage flows or facilities which discharge greater than the average volumes of sanitary sewage either occasionally or on a regular basis. The use of water saving devices shall not be used as a basis for reducing estimates of the volume of sanitary sewage.

"Water course" means any stream or surface water body, or any ditch or subsurface drain that will permit drainage into a surface water body. This term does not include swales or roadside ditches which convey only direct runoff from storms or snow melting, and storm sewers designed and constructed in a manner that will prevent infiltration of ground water into the pipe or lateral movement of ground water through the excavation in which the pipe has been laid.

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

"Water table" means the upper surface of a zone of saturation.

"Well" means a bored, drilled or driven shaft, or a dug hole, which extends below the seasonally high water table and which has a depth which is greater than its largest surface dimension.

"Wetland" means any area inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

"U.S.D.A. system of classification" means the system of classifying soil texture used by the United States Department of Agriculture which defines 12 soil textural classes based upon the weight percentages of sand, silt and clay in that portion of the soil which passes through a sieve with two millimeter openings. The soil textural classes are shown graphically on the soil textural triangle, Figure 3 of Appendix A.

"Zone of disposal" means the permeable layers of soil or rock material below the zone of treatment which permit downward movement of the septic tank effluent and lateral movement of this effluent away from the area of the disposal field.

"Zone of treatment" means the upper four feet of suitable soil or fill material, below the level of infiltration, which remove pollutants from the septic tank effluent by processes which include physical filtration of bacteria, adsorption of viruses and bacteria by clay and organic matter, biological destruction of pathogens by soil microorganisms, chemical fixation or precipitation of phosphorous, biochemical transformations of nitrogen compounds and biological assimilation of phosphorous and nitrogen.

"Zone of saturation" means a layer within or below the soil profile which is saturated with ground water either seasonally or throughout the year.

SUBCHAPTER 3. ADMINISTRATION

7:9A-3.1 Ordinances

(a) The administrative authority may adopt this chapter by reference as allowed by N.J.S.A. 26:3-69 to 69.6.

(b) For the purpose of this chapter, the term "special ordinance" means any ordinance which differs in any detail from this chapter. Within 10 days after adoption of a special ordinance, the administrative authority shall forward to the Department a copy of the ordinance together with a written statement in which all provisions which differ from this chapter are identified, the reasons for the differences are explained and all supporting facts and data are provided. Where requirements differing from the requirements of this chapter are proposed in order to conform with the requirements of the Pinelands Comprehensive Management Plan, the appropriate section(s) of the Plan shall be cited.

(c) The administrative authority shall not adopt an ordinance which is less stringent than this chapter.

7:9A-3.2 New systems

All aspects of the location, design, construction, installation, operation, maintenance, and alteration of individual subsurface sewage disposal systems approved after the effective date of this chapter shall comply with the requirements of these standards.

7:9A-3.3 Existing systems

(a) The use of systems in existence prior to the effective date of this chapter may be continued without change provided that these systems were located, designed, constructed and installed in conformance with the standards in effect at the time when they were installed and provided that such systems are not malfunctioning.

(b) When a change in the use of a building or facility served by an individual subsurface sewage disposal system is proposed and this change will result in an increase in the volume of sanitary sewage (determined as prescribed in N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such a change unless all aspects of the location, design, construction, installation, operation and maintenance of the system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with this chapter.

(c) Alterations made to a system for reasons other than a change of use as described in N.J.A.C. 7:9A-3.3(b) may be approved by the administrative authority provided that all of the following conditions are met:

1. Alterations are made in conformance with plans and specifications prepared by a licensed professional engineer. All plans shall be signed and sealed by the licensed professional engineer.

2. Alterations are made in such a way that those components of the system altered are in conformance with the requirements of this chapter or are closer to being in conformance with this chapter than the original components prior to the alteration; and

3. When alterations are made to correct a malfunctioning system the alterations shall be made in a manner that will eliminate the cause of the malfunction and not result in future malfunctions.

(d) Minor repairs may be made in the same manner as in the original system provided that all repairs are approved by the administrative authority.

(e) A person who discharges industrial wastes by means of an existing subsurface sewage disposal system and who has not already applied to the Department for a NJPDES permit shall apply within one year of the effective date of this chapter.

(f) A person who discharges sanitary wastes by means of an existing community onsite subsurface disposal system as defined in N.J.A.C. 7:14A-1.9, who has not already applied to the Department for a NJPDES permit, shall apply within two years of the effective date of this chapter.

7:9A-3.4 Malfunctioning systems

(a) Indications that an individual subsurface sewage disposal system is malfunctioning include but are not limited to the following:

1. Contamination of nearby wells or surface water bodies by sewage or effluent as indicated by the presence of fecal bacteria where the ratio of fecal coliform to fecal streptococci is four or greater;

2. Ponding or breakout of sewage or effluent onto the surface of the ground;

3. Seepage of sewage or effluent into portions of buildings below grund;

4. Emanation of foul odors from any component of the system; or

5. Back-up of sewage into the building served which is not caused by a physical blockage of the internal plumbing.

(b) When an individual subsurface sewage disposal system has been determined to be malfunctioning, the owner shall take immediate steps to correct the malfunction. When it becomes necessary to repair one or more system components or to make alterations to the system, all of the following requirements shall be met:

1. The owner or owner's agent shall notify the administrative authority or its authorized agent immediately upon detection of a malfunctioning system. Except in the case of emergency repairs or alterations made as allowed in (b)2 below, the owner shall obtain prior approval from the administrative authority or its authorized agent for any repairs or alterations made.

2. In cases when the suddenness and severity of a system malfunction are such that prior notice is not practical, the owner may make emergency repairs or alterations without prior approval provided that the administrative authority is notified no later than one working day after the work is begun. If the administrative authority or its authorized agent determines that emergency repairs or alterations are inadequate to correct the malfunction, the administrative authority may require further repairs or alterations.

3. Alterations made to correct a malfunctioning system shall meet the requirements of N.J.A.C. 7:9A-3.3(c), except that in cases where the alteration is relatively minor the administrative authority or its authorized agent may approve plans and specifications prepared by a qualified septic system installer rather than a licensed professional engineer.

4. When the malfunction involves continuous discharge of sewage or septic tank effluent onto the surface of the ground or into a watercourse, the use of the system shall cease until repairs or alterations have been completed in a manner which is satisfactory to the administrative authority. In such cases, the administrative authority may permit continued occupation of the building served provided that further surface discharge of sewage or septic tank effluent is prevented by installation of a holding tank or use of an existing septic system component as a holding tank. The latter may be accomplished by pumping-out the septic tank, dosing tank, seepage pit or other system component at an adequate frequency to prevent overflow.

(c) The administrative authority may, under certain circumstances, approve as a last resort, the permanent use of a holding tank to correct the problem of a malfunctioning system which cannot be repaired or altered in a satisfactory manner. Such approval may be granted by the administrative authority only if prior written approval has been granted by the Department and one of the following criteria is met:

1. The malfunctioning system serves a single family dwelling or other facility falling within the limitations set forth in N.J.A.C. 7:9-A1.8 and the system was constructed prior to the effective date of this chapter; or

2. The malfunctioning system serves a facility which exceeds the limitations set forth in N.J.A.C. 7:9A-1.8 but was constructed prior to March 6, 1981, the effective date of the NJPDES rules (N.J.A.C. 7:14A).

(d) The Department and the administrative authority may approve the permanent use of a holding tank to correct the problem of a malfunctioning system only when all of the following facts have been established to the satisfaction of the administrative authority and the Department:

1. The present malfunctioning system poses a threat or a potential threat to ground or surface water quality or public health or safety or the environment;

2. Due to site conditions, lot configuration, financial circumstances or other constraints, repair, or alteration of the system in a manner that will eliminate the cause of the malfunction is not feasible;

3. Public sewers are by practical means not available;

4. Reduction of disposal field hydraulic loading by means of water-saving plumbing fixtures will not correct the malfunction; and

5. Assurances are given that the holding tank will be emptied and the contents disposed of in a manner which complies with all applicable local, State and Federal ordinances, statutes and regulations. As a means of confirmation, the owner of the system shall install a water meter and shall submit to the administrative authority on a quarterly basis, evidence of dates and quantities of sewage removed, name of person(s) or firm(s) contracted to remove the sewage, the name of the facility(s) to which the sewage is taken, as well as any other evidence or information which is requested by the administrative authority.

7:9A-3.5 Permit to construct or alter

(a) A person shall not construct, install or alter an individual subsurface sewage disposal system until the administrative authority or its authorized agent has issued a permit for such construction, installation or alteration.

(b) The administrative authority or its authorized agent shall not issue a permit to construct, install or alter an individual subsurface sewage disposal system until an application has been submitted as prescribed in (c) below and, based upon a review of the application submitted, the location and design of the proposed system are found by the administrative authority or its authorized agent to be in conformance with the requirements of this chapter.

(c) The applicant shall submit a complete, accurate and properly executed application to the administrative authority. The application shall include the following information:

1. Key maps showing the approximate boundaries of the lot on a U.S. Geological Survey (U.S.G.S.) topographic quadrangle or other accurate map and on a U.S.D.A. soil survey map, which is available from the Soil Conservation Service ("SCS"). A good quality photo-copy reproduction of the U.S.G.S. quadrangle or U.S.D.A. soil survey map may be used for this purpose. The requirement for a soil survey map does not apply to Essex or Hudson counties, where no modern soil survey is currently available;

2. A site plan drawn at a scale adequate to depict clearly the following features within a 150 foot radius around the proposed system:

i. Location of all components of the proposed system including, but not limited to, septic tanks, grease traps, dosing tanks, distribution boxes, distribution laterals, disposal fields, interceptor drains and seepage pits;

ii. Boundaries of lot;

iii. Locations of existing and proposed buildings roadways, subsurface drains, wells and disposal areas on same lot and on adjacent lots;

iv. Existing and finished grade topography (two foot contour interval) using absolute elevations or relative elevations referenced to a permanent bench-mark;

v. Location of all surface water bodies, natural and artificial, and all springs or areas of ground water seepage;

vi. Location of existing and proposed surface water diversions;

vii. Location of all outcrops of bedrock;

viii. Conformance with setback requirements as required in N.J.A.C. 7:9A-4.3;

ix. Location of all soil profile pits, soil borings and permeability tests;

x. Location of stream encroachment boundaries for streams within the near vicinity of the site; and

xi. Boundaries of any wetland areas or transition zones within the boundaries of the property.

3. Soil logs prepared as prescribed in N.J.A.C. 7:9A-5.3;

4. Soil suitability class(es) determined as prescribed in N.J.A.C. 7:9A-5.4;

5. Results of permeability tests performed as prescribed in N.J.A.C. 7:9A-6, including all test data and calculations;

6. Maximum expected daily volume of sanitary sewage and method of calculation;

7. Detailed engineering plans and specifications for all components of the systems; and

8. All data and calculations used in the design of the sewage system.

(d) Applications shall be made using standard forms provided in Appendix B of this chapter or forms provided by the administrative authority which contain all of the information required on the standard forms in Appendix B. The administrative authority or its authorized agent may require additional data or the completion by the applicant of additional application forms.

7:9A-3.6 Witnessing of soil evaluation and testing

(a) The administrative authority or its authorized agent shall witness the excavation of soil profile pits and borings, in-situ permeability testing or soil sample collection and any other site evaluation procedure relied upon in the design or location of the system. The administrative authority or its authorized agent may require a maximum of 15 days prior to written notice for the purpose of witnessing of soil evaluation or testing procedures.

(b) The administrative authority may waive the requirements for witnessing of soil evaluation or testing procedures. Failure of the administrative authority or its authorized agent to be present when 15 days prior written notice has been given shall be construed to be a waiver of the witnessing requirements.

7:9A-3.7 Modification of plans

(a) Modification of plans or specifications for an individual subsurface sewage disposal system made subsequent to approval of the plans shall not be carried out unless the revisions are noted on a revised set of plans which have been signed, sealed and dated by the design engineer and approved by the administrative authority or its authorized agent.

(b) Any modification to plans or specifications made without approval of the administrative authority shall render the original approval null and void and a new application shall be required.

(c) The administrative authority or its authorized agent may require the revision of plans or specifications as it deems necessary if conditions found prior to or during construction warrant such change in order to obtain conformance with the provisions of this chapter.

7:9A-3.8 Pinelands area approvals

The administrative authority shall not approve an application to construct, install or alter an individual subsurface sewage disposal system within the Pinelands area (as defined in N.J.S.A. 13:18A-1 et seq.) until the Pinelands Commission has issued a Notice of Filing, Certificate of Compliance, or a written statement that no approval from the Pinelands Commission is required. All approvals issued by the administrative authority shall be consistent with the requirements of N.J.A.C. 7:50-5 and 6, and shall be reported to the Pinelands Commission in accordance with N.J.A.C. 7:50-4.

7:9A-3.9 Treatment works approvals

(a) A treatment works approval issued by the Department is required for any subsurface sewage disposal system other than a system serving a single dwelling unit, building, commercial unit or other realty improvement, located on a single property, generating less than 2000 gpd of sanitary sewage only, which is designed, constructed, operated and maintained in conformance with this chapter.

(b) Whenever a proposed subsurface sewage disposal system meets any of the following criteria, the administrative authority shall direct the applicant to apply to the Department for a treatment works approval.

1. The system will exceed any of the limitations set forth in N.J.A.C. 7:9A-1.8;

2. The design or construction of one or more components of the system will not be in conformance with this chapter;

3. The system utilizes unproven technology or is otherwise experimental in nature, so that adequate functioning of the system will depend upon the installation, operation or maintenance of components or treatment processes not provided for in this chapter;

4. The system is designed to provide wastewater treatment in order to meet effluent discharge limitations or ground and surface water quality standards as prescribed by applicable State or Federal regulations or statutes;

5. Sewage will not flow by gravity from the realty improvement served to the septic tank; or

6. The system will serve multiple units in a campground or mobile home park or a portion thereof.

(c) Applications for treatment works approval shall be made on forms available from the Department and shall be accompanied by the required application fee. Application forms and instructions regarding administrative and technical submission requirements may be obtained by contacting the Bureau of Construction and Connection Permits at the following address:

Bureau of Construction and Connection Permits
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, N.J. 08625

7:9A-3.10 NJPDES permits

(a) Individual subsurface sewage disposal systems which serve single family dwelling units and which are located, designed, constructed, installed, altered, operated and maintained in conformance with the requirements set forth in these standards are exempt from NJPDES permit requirements in accordance with N.J.A.C. 7:14A-5.1(b)2ii.

(b) Subsurface sewage disposal systems which serve facilities other than single family dwelling units and which are located, designed, constructed, installed, altered, operated and maintained in conformance with the requirements set forth in this chapter, and N.J.S.A. 58:11-43 et seq. where these restrictions are applicable, are authorized by rule.

(c) When the proposed system does not fall into either of the categories outlined in (b) or (c) above, the administrative authority shall direct the applicant to apply to the Department for a NJPDES permit.

7:9A-3.11 New technologies

The Department encourages the development and use of new technologies which may improve the treatment of sanitary sewage prior to discharge or allow environmentally safe disposal of sanitary sewage in areas where standard sewage disposal systems might not function adequately. Where the design, location, construction or installation of the system or any of its components does not conform to this chapter, the administrative authority shall direct the applicant to apply to the Department for a treatment works approval. Depending upon the volume and quality of the wastewater discharged, a NJPDES permit may also be required.

7:9A-3.12 Holding tanks

(a) The administrative authority may approve the use of a sewage holding tank in lieu of an individual subsurface sewage disposal system, as a temporary means of waste disposal, for a period not to exceed 60 days, where alteration or repair of an existing system is being completed as approved by the administrative authority.

(b) The administrative authority may approve permanent use of a holding tank in the case of a malfunctioning system, subject to aproval by the Department, as allowed in N.J.A.C. 7:9A-3.4(c).

7:9A-3.13 Certificate of compliance

(a) Prior to issuance of a certificate of compliance, the administrative authority or its authorized agent shall make sufficient inspections during the course of construction and installation or alteration of the individual subsurface sewage disposal system to determine that the system has been located, constructed and installed or altered in compliance with the requirements of this chapter and the approved engineering design. Alternatively, the administrative authority may issue a certificate of compliance if a licensed professional engineer submits to the administrative authority, a statement in writing, signed and sealed by him or her that the said system has been located, constructed, installed or altered in compliance with the requirements of these standards and the approved engineering design.

(b) The administrative authority or authorized agent may require additional permeability tests to be conducted, the disposal field excavation to be deepened, fill material to be added or other changes to be made in the installation of the system if, during the course of excavation, soil limitations not identified previously are discovered. Such changes shall be made as prescribed in N.J.A.C. 7:9A-3.7.

(c) A component of an individual subsurface sewage disposal system shall not be backfilled or otherwise concealed from view until a final inspection has been conducted by the administrative authority or its authorized agent, or a licensed professional engineer, and permission has been granted by the administrative authority to backfill the system. Any component of the system which has been covered without such permission shall be uncovered upon the order of the administrative authority or its authorized agent.

(d) A person shall not commence operation or use of an individual subsurface sewage disposal system until a certificate has been issued by the administrative authority or its authorized agent indicating that said system has been located, constructed, installed or altered in compliance with this chapter. The issuance of a certificate of compliance shall constitute only certification that the individual subsurface sewage disposal system has been constructed, located, installed or altered in conformance with this chapter. It shall not be construed as a guarantee that the system will function satisfactorily, nor shall it in any way restrict the powers or responsibilities of the administrative authority or the Department in the enforcement of any law or ordinance relating to public health and safety or environmental protection.

(e) The administrative authority or its authorized agent shall give to the building inspector or similar official of the municipality who is responsible for the issuance of occupancy permits a copy of the certificate of compliance.

7:9A-3.14 License to operate

(a) The administrative authority or its authorized agent shall issue a license to operate and a copy of the Department's operation and maintenance manual to the permittee at the time that a certificate of compliance is issued.

(b) The license to operate shall expire three years after issuance. The applicant shall be notified by the administrative authority or its authorized agent before the license expires and shall be directed to apply for a renewal of the license. The administrative authority shall not renew the license unless the licensee has submitted the following to the administrative authority:

1. Evidence that the necessary maintenance has been performed as prescribed in N.J.A.C. 7:9A-12.3;

2. A system inspection report, prepared by a licensed health officer, licensed professional engineer, first-grade sanitarian, or other qualified person acceptable to the administrative authority, indicating that the system has been maintained and is functioning in conformance with the requirements of this chapter; and

3. Payment of any fees which are required by a local ordinance.

(c) The license shall be transferable upon change of ownership of the property which is served by the system for which the license was issued.

(d) The administrative authority or its authorized agent may suspend or revoke the license to operate in the following circumstances:

1. It has been determined that the system is malfunctioning based upon criteria outlined in N.J.A.C. 7:9A-3.4(a) and the licensee fails to take steps to correct said malfunction as directed by the administrative authority or its authorized agent;

2. The owner or occupant of the premises served by the system violates any provision of this chapter with respect to operation and maintenance of the system; or

3. The owner or occupant of the premises served by the system denies right of entry to the administrative authority or its authorized agent, or the Department, as required in N.J.A.C. 7:9A-3.19, or in any way interferes with the administration or enforcement of this chapter.

7:9A-3.15 Records

(a) The administrative authority or its authorized agent shall maintain records and shall keep on file copies of the following documents:

1. Applications and plans and specifications for the construction, installation or alteration of individual subsurface sewage disposal systems, including all forms and data submitted by the applicant;

2. Permits issued for the construction, installation or alteration of individual subsurface sewage disposal systems;

3. Modifications to plans made subsequent to the issuance of a permit to construct, install or alter individual subsurface sewage disposal systems;

4. Reports of construction inspections made prior to issuance of a certificate of compliance for an individual subsurface sewage disposal system;

5. Certificates of compliance issued for individual subsurface sewage disposal systems;

6. Applications, inspection reports, forms and information connected with licenses to operate individual subsurface sewage disposal systems or license renewals; and

7. Inspection reports, plans and specifications for repair or alteration of malfunctioning individual subsurface sewage disposal systems or components of malfunctioning systems.

(b) Files containing records or documents listed in (a) above shall be available upon request for inspection by personnel of the Department.

(c) The administrative authority or its administrative agent shall maintain records until such time as the realty improvement served by the proposed or existing subsurface sewage disposal system is removed or connected to a public sewer.

7:9A-3.16 Prior tests

(a) Percolation test results, soil logs and determinations of seasonally high water table made prior to the effective date of this chapter may be used as a basis for design and location of an individual subsurface sewage disposal system for one year following the effective date of this chapter, provided that the following conditions are met:

1. Such tests complied with the rules in effect at the time they were performed; and

2. The system proposed is substantially in compliance with the requirements of this chapter.

7:9A-3.17 Registration of personnel

(a) The Department will establish a voluntary registration program for individuals involved in subsurface sewage disposal system site evaluation, design, construction, inspection and regulation. The purpose of the registration will be to provide a means for the Department to disseminate technical information and training to professional engineers, health officers, sanitarians, soil scientists, contractors, septic tank pumpers and other individuals involved in implementation of these standards.

(b) Individuals wishing to be registered shall contact the Department in writing and indicate the categories for which registration is sought. Registration categories shall be as follows:

1. The "septic system enforcement officer" category includes licensed professonal engineers, licensed health officers or first-grade sanitarians, acting as the authorized agent for the administrative authority, who approve, permit, certify or license the construction, installation, alteration, repair or operation of individual subsurface sewage disposal systems or who review engineering plans, witness site evaluation and testing, inspect construction or make any determinations relied upon for the granting of such approvals, permits, certifications or licenses.

2. The "site evaluator" category includes licensed professional engineers, licensed health officers, first-grade sanitarians or soil scientists who perform site evaluation, soil evaluation or soil testing as prescribed in N.J.A.C. 7:9A-4, 5 and 6.

3. The "septic system designer" category includes licensed professional engineers who prepare engineering plans and specifications for the construction or alteration of individual subsurface sewage disposal systems.

4. The "septic system installer" category includes persons who construct, install or alter individual subsurface sewage disposal systems in accordance with approved engineering plans and specifications or who repair systems as allowed in N.J.A.C. 7:9A-3.3(d).

5. The "septic system inspector" category includes licensed professional engineers, licensed health officers or first-grade sanitarians who perform inspections of individual subsurface sewage disposal systems as required in N.J.A.C. 7:9A-12.2.

7:9A-3.18 Additional requirements for certification of subdivisions

(a) Applications for certification of subdivisions by the administrative authority, pursuant to N.J.S.A. 58:11-25, regardless of the number of realty improvements involved, shall contain the basic information required in N.J.A.C. 7:9A-3.5(c) for each individual realty improvement contained in the subdivision. Where more than 10 realty improvements are involved, additional information is required as set forth in (c) below.

(b) Where 50 or more realty improvements are involved, two separate certifications are required. The first of these is a water quality standards related certification issued by the Department pursuant to N.J.S.A. 58:11-25.1, prior to planning board approval, as prescribed in (d) below. The second of these is a design and construction certification, issued by the administrative authority pursuant to N.J.S.A. 58:11-25, prior to issuance of building permits and reviewed by the Department and the administrative authority simultaneously, as prescribed in (f) below.

(c) For certifications pursuant to N.J.S.A. 58:11-25, of subdivisions consisting of more than 10 realty improvements, the following information is required in addition to the information required by N.J.A.C. 7:9A-3.5(c). This additional information shall be provided on a general site plan of the subdivision:

1. Lots with their dimensions and acreage;

2. Contours of existing topography (at an appropriate contour interval) using absolute elevations or relative elevations referenced to a permanent bench-mark;

3. Drainage right of way and any contemplated diversion thereof;

4. Location of all existing and proposed water supply wells within 500 feet from the boundaries of the subdivisions;

5. Streams and surface water bodies;

6. Existing and proposed storm sewers and subsurface drains;

7. Above and below ground power transmission lines, gas pipe lines and associated right-of-ways:

8. Location of all stream encroachment boundaries and 100-year flood plain boundaries which fall within the boundaries of the subdivision;

9. Location of all wetlands or transition zone delineation lines which fall within the boundaries of the subdivision;

10. Location of all profile pits, soil borings, permeability or percolation tests made within the area of the subdivision; and

11. Boundaries of all soil types or mapping units, obtained from detailed onsite soil investigations or transferred from USDA County Soil Survey Report.

(d) No subdivision approval shall be granted by any municipal or other authority in the State to cover 50 or more realty improvements, or less than 50 where the subdivision extends into an adjoining municipality or municipalities and will, in the aggregate, cover 50 or more realty improvements, until the Department has certified that the proposed sewerage facilities for realty improvements comply with applicable State standards.

(e) (Reserved)

(f) Copies of all applications and accompanying engineering data for certifications submitted under N.J.S.A. 58:11-25 to cover 50 or more realty improvements shall be filed with or mailed to the Department on the date the application is made to the administrative authority.

(g) Copies of all certifications issued by administrative authorities under N.J.S.A. 58:11-25 covering 50 or more realty improvements shall be mailed to the Department by the administrative authority issuing the same on the date of issue.

(h) In cases where preliminary determination by the administrative authority regarding the acceptability of the proposed sewage disposal systems may be required prior to the granting of subdivision approval by the planning board or other municipal agency, such determinations may be made based upon the type of disposal field installations proposed and the soil suitability classification determined by use of Soil Conservation Service soil survey maps in conjunction with Appendix D of this chapter. Alternatively, onsite soil evaluation consisting of soil logs and permeability tests may be required. Where onsite soil evaluation is required, a minimum of one soil log for every five acres or fraction thereof shall be sufficient provided that at least one soil log is provided for every soil series present within the area of the subdivision as shown on Soil Conservation Service soil survey maps. The number of permeability tests required shall be a minimum of one test for every five acres or fraction thereof.

7:9-3.19 Entry and inspection

The administrative authority and its agent and the Department shall have power to make, or cause to be made, such inspections and tests as may be necessary to enforce these standards and they and their authorized representatives shall at all times have the right to enter upon lands of realty improvements for these purposes. The system owner shall not refuse, prevent or otherwise prohibit such tests and inspections to determine compliance with this chapter.

7:9A-3.20 Hearing procedures

In case any certification is denied by the administrative authority, a hearing shall be held thereon before the administrative authority within 15 days after request therefor is made by the applicant. Upon such hearing, the administrative authority shall affirm, alter or rescind its previous determination and take action accordingly within 15 days after the date of such hearing.

AGENCY NOTE: Hearing procedures for the Department certifications required under proposed N.J.A.C. 7:9A-3.18(d) are not included in these proposed new rules, as the Department will incorporate such procedures in a rule proposal in the near future.

SUBCHAPTER 4 SITE EVALUATION AND SYSTEM LOCATION

7:9A-4.1 General provisions for site evaluation and system location

(a) Selection of a location for each individual subsurface sewage disposal system shall be based upon evaluation of all site characteristics which may affect the functioning of the system. Site characteristics to be evaluated shall include, but may not be limited to, minimum required separation distances as prescribed in N.J.A.C. 7:9A-4.3, slope, surface drainage and flood potential.

(b) A site plan shall be required as part of each application and shall, as a minimum, provide the information outlined in N.J.A.C. 7:9A-3.5(c)2.

7:9A-4.2 Location generally

(a) The location and installation of each individual subsurface sewage disposal system and every part thereof shall be such that with reasonable maintenance it will function in a satisfactory manner and will not create a nuisance or source of foulness, pose a threat to public health or safety or the environment, or otherwise adversely affect the quality of surface water or ground water.

(b) Individual subsurface sewage disposal systems shall not be located near or adjacent to the following features unless the design adequately addresses the special limitations associated with these features and complies with all applicable local, State and Federal laws, regulations and ordinances.

1. Bedrock outcrops or areas with excessive stones;
2. Sink-holes;
3. Steep slopes showing signs of unstable soil such as landslide scars, slump blocks, fence posts or lower trunks of trees bending downslope;
4. Bare eroded ground, denuded of vegetation, or with deep wheel ruts;
5. Highly disturbed ground indicated by such features as remnants of foundations or pavements, buried building debris or buried plant remains;
6. Sand dunes;
7. Mine spoils, borrow pits, dumps or landfills;
8. Low-lying coastal areas exhibiting signs of tidal inundation or tidal marsh vegetation such as cordgrass (Spartina alterniflora), saltmeadow grass (Spartina patens) or spike grass (Disticlis spicata);
9. Low-lying inland areas showing signs of ponding or wetland vegetation such as skunk cabbage (Symplocarpus foetidus), tussock sedge (Carex stricta), cat-tails (Typha spp.) alders (Alnus spp.), or white cedar (Chamaecyparis thyoides); and
10. Flat low-lying areas adjoining streams.

7:9A-4.3 Distances

The minimum separation distance between the various components of the system and the other features listed shall conform with Table 4.3 below. The location of a new well must be in conformance with the requirements of N.J.A.C. 7:10-12.13.

Table 4.3 Minimum Required Separation Distances (feet)

| Component | Reservoir, Well or Suction Line | Water Service Line, Pressure | Water-course[1] | Occupied Building | Property Line | Disposal Field | Existing Seepage Pit or Cesspool | In-ground Swimming Pool |
|---|---|---|---|---|---|---|---|---|
| Building Sewer | 25[2] | 5 | — | — | — | — | — | — |
| Septic Tank | 50[2] | 10 | 25[2,5] | 10[6] | 5 | — | — | 10 |
| D-Dox | 50[2] | 10 | 25[2,5] | 10 | 5 | — | — | 10 |
| Disposal Field[11] | 100[2,4] | 10 | 50[2,3,5] | 25[7] | 10 | 50[8] | 50 | 20 |
| Seepage Pit[9] | 150[2] | 25 | 100[2,5] | 50[7] | 20 | 50 | 50[10] | 30 |
| Dry Well | — | — | — | — | — | 50 | 50 | — |

(1) Includes subsurface drains with an above-ground or surface water outlet.

(2) Where excessively coarse soils or fractured rock substrata are encountered, these distances may be increased by the administrative authority.

(3) This distance may be decreased only in the case of an interceptor drain as allowed in N.J.A.C. 7:9A-10.7(d).

(4) This distance may be decreased by the administrative authority only when the well is provided with a water-tight casing to a depth of 50 feet of more, or where the casing is sealed into an impervious stratum which separates the water-bearing stratum from the layer of soil used for sewage disposal.

(5) These distances may be reduced by one-half if the water course is a footing drain with an invert elevation higher than the bottom of the disposal field or more than four feet above the level of the seasonally high water table.

(6) May be reduced to five feet with special approval of the administrative authority.

(7) May be reduced to 15 feet from disposal field and 30 feet from seepage pit for slab portions of dwelling only.

(8) This distance applies to disposal fields on adjacent lots but not to a split system on a single lot.

(9) Applies only to seepage pits allowed as prescribed in N.J.A.C. 7:9A-7.6.

(10) In no case shall the distance be less than three times the pit diameter.

(11) These distances shall be measured from the margin of the filled area in the case of soil replacement and mounded soil replacement installations or the edge of the required lateral fill extension in the case of mounded installations.

7:9A-4.4 Slope

(a) The disposal field or seepage pit shall not be located in an area where the slope is greater than 25 percent.

(b) Where the slope is greater than 10 percent, no disposal field or seepage pit shall be placed less than 50 feet upslope of any bedrock outcrop where signs of ground water seepage can be detected.

(c) Modification of slopes by re-grading shall meet the requirements of N.J.A.C. 7:9A-10.3(b).

7:9A-4.5 Surface drainage

(a) No disposal area shall be placed within a topographical depression or in any area where surface runoff or ground water is likely to accumulate unless measures adequate to address these limitations are incorporated in the approved engineering design and implemented when the system is constructed.

(b) The use of swales to divert surface run-off away from the disposal field shall be carried out only as prescribed within the engineering design which has been approved by the administrative authority.

7:9A-4.6 Surface flooding

(a) No part of a subsurface sewage disposal system shall be constructed in ground subject to surface flooding. For the purposes of this chapter, a site shall be considered to be subject to surface flooding when any of the criteria given in (b) below are satisfied. This determination shall be made whenever the proposed site is located adjacent to a stream, and the distance and relative elevation of the site with respect to the stream are such that it is reasonable to expect that the site may be subject to flooding as a result of stream overflow.

(b) For the purpose of compliance with (a) above, a site shall be considered subject to flooding whenever any of the following criteria are met:

1. Flooding is observed during a site inspection made by the administrative authority or its agent or the administrative authority has records or knowledge of past flooding at the site or in adjacent contiguous areas; or

2. Maps contained in a Soil Conservation Service County Soil Survey Report indicate the presence of one or more of the following soil types:

| | |
|---|---|
| Alluvial Land | Muck Shallow Over Clay |
| Atsion Tide Flooded | Muck Shallow Over Loam |
| Berryland | Mullica Loamy Substratum |
| Berryland-Othello Complex | Parsippany |
| Bowmansville | Plummer |
| Carlisle Muck | Pompton Fine Sandy Loam |
| Colemantown | Pope High Bottom |
| Colemantown-Matlock | Portsmouth Thin Surface Varient |
| Fluvaquents | Preakness |
| Fredon | Raritan |
| Humaquepts Flooded | Rowland |
| Manahawkin | Sloan and Wayland |
| Middlebury | Tioga |

i. Where the accuracy of the Soil Survey Report mapping is questioned, the soil series actually present at the site shall be identified by comparing the soil profile characteristics observed in a soil profile pit with the range of soil profile characteristics given in the County Soil Survey Report for a particular soil series.

(c) When fill material is proposed to elevate the ground surface above the level which is subject to flooding, the requirements and restrictions of (d) below as well as the requirements and restrictions of N.J.A.C. 7:9A-10.3(b) shall apply.

(d) Development within a flood plain area is subject to the restrictions and requirements of the Flood Hazard Area Rules N.J.A.C. 7:13. N.J.A.C. 7:13 prohibits the construction of an individual subsurface disposal system within the floodway of a delineated stream or within the encroachment line of a non-delineated stream and may require a stream encroachment permit for the construction of a system within the flood fringe of a delineated stream or the area between the encroachment lines and the boundary of the 100 year flood plain of a non-delineated stream.

(e) The criteria for delineation of flood hazard areas used in the Flood Hazard Area Rules, N.J.A.C. 7:13, are different from the criteria used in this chapter for identification of areas subject to flooding. Consequently, a site which does not meet the criteria given in (b) above may still be subject to N.J.A.C. 7:13. It is the responsibility of the applicant to comply with all applicable requirements of N.J.A.C. 7:13 regardless of whether the site of the proposed individual subsurface sewage disposal system meets the criteria given in (b) above. Compliance with this or any other provision of this chapter does not exempt the applicant from compliance with the requirements of N.J.A.C. 7:13.

7:9A-4.7 Freshwater wetlands

(a) As part of the initial site evaluation process, prior to selection of a site for a proposed subsurface sewage disposal system, the applicant shall take into consideration the possible presence of freshwater wetlands which are protected by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:7A. In cases where available information submitted as part of the application requirements for approval under this chapter indicate the potential presence of a freshwater wetlands within the proposed area of disturbance, the administrative authority shall require evidence that the applicant has complied with applicable regulations. This evidence shall meet the requirements of (c) below and shall be required whenever the criteria given in (b) below are satisfied. This section shall not apply to projects located within areas under the jurisdiction of the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq. and areas under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to N.J.S.A. 13:17-1 et seq.

(b) For the purpose of compliance with (a) above, the proposed site of a subsurface sewage disposal system shall be tentatively considered to be located within a potential freshwater wetland whenever any of the following criteria are met:

1. Surface ponding is observed, or the vegetation, topography or relative elevation with respect to adjacent surface water bodies is such as to indicate the likelihood of periodic or seasonal surface ponding;

2. Soil profile evaluation carried out as prescribed in N.J.A.C. 7:9A-5 indicates a seasonally high water table at a depth shallower than 1.5 feet below the existing ground surface; or

3. Maps contained in a Soil Conservation Service County Soil Survey Report indicate the presence of one or more of the following soil types:

| | | |
|---|---|---|
| Abbottstown | Haledon (wet variant) | Pocomoke |
| Adrian | Halsey | Portsmouth |
| Abia | Hammonton | Preakness |
| Alluvial Land | Hummuepts | Raynham |
| Amwell | Keansburg | Reaville (wet variant) |
| Atherton | Klej | Ridgebury |
| Atsion | Lamington | Rowland |
| Bayboro | Lenoir | Shrewsbury |
| Berryland | Leon | Sloan |
| Bibb | Livingston | St. Johns |
| Biddeford | Lyons | Sulfaquents |
| Bowmansville | Manahawkin | Sulfihemists |
| Carlisle | Marsh | Swamp |
| Chalfont | Matlock | Tidal Marsh |
| Chippewa | Muck | Turbotville |
| Cokesbury | Mullica | Venango (Albia) |
| Colemantown | Norwich | Wallkill |
| Croton | Othello | Watchung |
| Doylestown | Parsippany | Wayland |
| Elkton | Pasquotank | Weeksville |
| Fallsington | Passaic (Parsippany variant) | Whippany |
| Fluvaquents | | Whitman |
| Fredon | Peat | Unnamed |
| Fresh Water Marsh | Plummer | |

i. In addition to the soil types listed above, wet phases of soils classified by the Soil Conservation Service as somewhat poorly drained may also indicate the presence of a freshwater wetland.

ii. Where the accuracy of the Soil Survey Report mapping is questioned, the soil series actually present at the site shall be identified by comparing the soil profile characteristics observed in a soil profile pit with the range of soil profile characteristics given in the County Soil Survey Report for a particular soil series.

(c) Evidence that the applicant has complied with applicable State freshwater wetland rules shall consist of any of the following documents:

1. A "letter of interpretation" or "transition area waiver" issued by the Department, indicating that the proposed development is not subject to N.J.A.C. 7:7A;

2. A written notification from the Department indicating that the wetlands aspects of the proposed development are covered by a Statewide General Permit;

3. A freshwater wetlands permit issued by the Department for the wetlands aspects of the proposed development;

4. A permit issued by the U.S. Army Corps of Engineers ("Corps") prior to July 1, 1988 or an approval letter from the Corps indicating that the wetlands aspects of the proposed development were authorized under a Nationwide Permit prior to July 1, 1988; or

5. A written determination from the Department that the proposed development is not subject to regulation under the Freshwater Wetlands Protection Act.

(d) Use of the criteria given in (b) above to identify the presence of a potential freshwater wetland does not constitute an official freshwater wetlands delineation by the Department's "three-parameter approach" in accordance with N.J.A.C. 7:7A. As a result, sites which do not meet these criteria may still be subject to regulation under N.J.A.C. 7:7A or other Federal, State or local laws. The applicant shall contact the appropriate agencies and comply with all applicable statutes or regulations or ordinances.

7:9A-4.8 Area reserved for sewage disposal

The area used for sewage disposal shall be selected and maintained so that it is free from encroachments by driveways, accessory buildings, additions to the main building and trees or shrubbery whose roots may cause clogging of any part of the system. The area of sewage disposal shall not be located under driveways, parking lots (paved or otherwise), accessory buildings, additions to main buildings or any other form of encroachment which may adversely affect the functioning of the system or interfere with system maintenance.

SUBCHAPTER 5. DETERMINATION OF SOIL SUITABILITY

7:9A-5.1 General provisions for the determination of soil suitability

When a site meeting the requirements of N.J.A.C. 7:9A-4 has been chosen for location of the proposed individual subsurface wastewater disposal system, the suitability of the soil for treatment and disposal of the effluent shall be determined as prescribed below. This determination shall be made based upon soil profile characteristics observed in soil profile pits and borings as prescribed in N.J.A.C. 7:9A-5.2, criteria for determination of soil suitability classes which are given in N.J.A.C. 7:9A-5.4, criteria for recognition of soil limiting zones which are given in N.J.A.C. 7:9A-5.5 through 5.9, as well as any other related data that may be required by the administrative authority.

7:9A-5.2 Requirements for soil profile pits and borings

(a) Soil profile pits shall be excavated at the site of each proposed disposal field for the purpose of determining the suitability and distribution of soil types present at the site. Partial substitution for soil profile pits may be made using soil borings as outlined in (b) below.

(b) A minimum of two profile pits are required for each disposal field. A minimum of three soil borings may be performed in lieu of the second profile pit, provided that the soil horizons and substrata observed in the borings are not significantly different from those observed in the first profile pit.

(c) The location of soil profile pits and borings for disposal fields shall be as follows:

1. As shown in Figure 1 of Appendix A, profile pits shall be located at either end of the disposal field, within or no further than 15 feet beyond the boundaries of the disposal field.

2. In cases where a profile pit or part of a profile pit has been excavated within the boundaries of a proposed disposal trench or bed, the pit shall be backfilled after use in a manner that will not result in a major discontinuity with respect to soil horizonation, density or permeability in the soil below the disposal trench or bed.

3. When soil borings are substituted for the second profile pit these shall be located as shown in Figure 1 of Appendix A, at the approximate center of the disposal field and at corners opposite the profile pit. All soil borings shall be within the boundaries of the disposal field, or no further than 15 feet beyond the boundaries of the disposal field.

(d) When a seepage pit(s) is proposed, as allowed in N.J.A.C. 7:9A-7.6, a minimum of one profile pit or two soil borings shall be performed for each seepage pit. Profile pits shall be located within or no further than 15 feet from the proposed seepage pit. Borings shall be located on opposite sides of the seepage pit, no further than 15 feet from the seepage pit.

(e) Profile pits shall be prepared as follows:

1. Profile pits shall be excavated, if possible, to a minimum depth of 10 feet below the existing ground surface or to solid bedrock, when encountered. If the profile pit becomes unstable due to lack of soil cohesion or the presence of ground water, or both, the pit may be terminated at a depth less than 10 feet. The depth of the profile pit shall never be less than eight feet below the proposed level of infiltration.

2. When a seepage pit is proposed, the profile pit shall extend a minimum of eight feet below the bottom of the seepage pit or to solid bedrock, when encountered. In cases where the minimum required depth is deeper than that practically attainable using ordinary excavating equipment, soil borings should be used rather than a profile pit. Alternatively, borings may be used to extend the depth of profile pits beyond the range of the excavating equipment.

3. The sides of the profile pit shall be stepped and sloped as shown in Figure 2 of Appendix A, to prevent caving-in and to allow safe access. An undisturbed face, a minimum of one foot wide and extending from the top to the bottom of the pit, shall be exposed by means of hand tools, for observation of the soil profile characteristics.

(f) Soil borings shall be performed as follows:

1. Soil borings shall be completed to a minimum depth of 10 feet below the existing ground surface or to solid bedrock, where encountered. In no case shall the depth of the borings be less than eight feet below the proposed level of infiltration. Where a seepage pit is proposed, the borings shall extend a minimum of eight feet below the bottom of the seepage pit or to solid bedrock, where encountered.

2. Soil borings shall be made in a manner that will provide a continuous sample of the soil profile without mixing the soil from different depths. Hand augers may be used provided that the hole remains open and does not slump.

(g) In soil profile pits and borings, the following characteristics of each recognizable soil horizon or substratum (not including rock substrata) shall be determined:

1. Depth and thickness of horizon;

2. Soil color, using the Munsell system of classification which includes an alpha-numeric symbol together with a descriptive color name;

3. Estimated soil textural class, using the USDA system of classification;

4. Estimated volume percentage of coarse fragment, if present;

5. Abundance, size and contrast of mottles, if present;

6. Soil structural class (soil profile pits only); and

7. Soil consistence.

(h) Soil profile characteristics shall be reported in log form, using terminology as prescribed in N.J.A.C. 7:9A-5.3.

7:9A-5.3 Terminology required for soil logs

(a) A soil log shall be prepared for each soil profile pit or soil boring. The soil profile characteristics listed in N.J.A.C. 7:9A-5.2(g) shall be described using the terminology specified in (b) through (h) below.

(b) Depth and thickness of each district soil horizon or substratum shall be reported in inches. A distinct soil horizon or substratum is any soil horizon or substratum which differs from horizons or substrata above or below it in color, texture, coarse fragment content, mottling, structure or consistance.

(c) Color shall be described using the Munsell system of classification which includes a descriptive color name such as "strong brown" or "pale red", together with an alpha-numeric designation of hue, value and chroma such as "7.5 YR 5/6" or "2.5 YR 6/2". When mottling is encountered, report the dominant or background color and the mottle colors.

(d) Texture shall be reported as the name of the appropriate textural class which is shown on the USDA textural triangle, Figure 3 of Appendix A, determined based upon the relative proportions of sand, silt and clay in that portion of the soil which excludes the coarse fragment. Texture shall be estimated in the field by feel, or determined by textural analysis as prescribed in N.J.A.C. 7:9A-6.3.

(e) The volume percentage of coarse fragments shall be estimated in the field visually using volume percentage estimation charts provided in Figure 4 of Appendix A. Coarse fragments which are rounded or subrounded in shape shall be classified based upon size, as indicated in (e)1 through 3 below. In the case of shale, slate, or other thin rock fragments, the rock type and the average length and thickness of the rock fragments shall be reported.

1. "Gravel" means a rock fragment from two millimeters (0.1 inches) to 76 millimeters (three inches) in diameter;

2. "Cobble" means a rock fragment from 76 millimeters (three inches) to 254 millimeters (10 inches) in diameter; and

3. "Stone" means a rock fragment greater than 254 millimeters (10 inches) in diameter.

(f) When mottling is observed, the abundance, size, and contrast of the mottles shall be reported using the following terminology:

1. Abundance shall be estimated visually, by using the volume percentage charts provided in Figure 4 of Appendix A, to estimate the percentage of the exposed surface which is occupied by mottles. Abundance of mottles shall be classified as follows:

i. Mottles are "few" when less than two percent of the exposed surface is occupied by mottles;

ii. Mottles are "common" when from two percent to 20 percent of the exposed surface is occupied by mottles; and

iii. Mottles are "many" when more than 20 percent of the exposed surface is occupied by mottles.

2. Size shall be classified based on the estimated average longest dimension of the mottles, as follows:

i. Mottles are "fine" when they are less than five millimeters in size;

ii. Mottles are "medium" when they are from five to 15 millimeters in size; and

iii. Mottles are "course" when they are greater than 15 millimeters in size;

3. Contrast shall be described as follows:

i. Mottles are "faint" when they may be distinguished only on close examination;

ii. Mottles are "distinct" when they are readily seen but not prominent; and

iii. Mottles are "prominent" when they are obvious and one of the outstanding features of the soil horizon.

(g) Soil structure shall be described using the following terms which refer to the shape of the natural soil aggregates:

1. Structure is "spheroidal" when the aggregates are more or less equi-dimensional and lack sharp corners, sharp edges or well-defined faces. This term includes crumb and granular structure as defined by the USDA;

2. Structure is "subangular blocky" when the aggregates are more or less equi-dimensional and possess well-defined flat or somewhat curved faces, but lack sharp corners or edges;

3. Structure is "angular blocky" when the aggregates are more or less equi-dimensional in shape and possess well-defined flat or somewhat curved faces, sharp corners and sharp edges;

4. Structure is "prismatic" when the aggregates have one axis distinctly longer than the other two and are oriented with the long axis vertical;

5. Structure is "platy" when the aggregates have one axis distinctly shorter than the other two and are oriented with the short axis vertical. Soil horizons with platy structure generally show numerous

well-defined horizontal structural faces and lack well defined vertical structural faces;

6. Structure is "massive" when the soil consists of a dense, compact mass showing no recognizable natural aggregates or structural faces; and

7. Structure is "single grain" when the soil consists of loose individual sand grains which lack cohesion and are not bound together into recognizable soil aggregates.

(h) Soil consistence shall be described using the following terminology which refers to the ease with which a soil clod or aggregate may be crushed with the fingers in either the dry or moist condition.

1. In the dry soil condition, soil consistence is characterized as:

i. "Loose" when the soil is non-coherent;

ii. "Soft" when the soil mass breaks to a powder of individual grains with slight pressure;

iii. "Slightly hard" when the soil mass is easily broken between thumb and forefinger;

iv. "Hard" when the soil mass can be broken in the hands without difficulty, but is barely breakable between thumb and forefinger; and

v. "Very hard" when the soil mass can be broken in the hands with difficulty, but is not breakable between thumb and forefinger.

2. In the moist soil condition, soil consistence is characterized as:

i. "Loose" when the soil is non-coherent;

ii. "Friable" when the soil material crushes easily between thumb and forefinger;

iii. "Firm" when the soil material crushes under moderate pressure between thumb and forefinger;

iv. "Very firm" when the soil material is barely crushable under strong pressure between thumb and forefinger; and

v. "Extremely firm" when the soil material cannot be crushed between thumb and forefinger, but can only be broken apart bit by bit.

3. For any moisture condition, soil consistence is characterized as "cemented" when the soil mass is brittle and hard, and cannot be broken by hand.

7:9A-5.4 Criteria for determination of soil suitability classes

(a) The soil suitability class shall determine what type(s) of standard disposal field installation(s), if any, may be approved on a given site. The soil suitability class is determined based upon the type and depth of limiting zone(s) present. In the case of disturbed ground, additional factors must be considered, as outlined N.J.A.C. 7:9A-5.10.

(b) The depth to the limiting zone shall be measured from the existing ground surface to the top of the limiting zone. In the case of disturbed ground, depth to the limiting zone shall be measured from the pre-existing natural ground surface or the existing ground surface, whichever is lowest. Criteria for recognition of the pre-existing natural ground surface are given in N.J.A.C. 7:9A-5.10(c).

(c) As shown in Table 5.4 below, the soil suitability designation consists of a Roman numeral from I to III which designates the severity of the soil limitation, together with a letter symbol which designates the type(s) of limitation. When more than one limiting zone is present, the following practice shall be followed:

1. The primary classification of the soil is based upon whichever limiting zone presents the most severe limitation (highest number value). Secondary classifications are given based upon limitations which are less severe (lower number values). The primary classification is stated first followed by secondary classifications in parentheses. For example, the classification for a soil with a seasonally high water table (top of the zone of saturation) at a depth of 1.5 feet and a massive rock substratum at seven feet would be III Wr (II Sr).

2. When two or more limiting zones are present with the same degree of limitation, a compound symbol is used, in primary or secondary classifications, consisting of a Roman numeral showing the degree of limitation followed by a letter symbol for each limiting zone. For example, the classification for a soil with a seasonally high water table at 2.5 feet and a fractured rock substratum at three feet would be II Wr, Sc.

TABLE 5.4 SOIL SUITABILITY CLASSIFICATION

| Type of Limiting Zone | Depth[1], Ft. | Suitability Class |
|---|---|---|
| Fractured Rock or | >5 | I |
| Excessively Coarse Substratum | 0-5 | IISc |
| Massive Rock or | >9 | I |
| Hydraulically Restrictive | 4-9 | IISr |
| | <4 | IIISr |
| Hydraulically Restrictive | >9 | I |
| Horizon, | 4-9 | IIHr |
| Permeable Substratum | <4 | IIIHr |
| Excessively Coarse Horizon | >5 | I |
| | 0-5 | IIHc |
| Zone of Saturation, Regional | >5 | I |
| | 2-5 | IIWr |
| | <2 | IIIWr |
| Zone of Saturation, Perched | >5 | I |
| | 2-5 | IIWp |
| | <2 | IIIWp |

(1) Depth is measured from the existing natural ground surface to the top of the limiting zone. In the case of disturbed ground, the depth to the limiting zone shall be measured from the pre-existing natural ground surface, identified as prescribed in N.J.A.C. 7:9A-5.10, or the existing ground surface, whichever is lowest.

7:9-5.5 Rock substrata

(a) Criteria for recognition of rock substrata shall include but not be limited to the following:

1. Any solid and continuous body of rock, with or without fractures, or any weathered or broken body of rock fragments overlying a solid body of rock, in which more than 50 percent by volume of the rock fragments are greater than two-millimeters in diameter or large enough to be retained on a two millimeter sieve shall be considered to be a rock substratum. In cases where the content of coarse fragments increases downward in a soil profile underlain by a rock substratum, the upper limit of the limiting zone shall be taken as the depth above which 50 percent or more of the soil material consists of particles less than two millimeters in diameter or small enough to pass through a two millimeter sieve.

2. A rock substratum shall be considered fractured if, based upon the judgment and experience of the soil evaluator, the rock substratum in question is determined to contain an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area. Any rock substratum which does not contain an adequate number of open and inter-connected fractures shall be considered a massive rock substratum. When doubt exists as to whether the limiting zone should be considered a fractured rock substratum or a massive rock substratum, the administrative authority may require a basin flooding test to be performed as prescribed in N.J.A.C. 7:9A-6.7.

3. Whenever the presence of a perched zone of saturation, immediately above the rock substratum, is inferred based upon observation of soil morphology, as prescribed in N.J.A.C. 7:9A-5.8, or confined, by direct observation or by testing, as prescribed in N.J.A.C. 7:9A-5.9, the rock substratum shall be considered massive.

7:9A-5.6 Excessively coarse horizons and substrata

(a) Criteria for recognition of excessively coarse horizons or substrata are as follows:

1. Soil horizons or substrata which have a course fragment content greater than 50 percent by volume shall be considered excessively coarse regardless of their measured permeability or percolation rate.

2. Sand textured soil horizons or substrata which contain less than 50 percent by volume coarse fragments shall be considered excessively coarse if they are composed primarily of coarse-very coarse sand (from 0.5 to two millimeters in diameter) and lack detectable amounts (two percent or more) of silt and clay. Soils which lack detectable amounts of silt and clay are soils which are dominantly gritty to the

touch, lack cohesion when moist, lack stickiness when wet and do not stain the fingers when rubbed in the hand.

3. When doubt exists as to whether a horizon or substratum should be considered excessively coarse, the administrative authority may require a soil permeability or percolation test to be performed within the horizon or substratum in question. Soil horizons or substrata which are tested shall be considered excessively coarse when the measured permeability is faster than 20 inches per hour or the measured percolation rate is faster than three minutes per inch. Alternatively, soil texture may be verified by textural analysis as prescribed in N.J.A.C. 7:9A-6.3.

7:9A-5.7 Hydraulically restrictive horizons and substrata

(a) Criteria for recognition of hydraulically restrictive horizons and substrata shall include but not be limited to the following:

1. Any soil horizon or substratum which exists immediately below a perched zone of saturation shall be considered hydraulically restrictive. The perched zone of saturation may be observed directly, inferred based on observation of soil profile morphology as prescribed in N.J.A.C. 7:9A-5.8, or confirmed by testing as prescribed in N.J.A.C. 7:9A-5.9.

2. Any soil horizon or substratum possessing a clay, silty clay, or silty clay loam texture, as defined in the U.S.D.A. system of classification, shall be considered to be hydraulically restrictive.

3. Any soil horizon or substratum shall be considered hydraulically restrictive if it possesses a sandy clay, clay loam, silt loam or silt texture together with:

i. A massive or platy structure; or

ii. A hard, very hard, firm, very firm or extremely firm consistence.

4. Any cemented horizon or substratum such as ironstone, which remains hard even when soaked in water, shall be considered hydraulically restrictive.

(b) When doubt exists as to whether a soil horizon or substratum should be considered hydraulically restrictive, the administrative authority may require that the soil horizon or substratum in question be tested by an appropriate method, as prescribed in N.J.A.C. 7:9A-6. The soil horizon or substratum shall be considered to be hydraulically restrictive if the measured permeability is slower than 0.2 inch per hour or the percolation rate is slower than 60 minutes per inch.

7:9A-5.8 Criteria for recognition of zones of saturation

(a) Criteria for recognition of zones of saturation shall include but not be limited to the following:

1. Any layer within or below the soil profile which exhibits mottling shall be considered a zone of saturation.

2. Any layer within or below the soil profile from which ground water seepage is observed shall be considered a zone of saturation.

3. Any layer within or below the soil profile which is below the static water level observed within a soil profile pit or boring shall be considered to be a zone of saturation.

(b) The upper limit of the zone of saturation, which is the seasonally high water table, shall be determined by one of the following means:

1. Where mottling is observed, at any season of the year, the seasonally high water table shall be taken as the highest level at which mottling is observed, except when the water table is observed at a level higher than the level of the mottling.

2. Where mottling is not observed, the seasonally high water table shall be determined based upon either of the following methods:

i. During the months of January through April, inclusive, water levels may be measured directly within soil profile pits or borings. Whenever the Department determines that there has been a significant departure from normal climatic conditions the Department may, with due notice to the administrative authority, lengthen or shorten the period allowed for direct measurement during any given year; or

ii. During other times of the year, the depth to the seasonally high water table may be obtained from the Soil Conservation Service County Soil Survey Report provided that the soil series present at the site is identified based upon comparison of soil profile morphology observed within a soil profile pit, and the soil profile description provided for the soil series in question within the County Soil Survey Report.

3. When the determination of seasonally high water table must be made in disturbed ground recognized as prescribed in N.J.A.C. 7:9A-5.10, direct observation during the months of January through April inclusive is the only method which shall be permitted.

(c) When a hydraulically restrictive horizon, a hydraulically restrictive substratum, or a massive rock substratum is not present throughout or immediately below the zone of saturation, the zone of saturation shall be considered a regional zone of saturation.

(d) Any zone of saturation which occurs above a hydraulically restrictive horizon, a hydraulically restrictive substratum, or a massive rock substratum shall be considered a regional zone of saturation unless a perched zone of saturation is identified based upon the criteria given in (e) below. When doubt exists as to whether the zone of saturation is regional or perched, and an interceptor drain is proposed to remove the zone of saturation below the disposal field, the administrative authority may require a hydraulic head test to be performed as prescribed in N.J.A.C. 7:9A-5.9.

(e) A zone of saturation shall be considered to be perched whenever any of the following conditions are met:

1. The zone of saturation is present immediately above a hydraulically restrictive horizon underlain by a layer of permeable unsaturated soil which is free of mottling and has a chroma of four or higher;

2. Water is observed ponded above a hydraulically restrictive horizon at the bottom of the soil profile pit but this water drains away naturally when the depth of the pit is extended below the bottom of the hydraulically restrictive horizon; or

3. Water is observed seeping into a profile pit immediately above a hydraulically restrictive horizon, a hydraulically restrictive substratum or a massive rock substratum and this seep is eliminated by means of a trench excavated upslope of the profile pit which intercepts and diverts laterally moving ground water away from the profile pit.

(f) Any zone of saturation which is present below a hydraulically restrictive horizon shall be considered an artesian zone of saturation whenever any of the following conditions are met:

1. Artesian conditions have been observed in contiguous geologic formations or are known to exist in adjacent areas underlain by similar soils and/or geologic substrata;

2. Water-bearing strata which are present below the hydraulically restrictive horizon are known to be inclined and to have outcrop areas upslope or at elevations higher than the elevation of the site; or

3. An unsaturated zone of substantial thickness and continuity is not observed below the hydraulically restrictive horizon. To prove the absence of an artesian condition, the unsaturated zone must be free of mottling and have a chroma of four or higher. When this determination is made during the months of January through April inclusive, the unsaturated zone must be a minimum of one foot in thickness. At times of the year other than January through April inclusive, the unsaturated zone must be a minimum of four feet in thickness. Whenever the Department determines that there has been a specific departure from normal climatic conditions, the Department may, with prior written notice to the administrative authority, adjust or modify the length of seasons for application of the criteria set forth in this paragraph.

(g) When any of the conditions in (f) above are met, the administrative authority shall not approve the removal of the hydraulically restrictive horizon for the purpose of installing a soil replacement disposal field unless it is determined by means of a hydraulic head test, as prescribed in N.J.A.C. 7:9A-5.9, that an artesian zone of saturation is absent below the hydraulically restrictive horizon.

7:9A-5.9 Hydraulic head test

(a) When a hydraulic head test is required by the administrative authority to determine the presence or absence of a perched or artesian zone of saturation, piezometers shall be installed and monitored by the applicant as follows:

1. Piezometer A shall consist of a steel or plastic casing, a minimum of two inches in diameter, perforated or open at the bottom,

and extending from above the ground surface to a point immediately above but not penetrating into the hydraulically restrictive horizon.

2. Piezometer B shall consist of a steel or plastic casing, a minimum of two inches in diameter located two to five feet from Piezometer A and extending from above the ground surface to a minimum of one foot below the bottom of the restrictive horizon. Peizometer B must be:

i. Open at the bottom or perforated only below the bottom of the restrictive horizon and within the underlying permeable horizon or stratum; and

ii. Installed or sealed in such a manner that no ground water may move upward or downward through the hydraulically restrictive horizon by flowing around the outside of the casing. When the hydraulically restrictive horizon is a horizon of high clay content and plastic consistence, this may be accomplished by use of a steel well-point which may be driven through the restrictive horizon and into the permeable soil below. In other cases, the piezometer shall be installed within an over-sized borehole with a bentonite pellet seal, a minimum of one foot thick, placed at the appropriate level.

(b) The piezometers shall be developed by pumping or surging. After a period of 24 hours the water levels in both piezometers shall be accurately measured and recorded.

(c) Water level measurements shall be interpreted as follows:

1. An equal water level in both piezometers means that the water level above the hydraulically restrictive horizon is due to the presence of a regional rather than a perched zone of saturation. Interceptor drains shall not be relied on as a means of providing an unsaturated zone below the disposal field.

2. Where water levels are different in piezometers A and B:

i. A water level in piezometer B which is above the bottom of the hydraulically restrictive horizon means an artesian zone of saturation is present below the hydraulically restrictive horizon. Excavation and removal of the hydraulically restrictive horizon in order to install a soil replacement or mounded soil replacement disposal field shall not be allowed.

ii. A water level in piezometer B which is below the bottom of the hydraulically restrictive horizon means that the water level, if observed, in piezometer A is due to the presence of a perched zone of saturation. No artesian zone of saturation is present below the hydraulically restrictive horizon. Interceptor drains may be proposed as a means of providing an unsaturated zone below the disposal field. Excavation and removal of the restrictive horizon in order to install a soil replacement or mounded soil replacement disposal field may be allowed.

(d) When it is required, the hydraulic head test shall be conducted only during the months of January through April inclusive, and shall be witnessed by the administrative authority or its authorized agent. Whenever the Department determines that there has been a significant departure from normal climatic conditions, the Department may, with prior written notice to the administrative authority, lengthen or shorten the period allowed for use of this test during any given year.

(e) When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered to be monitoring wells requiring installation by a licensed well driller and a permit issued by the Department pursuant to State law (N.J.S.A. 58:4-1 et seq.). The applicant shall contact the Department for a determination of whether or not a permit is required.

7:9A-5.10 Disturbed ground

(a) When placement of a disposal field is proposed in an area of disturbed ground, the type and depth of soil limiting zones as well as a variety of additional factors must be considered in determination of soil suitability, depending on the nature of the soil disturbance, as outlined in (b) below. Types of soil disturbance which shall be addressed within the soil evaluation and engineering design include but are not limited to filled areas, excavated areas, re-graded areas, artificially drained areas and pre-existing wastewater disposal areas.

(b) A site shall be considered disturbed ground when any of the following conditions are present:

1. Displaced or man-made objects such as tree stumps, branches, plant stems, leaves, building debris or trash of man-made origin, are observed below the ground surface in profile pits or soil borings;

2. Soil profile pits or borings reveal A-horizons or O-horizons which are buried by layers of soil or other material;

3. Soil horizons are absent or mixed in a manner which cannot be explained as a result of natural processes;

4. Mounded areas or depressions in the land surface are observed which do not conform with surrounding topography and which show signs of recent disturbance such as lack of vegetation, weedy vegetation, severe erosion, wheel ruts, etc.;

5. Remnants of building foundations, pavement or other man-made structures are observed at the surface or uncovered in profile pits or soil borings;

6. Subsurface drains or their remnants are observed in profile pits or borings or the outlets of drains are observed at the surface; or

7. Components of an existing wastewater disposal system, or remnants of an abandoned sewage disposal system are present below the site of a proposed new system.

(c) When evidence is found that the surface of the ground may have been modified by a disturbance such as addition of fill material, removal of soil horizons or re-grading, the pre-existing natural ground surface shall be identified based upon the following criteria:

1. When a buried A- or O-horizon is present, the pre-existing natural ground surface shall be taken as the top of the A-horizon or the bottom of the O-horizon.

2. When a buried A- or O-horizon is not present, the level of the pre-existing natural ground surface shall be determined by extrapolation from adjacent areas beyond the limit of soil disturbance. When this method is relied upon, the nature of the pre-existing topography as well as the nature of the ground disturbance shall be described, using topographic contour maps and profiles where appropriate, to the satisfaction of the administrative authority.

(d) In cases where disturbed soil or other fill material are present at the site, the suitability of this material shall be evaluated based upon its composition and its physical stability as follows:

1. Fill materials containing more than trace amounts of the following types of materials, or any other materials which are subject to disintegration or change in volume, shall be considered unsuitable:

i. Tree stumps, plant stems, leaves, food or animal remains or wastes, wood chips, saw dust, or any organic materials which may be subject to decay;

ii. Trash, discarded furniture, building or demolition debris or any bulky objects containing large voids or subject to collapse or re-orientation; or

iii. Cans, bottles, drums or any containers which are empty or filled with liquids.

2. Layers of fill material which do not contain materials as described in (d)1 above but which do contain course fragments in excess of 50 percent by volume shall be considered excessively coarse horizons or substrata. In the case of disturbed ground, coarse fragments may include man-made or artificial materials as well as rock fragments which are larger than two millimeters in diameter, provided that the man-made materials are limited only to physically and chemically inert materials without large voids, such as brick, concrete or glass fragments.

3. When construction of a wastewater disposal field is proposed within disturbed ground, an acceptable state of compaction of the soil or fill material shall be verified by laboratory tests of samples taken from within the area of the proposed disposal field. Based upon the results of these tests, the design engineer shall certify to the administrative authority that the in-place dry density of the soil or fill material above which the proposed system will be located is a minimum of 90 percent of the Standard Procter Density determined by laboratory analysis.

(e) In cases where the surface of the ground has been raised by the addition of fill material or lowered by the removal of pre-existing soil horizons, soil suitability shall be determined based upon the depth to limiting zones measured from the pre-existing natural ground surface determined as prescribed in (c) above, or the existing ground surface, whichever is lowest.

(f) Ground containing subsurface drainage systems or remnants of abandoned subsurface drainage systems shall be considered unsuitable for the installation of a disposal field unless the drains will be removed or the outlets of the drainage system permanently sealed. Any subsurface drain which has a surface outlet shall be considered as a watercourse and is subject to minimum horizontal setback distances from waste disposal system components as set forth in N.J.A.C. 7:9A-4.3.

(g) Ground containing existing wastewater disposal systems or remnants of abandoned systems shall be considered unsuitable for the installation of a disposal field unless the pre-existing system will be removed prior to installation of the proposed new system.

## SUBCHAPTER 6. PERMEABILITY TESTING

7:9A-6.1 General provisions for permeability testing

(a) The design permeability is the basis for determining the minimum required area of the disposal field. Tests shall be required at the site of each disposal field, at the level of infiltration, for determination of the design permeability. Where a conventional disposal field will be installed, tests shall be conducted at a depth of one to three feet below the ground surface, within the soil horizon in which the bottom of the disposal field will be placed. When a soil replacement, mound, or mounded soil replacement installation is proposed, a percolation test shall be conducted within the fill material after it has been emplaced and compacted, or a tube permeater test shall be conducted using samples of the fill material which have been compacted to a bulk density equivalent to that achieved in the construction of the disposal field. In lieu of this, the permeability class rating method may be used to determine whether the fill material used meets the requirements of N.J.A.C. 7:9A-10.1(f)4.

(b) The administrative authority may require additional tests at depths other than the depth of infiltration when doubt exists regarding the presence or the type of a limiting zone.

(c) The type of tests which may be used shall be determined based upon the purpose of the test and the soil conditions at the depth of the test as shown in Table 6.1 below.

Table 6.1 Type of Test

Test Options:
1—Tube Permeater Test
2—Soil Permeability Class Rating Test[i]
3—Percolation Test[ii]
4—Basin Flooding Test
5—Pit-bailing Test
6—Piezometer Test

| Purpose of Test and Soil Conditions at Depth of Test | Acceptable Test Options |
|---|---|
| I. Determination of Design Permeability at Level of Infiltration, Identification of Hydraulically Restrictive or Excessively Coarse Horizons or Substrata Above the Water Table | |
| A. Sands and loamy sands with single grain structure | 1, 2 or 3 |
| B. Oil soil textures | |
| 1. Undisturbed sample can be taken | 1, 2 or 3 |
| 2. Undisturbed sample cannot be taken | 2 or 3 |
| II. Identification of Massive Rock Substrata Above the Water Table | 4 |
| III. Identification of Hydaulically Restrictive Horizons or Substrata and Massive Rock Substrata Below the Water Table | 5 or 6 |
| IV. Design of Seepage Pits | 3 |

[i]This test shall not be used in soil horizons or substrata containing coarse fragments in excess of 50 percent by volume or 75 percent by weight.

[ii]When the percolation test is used as a basis of design, a 25 percent increase in the minimum required disposal field size shall be required as a factor of safety to compensate for the poor reliability of this test method.

(d) The number of permeability tests required shall be as follows:

1. When the tube permeameter test or the soil permeability class rating test are used to determine the design permeability at the level of infiltration, a minimum of one test shall be conducted within each disposal field and each test shall consist of a minimum of two test replicates. The administrative authority shall require additional tests or more than two replicates per test where the variability of test results exceeds the limits allowed in N.J.A.C. 7:9A-6.2(i)2, or where the results of soil profile pits or borings, made as prescribed in N.J.A.C. 7:9A-5.2, indicate the presence of more than one soil type within the area of the disposal field. When soil tests taken in different parts of the disposal field yield different results, the system shall be designed based upon the most restrictive conditions found within the area of the disposal field.

2. When the basin flooding test, the pit-bailing test or the piezometer test are required for identification of limiting zones, a minimum of one test shall be required in each disposal field. The administrative authority may require more than one test where conditions vary from one part of the disposal field to another.

(e) When the percolation test is used the following requirements shall be met:

1. When the percolation test is used to determine the design permeability at the level of infiltration, the administrative authority shall require a minimum number of percolation tests based upon the size of the proposed disposal field, as follows:

| Size of Disposal Field Square feet) | Minimum Number of Tests |
|---|---|
| Less than 1500 | 2 |
| 1500-3000 | 3 |
| 3000-4000 | 4 |
| 4000-6000 | 5 |

2. When the accuracy of a percolation test is questioned, one or more replicate tests may be performed at the same location within the disposal field as a means of better defining the true soil conditions at that particular location. The average of the results obtained from replicate tests at a given location within the disposal field shall be used for design purposes or for determination of soil suitability at that location.

3. The results of percolation tests taken at different locations within the disposal field shall not be averaged.

4. When a percolation test is abandoned due to lack of measurable percolation, this test may be disregarded provided that a minimum of three replicate tests taken at that same location yield acceptable results and provided that all subsequent test replicates taken at that location yield measurable percolation rates.

5. All percolation tests shall be located within the boundaries of the proposed disposal field and only the most restrictive percolation rate obtained within the disposal field shall be utilized for design purposes.

6. Percolation tests shall be uniformly spaced within the area of the disposal field. Acceptable patterns of percolation test placement are shown in Appendix C.

7. When a seepage pit is proposed, as allowed in N.J.A.C. 7:9A-7.6, a minimum of one percolation test shall be performed within each soil horizon or substratum between the invert of the inlet and the bottom of the seepage pit. The administrative authority may require additional tests below the bottom of the seepage pit where the presence of a limiting zone is in question.

(f) The administrative authority or its authorized agent shall witness permeability tests in accordance with the requirements of N.J.A.C. 7:9A-3.6.

(g) When results of a permeability test or a percolation test are suspect, the administrative authority or its authorized agent may require that the test be repeated. When the tube permeameter test or the soil permeability class rating method is used, the administrative authority may collect and test replicate samples for verification of soil permeability. In cases where the results obtained by the applicant differ from those obtained by the administrative authority, the results obtained by the administrative authority shall be used for design or determination of soil suitability.

(h) Except as provided in N.J.A.C. 7:9A-6.3, only unadulterated water to which no foreign substances or chemical additives have been added shall be used to conduct permeability or percolation tests. The addition of foreign substances or chemical additives to water used for permeability testing shall be considered as a falsification of data subject to penalties as outlined in N.J.A.C. 7:9A-1.7.

(i) The results of all permeability tests or percolation tests, complete or incomplete, including all test replicates, taken within the disposal field or less than 150 feet beyond the boundaries of the proposed disposal field shall be reported to the administrative authority using data submission forms as provided in Appendix B. Results shall be reported regardless of whether or not they are acceptable and regardless of whether or not they are used as a basis for the disposal field design. Failure to report test results shall be considered a falsification of data and may subject the violator to penalties as outlined in N.J.A.C. 7:9A-1.7.

(j) The administrative authority may allow the use of test methods other than the standard test options outlined in N.J.A.C. 7:9A-6.1(c), subject to review and approval of the test method by the Department.

7:9A-6.2 Tube permeameter test

(a) The following equipment is required for the tube permeameter test:

1. A thin-walled (one millimeter or less in thickness) metal tube, from one and one-half to three inches in diameter, six inches in length, beveled on the lower outside edge;

2. A wooden block with dimensions broader than the diameter of the tube in (a)1 above and a hammer, to drive the tube into the soil;

3. A small trowel;

4. A knife (to trim core);

5. Muslin or similar open-textured cloth and a rubberband;

6. A soaking basin of adequate size and depth to soak cores as prescribed in (c) below;

7. Fine gravel (from two to 10 millimeters in diameter);

8. A test basin of adequate length (generally 10 inches or greater) and width (generally four inches or greater) to accommodate one or more replicate samples at a time. The depth of the basin should be adequate to allow placement of the sample on a layer of gravel while keeping the bottom of the core several inches below the rim of the basin, as prescribed in (d) below (See Figure 5 of Appendix A);

9. A stopper which fits water-tight into the top of the sample tube and which is fitted with a glass standpipe from three to five inches long and from 0.25 to 0.75 inches in diameter (See Figure 5 of Appendix A). The standpipe should have a scale for measuring changes in water level over time as required in (d) below;

10. A small laboratory wash bottle for refilling standpipe;

11. A clock or watch with second hand;

12. A ruler (engineering scale is best);

13. One gallon of water per test. The water should be allowed to stand in an open container until clear of dissolved air. Boiling may be used to remove air provided that the water is allowed to cool down to room temperature before use; and

14. A two millimeter sieve.

(b) When the tube permeameter test is used, undisturbed samples shall be collected as prescribed in (d) below. When the texture of the soil to be tested is a sand or loamy sand and lack of soil cohesion or the presence of large amounts of coarse fragments, roots or worm channels prevent the taking of undisturbed samples, disturbed samples shall be taken as prescribed in (e) below. When the texure of the soil is other than a sand or loamy sand and undisturbed samples cannot be taken, the tube permeameter test shall not be used.

(c) When the tube permeameter test is used, a minimum of two replicate samples shall be taken and the procedures outlined in this section shall be followed for each replicate sample to be tested. It is recommended that more than two replicate samples be taken to avoid the necessity of re-sampling in the event that samples are damaged in transport or the results of one or more replicate tests must be rejected due to extreme variability of results, as required in (i) below. Replicate samples shall be taken from within the same soil horizon at the same location within the area of the proposed disposal field.

(d) The following procedure shall be used to collect each replicate sample:

1. Step One: Expose an undisturbed horizontal surface within and a minimum of three inches above the bottom of the soil horizon or layer to be tested.

2. Step Two: Position the sampling tube on the soil surface at the point chosen for sampling. Care should be taken to avoid large gravel or stones, large roots, worm holes or any discontinuity which might influence results. If the soil is excessively dry it may be moistened, but not saturated, provided that the force of falling water is not allowed to act directly upon the soil surface.

3. Step Three: Hold the wooden block on the top of the sampling tube and drive the tube into the soil a distance of from two to four inches using light even blows with the hammer. Care should be taken to hit the block squarely in the center and to drive the tube straight down into the soil. Do not attempt to straighten the tube by pushing or by hitting the tube on the side with the hammer.

4. Step Four: When the tube has been driven to the desired depth, carefully remove the soil around the outside of the tube, insert a trowel into the soil below the tube and, exerting pressure from below, lift the sampling tube out of the soil.

5. Step Five: Trim the bottom of the soil core flush with the sampling tube using a knife and taking care not to smear the soil surface. Carefully invert the sampling tube and tap the side lightly with the handle of the knife or similar implement to remove any loose soil which may be resting on the top of the soil core and to verify that an undisturbed sample has been obtained. Omit this step in the case of sandy-textured non-cohesive soils with single grain structure. Check the top and bottom surfaces of the core sample and discard any sample which has worm holes or large cracks caused by handling.

6. Step Six: After the core has been checked for worm holes or signs of disturbance, stretch a piece of muslin cloth over the bottom of the tube and secure with a strong rubberband.

(e) The following procedure shall be used for the collection of disturbed samples for the tube permeameter test:

1. Step One: Collect an adequate volume of the soil or fill material to be tested. Spread the soil on a clean surface and allow to dry in the air until dry to the touch. An oven may be used to accelerate drying provided that the soil is allowed to cool down to room temperature before testing.

2. Step Two: Pass the soil through a two millimeter sieve to remove gravel and stones.

3. Step Three: Stretch a piece of muslin cloth over the bottom of the sampling tubes and place the tubes on a flat surface. Slowly pour the soil into each sampling tube while gently tapping the side of the tube with a hard instrument. Fill the tubes to a depth of three to four inches. Check the bulk density of the sample by dividing the weight of the sample (weight of sample tube containing sample minus the weight of empty sample tube) by the volume of the sample (length of sample multiplied by 3.14 $r^2$, where r is the internal radius of the sample tube). The minimum acceptable bulk density for disturbed samples is 1.2 grams per cubic centimeter.

(f) The following procedure shall be used for pre-soaking undisturbed or disturbed core samples for the tube permeameter test:

1. Step One: Place the soil core in the pre-soak basin and fill the basin with water to a point just below the top of the soil core. Never fill the basin to a level which is higher than the top of the soil core. Never use water directly from the tap to soak cores. Use only deaired water as prescribed in (a)13 above. Allow the sample to soak until the top surface of the core is saturated with water. This may require only a few minutes of soaking for sandy textured soils or several days for clay textured soils. Failure to soak the sample for sufficient time may result in greatly reduced permeability measurements due to entrapped air.

2. Step Two: When the sample has soaked for sufficient time, place a one inch layer of fine gravel (from two to 10 millimeters in

diameter) on top of the soil core in the sampling tube. Slowly fill the tube with de-aired water taking care not to disturb the surface of the core. A small spatula or similar implement may be used to break the fall of the water as it is poured into the tube.

3. Step Three: Immediately transfer the soil core to the test basin in which a layer of gravel has been placed and gently press the soil core into the gravel so that it stands vertically with its base positioned at the desired depth below the rim of the test basin.

(g) The following procedure shall be used to conduct the tube permeameter test:

1. Step One: When the soil core has been positioned at the desired height within the test basin (see Figure 5 of Appendix A), fill the test basin to overflowing with de-aired water. (Note: The hydraulic head used in the test depends upon the height of the top of the sample tube or standpipe above the rim of the test basin as shown in Figure 5. In general, a higher hydraulic head should be used for heavy textured soils to expedite the test and a lower head should be used for sandy textured soils to prevent an excessively fast flow rate).

2. Step Two: Fill the tube to overflowing with de-aired water and record the time, in minutes, required for the water level in the tube to drop a standard distance such as one-half inch, one inch, or two inches. Repeat this step until the rate of fall becomes constant or the difference between the highest and lowest of three successive readings is less than five percent. When the readings are less than 20 minutes in length the time should be reported to the nearest second.

3. Alternate Step Two: When the rate of fall observed in "Step Two" ((g)2 above) is slow, the flow rate may be increased by use of a standpipe as shown in Figure 5. Carefully insert the standpipe into the top of the sample tube and fill with de-aired water. The apparatus should be checked for leaks where the standpipe fits into the sample tube. Silicon jelly, petroleum jelly or a similar material may be used to prevent leakage. Measure the rate of fall of the water level in the standpipe as in Step Two.

(h) The permeability of each replicate sample tested shall be calculated using the following formula:

1. $K \text{ (in/hr)} = 60 \text{ min/hr} \times L(\text{in})/T(\text{min}) \times r^2/R^2 \times \ln (H_1/H_2)$

Where:

K is the permeability of the soil sample;

L is the length of the soil core, in inches;

T is the time, in minutes, required for the water level to drop from $H_1$ to $H_2$ during the final test interval;

r is the radius of the standpipe, in centimeters or inches;

R is the radius of the soil core, in the same units as "r";

ln is the natural logarithm

$H_1$ is the height of the water level above the rim of the test basin at the beginning of each test interval, in inches; and

$H_2$ is the height of the water level above the rim of the test basin at the end of each test interval, in inches.

Note: When the standpipe is not used, the term $r^2/R^2$ is omitted from the equation.

(i) Variability of test results shall be evaluated as follows:

1. Soil permeability classes are defined as follows:

| Measured Permeability | Soil Permeability Class |
|---|---|
| Greater than 20 inches per hour ("in/hr") | K5 |
| 6-20 in/hr | K4 |
| 2-6 in/hr | K3 |
| 0.6-2 in/hr | K2 |
| 0.2-0.6 in/hr | K1 |
| Less than 0.2 in/hr | K0 |

2. The variability of soil permeability test results shall be considered acceptable only where the results of all replicate tests fall within one soil permeability class or two adjacent permeability classes.

3. Where the results of replicate tests differ by more than one soil permeability class, the samples shall be examined for the following defects:

i. Cracks, worm channels, large root channels or poor soil tube contact within the sample yielding the highest permeability value(s);

ii. Large pieces of gravel, roots or unsaturated soil within the interior of the sample yielding the slowest permeability value(s); or

iii. Smearing or compaction of the upper or lower surface of the sample yielding the lowest permeability value(s).

4. If any of the defects described in (i)3 above are found, the defective core(s) shall be discarded and the test repeated using a new replicate sample for each defective replicate sample.

(j) When test results have been obtained with an acceptable range of variability as defined in (i) above, the results shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the level of infiltration, the slowest of the test replicate results shall be used for design purposes.

2. When the purpose of the test is to identify a hydraulically restrictive horizon or substratum above the water table, the horizon or substratum in question shall be considered hydraulically restrictive if the average permeability of the replicate samples tested falls within soil permeability class KO as defined in (i)1 above.

3. When the purpose of the test is to identify an excessively coarse horizon or substratum above the water table, the horizon or substratum in question shall be considered excessively coarse if the average permeability of the replicate samples tested falls within permeability class K5 as defined in (i)1 above.

(k) Where results of replicate tests exceed the limits of variability allowed in (i)2 above, the results shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the depth of infiltration, the slowest of the test replicate results shall be used for design purposes.

2. When the purpose of the test is to identify a hydraulically restrictive horizon or substratum above the water table, the horizon or substratum in question shall be considered hydraulically restrictive if the slowest permeability of the replicate samples tested falls within soil permeability class KO as defined in (i)1 above.

3. When the purpose of the test is to identify an excessively coarse horizon or substratum above the water table, the horizon or substratum in question shall be considered excessively coarse if the fastest permeability of the replicate samples tested falls within permeability class K5 as defined in (i)1 above.

7:9A-6.3 Soil permeability class rating

(a) Determination of permeability by the soil permeability class rating technique is based upon a hydrometer analysis performed as prescribed in (f) below, and a sieve analysis performed as prescribed in (g) below, together with evaluation of soil morphological properties as prescribed in N.J.A.C. 7:9A-5.2 and 5.3. As an alternate to the hydrometer analysis procedure prescribed in (f) below, the hydrometer analysis procedure given in ASTM STANDARD D 422, published by the American Society for Testing and Materials, may be used to determine the percent by weight of sand and the percent by weight of clay in the sample.

(b) The following equipment is required:

1. A two-millimeter sieve, with an eight inch or larger diameter frame;

2. A set of two sieves, with five inch or larger diameter frames, with covers and pans. The sieves shall meet the following specifications:

i. The first sieve shall be 0.25 millimeter, 60-mesh, Bureau of Standards, phosphor bronze wire cloth; and

ii. The second sieve shall be 0.047 millimeter, 300-mesh, Bureau of Standards, phosphor bronze wire cloth (0.0015wire);

3. A wooden rolling pan or mortar with rubber-tipped pestle;

4. An oven;

5. A scale (0.1 gram accuracy);

6. Distilled water;

7. A sodium hexametaphosphate solution of 50 grams of the salt dissolved in one liter of distilled water;

8. The electric mixer (see section 2.1.1 of ASTM Standard D 422) or mechanical shaker;

9. A 1000 milliliter graduated cylinder with rubber stopper;

10. A soil hydrometer calibrated to read in grams per liter at 68 degrees Fahrenheit (ASTM #152H);
11. A thermometer;
12. A clock with second hand; and
13. A sieve shaker

(c) A loose sample of soil, 200 grams or more, shall be collected from the soil horizon or substratum to be tested.

(d) The soil sample shall be prepared as follows:

1. Pass the soil sample to be tested, which has been allowed to air dry, through a two millimeter sieve to remove coarse fragments. Use moderate pressure with a wooden rolling pin or mortar with rubber-tipped pestle to break soil aggregates (but not soft rock fragments) which are larger than two millimeters.
2. Weigh both the material retained and the material which passes through the sieve. This method shall not be used where the weight of coarse fragments retained on the sieve exceeds 75 percent of the total sample weight.
3. Discard the coarse fragments.

(e) Dispersion of the soil sample shall be accomplished using a motor-mixed or a reciprocating shaker as prescribed below. This procedure shall be followed for each replicate sample tested.

1. Step One: Place 40 grams of air dry soil which has been passed through a two millimeter sieve into a mixing cup or one liter shaker bottle together with 100 milliliters of sodium hexametaphosphate solution and 400 milliliters of distilled water. Weigh out an additional 40 gram sample for determination of oven dry weight. Re-weigh the latter sample after keeping it in an oven at 105 degrees Centigrade for 24 hours. (Only one sample is required for determination of oven-dry weight regardless of the number of replicate samples used for the hydrometer analysis).
2. Step Two: If a motor mixer is used, allow the soil to soak in the cup for 10 minutes, place the cup on the mixer and mix the sample for five minutes. Next, transfer the suspension completely to the cylinder. Rinse the mixing cup with distilled water and pour the rinse water into the cylinder so that none of the suspension is left in the mixing cup. Bring the volume of the suspension in the cylinder up to the 1000 milliliter mark with distilled water. Allow the suspension to reach room temperature.
3. Alternate Step Two: If a reciprocating shaker is used in lieu of the mixer, shake the sample for 12 hours, at a rate of approximately 120 strokes per minute, and transfer to the cylinder rinsing the shaking bottles with distilled water. Bring the volume of the suspension in the cylinder to the 1000 milliliter mark with distilled water. Allow the suspension to reach room temperature.

(f) The following procedure shall be used for the hydrometer analysis:

1. Step One: Calibrate the hydrometer as follows: Add 100 milliliters of sodium hexametaphosphate solution to a 1000 milliliter cylinder and fill to the 1000 milliliter mark with distilled water. Place the stopper in the cylinder and shake vigorously in a back and forth motion. Place the cylinder on the table and lower the hydrometer into the solution. Determine the scale reading at the upper edge of the meniscus surrounding the hydrometer stem. This is the hydrometer calibration, Rc. Record the temperature in degrees Fahrenheit (°F).
2. Step Two: Place a stopper in th cylinder containing the dispersed soil sample, shake the cylinder using a back and forth motion (avoid causing circular currents in the cylinder) and place the cylinder on the table. Record the time immediately. After 20 seconds carefully lower the hydrometer into the cylinder and, after exactly 40 seconds, read the hydrometer. Repeat this step until two successive readings are obtained which agree within 0.5 gram per liter.
3. Step Three: Determine the temperature of the suspension and correct the hydrometer reading as follows:

i. Subtract the reading obtained in Step One, Rc, from the hydrometer reading.

ii. For each degree Fahrenheit above 68 add 0.2 gram to the reading or for each degree Fahrenheit below 68 subtract 0.2 gram.

4. Step Four: Remove the hydrometer, stopper the cylinder, and shake the hydrometer as in Step Two. Remove the stopper and immediately place the cylinder on a table where it will not be disturbed. Take a hydrometer reading after exactly two hours and correct the hydrometer reading as in Step Three.
5. Step Five: Using test data reporting forms provided in Appendix B, record, the following data:

i. Oven dry weight of soil, Wt (from Step One of (e) above);
ii. Hydrometer calibration, Rc (Step One);
iii. Hydrometer reading at 40 seconds, R1 (Step Two);
iv. Temperature of suspension (Step Three);
v. Corrected hydrometer reading, R1′ (Step Three);
vi. Hydrometer reading at two hours, R2′ (Step Four); and
vii. Corrected hydrometer reading, R2′ (Step Four);

6. Step Six: Calculate the percent of sand and percent of clay as follows:

i. Percent of sand = (Wt. – R′)/Wt. x 100
ii. Percent of clay = R2′/Wt. x 100

NOTE: The hydrometer analysis may not be carried out in a room where the temperature varies more than two degrees during the time required to perform the test.

(g) A sieve analysis shall be performed as prescribed below for each replicate sample used in the hydrometer analysis except when the content of sand determined as prescribed in Step Six of (f) above is less than 25 percent.

1. Step One: After the completion of Step Four in (f) above, pour the suspension from the sedimentation cylinder into a 0.047 millimeter sieve and wash the fine material through the sieve using running water.
2. Step Two: Dry the sieve and its contents in an oven. Cool the sieve and transfer the sand to a pre-weighed evaporating dish (or similar heat resistant vessel) carefully, using a soft brush.
3. Step Three: Place the dish and its contents in an oven at 105 degrees Centigrade, for two hours, to dry. Cool the dish and its contents and weigh to the nearest 0.01 gram. Determine the weight of the sand by subtracting the weight of the dish.
4. Step Four: Assemble a stack of sieves as specified in (a)2 above, consisting of the pan, the 0.047 millimeter sieve and the 0.25 millimeter sieve, from bottom to top, respectively. Inspect sieves carefully before using to make sure that they are clean and undamaged. Transfer the sand from the evaporating dish to the top sieve using a soft brush to complete the transfer.
5. Step Five: Put the cover on the top sieve, firmly fasten the sieves to the sieve shaker and shake for three minutes. Disassemble the stack of sieves, transfer the contents of each sieve to a weighing dish separately. Weigh the contents of each sieve to the nearest 0.01 gram. Record the following data:

i. Total weight of sand fraction, from Step Three;
ii. Weight of sand passing the 0.25 millimeter sieve (retained in the 0.047 millimeter sieve);
iii. Percent fine plus very fine sand: Divide weight of stand passing 0.25 millimeter sieve by total weight of sand fraction and multiply this value by 100.

(h) The following procedure shall be used to determine the soil permeability class:

1. Step One: Using the soil permeability/textural triangle, Figure 6 of Appendix A, determine the soil permeability class of the soil horizon being tested, based upon the average percentage of sand and the average percentage of clay in the replicate samples tested as prescribed in (f) above.
2. Step Two: If the average percentage of fine plus very fine sand in the replicate samples tested, determined as prescribed in Step Five of section (g) above, is 50 percent or greater, adjust the permeability class determined in Step One of this subsection to the next slowest class.
3. Step Three: If the soil horizon being tested is found to have a massive or platy structure or a hard, very hard, firm, very firm or extremely firm consistence, determined as prescribed in N.J.A.C. 7:9A-5.3, adjust the permeability class determined in Step One of this subsection to the next slowest class.

7:9A-6.4 Percolation test

(a) The following equipment is required for the percolation test:

1. A soil auger, post-hole digger or other means of preparing a test hole as prescribed in (b) below;

2. A knife or trowel for removing smeared or compacted surfaces from the walls of the test hole;

3. Fine (from two to 10 millimeter in diameter) gravel (optional);

4. A water supply (50 gallons is generally adequate);

5. A straight board (to serve as fixed reference point for water level measurements);

6. A clock and a ruler (12 inches or longer, engineering scale);

7. An automatic siphon or float valve (optional); and

8. A hole liner consisting of a 14 inch section of slotted pipe or well screen, or a 14 inch length of one-quarter inch hardware cloth or other similar material rolled into a tube (optional). The hole liner shall be no smaller than two inches in diameter less than the test hole.

(b) Percolation tests shall not be conducted in frozen ground or in holes which have been allowed to remain open to the atmosphere for periods greater than three days. The required configuration of the test hole is illustrated in Figure 7 of Appendix A. The following procedure shall be used in preparation of the test hole.

1. Step One: Excavate a test hole having horizontal dimensions of eight to 12 inches at a depth such that the lower six inches of the test hole are contained entirely within the soil horizon or layer of fill material being tested. In order to facilitate access to the lower portion of the hole, the test hole may be excavated from the bottom of a shallow pit provided that the vertical axis of the test hole is a minimum of 14 inches measured from the bottom of the pit to the bottom of the test hole.

2. Step Two: In soil textures other than sands or loamy sands, remove smeared or compacted soil from the sides and bottom of the test hole by inserting the tip of a knife or trowel into the soil surface and gently prying upward and outward. Remove loose soil from the test hole.

3. Step Three: At this point, a one-half inch layer of fine gravel may be placed in the bottom of the hole to protect the soil surface from disturbance or siltation when water is added to the hole. If additional protection is desired, a hole liner as described in (a)8 above may be placed in the hole and the space between the liner and the sides of the hole may be filled with fine gravel.

4. Step Four: Place and secure a straight board horizontally across the top of the test hole, as shown in Figure 7 of Appendix A, to serve as a fixed point for depth of water measurements to be made at appointed time intervals throughout the test.

(c) All soils, except for sandy textured soils which meet the requirements of (d) below, shall be pre-soaked using the following procedure. Any soil which exhibits cracks or fissures between soil aggregates shall be pre-soaked regardless of the texture. Pre-soak as follows:

1. Fill the test hole with water and maintain a minimum depth of 12 inches for a period of four hours by refilling as necessary or by means of an automatic siphon or float valve.

2. At the end of four hours, cease adding water to the hole and allow the hole to drain for a period of from 16 to 24 hours.

(d) In sandy textured soils, including sands, loamy sands and sandy loams, where a rapid percolation rate is anticipated, fill the test hole to a depth of 12 inches and allow to drain completely. Refill the hole to a depth of 12 inches and record the time required for the hole to drain completely. If this time is less than 60 minutes, the test procedure may begin as prescribed in (e) below without further pre-soaking. If water remains in the test hole after 60 minutes, the hole must be pre-soaked as prescribed in (c) above before proceeding with the test.

(e) Immediately following the pre-soak procedure (no more than 24 hours after the start of the pre-soak procedure), the percolation rate shall be determined using the following procedure:

1. Step One: If water remains in the test hole after the completion of the pre-soak period, the test shall be terminated and the percolation rate shall be reported as greater than 60 minutes per inch. If no water remains in the test hole, fill to a depth of seven inches. At a five to 30 minute time interval, depending upon the rate of fall, record the drop in water level to the nearest one-tenth of an inch. Refill the hole at the end of each time interval and repeat this procedure using the same time interval until a constant rate of fall is attained. A constant rate of fall is attained when the difference between the highest and lowest of three consecutive measurements is no greater than two-tenths of an inch.

2. Step Two: Immediately after the completion of Step One, refill the test hole to a depth of seven inches and record the time required for exactly six inches of water to seep away. This time divided by six will be the percolation rate in minutes per inch.

(f) The results of the percolation test shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the level of infiltration, the slowest percolation rate determined within the proposed disposal field shall be used for design purposes. If any of the measured percolation rates are slower than 60 minutes per inch or faster than three minutes per inch the application shall not be approved. A percolation rate may be the result of a single percolation test or the average of several replicate tests, as allowed in N.J.A.C. 7:9A-6.1(e)2.

2. When the result of the test(s) is an average percolation rate slower than 60 minutes per inch, the horizon or substratum in question shall be considered hydraulically restrictive.

3. When the result of the test(s) is an average percolation rate faster than three minutes per inch, the horizon or substratum in question shall be considered excessively coarse.

4. When a seepage pit is proposed, the design percolation rate shall be calculated by adding the products of the percolation rate and the thickness of each individual horizon tested and dividing the result by the total thickness of all the horizons tested. Any horizon with a percolation rate slower than 40 minutes per inch shall be excluded from this computation.

7:9A-6.5 Pit-bailing test

(a) The following equipment is required for performing a pit-bailing test (see Figure 8 in Appendix A):

1. A back-hoe;

2. Wooden or metal stakes, string and a hanging level;

3. A steel measuring tape;

4. A pump (optional);

5. A stop-watch; and

6. A perforated pipe, with a three inch diameter or greater.

(b) The following procedure shall be used for preparation of the test pit:

1. Step One: Excavate a test pit extending into but not below the soil horizon or layer to be tested. The bottom of the pit should be a minimum of 1.5 feet below the observed water level and a minimum of six feet below the proposed level of infiltration. The bottom of the pit should be relatively flat and level. The shape of the pit within the depth interval tested should be approximately square or round. A rectangular or elliptical pit may be used provided that, within the depth interval tested, the length of the long dimension is no more than twice the length of the short dimension. The excavation made for a soil profile pit as prescribed in N.J.A.C. 7:9A-5.2 may be used provided that all the above requirements are met.

2. Step Two: Allow the water level to rise in the pit for a minimum of two hours and until the sides have stabilized. If large volumes of soil have slumped into the pit, this soil must be removed before proceeding with the test. If the sides of the pit continue to slump and cannot be stabilized, the test shall be abandoned. If water is observed seeping into the pit from soil horizons above the zone of saturation in which the test is being conducted, adequate means shall be taken to intercept and divert this water away from the test pit, otherwise the pit-bailing test shall not be used. If, during the excavation of the pit, the water level in the pit rises suddenly after a hydraulically restrictive horizon is penetrated, and continues to rise above the bottom of the hydraulically restrictive horizon, the pit-bailing test shall not be used.

(c) The following procedure shall be used for performance of the pit-bailing test and the calculation of test results:

1. Step One: Establish a fixed reference point for depth to water level measurements which will not be disturbed during removal of water from the pit or which can be temporarily removed and later re-positioned in exactly the same place. One way to establish a removable reference level mark is as follows:

i. Drive stakes firmly into the ground on opposite sides of the test pit, several feet beyond the edge, where they will not be disturbed.

ii. Next, stretch a string with hanging level from stake to stake, over the pit, and adjust the string to make it level.

iii. Finally, secure the string to the stakes and mark or notch the positions on the stakes where the string is attached so that the string may be removed temporarily and later repositioned exactly in its place.

2. Step Two: Measure the distance from the reference level to the bottom of the pit and to the observed water level.

3. Step Three: Lower the water in the pit by at least one foot, by pumping or bailing. If the back-hoe bucket is used to remove water from the pit, it may be necessary to remove the reference level marker prior to bailing and re-position it in its original position prior to beginning step four.

4. Step Four: Choose a time interval, based upon the observed rate of water level rise. At the end of each time interval, measure and record the information indicated in (c)4 i through iii below and repeat these measurements until the water level in the pit has risen a total of one foot or more.

i. Time, in minutes (the time interval, in minutes, between measurements should be chosen to allow the water level to rise by several inches);

ii. Depth of water level below the reference string at the end of each time interval, to the nearest eighth of an inch or one-hundredth of a foot; and

iii. Area of water surface, in square feet. Measure appropriate dimensions of the water surface, depending on the shape of the pit, to permit calculation of the area of the water surface at the time of each water level depth measurement. Entering a soil pit excavated below the water table can be extremely dangerous and should be avoided unless the pit is relatively shallow and the sides of the pit have been stepped and sloped as prescribed in N.J.A.C. 7:9A-5.2(e)3 to eliminate the likelihood of sudden and severe cave-in of the pit. The distance between two opposite edges of the water surface can be measured accurately, without entering the pit, as follows. Place a board on the ground, perpendicular to the side of the pit and extending out over the edge. Using a plumb-bob, position this board so that its end is directly over the edge of the water surface in the pit, below. Position a second board, in the same manner, on the opposite side of the pit. Measure the distance between the ends of the boards to determine the length of the water surface below.

5. Step Five: Determine whether an adequately consistent set of data has been obtained in accordance with (e)5 i and ii below.

i. Calculate the permeability for each time interval using the following equation:

$K_a = (h_{rise}/t) \times [A_{av.}/2.27\ (H^2\text{-}h^2)] \times 60$ min/hr

where:

$K_a$ = permeability, in inches per hour;

$h_{rise}$ = difference in depth to water level at the beginning and end of the time interval, in inches;

$t$ = length of time interval, minutes;

$A_{av.}$ = average of water surface area at the beginning of time interval (end of previous time interval) and at the end of the time interval, in square feet;

$H$ = difference between depth to assumed static water level and actual or assumed depth to impermeable stratum, in feet (Depth to impermeable stratum, if unknown, is assumed to be one and one-half times the depth of the pit.); and

$h$ = difference between average depth of water levels at beginning and end of time interval and actual or assumed depth to the impermeable stratum, in feet.

ii. If the calculated values of $K_a$ for successive time intervals show either an increasing or a decreasing trend, repeat Steps Three and Four until consecutive values of $K_a$ are approximately equal.

6. Step Six: Remove as much water as possible from the pit. Continue excavating the pit until an impermeable stratum is encountered or as deep as possible considering the limitations of the excavating equipment used and the nature of the soil conditions encountered. Where no impermeable stratum is encountered, the impermeable stratum shall be assumed to be at the bottom of the excavation.

7. Step Seven: Immediately place upright in the pit a piezometer consisting of a perforated pipe, three inches in diameter or larger, of sufficient length to extend from the bottom of the pit to above the ground surface. Cap and hold the piezometer vertical while backfilling the pit. When the pit is almost completely filled and the piezometer is secure in its position, record the height of the piezometer above the reference level. Finish backfilling the pit and mound soil around the piezometer and over the pit to divert surface water.

8. Step Eight: Return 24 hours or more later and record the depth from the top of the piezometer to the static water level. Correct this depth by subtracting from it the height of the piezometer above the reference level measured in Step Seven.

9. Step Nine: Re-calculate the permeability, K, using the following formula:

$K = (h_{rise}/t) \times [A_{av.}/2.27\ (H^2\text{-}h^2)] \times 60$ min/hr

where:

$K$ = permeability, inches per hour;

The values of $h_{rise}$, t, and $A_{av.}$ are the values recorded for these parameters in the last time interval of Step Four of this subsection;

$H$ = difference between depth to actual corrected static water level and actual or assumed depth to impermeable stratum, recorded in Steps Six and Eight, in feet; and

$h$ = difference between the average depth of water levels at the beginning and end of the last time interval recorded in Step Four and the actual or assumed depth to the impermeable stratum recorded in Step Six, in feet.

(d) When the permeability calculated in Step Eight of (c) above is slower than 0.2 inch per hour, the horizon(s) being tested shall be considered a hydraulically restrictive horizon and shall not be considered an acceptable zone of wastewater disposal.

(e) When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered to be monitoring wells requiring installation by a licensed well driller and a permit issued by the Department pursuant to State law (N.J.S.A. 58:4-1 et seq.). The applicant shall contact the Department for a determination of whether or not a permit is required.

7:9A-6.6 Piezometer test

(a) The following equipment is required for the piezometer test:

1. A screw type soil auger, minimum of one inch in diameter, with extensions;

2. A piezometer tube consisting of a metal pipe beveled on the outside lower edge, with an inside diameter about one-sixteenth of an inch larger than the diameter of the soil auger;

3. A maul or hammer, to drive pipe into the ground;

4. A pump with tubing, to evacuate water from piezometer tube;

5. A stop watch;

6. A means for accurately measuring the water level within the piezometer tube as a function of time, which may consist of one of the following:

i. A light-weight rod with measuring scale mounted on a cylindrical float with a diameter one-quarter inch or more smaller than the inside diameter of the piezometer tube;

ii. An electric probe consisting of a thin wire embedded in and protruding from the tapered end of a wooden rod, graduated in inches, and connected in series to a limiting resistor, a millimeter and a 33-volt hearing-aid battery, the opposite terminal of which is connected to the piezometer tube; or

iii. For depths greater than six feet, an electric sounder or the "wetted tape" method should be used.

(b) The following procedure shall be used for the piezometer test:

1. Step One: Remove any sod, vegetation or leaf litter from the ground surface where the test hole will be excavated. The test hole may be excavated from the existing ground surface or from the bottom of a larger excavation or soil profile pit.

2. Install the piezometer in accordance with Step Two A and Two B outlined in (b)2 i and ii below or Alternate Step Two outlined in (b)2 iii below.

i. Step Two A: Using the soil auger, drill the test hole down to a depth of six inches. Remove the auger and drive the piezometer tube into the hole to a depth of five inches. Re-insert the soil auger through the piezometer tube and into the test hole and drill down six inches further. Remove the soil auger, drive the piezometer tube six inches deeper, re-insert the auger and drill six inches deeper, repeating this procedure until the test hole reaches the top of the soil horizon or zone within a soil horizon to be tested.

ii. Step Two B: Using the soil auger, extend the test hole exactly four inches below the bottom of the piezometer tube (see Figure 9 of Appendix A). In coarse-textured soils lacking cohesion, where the unlined cavity at the bottom of the test hole may be unstable, use a piezometer tube with closely spaced perforations in the lower four inches of its length and drive the tube down to the bottom of the test hole.

iii. Alternate Step Two: Power equipment may be used in lieu of the hand auger to drill the test hole and install the piezometer casing provided that the casing fits tightly into the hole or the installation is sealed with bentonite so that leakage does not occur around the outside of the casing and provided that a suitable unlined cavity is provided at the bottom of the bore hole as required in Step Two B above.

3. Step Three: Allow the lower portion of the test hole to fill with ground water and pump the water out one or more times to minimize the effect of soil puddling and to flush the soil pores in the unlined portion of the test hole.

4. Step Four: Allow the water level to rise within the piezometer until the water level becomes relatively stable. Note the approximate rate of rise and record the static water level using the top of the piezometer tube as a reference point.

5. Step Five: Pump most of the water out of the piezometer tube. Record the time and the depth of the water level below the top of the tube. After an appropriate interval of time, record the new depth of the water level. Choose the length of the time interval based upon the rate of rise observed in Step Four so that the difference in water levels at the beginning and end of the time interval will be large enough to permit an accurate measurement, but do not allow the water level to rise to within eight inches of the static level determined in Step Four.

6. Step Six: Repeat Step Five of this subsection, lowering the water level to approximately the same depth and using the same time interval, until consistent results are obtained.

7. Step Seven: Allow the water level in the piezometer tube to rise and, a minimum of 24 hours later, record the depth of the water table for use in the calculation of permeability.

(c) The permeability of the soil horizon tested shall be determined as follows:

1. Step One: Determine the value of the A-parameter from Figure 10 of Appendix A based upon D, the diameter of the soil auger (or drill bit).

2. Step Two: Calculate the permeability, K, in inches per hour, using the following formula:

$K = 60 \text{ min/hr} \times (3.14R^2)/At \times \ln (d_1-D_{stat}/d_2-D_{stat})$ where:

K = the permeability of the soil horizon tested, in inches per hour;

R = the inside radius of the piezometer tube, in inches;

ln = the natural logarithm;

$D_{stat}$ = the depth of the static water level below the top of the piezometer tube determined in Step Seven, in inches;

$d_1$ = depth of the water level below the top of the piezometer tube at the beginning of the last time interval, in inches;

$d_2$ = depth of the water level below the top of the piezometer tube at the end of the last time interval, in inches;

t = length of time interval, in minutes; and

A = value determined in Step One above, in inches.

(d) When the permeability calculated in (c)2 above is less than 0.2 inch per hour, the horizon or substratum in question shall be considered hydraulically restrictive and shall not be considered an acceptable zone of wastewater disposal.

(e) When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test, except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered monitoring wells which require installation by a licensed well driller and a permit issued by the Department pursuant to N.J.S.A. 58:4A-6 et seq. The applicant is responsible for contacting the Department for a determination of whether or not a permit is required.

7:9A-6.7 Basin flooding test

(a) The following equipment is required for basin flooding test:

1. Excavating equipment capable of producing a test basin as prescribed in (b) below;

2. A water supply (minimum of 375 gallons per basin filling); and

3. A means for accurately measuring the water level within the basin as required in (c) below.

(b) A test basin meeting the following requirements shall be excavated within or immediately adjacent to the proposed disposal field.

1. The bottom of the test basin shall be at a depth between six and eight feet below the bottom of the proposed level of infiltration.

2. The bottom area of the basin shall be a minimum of 50 square feet.

3. A soil profile pit excavated as prescribed in N.J.A.C. 7:9A-5.2 may be utilized for this test provided that the requirements of (b)1 and 2 above are satisfied.

4. The bottom of the basin should be made as level as possible so that high areas of rock do not project above the water level when the basin is flooded as prescribed in (c) below.

5. If ground water is observed within the test basin, the basin flooding test shall not be used.

(c) The following test procedure shall be used for the basin flooding test:

1. Step One: Fill the test basin with exactly 12 inches of water and record the time. Allow the basin to drain completely. If the time required for the basin to drain completely is greater than 24 hours, the test shall be terminated and the limiting zone in question shall be considered to be a massive rock substratum.

2. Step Two: If the basin drains completely within 24 hours after the first flooding, immediately refill the basin to a depth of 12 inches and record the time. If the basin drains completely within 24 hours of the second filling, the limiting zone in question shall be considered to be fractured rock substratum. If water remains in the basin after 24 hours the limiting zone in question shall be considered to be a massive rock substratum.

(d) Due to the potential safety hazards which are posed by the excavation of a large test basin such as that required for this test, adequate safety measures shall be taken including the use of stepped and sloped sidewalls as shown in Figure 2 of Appendix A to permit safe access to the test basin during the test procedure as well as the use of warning signs or a fence to limit access to the basin by the public during periods when the basin is left unattended, or both.

(e) The basin flooding test shall not be conducted in rock strata which have been blasted with explosives.

## SUBCHAPTER 7. GENERAL DESIGN AND CONSTRUCTION REQUIREMENTS

7:9A-7.1 Design requirements

(a) An engineer who is licensed in the State of New Jersey shall design all individual subsurface sewage disposal systems.

(b) The engineer shall take into consideration slope, surface drainage, soil characteristics, the presence and depth of limiting zones within the soil, soil permeability, type of wastes and the expected volume of sanitary sewage in the design of all individual subsurface sewage disposal systems.

(c) Individual subsurface sewage disposal systems shall not be designed in a manner that will permit a direct discharge of sanitary sewage or septic tank effluent onto the surface of the ground, into a subsurface drain, or into any water course.

7:9A-7.2 Construction

(a) The system and all its component parts shall be constructed and installed to conform in all details to the requirements set forth in this chapter and to the engineering design which has been approved by the administrative authority. Departures from the approved design which become necessary due to circumstances which arise during construction and installation shall be approved by the design engineer and the administrative authority and shall meet or exceed the requirements of this chapter.

(b) Construction and installation shall be performed in such a manner that the capacity of the soil or fill material to adequately absorb or purify the septic tank effluent is not adversely affected.

7:9A-7.3 Type of wastes

(a) The system(s) shall be designed to receive all sanitary sewage from the building served except in the following cases:

1. Separate systems may be designed to receive only greywater, or only blackwater, as allowed in N.J.A.C. 7:9A-7.5.

2. Laundry wastes may be discharged into a seepage pit when approved by the administrative authority as a means of reducing hydraulic loading on an existing disposal field which has been malfunctioning.

(b) Drainage from basement floors, footings or roofs shall not enter the individual subsurface sewage disposal system and shall be diverted away from the area of the disposal field. Backwash from water softeners shall not be disposed of within the system but may be discharged into a drywell located away from the area of the disposal field.

(c) Discharge of industrial wastes onto the land, into the soil, or into the ground water is prohibited. The administrative authority shall not approve any system serving any establishment engaged in activities such as photo-processing, dry-cleaning, printing, furniture stripping and refinishing, manufacturing, automobile painting, or any other process or activity which may result in discharge of industrial wastes into the system, without prior approval from the Department. Where doubt exists as to whether or not a waste generated by a particular facility may be considered as an industial waste, the administrative authority shall instruct the applicant to contact the Department for a determination of whether or not a NJPDES permit will be required.

(d) The administrative authority shall report to the Department any discharge of industrial wastes into an individual subsurface sewage disposal system. Use of sewage system cleaners which contain restricted chemical materials shall be considered to be a discharge of industrial wastes and is prohibited.

7:9A-7.4 Volume of sanitary sewage

(a) Each component of the individual subsurface sewage disposal system shall be designed and constructed to adequately treat and dispose of the expected volume of sanitary sewage to be discharged from the premises to be served. The expected volume of sanitary sewage from private residential sources shall be determined based on the criteria set forth in (b) below. The expected volume of sanitary sewage from commerical or institutional establishments shall be determined based on the criteria set forth in (c) below.

(b) The criteria for estimating the volume of sanitary sewage from private residential sources shall be as follows:

1. The daily volume for each bedroom or dwelling unit shall be:

| | |
|---|---|
| Volume, first bedroom | 200 gallons per day ("gal/day") |
| Volume, each additional bedroom | 150 gal/day |
| Minimum volume per dwelling unit | 350 gal/day |
| Minimum volume per apartment | 350 gal/day |

2. The minimum volume for a dwelling unit shall be reduced to 200 gallons per day in the case of deed restricted senior citizen communities or mobile home parks with dwelling units less than 500 square feet in size.

(c) The volume of sanitary sewage for commercial or institutional establishments shall be based upon the type and size of the facility, the type and number of plumbing fixtures present or proposed, and the maximum expected number of persons that may be served during any single day of operation. The volume shall be estimated as follows:

1. Depending upon the method of estimation selected from (d) below, multiply the number of gallons per person (user) by the maximum expected number of persons per day, or multiply the number of gallons per facility (unit) per day by the number of facilities (units) present or proposed.

2. When employees will be present at the establishment, estimate the maximum number of employees which may be present during a single day of operation and add an additional 15 gallons per employee per eight hour shift, except where otherwise indicated.

(d) The criteria listed below are minimum standards for average facilities of the categories listed. In cases where a facility does not fall within any of the categories listed or where actual water use data is available relating to the facility, the administrative authority may approve the use of other documented criteria provided that the value used for design is at least 50 percent greater than the average daily volume of sewage.

| Type of Establishment | Method of Estimation (gallon per user or gallon per unit per day) |
|---|---|
| 1. Airport | 5 gal/passenger |
| 2. Assembly Hall | 3 gal/seat/day |
| 3. Auto Service Station | 10 gal/car served |
| 4. Bar | 5 gal/patron |
| 5. Bathhouse with shower | 25 gal/person |
| without shower | 10 gal/person |
| 6. Beach Club | 25 gal/person |
| 7. Beauty Salon | 120 gal/sink/day |
| 8. Boarding House, Meals | 75 gal/guest[2] |
| | 15 gal/non-resident boarder |
| 9. Bowling Alley, no food | 125 gal/lane/day |
| with food, add | 5 gal/patron |
| 10. Bus Stop Rest Area | 5 gal/passenger |
| 11. Cafeteria | 5 gal/customer |
| 12. Camp, Cottage (barracks type) | 65 gal/person |
| 13. Camp, Day, no meals | 20 gal/person |
| 14. Camp, Resort | 100 gal/site/day[2] |
| 15. Camp, Trailer | 100 gal/site/day[2] |
| with toilets, add | 10 gal/person/day |
| 16. Church, with or without kitchen | 3 gal/seat/day |
| 17. Cocktail Lounge | 5 gal/customer |
| 18. Coffee Shop | 5 gal/customer |
| 19. Comfort Station/Picnic Grounds, with toilets | 10 gal/person |
| with toilets and showers | 15 gal/person |
| 20. Cottages | 100 gal/person[2] minimum 350 gal/dwelling unit/day |
| 21. Country Club | 60 gal/member/day |
| | 25 gal/non-member |
| 22. Dining Hall | 5 gal/customer |
| 23. Dormitory, Bunkhouse | 40 gal/bed/day |
| 24. Factory/Industrial Building | 15 gal/employee per eight hour shift |
| with showers, add | 15 gal/employee per eight hour shift |
| 25. Hospital, Medical | 250 gal/bed/day |
| 26. Hospital, Mental | 150 gal/bed/day |
| 27. Hotels | 130 gal/room/day |
| 28. Institution, Other than hospital | 150 gal/bed/day |
| 29. Laundry, Self-service | 50 gal/wash |
| 30. Motel | 130 gal/room/day |
| 31. Nursing/Rest Home | 150 gal/bed/day |
| 32. Office Buildings | 15 gal/employee per eight hour shift or 0.125 gal/$ft^2$, whichever is greatest |
| 33. Prison | 150 gal/inmate/day |

| | |
|---|---|
| 34. Restaurant | |
| sanitary wastes only | 5 gal/patron |
| kitchen wastes, add | 5 gal/patron |
| 35. Rooming House, no meals | 65 gal/bed/day |
| 36. School, Boarding | 100 gal/student/day |
| 37. School, Day | |
| No cafeteria or showers | 10 gal/student/day |
| Cafeteria only | 15 gal/student/day |
| Cafeteria and showers | 20 gal/student/day |
| Cafeteria, showers and laboratories | 25 gal/student/day |
| 38. Shopping Center | 0.125 gal/square ft./day[1] |
| 39. Stadium | 3 gal/seat/day |
| 40. Store | 0.125 gal/square ft./day[1] |
| 41. Swimming Pool | 10 gal/person |
| 42. Theater, Indoor | 3 gal/seat/day |
| 43. Theater, Outdoor | 10 gal/parking space |
| 44. Visitor Center | 5 gal/visitor |

(1) Volume of sanitary sewage for employees included within method of estimation indicated.

(2) If laundry wastes are anticipated, increase the estimated flow by 50 percent.

7:9A-7.5 Separate disposal of greywater and blackwater

A greywater system may be approved by the administrative authority provided that all of the requirements of these standards are satisfied and provided that an acceptable means for disposal of the blackwater from the building served is indicated in the system design. When the blackwater from the building served by a greywater system is to be disposed of into a waterless toilet, a variance from the Uniform Construction Code, Plumbing sub-code, N.J.A.C. 5:23-3.5, must be obtained by the applicant prior to approval of the greywater system by the administrative authority and the volume of sanitary sewage to be used in the design of the greywater system shall be determined as prescribed in N.J.A.C. 7:9A-7.4. When the blackwater from the building served by a greywater system is to be disposed of into a separate subsurface sewage disposal system, the blackwater system shall meet all the requirements of this chapter and the volume of sanitary sewage used in the design of both the greywater system and the blackwater system shall be a minimum of 75 percent of the volume of sanitary sewage determined as prescribed in N.J.A.C. 7:9A-7.4.

7:9A-7.6 Type of system

Each system approved by the administrative authority pursuant to this chapter shall consist of a septic tank which discharges effluent through a gravity flow, gravity dosing or pressure dosing network to a disposal field as hereafter described. Seepage pits shall not be approved for new installations except in the case of a greywater system as provided by in N.J.A.C. 7:9A-7.5. Installation of a seepage pit may be approved as an alteration for an existing system subject to the requirements of N.J.A.C. 7:9A-3.3.

7:9A-7.7 Building sewer

The building sewer shall be designed and constructed in accordance with the provisions of the State Uniform Construction Code, N.J.A.C. 5:23, adopted pursuant to the Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq.

SUBCHAPTER 8. PRETREATMENT UNITS

7:9A-8.1 Grease traps

(a) Restaurants, cafeterias, institutional kitchens and other installations discharging large quantities of grease shall use a grease trap. A garbage grinder shall not be used when a grease trap is required.

(b) The grease trap shall be installed in a separate line serving that part of the plumbing system into which the grease will be discharged. The grease trap shall be located close to the source of the wastewater, where the wastewater is still hot, to facilitate separation. Grease traps shall be located, designed and constructed in a manner that will permit easy access and cleaning.

(c) The following equation shall be used to determine the minimum size required for grease traps serving restaurants:

$$Q = (D) \times (HR/2) \times (12.5) \times (LF), \text{ where:}$$

Q = size of grease trap in gallons;
D = number of seats in dining area;
HR = number of hours open per day; and
LF = loading factor depending on restaurant location:
1.25 for interstate freeways;
1.0 for other freeways;
1.0 for recreation areas;
0.8 for main highways;
0.5 for other highways.

(d) The following equation shall be used to determine the minimum size required for grease traps serving cafeterias and institutional kitchens:

$$Q = (M) \times (11.25) \times (LF), \text{ where:}$$

Q = size of grease trap, gallons;
M = total number of meals served per day; and
LF = loading factor depending on type of facilities present:
1.0 with dishwashing;
0.5 without dishwashing.

(e) In no case shall a grease trap serving a restaurant, cafeteria or institutional kitchen be smaller than 750 gallons in capacity.

(f) The minimum requirements for construction, materials and foundations of grease traps shall be the same as those required for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2.

(g) The inlet and outlet of the grease trap shall be provided with "T" baffles extending to a depth of 12 inches above the tank floor and well above the liquid level.

(h) To facilitate maintenance, manholes extending to finished grade shall be provided. Covers shall be of gas-tight construction and shall be designed to withstand expected loads and prevent access by children.

7:9A-8.2 Septic tanks

(a) The use of a septic tank shall be required for all subsurface wastewater disposal systems. Use of an aerobic treatment unit or any other device in lieu of a septic tank shall not be approved by the administrative authority without prior approval by the Department.

(b) The minimum capacity of the septic tank shall be determined in accordance with the following criteria:

1. When serving single family dwelling units, septic tanks shall have the minimum capacity of 250 gallons per bedroom. Expansion attics shall be considered additional bedrooms. In no case shall the capacity be less than 1000 gallons.

2. When serving installations other than single family dwelling units, the minimum capacity shall be 1.5 times (150 percent) the volume of sanitary sewage, Q, when Q, determined as prescribed in N.J.A.C. 7:9A-7.4, in less than 1,500 gallons per day. When Q is greater than 1,500 gallons per day, the minimum capacity in gallons shall be 1,125 plus 0.75Q. In no case shall the capacity be less than 1000 gallons.

3. Two or more septic tanks may be connected in series in order to obtain the minimum required liquid capacity providing that each tank is at least as large as the succeeding tank. When a multiple compartment tank is used, the requirements of (d)3 below shall be satisfied.

(c) When domestic garbage grinder units are installed or contemplated, a multiple compartment septic tank is required and the liquid capacity of the septic tank(s), exclusive of air space, shall be at least 50 percent greater than the minimum capacity required in (b)1 above.

(d) Multiple compartment septic tanks shall be required for institutional and commercial installations where the daily volume of sewage determined as prescribed in N.J.A.C. 7:9A-7.4 is greater than 1000 gallons. When multiple compartment tanks are used the following shall be required:

1. The total capacity of multiple compartment tanks shall not be less than 1000 gallons. The first compartment shall have a liquid capacity of two-thirds the total required liquid capacity determined as prescribed in (b) above.

2. Not more than two compartments shall be provided in tanks having liquid capacities of less than 1250 gallons. Tanks having liquid

capacities of over 1250 gallons may be provided with more than two compartments.

3. Multiple compartments may be provided by partitions within a single tank as shown in Figure 11 of Appendix A, or by connecting individual tanks in series. When a single partitioned tank is used, vent holes shall be provided near the top of each partition to allow free exchange of evolved gases between compartments and the two compartments shall be connected by means of a pipe tee, baffle or septic solids retainer, as shown in Figure 11.

(e) Septic tanks shall be designed and constructed according to the following requirements:

1. Septic tanks shall be water-tight and constructed of sound and durable materials which are resistant to corrosion, decay, frost damage or to cracking or buckling due to settlement or backfilling. All joints below the liquid level of the tank or below the seasonally high water table shall be provided with a permanent water-tight seal.

2. Covers shall be designed and constructed so as not to be damaged by any load which is likely to be placed on them. Precast slabs used as covers shall be water-tight, a minimum of three inches in thickness and adequately reinforced.

3. The walls and base of poured-in-place concrete tanks shall not be less than six inches in thickness. The sides and bottom of precast concrete tanks shall be a minimum of three inches in thickness and shall be adequately reinforced.

4. Concrete used in the construction of septic tanks shall conform to the American Concrete Institute (ACI) standards for frost resistance (ACI 318-16-4.5.1) and water-tightness (ACI 318-16-4.5.2). In the case of built-in-place tanks, certification that these standards have been met shall be provided by the design engineer and the certification shall be signed, sealed and attached to the approved engineering design. In the case of precast tanks, certification shall be provided by the manufacturer and the certification displayed on the tank.

5. All inside concrete surfaces shall be sealed with two coatings of a bituminous coating to minimize corrosion. Coating of pre-cast tanks shall be applied by the manufacturer prior to delivery to the job site.

6. The base of poured-in-place tanks shall be cast in one piece and shall extend beyond the side and end walls of the tank. Such tanks shall not be emplaced until 48 hours after the base has been poured.

7. Pre-fabricated polyethylene septic tanks shall conform with the standards for materials, wall thickness, fastening of fittings and maximum deformation under load as prescribed by the Canadian Standards Association in CSA Standard CAN3-B66-M79.

8. Pre-fabricated fiberglass septic tanks shall conform to ASTM Standard D4021.

(f) A pre-fabricated septic tank constructed of any material which may be floated or shifted by water or ground cave-in shall be filled with water immediately after it is set in its proper position. When a septic tank is installed below or partially below the level of the seasonally high water table, the design engineer shall show by means of appropriate calculations that the tank is of sufficient weight or will be otherwise secured or anchored so that it will not shift or float if emptied during the time of seasonally high groundwater. Perforating or otherwise damaging the water-tight integrity of a septic tank for the purpose of installation below the water table is prohibited.

(g) Septic tanks shall be placed upon a firm and stable foundation so that the potential for uneven settlement or shifting is minimized. Tanks shall be constructed or installed directly on undisturbed natural soil. If the excavation is dug too deep, it shall be backfilled to the proper elevation with sand. When the tank must be constructed or installed on a layer of fill material greater than one foot in thickness, the fill shall be properly emplaced and compacted as prescribed in N.J.A.C. 7:9A-10.4(f)3.

(h) Metal septic tanks are prohibited. Septic tanks may be constructed of the following materials:

1. Poured-in-place concrete;
2. Precast reinforced concrete;
3. Fiberglass;
4. Polyethylene; or
5. Other materials as approved by the Department.

(i) Septic tanks shall conform to the following specifications:

1. The depth below the liquid level of the tank shall not be less than 36 inches or more than 72 inches.

2. Inlets and outlets shall be arranged so that all flow is directed along the longest horizontal dimension of the tank.

3. Tanks which are rectangular in cross-section shall have an inside length at least twice the inside width. The inside length, measured from the inlet side to the outlet side, shall not be less than 72 inches. The inside width of the tank shall not be less than 36 inches.

4. Upright cylindrical tanks shall have a minimum diameter of 52 inches. Horizontal cylindrical tanks shall have a minimum length of 72 inches and a minimum width at the liquid level of 36 inches.

(j) Inlets and outlets of septic tanks shall conform to the following specifications:

1. Inlet and outlet connections of each tank or compartment shall be arranged so as to obtain effective retention of scum and sludge and shall be fastened with and constructed of, or coated with, materials which are resistant to corrosion by sulfuric acid. Where pipe tees are used, the tees shall be sanitary tees and shall be installed in a manner that will provide a lasting water-tight seal between the tee and the wall of the tank. For this purpose, a manufactured water-proof pipe coupling which is incorporated into the wall of the tank may be used, or an expanding grout which will adhere both to the tee and to the body of the tank where the tee is installed.

2. A baffle or a pipe tee, not less than four inches in diameter, is required at the inlet of the tank. The bottom of the baffle or the bottom of the vertical leg of the tee shall extend below the liquid level a distance equal to 25 percent of the liquid depth. The invert elevation of the inlet shall not be less than two inches higher than the invert elevation of the tank outlet or the outlet of the first compartment. The inverts of the inlets of subsequent compartments shall be a minimum of one inch higher than their outlets.

3. Outlet connections of the tank or each compartment thereof shall be provided with a tee not less than four inches in diameter or a durable baffle equivalent in size. They shall be permanently fastened in place with the bottom opening extending below the liquid level by a distance equal to 25 percent of the total liquid depth. Outlet baffles or tees shall be provided with a gas deflection baffle installed as shown in Figure 12 of Appendix A. In lieu of a baffle or tee connection, an alternative device such as a septic solids retainer may be used provided that this device bears the seal of the National Sanitation Foundation ("NSF") certifying that the device has been approved by NSF for the specific use proposed and provided that the installation conforms to the manufacturer's recommendations. Where a septic solids retainer is used, a gas deflection baffle is not required.

(k) The space between the liquid surface and the top of the outlet tee or baffle shall not be less than 15 percent of the total liquid depth.

(l) Access openings for septic tanks shall meet the following requirements:

1. Each septic tank or each compartment of a multiple compartment tank shall be provided with at least one access opening which shall be a manhole a minimum of 20 inches square or 20 inches in diameter.

2. All manholes shall be extended flush with finished grade by means of a riser fitted with a removable water-tight cover. Covers shall be bolted or locked to prevent access by children. Covers shall be of cast-iron when a concrete riser is used.

3. An inspection port extending to finished grade shall be provided over each tank or compartment inlet and outlet which is not directly below a manhole except for those outlets where a septic solids retainer is used. Inspection ports shall extend to finished grade, shall be constructed of four inch cast iron or Polyvinyl Chloride (PVC), and shall have a locked or bolted cap.

4. Manhole risers and inspection ports on fiberglass or polyethylene tanks shall be constructed of the same material as the tank.

(m) Backfill around septic tanks shall be free of large stones, roots or foreign objects, shall be placed in thin layers, not to exceed eight inches, and shall be thoroughly tamped in a manner that will not produce undue strain on the tank. In the case of pre-fabricated plastic or fiberglass tanks, backfill shall be no thicker than the maximum depth recommended by the manufacturer.

SUBCHAPTER 9. EFFLUENT DISTRIBUTION NETWORKS

7:9A-9.1 General requirements for effluent distribution

(a) Discharge of effluent from the septic tank or grease trap to the disposal field and distribution of effluent within the disposal field shall be accomplished by one of the following methods:

1. The gravity flow method whereby the pretreatment unit discharges directly to a single distribution lateral, an inter-connected network of distribution laterals or to a distribution box discharging to two or more individual distribution laterals;

2. The gravity dosing method whereby the pretreatment unit discharges to a dosing tank with a pump or siphon which in turn discharges to a single distribution lateral, an inter-connected network of distribution laterals or to a distribution box discharging to two or more individual distribution laterals; or

3. The pressure dosing method whereby the pretreatment unit discharges to a dosing tank with a pump or siphon which in turn discharges to an inter-connected network of distribution laterals designed to discharge effluent under pressure.

(b) Each lateral in the distribution network shall receive an equal hydraulic loading. The use of serial distribution is prohibited.

(c) The use of gravity flow is restricted to those cases where less than 600 linear feet of distribution laterals are used and where the relative locations and elevations of the system components will allow gravity flow from the building sewer to the pretreatment unit and on through the distribution network.

(d) Alternating siphons or pumps may be used to alternately dose and rest two or more disposal fields provided that no field or portion of a field receives more than the maximum daily hydraulic loading rate allowed in N.J.A.C. 7:9A-10.2. Soils with a permeability faster than six inches per hour or a percolation rate faster than 15 minutes per inch shall not be rested for periods longer than one day unless pressure distribution is used and shall not receive more than 25 percent of the maximum allowed daily hydraulic loading in a single dose.

7:9A-9.2 Dosing tanks

(a) A dosing tank using a siphon or pump is required for systems using gravity or pressure dosing and shall meet the requirements of (b) through (f) below.

(b) The minimum capacity of dosing tanks using pumps shall be determined as follows:

1. Dosing tanks using pumps shall have sufficient capacity to distribute septic tank effluent equally to all parts of the disposal field during each dosing cycle and to provide adequate reserve storage capacity in the event of a pump malfunction. The total liquid capacity shall be great enough to accommodate the minimum required dose volume determined as prescribed in (b)2 below, plus the minimum required reserve storage capacity determined as prescribed in (b)3 below. Additional volume must be provided above the pumping level to accommodate the volume of water displaced by the pump and controls as well as any quantity of effluent which will drain back into the dosing tank when the pump shuts off at the end of a dosing cycle. Additional volume must be provided below the pumping level so that the pump may be placed on a pedestal, above the dosing tank bottom, to prevent the pump from drawing in air or whatever solids may accumulate in the bottom of the dosing tank.

2. The dose volume shall be determined based upon the soil permeability or percolation rate, daily volume of sewage (Q) and the total internal volume of the distribution network (V), as shown below. In the case of pressure dosing systems, the volume of the distribution network, V, shall include the volume of the delivery pipe, the manifold and the laterals.

| Soil Permeability (in/hr) | Percolation Rate (min/in) | Required Dose Volume Gravity Dosing | Required Dose Volume Pressure Dosing |
|---|---|---|---|
| 6-20 | 3-15 | minimum of 75 percent V,[1] maximum of 25 percent Q | minimum of 10V[2] maximum of 25 percent Q |
| 0.2-6 | 15-60 | minimum of 75 percent V maximum of 100 percent Q | minimum of 10V maximum of 100 percent Q |

[1]In cases where 75 percent V is larger than 25 percent Q, the 25 percent Q maximum rather than the 75 percent minimum shall be observed.
[2]In cases where 10V is larger than 25 percent Q, the 25 percent Q maximum rather than the 10V minimum shall be observed.

3. Reserve capacity is the inside volume of the dosing tank which lies between the level at which the high-water alarm switch is set and the invert elevation of the tank inlet, as shown in Figure 13 of Appendix A. A minimum reserve capacity equal to the daily volume of sewage shall be required except where a stand-by pump is provided which is equivalent in performance capacity to the primary pump and which will switch on automatically in the event that the primary pump malfunctions.

(c) The capacity of dosing tanks using siphons shall be adequate to provide the required dose volume determined as prescribed in (b)2 above. No reserve capacity is required when a siphon is used.

(d) All dosing tanks shall meet the following requirements regardless of whether a pump or siphon is used.

1. The requirements for the construction of dosing tanks shall be the same as those prescribed for septic tanks in N.J.A.C. 7:9A-8.2(e). Dosing tanks may be constructed as a separate unit or may share a common wall with the pretreatment unit.

2. Materials used for the construction of dosing tanks shall be the same as those allowed for septic tanks as prescribed in N.J.A.C. 7:9A-8.2(h).

3. Dosing tanks shall be constructed in a manner that will permit venting of the disposal area.

4. Installation requirements for pre-fabricated dosing tanks shall be the same as those for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2(f).

5. Dosing tanks shall be placed on a firm and stable foundation so that the potential for differential settling or shifting is minimized.

6. Inlets shall be above the highest water level attained when the entire reserve capacity is full. Outlets for dosing tanks using siphons shall conform with the manufacturer's recommendations.

7. Dosing tanks shall be readily accessible for service and repair. A removable water-tight cover or a manhole with a removable water-tight cover shall be provided. Manholes shall be a minimum of 20 inches in diameter or 20 inches square and shall be located directly over the pump or siphon. The top of the tank or manhole riser shall be extended to or above finished grade and the cover shall be bolted or locked to prevent access by children. When a concrete riser is used, the cover shall be of cast-iron.

8. Requirements for backfilling around dosing tanks shall be the same as for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2(m).

(e) Dosing may be accomplished by means of an automatic siphon when the low water level in the dosing tank is at a higher elevation than the invert of the highest distribution lateral. When a siphon is used the following requirements shall be met:

1. Siphons shall be constructed of durable materials not subject to corrosion by acid or alkali.

2. Extreme care shall be utilized in the installation of siphons. The installation shall conform exactly and in all details to the manufacturer's recommendations and specifications.

3. The horizontal dimensions of the dosing tank shall be adjusted so that the volume obtained by multiplying the manufacturer's rated siphon drawing depth by the internal horizontal area of the tank will be equal to the required dose volume determined as prescribed in (b)2 above.

4. When installation is complete, the siphon shall be primed by filling it with water at which time the siphon shall be checked for leaks as evidenced by air bubbles rising from the bell casing or piping. Any leaks shall be repaired before final approval is given.

5. In gravity dosing systems, when the delivery pipe between the dosing tank and the distribution box or distribution network is long, the siphon invert shall be set at an elevation sufficiently higher than the invert of the highest distribution lateral to compensate for any head losses due to friction in the connecting pipe. Friction head shall be determined using Figure 16 of Appendix A.

6. In pressure dosing systems, the invert of the siphon shall be set higher than the invert of the distribution laterals by a distance equal to the total operating head determined as prescribed in N.J.A.C. 7:9A-9.7(a)ii.

7. For facilities from which large quantities of septic tank effluent may be discharged at one time, the design engineer shall make certain that the siphon discharge rate will not be exceeded by the maximum expected rate of inflow at time of peak flow.

8. Each dosing tank shall be equipped with a cycle counter activated by a weighted float or mercury switch to facilitate monitoring of siphon performance.

9. Dosing tanks using siphons shall be equipped with an overflow to the distribution box or distribution network and a high-water alarm meeting the requirements of (f)7iii below. The invert of the overflow shall be just above the level of the high-water alarm switch which shall be several inches above the normal high-water level of the dosing tank.

(f) Dosing may be accomplished by means of a pump when either gravity dosing or pressure dosing is used. Duplicate pumps may be required by the administrative authority. The following requirements shall be met:

1. The pump must be rated by the manufacturer to handle septic tank effluent.

2. Pumps used for gravity dosing systems must be rated by the manufacturer, as indicated by the manufacturer's pump performance curve, to be capable of delivering the total required dose volume within a period of 15 minutes or less when working against a total dynamic head equal to the total design operating head. For the purpose of making this determination, the total design operating head shall be considered as the sum of the elevation head and the friction head calculated as prescribed in N.J.A.C. 7:9A-9.7(a)7.

3. Selection of an adequate pump for pressure dosing is part of the design procedure for pressure dosing systems and shall be performed in conformance with N.J.A.C. 7:9A-9.7(a).

4. Pumps shall be set on a pedestal so that the intake is elevated several inches above the bottom of the dosing tank.

5. Easy or "quick-disconnect" couplings shall be used to facilitate removal of the pump for servicing.

6. For facilities from which large quantities of septic tank effluent may be discharged at one time, the design engineer shall make certain that the pump discharge rate will not be exceeded by the maximum expected rate of inflow at times of peak flow.

7. The operation of the pump shall be controlled by means of automatic switches which are activated by the rising and falling level of effluent in the dosing tank. Such switches shall meet the following requirements:

i. Switches shall be able to withstand the humid and corrosive atmosphere in the dosing tank. Mercury or weighted float type switches are suitable for this purpose. Pressure-diaphragm type switches are prohibited.

ii. The pump-on and pump-off switches shall be set at appropriate levels to provide a dose volume as required in N.J.A.C. 7:9A-9.2(a)2. The pump-off switch shall be set six inches above the pump intake. The pump-on switch shall be set at a distance, d, above the pump-off switch, which is calculated by means of the following formula:

d, in = $(V_d + V_{cp} + V_{pd})$ x (1 $ft^3$/7.48 gal) x (12 in/1 ft)/(A), where:

$V_d$ is the required dose volume, in gallons, determined as prescribed in N.J.A.C. 7:9A-9.2(a)2;

$V_{cp}$ is the internal volume of all pipes which will drain back into the dosing tank at the end of a dosing cycle, in gallons;

$V_{pd}$ is the volume displacement, in gallons, of the pump and controls; and

A is the internal horizontal area of the dosing tank, in square feet.

iii. A high-water alarm switch shall be set four inches above the pump-on switch and shall activate visible and audible alarms which can be readily seen and heard by occupants within the building served. The high-water alarm switch shall meet the same requirements prescribed for pump-control switches in (f)7i above. The alarm and its switch shall not be on the same electrical circuit as the pump and its switches.

iv. All electrical contacts and relays shall be located outside of the dosing tank and a gas-tight seal shall be provided where electrical conduits enter the tank.

v. All electrical service lines from the home or facility to the pump control panel shall be protected by electrical conduit.

7:9A-9.3 Connecting pipes and delivery pipes

(a) Connecting pipes between pretreatment units and dosing tanks, distribution boxes or distribution networks, and delivery pipes discharging effluent from dosing tanks shall be of such size as to serve the connected fixtures but in no case less than three inches in diameter. Delivery pipes from dosing tanks using siphons shall be one nominal size larger than the siphon to facilitate venting.

(b) Delivery pipes for pressure dosing networks shall be constructed of Polyvinyl Chloride (PVC) plastic (ASTM D 2665), schedule 40, SDR-21 or SDR-26; or Acrylonitrile-Butadiene-Styrene (ABS) plastic (ASTM 2661). Connecting pipes may be constructed of any of the following materials:

1. Plastic meeting the following criteria:

i. PVC (ASTM D 2665)—schedule 40, SDR-21 or SDR-26; or

ii. ABS (ASTM 2661).

2. Cast-iron; or

3. Other material acceptable to the administrative authority.

(c) All pipe joints in connecting pipes and delivery pipes shall be made water-tight and protected against damage by roots.

(d) Connecting pipes and delivery pipes shall be laid on a firm foundation satisfactory to the administrative authority.

(e) The alignment and grade of connecting pipes shall meet the following requirements:

i. Connecting pipes shall have a minimum grade of one-quarter inch per foot unless otherwise authorized by the administrative authority.

ii. Connecting pipes shall be laid in a continuous grade and, as nearly as possible, in a straight line. Drop manholes may be installed if found necessary. Horizontal bends, where required, shall not be sharper than 45 degrees. The inside angle between adjacent sections of pipe shall be no less than 135 degrees.

(f) In cases where the delivery pipe from the dosing tank will be installed higher than the maximum expected depth of frost penetration, measures shall be taken, as outlined in this subsection, to insure that the delivery pipe will drain at the end of each dosing cycle.

1. In the case of dosing tanks using pumps, when the low-water level in the tank is lower than the invert of the distribution box or distribution network, the delivery pipe shall be sloped back towards the dosing tank and there shall be no check-valve at the pump so that the delivery pipe will drain back into the dosing tank at the end of each dosing cycle. Also, a one-eighth inch weep hole shall be provided, at the invert of the pump discharge pipe, at a point which is above the high water level in the dosing tank.

2. In the case of dosing tanks using siphons, or when a pump is used and the elevation of the low-water level in the dosing tank is higher than the invert of the distribution box or distribution network, the distribution network must be designed so that the delivery pipe (as well as the manifold pipe, in pressure distribution systems) will drain out through the distribution laterals at the end of each dosing cycle. In the latter case, where a pump is used, a one-eighth inch weep hole shall be drilled in the delivery pipe, at its highest point within the dosing tank, to prevent effluent from siphoning out of the tank between dosing cycles.

7:9A-9.4 Distribution boxes

(a) A distribution box shall be required for all gravity flow systems and all gravity dosing systems where the effluent shall be distributed between two or more distribution laterals which are not inter-connected. The following requirements shall be met:

1. Distribution boxes shall be water-tight and constructed of sound and durable materials which will resist decay or corrosion by sulphuric acid, frost damage, cracking or buckling due to backfilling or other anticipated stresses.

2. The distribution box shall be set perfectly level and shall be installed as follows:

i. In the case of disposal beds, the distribution box shall be installed directly on the filter material within the disposal bed.

ii. In the case of disposal trenches, the distribution box shall be set on a layer of gravel or a concrete footing extending downward below the maximum expected depth of frost penetration. Where gravel is used, the gravel shall extend laterally a minimum of six inches beyond the sides of the distribution box.

3. A separate outlet shall be provided for each distribution lateral. The inverts of all outlets shall be rigidly set at the same level which shall be a minimum of two inches above the bottom of the box. When installation is complete the distribution box shall be filled with water at which time the installation shall be checked to make sure that it is level. Adjustments shall be made as necessary so that all outlets are permanently and securely fixed at exactly the same elevation prior to backfilling.

4. The invert of the inlet shall be at least one inch above the invert of the outlets. Where dosing is employed, or where the connecting pipe from the pre-treatment unit has a steep slope, measures shall be taken to prevent direct flow of effluent across the distribution box resulting in unequal distribution of effluent among the distribution box outlets. This may be accomplished by installation of a baffle or elbow within the distribution box or by use of two distribution boxes connected in series. In the latter case, all outlets of the first distribution box shall be sealed off except for the outlet which discharges to the second distribution box.

5. Distribution boxes shall be provided with a means of access which may be a removable lid in the case of smaller boxes. Access to larger boxes may be provided by means of manholes and inspection ports with removable water-tight covers. In any case, the following requirements shall be met:

i. Access openings must be adequate in size and located to facilitate removal of accumulated solids and inspection of the inlet and all outlets.

ii. All access openings shall be extended to within 12 to 18 inches of the finished grade surface.

iii. Access openings shall be constructed in such a manner as to prevent the entrance of surface water.

7:9A-9.5 Laterals; gravity distribution

(a) Gravity flow networks and gravity dosing networks may consist of a single distribution lateral, two or more laterals connected by means of elbows or tees, or two or more separate distribution laterals connected independently to a distribution box. Distribution laterals shall meet all the following requirements:

1. Distribution laterals shall be a minimum of three inches in diameter.

2. Distribution laterals shall consist of lengths of rigid perforated pipe connected with tight joints.

3. Spacing and arrangement of distribution laterals shall conform with N.J.A.C. 7:9A-10.3(d).

4. Perforations shall be evenly spaced along two rows running the length of the pipe, on each side, midway between the invert and the center-line which separates the upper and lower halves of the pipe. Perforations shall be no smaller than three-eighth inch and no longer than three-quarter inch in diameter.

5. Each individual distribution line shall be approximately level and shall be capped at the end, except where the laterals are connected together by loops. In no case shall the slope of the distribution lines be greater than two inches per 100 feet.

6. An inspection port shall be provided near the end of each lateral or near corners of the distribution network where the laterals are joined in a loop. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

(b) The following materials are acceptable for distribution laterals:

1. Clay pipe, standard and extra strength perforated (ASTM C-211); or

2. Plastic:

i. Acrylonitrile-Butadiene-Styrene (ABS) (ASTM D-2751);

ii. Polyvinyl Chloride (PVC) (ASTM D-2729, D-3033, D-3034);

iii. Styrene-Rubber (ASTM D-2852, D-3298); or

iv. Polyethylene, straight wall (ASTM D-1248).

7:9A-9.6 Pressure dosing networks

(a) Pipe networks for pressure dosing systems shall consist of two or more distribution laterals connected to a central or end manifold. The following requirements shall be met:

1. The size of laterals shall be no less than one but no greater than three inches in diameter and shall be chosen in conformance with N.J.A.C. 7:9A-9.7(a)3. The size of the manifold pipe shall be chosen in conformance with N.J.A.C. 7:9A-9.7(a)5.

2. Spacing and arrangement of laterals shall conform with the requirements of N.J.A.C. 7:9A-10.3(d).

3. All joints and connections shall be water-tight. Solvent-weld joints shall be used.

4. Holes shall be spaced evenly, in a straight line along the invert of each lateral. Hole diameter and spacing may vary from one-quarter to one-half inch and from 30 to 60 inches, respectively, and shall be chosen in conformance with N.J.A.C. 7:9A-13.7(a)2. In bed systems, holes in adjacent laterals shall be off-set by one-half the hole spacing so that the distance between holes in adjacent laterals is maximized.

5. The ends of the laterals shall be capped. A small hole shall be drilled horizontally in the end-cap of each lateral, near the crown, to facilitate venting at the beginning of each dosing cycle.

6. Each individual distribution line shall be approximately level. In no case shall the slope of the distribution lines be greater than two inches per 100 feet.

7. An inspection port shall be provided near the end of each lateral. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

8. Pressure dosing networks shall be constructed of PVC plastic (ASTM D-2662), schedule 40, SDR-21 or SDR-26, or ABS plastic (ASTM 2661) pipe.

7:9A-9.7 Design procedure for pressure dosing systems

(a) The following procedure shall be used for disposal fields consisting of a disposal bed or disposal trenches which are at equal elevations.

1. Step One: Determine the length, number and spacing of distribution laterals based upon the required size of the disposal field, determined as prescribed in N.J.A.C 7:9A-10.2, and the requirements for spacing of disposal trenches or the requirements for spacing of distribution laterals within disposal beds as prescribed in N.J.A.C. 7:9A-10.3(d). The number of distribution laterals will also depend upon whether a central or end manifold arrangement is used.

2. Step Two: Select the hole diameter and spacing. The hole diameter shall be a minimum of one-quarter inch but no larger than one-half inch. The minimum allowed hole spacing shall be 30 inches. The maximum allowed hole spacing shall be 60 inches, except in the case of systems installed in soils or fill material with a permeability faster than six inches per hour or a percolation rate faster than 15 minutes per inch, in which case the maximum allowed hole spacing shall be 36 inches.

3. Step Three: Based upon the hole diameter and hole spacing selected and the length of the laterals, determine the required diameter of laterals using Figure 14 of Appendix A.

4. Step Four: Pressure distribution systems shall be designed so that a minimum pressure head of 2.5 feet shall be maintained at the supply end of the laterals. Based upon the hole diameter and the design pressure head at the supply end of the laterals, determine the hole discharge rate from the table below. Determine the lateral discharge rate by multiplying the hole discharge rate by the number of holes per lateral.

| Pressure Head (ft.) | Discharge Rate (gallons per minute) based on Hole Diameter (inches) | | | | |
|---|---|---|---|---|---|
| | 1/4 | 5/16 | 3/8 | 7/16 | 1/2 |
| 2.5 | 1.18 | 1.85 | 2:66 | 3.63 | 4.73 |
| 3.0 | 1.28 | 1.99 | 2.87 | 3.91 | 5.10 |
| 3.5 | 1.40 | 2.19 | 3.15 | 4.29 | 5.60 |
| 4.0 | 1.47 | 2.30 | 3.31 | 4.51 | 5.89 |
| 4.5 | 1.59 | 2.48 | 3.57 | 4.86 | 6.35 |
| 5.0 | 1.65 | 2.57 | 3.71 | 5.04 | 6.59 |

5. Step Five: Based upon the number of laterals and the lateral spacing, determine the manifold length. Based upon the manifold length, the lateral discharge rate and the number of laterals, using Figure 15 of Appendix A, determine the required manifold diameter.

6. Step Six: Determine the necessary system discharge rate by multiplying the lateral discharge rate by the number of laterals; and

7. Step Seven: For pump systems, select the proper pump as follows:

i. Using Figure 16 of Appendix A, determine the friction head based upon the system discharge rate and the diameter and length of the delivery pipe.

ii. Calculate the total operating head, $H_t$, using the following formula:

$H_t$, ft = $H_f + H_e + H_p$

where:

$H_f$ is the friction head, in feet, determined in (a)7i above;

$H_e$ is the elevation head, in feet, calculated by subtracting the dosing tank low water elevation from the elevation of the invert of the distribution laterals; and

$H_p$ is the design pressure head to be maintained at the supply end of the laterals, in feet.

iii. Choose a pump which is rated by the manufacturer to deliver a flow rate equal to or greater than the system discharge rate calculated in Step Six when working against a total dynamic head equal to the total operating head calculated in (a)7ii above.

8. Alternate Step Seven: For systems using syphons, determine the syphon elevation as follows:

i. Determine the friction head in the delivery pipe as in (a)7i above.

ii. Calculate the velocity head using the following formula:

$H_v$, ft = $(D/A)^2/2g$

where:

D = System Discharge Rate, $ft^3/sec$.

= System Discharge Rate, gpm) × (1 $ft^3$/7.48 gal) × (1 min/60 sec)

A = pipe area, $ft^2$

= [(internal pipe diameter, in/2) × (1 ft/12 in)]$^2$ × (3.14)

g = 32.2 $ft/sec^2$

iii. Calculate the total operating head, $H_t$, by the following equation:

$H_t$, ft = $H_f + H_v + H_p$

where:

$H_f$ is the friction head, in feet, determined from Figure 16 of Appendix A.

$H_v$ is the velocity head, in feet, determined in (a)8ii above.

$H_p$ is the design pressure head to be maintained at the supply end of the laterals, in feet.

iv. Choose a siphon rated to discharge at a flow rate equal to or greater than the system discharge rate. Install the siphon at an elevation such that the siphon invert is higher than the invert of the distribution laterals by a distance equal to the total operating head calculated in (a)7iii above.

(b) If a trench system is proposed where the elevation of the infiltrative surface will not be the same in all trenches, the design engineer must demonstrate by means of appropriate calculations to the satisfaction of the administrative authority, that all portions of all trenches will receive equal hydraulic loading in conformance with the requirements of N.J.A.C. 7:9A-10.2. One way of accomplishing this would be to divide the disposal field into sections consisting of individual trenches or groups of trenches which are at the same elevation and which are dosed individually in conformance with the requirements of this section.

## SUBCHAPTER 10. DISPOSAL FIELDS

### 7:9A-10.1 General design requirements for disposal fields

(a) A disposal field shall be required for all new systems except as allowed in N.J.A.C. 7:9A-7.6, in which case a seepage pit may be approved in lieu of a disposal field. The disposal field shall consist of one or more disposal trenches or a disposal bed designed, constructed and installed as hereafter prescribed.

(b) The disposal field installation shall be such that the disposal field is underlain by a suitable zone of treatment as prescribed in (d) below and a suitable zone of disposal as prescribed in (e) below. Acceptable options for disposal field installation are as follows:

1. Conventional installation: The disposal field shall be installed directly within the native soil and the level of infiltration shall be from one to three feet below the existing ground surface, as shown in Figure 17 of Appendix A.

2. Soil replacement, bottom-lined installation: The excavation for the disposal bed or each individual trench shall be extended below the level of infiltration and back-filled up to the level of infiltration with suitable fill. The disposal bed or trenches shall be installed on top of the fill with the level of infiltration one to three feet below the existing ground surface, as shown in Figure 18 of Appendix A.

3. Soil replacement, fill-enclosed installation: An excavation shall be made below the level of infiltration and extending laterally a minimum of two feet beyond the perimeter of the disposal field on all sides. This excavation shall be back-filled with suitable fill, the disposal bed or trenches installed within the fill, and the level of infiltration shall be one to three feet below the existing ground surface, as shown in Figure 19 of Appendix A.

4. Mounded installation: Fill material shall be placed above the ground surface; the disposal field shall be installed within the fill; and the level of infiltration shall be one to four feet above the existing ground surface (measured on the upslope side of the disposal bed or each individual disposal trench), as shown in Figure 20 of Appendix A.

5. Mounded soil replacement installation: An excavation shall be made below the ground surface; fill material shall be placed within this excavation and mounded up above the existing ground surface; the disposal field shall be installed within the fill; and the level of infiltration shall be between one foot and four feet above the ground surface (measured on the upslope side of the disposal bed or each individual disposal trench), as shown in Figure 21 of Appendix A.

(c) The type of disposal field installation permitted shall be determined based upon the soil suitability class as outlined in Table 10.1, below.

TABLE 10.1 TYPE OF DISPOSAL FIELD INSTALLATION

C = Conventional Installation
SRB = Soil Replacement, Bottom-lined Installation
SRE = Soil Replacement, Fill-enclosed Installation
M = Mound Installation
MSR = Mounded Soil Replacement Installation[1]

| TYPE OF LIMITING ZONE | DEPTH[2], FT. | SUITABILITY CLASS | TYPE OF INSTALLATION PERMITTED[3] |
|---|---|---|---|
| Fractured Rock or | >5 | I | C, (SRB,SRE,M,MSR) |
| Excessively Coarse | 0-5 | IISc | SRE, M, (MSR) |
| Substratum | | | |
| Massive Rock | >9 | I | C, (SRB,SRE,M,MSR) |
| Hydraulically | 4-9 | IISr | M, (MSR) |
| Restrictive Substratum | <4 | IIISr | |
| Hydraulically | >9 | I | C, (SRB,SRE,M,MSR) |
| Restrictive Horizon, | 4-9 | IIHr | SRB, SRE, M, (MSR) |
| Permeable Substratum | <4 | IIIHr | SRB, SRE, (MSR) |
| Excessively | >5 | I | C, (SRB,SRE,M,MSR) |
| Coarse Horizon | 0-5 | IIHc | SRE, M, (MSR) |
| Zone of Saturation, | >5 | I | C, (SRB,SRE,M,MSR) |
| Regional | 2-5 | IIWr | M, (MSR) |
| | <2 | IIIWr | |
| Zone of Saturation, | >5 | I | C, (SRB, SRE,M,MSR) |
| Perched | 2-5 | IIWp | C[4], (SRB[4], SRE,M,MSR) |
| | <2 | IIIWp | C[4], (SRB[4], SRE,M,MSR) |

[1]Mounded soil replacement systems are genrally required only in cases where several limiting zones are present as, for example, in compound soil suitability classes such as IIScWr, IIIHr (IISr) or IIIHr (IIWr).

[2]Depth is measured from the existing ground surface to the top of the limiting zone. In the case of disturbed ground, the depth to the limiting zone shall be measured from the pre-existing natural ground surface, identified as prescribed in N.J.A.C. 7:9A-5.10(c), or the existing ground surface, whichever is lowest.

[3] Installations shown in parentheses are allowed but are generally not the most cost-effective type of installation for the soil suitability class unless other soil limitations are present.

[4] An interceptor drain or other means of removing the perched zone of saturation is required.

Note: In soils with a compound soil suitability class, where more than one limiting zone is present in the soil, a disposal field installation shall not be approved unless the type of installation proposed is listed in Table 10.1 as an acceptable option for each of the soil suitability classes which apply.

(d) A zone of treatment (see Figures 22, 23 and 24 in Appendix A), a minimum of four feet in thickness, shall be present below the disposal field and shall meet all of the following requirements:

1. The zone of treatment shall be composed of suitable soil which meets all of the criteria listed in (d)2 below, suitable fill material which satisfies the requirements of (f) below, or a combination of suitable soil and suitable fill.

2. Suitable soil within the zone of treatment shall meet the following criteria:

i. Coarse fragment content less than 50 percent by volume;

ii. Permeability less than 20 inches per hour and greater than 0.2 inches per hour, or a percolation rate slower than three minutes per inch and faster than 60 minutes per inch.

3. The zone of treatment shall not contain or be interrupted by fractured or massive rock substrata, hydraulically restrictive horizons or substrata, perched zones of saturation or regional zones of saturation. When excessively coarse horizons or substrata are present above, within or below the zone of treatment, these horizons shall not be considered part of the zone of treatment.

4. For design purposes, the top of the zone of treatment shall be considered to be the bottom of the disposal field or the bottom of an excessively coarse horizon when such a horizon is present immediately below the bottom of the disposal field. The bottom of the zone of treatment shall be considered to be whichever of the features listed below occurs at a shallower depth below the disposal field, except that in no case shall the bottom of the zone of treatment extend to a depth greater than eight feet below finished grade.

i. An imaginary horizontal surface at a depth of four feet below the top of the zone of treatment, excluding the thickness of any intervening excessively coarse horizons;

ii. The top of the shallowest limiting zone which is present in the soil below the disposal field; or

iii. The bottom of the shallowest soil profile pit or boring made within the area of the disposal field.

(e) A zone of disposal (see Figures 22, 23 and 24 in Appendix A), a minimum of four feet in thickness, shall be present below the zone of treatment and shall meet all of the following requirements:

1. The zone of disposal shall be composed of native soil or rock material which has a permeability greater than 0.2 inch per hour or a percolation rate greater than 60 minutes per inch;

2. When the permeability in the zone of disposal has been determined, as prescribed in N.J.A.C. 7:9A-6, to be two inches per hour or faster, the minimum required thickness of the zone of disposal may be reduced to two feet. This determination shall not be made using the percolation test or basin flooding test;

3. The zone of disposal shall not contain or be interrupted by any hydraulically restrictive horizon unless the entire thickness of this horizon has been removed throughout the entire area of the disposal field and has been replaced with fill material meeting the requirements of (f)5 below. The thickness of any restrictive horizon which has been removed shall not be counted as part of the zone of disposal; and

4. For design purposes, the top of the zone of disposal shall be taken as the bottom of the zone of treatment. The bottom of the zone of disposal shall be considered to be whichever of the following features is present at a shallower depth below the disposal field:

i. The top of any massive rock or hydraulically restrictive substratum;

ii. The top of the shallowest hydraulically restrictive horizon which occurs below the bottom of the disposal field, except when the hydraulically restrictive horizon is to be removed and replaced with suitable fill materials; or

iii. The bottom of the shallowest soil profile pit or boring made below the disposal field.

(f) When fill material is used in disposal field construction, the following requirements shall be met:

1. When a soil replacement installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.4 are satisfied and the fill material used meets the requirements of (f)4 below. The zone of disposal may contain a layer of fill provided that the fill material used within the zone of disposal meets the requirements of (f)5 below.

2. When a mound installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.5 are satisfied and the fill material used meets the requirements of (f)4 below.

3. When a mounded soil replacement installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.6 are satisfied and the fill material used meets the requirements of (f)4 below. The zone of disposal may contain a layer of fill provided that the fill material used within the zone of disposal meets the requirements of (f)5 below.

4. When fill material is utilized within the zone of treatment, the fill shall meet the following requirements:

i. Coarse fragment content less than 15 percent by volume or less than 25 percent by weight;

ii. Textural analysis (composition, by weight, of size fraction passing the two millimeter sieve): from 85 to 95 percent sand, from five to 15 percent silt plus clay, minimum two percent clay; and

iii. Permeability from two to 20 inches per hour; or percolation rate from three to 30 minutes per inch.

5. When fill material is placed within the zone of disposal, the fill material shall meet the following requirements:

i. Textural analysis (composition, by weight, of size fraction passing the two millimeter sieve): 85 percent or more sand; and

ii. Permeability greater than two inches per hour; or percolation rate faster than 30 minutes per inch.

(g) The following requirements shall be met when installing a septic tank in sloping ground.

1. The interface between filter material and the underlying soil or fill material at the bottom of each individual trench or bed shall be level;

2. On strongly sloping sites the shape of the disposal field shall be elongated with the long axis parallel to the topographic contour;

3. When the slope is greater than 10 percent, trenches shall be used rather than beds;

4. Mound or mounded soil replacement installations shall be restricted to slopes less than 10 percent; and

5. When disposal trenches are installed at different elevations and gravity flow or gravity dosing are used, the distribution of effluent between trenches shall be accomplished by means of a distribution box.

(h) When a conventional or soil replacement installation is proposed, the bottom of the disposal field shall be at a depth of from one to three feet below the existing ground surface. When a mound or mounded soil replacement installation is proposed, the level of infiltration shall be at an elevation no higher than four feet above the existing ground surface, measured on the upslope side of the disposal bed or each individual disposal trench. In no case shall the level of infiltration be greater than three feet below the finished grade.

7:9A-10.2 Disposal field sizing requirements

(a) The minimum required disposal field size or the maximum allowable hydraulic loading rate shall be determined, using sizing criteria as prescribed below, based upon the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, and the results of permeability tests or percolation tests performed as prescribed in N.J.A.C. 7:9A-6.

1. The disposal field sizing criteria to be used shall be determined based upon the type of disposal field, disposal field installation and the method of effluent distribution used, as follows:

| Type of Disposal Field Installation | Type of Disposal Field | Method of Distribution | Applicable Sizing Criteria |
|---|---|---|---|
| Conventional | Trench | Gravity | N.J.A.C. 7:9A-10.2(b) |
| | | Pressure | N.J.A.C. 7:9A-10.2(b) |
| | Bed | Gravity | N.J.A.C. 7:9A-10.2(c) |
| | | Pressure | N.J.A.C. 7:9A-10.2(c) |
| Soil Replacement, Bottom-lined | Trench | Gravity | N.J.A.C. 7:9A-10.2(c) |
| | | Pressure | N.J.A.C. 7:9A-10.2(d) |
| | Bed | Gravity | N.J.A.C. 7:9A-10.2(c) |
| | | Pressure | N.J.A.C. 7:9A-10.2(d) |
| Soil Replacement, Fill-enclosed | Trench | Gravity | N.J.A.C. 7:9A-10.2(b) |
| | | Pressure | N.J.A.C. 7:9A-10.2(b) |
| | Bed | Gravity | N.J.A.C. 7:9A-10.2(c) |
| | | Pressure | N.J.A.C. 7:9A-10.2(d) |
| Mound Replacement | Trench | Gravity | N.J.A.C. 7:9A-10.2(b) |
| | | Pressure | N.J.A.C. 7:9A-10.2(b) |
| | Bed | Gravity | N.J.A.C. 7:9A-10.2(c) |
| | | Pressure | N.J.A.C. 7:9A-10.2(d) |

(b) All disposal fields using trenches, except for bottom-lined soil replacement installations, shall meet the following size requirements:

1. The minimum required length of trenches per gallon of daily sewage volume, L/Q, shall be determined from Table 10.2(b) below, based upon the trench width selected and the results of permeability tests or percolation tests, performed as prescribed in N.J.A.C. 7:9A-6.

2. The minimum required length of trenches, L, shall then be determined by multiplying the value of L/Q obtained from the table by the daily volume of sewage, Q, determined as prescribed in N.J.A.C. 7:9A-7.4.

(c) All disposal beds using gravity flow or gravity dosing, all conventionally installed disposal beds using pressure dosing and all bottom-lined soil replacement trench installations using gravity flow or gravity dosing shall meet the following size requirements.

1. The minimum required bottom area of disposal field per gallon of daily sewage volume, A/Q, shall be determined from Table 10.2(c) below, based upon the results of permeability tests or percolation tests performed as prescribed in N.J.A.C. 7:9A-6.

2. The minimum required bottom area shall then be determined by multiplying the value of A/Q obtained from the table by the daily volume of sewage, Q, in gallons, determined as prescribed in N.J.A.C. 7:9A-7.4.

(d) All disposal beds using pressure dosing except for conventional installations and all bottom-lined soil replacement trench installations using pressure dosing shall have a minimum size of 1.33 square feet of bottom area per gallon of daily sewage volume.

TABLE 10.2(b) MINIMUM REQUIRED DISPOSAL TRENCH LENGTH PER GALLON OF DAILY SEWAGE VOLUME, L/Q (ft/gal per day)

| Permeability (in/hr) | Percolation Rate (min/in) | Trench Width (ft): 1.5 | L/Q (ft/gal per day)(1) 2.0 | 2.5 | 3.0 |
|---|---|---|---|---|---|
| 6-20 | 3-15 | 0.65 | 0.54 | 0.46 | 0.40 |
| 2-6 | 16-30 | 0.83 | 0.69 | 0.59 | 0.52 |
| 0.6-2 | 31-45 | 1.03 | 0.85 | 0.73 | 0.64 |
| 0.2-0.6 | 46-60 | 1.18 | 0.98 | 0.84 | 0.74 |

TABLE 10.2(c) MINIMUM REQUIRED DISPOSAL FIELD BOTTOM AREA PER GALLON OF DAILY SEWAGE VOLUME, A/Q ($ft^2$/gal per day)

| Permeability (in/hr) | Percolation Rate (min/in) | A/Q(1) ($ft^2$/gal per day) |
|---|---|---|
| 6-20 | 3-15 | 0.61 |
| 2-6 | 16-30 | 2.08 |
| 0.6-2 | 31-45 | 2.56 |
| 0.2-0.6 | 46-60 | 2.94 |

[1] Additional Requirements:

a. Where garbage disposal units are installed or contemplated, the value obtained from this table shall be increased by a factor of 25 percent for use in disposal field sizing.

b. When the size of the disposal field is determined based upon the results of a percolation test, the value obtained from this table shall be increased by a factor of 25 percent as a design safety factor to compensate for the inherent inaccuracy of the test method.

7:9A-10.3 Specific requirements for conventional disposal field installations

(a) A conventional installation shall be made by placing the disposal bed or each individual disposal trench in an excavation made directly within the natural soil or, in the case of disturbed ground, within pre-existing fill material.

(b) All rough-grading shall be in accordance with the following requirements:

1. Sites which have been re-graded prior to site evaluation, soil evaluation or permeability testing shall be considered to be disturbed ground and all requirements relating to disturbed ground shall be met.

2. When a site is re-graded after site evaluation, soil evaluation or permeability testing, this re-grading shall be carried out in conformance with an engineering design which has been approved by the administrative authority.

3. On a re-graded site, the disposal field shall be placed only in those areas which have been lowered by cutting and no portion of the disposal field shall be placed within those areas which have been raised by filling.

(c) Excavation for the disposal field shall be in accordance with the following procedures:

1. Adequate measures shall be used to insure that the bottom of the disposal bed or each individual disposal trench is level.

2. In soil textures other than sands or loamy sands, excavation which exposes the infiltrative surface of the disposal field shall not be carried out when the soil moisture content is above the lower plastic limit. This means that when a small lump of soil, taken from the depth of the proposed excavation, can be rolled out with the fingers to form a wire or rod, one-eighth of an inch in thickness, and does not crumble when handled, the soil is too wet to proceed with the excavation.

3. Excavation shall be carried out in a manner that will avoid unnecessary compaction of the disposal field bottom and sidewalls. Heavy equipment such as bulldozers or front-end loaders shall not be driven over the exposed infiltrative surface of the disposal field. Excavation should be carried out with a backhoe operating from between disposal trenches or from outside the perimeter of previously excavated portions of the disposal bed. If it becomes necessary to walk on the disposal field bottom, a suitable board shall be laid over the soil to avoid trampling.

4. Any smeared or compacted soil surfaces which have been produced on the bottom or sidewalls of the excavation shall be removed to expose a fresh soil surface which is rough and uneven.

5. Work should be scheduled so that the bottom and sidewalls of the excavation will not be exposed to rainfall or wind-blown silt between the time of excavation and the time of final inspection and backfilling. Any loose soil or debris which is washed into or otherwise deposited within the excavation as a result of the excavation remaining open to the elements shall be carefully removed prior to backfilling.

(d) The construction of the distribution network shall be in accordance with N.J.A.C. 7:9A-9.5, when gravity flow or gravity dosing is used, or N.J.A.C. 7:9A-9.6, when pressure dosing is used. Additional requirements for disposal trenches or beds are given in (d)1, and 2 below, respectively.

1. Disposal trenches shall be constructed in accordance with the following requirements:

i. The minimum spacing between trenches (sidewall to sidewall) shall be six feet.

ii. The minimum width of trenches shall be 1.5 feet.

iii. The maximum width of trenches shall be three feet.

iv. There shall be one distribution line per trench.

2. Disposal beds shall be constructed in conformance with the following requirements:

i. There shall be a minimum of two distribution lines per bed.

ii. The maximum distance from edge of bed to nearest distribution line shall be three feet.

iii. The minimum distance from edge of bed to nearest distribution line shall be one foot.

iv. The maximum spacing between distribution lines for gravity distribution shall be three feet.

v. The required spacing between distribution lines for pressure distribution shall be from 3/4 to 5/4 of the hole spacing;

vi. The spacing between all distribution lines shall be equal and uniform; and

vii. Holes in pressure distribution lines shall be aligned so that holes in adjacent laterals shall be off-set by one-half the hole spacing.

(e) Filter material shall meet the following requirements:

1. Filter material shall cover the distribution lines and extend the full width of the trench or bed, shall extend between 12 and 18 inches deep beneath the bottom of the distribution lines and shall extend at least two inches above the top of the lines.

2. The filter material shall be washed gravel or crushed stone, free of fines, dust, ashes or clay. Refer to the New Jersey Department of Transportation standard sizes for coarse aggregates as shown in Figure 26 of Appendix A. The filter material shall conform in size and gradation to size number 24, size number three or size number four.

3. The filter material shall be covered with drainage fabric, untreated building paper or a four to eight inch thickness of salt-hay or straw, as the laying of the distribution lines progresses. When drainage fabric or untreated building paper is used, the following requirements shall be met:

i. Edges of adjacent sheets shall be overlapped by a minimum of six inches.

ii. Drainage fabric shall be specified in the engineering design and shall have adequate tensile strength to prevent ripping during installation and backfilling, adequate air permeability to allow free passage of gases, and adequate particle retention to prevent downward migration of soil particles into the filter material.

iii. Use of water-proof paper is prohibited.

4. The filter material may be laid into the excavation using a backhoe, front-end loader or dump truck provided that this operation is carried out from sides of the system rather than by driving out onto the exposed disposal field infiltrative surface. In the case of large beds, tracked equipment may be operated within the disposal bed provided that the equipment does not exert a ground pressure in excess of eight pounds per square inch and provided that the filter material is pushed out in front of the vehicle while maintaining a minimum thickness of one foot of filter material below the vehicle tracks at all times.

(f) Backfill and final grading shall be carried out in accordance with the following requirements:

1. A minimum of nine inches and no more than 18 inches of backfill shall be placed over the top of the disposal field filter material.

2. Backfill material shall be of earth similiar to that found at the site and free of large stones, tree stumps, broken masonry or other waste construction material.

3. In no case shall the backfill material be more permeable than the surrounding soil.

4. Backfill shall completely cover the entire disposal bed or each of the disposal trenches and shall be graded smoothly into the surrounding topography on all sides.

5. The following practices shall be followed:

i. Heavy machinery, rubber-tired vehicles or other vehicles exerting a ground pressure in excess of eight pounds per square inch shall not be permitted to pass over the disposal field after the filter material and distribution network have been installed.

ii. Tracked equipment may be used for the purpose of backfilling and final grading provided that this equipment does not exert a pressure on the underlying soil in excess of eight pounds per square inch.

iii. Final grading shall be completed in accordance with the approved engineering design and in such a manner that surface water will not collect over the disposal field.

iv. After completion of backfilling and final grading, the backfilled area over the disposal field shall be seeded or sodded to establish a vegatative cover or otherwise stabilized against erosion in a manner acceptable to the administrative authority.

7:9A-10.4 Specific requirements for soil replacement disposal field installations

(a) A soil replacement disposal field installation shall be made by installing the disposal bed or each individual disposal trench on top of or within suitable fill material which has been placed in an excavation made below the existing ground surface. In a bottom-lined installation, the fill material shall be placed below the disposal field only, as prescribed in (b) below. In a fill-enclosed installation, the fill shall be placed around the sides as well as below the disposal field, as prescribed in (c) below. The type of soil replacement disposal field installation required depends upon the soil limitations present and the slope across the disposal area as follows:

1. A fill-enclosed installation shall be required when:

i. The limiting zone is a perched zone of saturation underlain by a hydraulically restrictive horizon and the slope across the disposal field is less than five percent;

ii. The limiting zone is a excessively coarse horizon or substratum; or

iii. The limiting zone is a fractured rock substratum.

2. A bottom-lined installation may be permitted where:

i. The limiting zone is a hydraulically restrictive horizon and no perched zone of saturation is present; or

ii. The limiting zone is an perched zone of saturation underlain by a hydraulically restrictive horizon and the slope across the disposal field is five percent or greater.

(b) Bottom-lined soil replacement disposal field installations shall be constructed as follows:

1. An excavation shall be made within the area occupied by the disposal bed or by each individual disposal trench and, where the limiting zone is a hydraulically restrictive horizon, the excavation(s) shall extend a minimum of two feet below the bottom of the hydraulically restrictive horizon.

2. The excavation shall be backfilled to the level of infiltration with suitable fill material.

3. The disposal field shall be constructed on top of the fill material within the excavation(s).

4. An interceptor drain designed and constructed as prescribed in N.J.A.C. 7:9A-10.7 shall be provided to divert away from the disposal field laterally moving ground water which may be perched above any hydraulically restrictive horizon penetrated by the excavation.

(c) Fill-enclosed soil replacement disposal field installations shall be constructed as follows:

1. An excavation shall be made to the required depth extending throughout the entire area to be occupied by the disposal field and beyond the perimeter of the disposal field a minimum of two feet in all directions. In cases where the limiting zone is a fractured rock substratum and a pit-bailing or basin flooding test has been used to establish adequate permeability, the depth of the disposal field excavation shall be no less than the depth of the test pit.

2. The excavation shall be backfilled with suitable fill material.

3. The disposal field shall be constructed within the fill material so that the entire disposal bed or each individual trench is surrounded by a minimum of two feet of fill material on all sides.

(d) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(e) Excavation prior to the placement of fill material shall be carried out in accordance with the requirements of N.J.A.C. 7:9A-10.3(c)2 through 5.

(f) Fill material used in soil replacement disposal field installations shall meet the following requirements:

1. The fill material used below the disposal field shall meet the requirements for texture and permeability which are prescribed in N.J.A.C. 7:9A-10.1(f).

2. The minimum depth of fill below the disposal field shall be one foot.

3. Compaction of fill material shall be required whenever fill material is used below the disposal field and shall be carried out in accordance with the following requirements:

i. Compaction of fill shall be carried out as directed by a professional engineer and as indicated on the approved engineering design.

ii. Based upon a final inspection, a professional engineer shall certify by signature and seal that compaction of the fill has been performed adequately to prevent failure of any component of the system due to excessive settlement or differential settlement.

iii. Fill material shall be spread and compacted in layers one foot or less in thickness.

iv. Compaction may be accomplished manually or mechanically, by tamping or rolling, or by driving over the filled area in a controlled pattern using tracked or rubber-tired vehicles. Compaction may also be accomplished by puddling.

v. When heavy excavating equipment is operated within the excavation for the purpose of placement of compaction of the fill material, this equipment shall not be driven directly on the exposed bottom of the excavation. A minimum of one foot of fill material shall be maintained below the vehicle tracks or wheels at all times.

(g) Construction of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(h) Filter material shall be as prescribed for conventional installations, in N.J.A.C. 7:9A-10.3(e).

(i) Backfill and final grading shall be as required in N.J.A.C. 7:9A-10.3(f) and shall extend a minimum of five feet, in all directions, beyond the perimeter of the filled area.

7:9A-10.5 Specific requirements for mounded disposal field installations

(a) A mounded disposal field installation shall be made by installing the disposal field as prescribed below, within suitable fill which has been placed above the existing ground surface.

(b) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(c) On sloping sites, the disposal field shall be elongated in shape with the long axis parallel to the topographic contour.

(d) Prior to placement of fill material, the ground surface shall be prepared as follows:

1. Excessive vegetation shall be cut and removed. Large trees including the stumps shall be removed. If large holes are left as a result of stump removal these shall be filled with fill material meeting the requirements of N.J.A.C. 7:9A-10.1(f)4.

2. The delivery pipe from the dosing tank shall be installed and the excavation backfilled and compacted prior to preparation of the ground surface for fill placement.

3. The area within the perimeter of the mound shall be plowed or disked to produce a thoroughly roughened surface. Plowing shall be done using a two bottom or larger moldboard plow or chisel plow and shall be parallel to the topographic contour in such a direction that each plow furrow will be thrown upslope. The soil should be broken-up to a depth of six to eight inches. Alternatively, a rototiller may be used provided that the surface soil is of sand or loamy sand texture.

(e) A mound shall be constructed by placing a layer of fill material over the ground within and adjacent to the area of the disposal field. The method of emplacement and lateral extent of the fill material shall be as follows:

1. The area of the fill layer shall include the area of the disposal field plus a lateral extension of fill material surrounding the disposal field on all sides.

2. The minimum required width of the lateral fill extension shall be 20 feet where gravity distribution is to be used and five feet where pressure distribution is to be used.

3. Within the area of the lateral fill extension, the top surface of the fill material shall be kept level with or higher than the invert of the distribution laterals.

4. On sloping sites, the width of the lateral fill extension may be reduced on the upslope side of the disposal field provided that the top surface of the fill material is kept level with or higher than the invert of the distribution laterals up until the point where the top surface of the fill material intersects with the existing slope.

5. At the outside edge of the lateral fill extension, the mound shall be terminated by sloping the top surface of the fill layer downward at a slope of three to one or less. Alternatively, lateral support for the fill layer may be provided by a retaining wall or a berm of soil material meeting the requirements of N.J.A.C. 7:9A-10.3(f)2 and sloped at a grade of three to one or less.

6. Fill material below the disposal field and within the area of the lateral fill extensions shall be suitable fill material meeting the requirements of N.J.A.C. 7:9A-10.1(f)4.

7. Compaction of fill shall be carried out as prescribed in N.J.A.C. 7:9A-10.4(f).

(f) Construction and installation of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(g) Filter material shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(e).

(h) Backfill and final grading over the mound shall be completed as follows:

1. Immediately above the disposal field filter material which has been covered with a suitable barrier material, as prescribed in N.J.A.C. 7:9A-10.3(e)3, a layer of topsoil, suitable for establishment of a good vegetative cover, 12 to 18 inches in thickness at the center of the mound and six to 12 inches in thickness at the edges, shall be placed over the entire mound, covering the top and side slopes. The topsoil shall be build up thicker along the long axis of the mound so that a convex profile is produced parallel to the direction of the slope. The topsoil shall be lightly compacted by tamping or rolling to prevent settlement.

2. Immediately after completion of final grading, the mound surface shall be mulched and seeded, or sodded, to establish a good vegetative cover and to prevent erosion.

7:9A-10.6 Specific requirements for mounded soil replacement disposal field installations

(a) Mounded soil replacement disposal fields shall be constructed as follows:

1. An excavation shall be made to the required depth throughout the entire area of the disposal field and extended laterally in all directions a minimum of two feet beyond the perimeter of the disposal field.

2. This excavation shall be backfilled with suitable fill material and the fill material mounded up over the excavation to produce a mound of the desired height in which to install the disposal field.

3. The sides of the mound shall be constructed with slopes of three to one or less.

(b) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(c) Excavation prior to placement of fill material shall be carried out as specified in N.J.A.C. 7:9A-10.3(c)2 through 5.

(d) Fill material shall meet the requirements of N.J.A.C. 7:9A-10.4(d).

(e) Construction of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(f) Filter material shall be as prescribed for conventional installations, in N.J.A.C. 7:9A-10.3(e).

(g) Backfill and final grading shall be as prescribed for mounded installations, in N.J.A.C. 7:9A-10.5(h).

7:9A-10.7 Interceptor drains

(a) Interceptor drains may be used on sloping sites to improve site suitability by intercepting laterally moving ground water which is perched above a hydraulically restrictive horizon provided that the requirements of (b) through (k) below are met.

(b) Interceptor drains shall be oriented parallel to the length and width of the disposal field and shall be installed on all sides except for the downslope side, as shown in Figure 25 of Appendix A.

(c) Interceptor drains designed to intercept ground water which is perched above a hydraulically restrictive horizon shall extend to the top but not through the entire thickness of the hydraulically restrictive horizon.

(d) The minimum distance between the disposal field and an interceptor drain shall be as prescribed in (d)1 and 2 below. The only exceptions to these requirements shall be where the bottom of the drain is at an elevation which is higher than the bottom of the disposal field or where the drain is set at the top of a restrictive horizon which is penetrated by the excavation for a soil replacement or mounded soil replacement installation, in which cases the minimum setback distance between the disposal field and the drain shall be 20 feet.

1. The minimum distance between a disposal field and any portion of an interceptor drain which is downslope of the disposal field shall be 50 feet.

2. The minimum distance between a disposal field and those portions of the interceptor drain which are upslope of the disposal field's downslope side shall be 50 feet unless a shorter distance is calculated using the formula given in (d)3 below. In no case shall this distance be less than 10 feet.

3. Calculate the minimum required horizontal separation distance, D, using the equation, $D = Q/(LKI^2)$, where:

Q is the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, in gallons per day, multiplied by a unit conversion factor of 1 $ft^3$/7.48 gallons.

L is the total length of the disposal field, in feet, measured parallel to the topographic contour.

K is the horizontal saturated permeability above the restrictive horizon, in inches per hour, determined as prescribed in N.J.A.C. 7:9A-6.5 or 6.6, multiplied by unit conversion factors of (1 foot/12 inches) and (24 hours/1 day).

I is the slope, in feet/foot, measured perpendicular to the topographic contour.

(e) Excavation shall be carried out as follows:

1. The excavation for the interceptor drain shall be made to the exact depth required in (c) above, a minimum two feet wide, and shall extend for the entire length of the drain, around the upslope side of the disposal field and down both ends of the field to the downslope side, as shown in Figure 25 of Appendix A.

2. To accommodate the drain discharge pipes, the excavation shall extend, on each end of the disposal field, beyond the extent of the drain, from the downslope side of the disposal field to free-flowing outlet meeting the requirements of (f) below.

3. The part of the excavation in which the drain discharge pipe will be laid shall have a slope which is steep enough to carry away the intercepted ground water.

(f) That portion of the excavation which will accommodate the drain shall be filled with filter material to a depth which is a minimum of one foot higher than the top of the perched zone of saturation which is to be drained. Filter material used for this purpose shall be washed gravel or crushed stone, free of fines, dust, ashes or clay, and shall conform in size and gradation with one of the following New Jersey Department of Transportation standard sizes for coarse aggregate as shown in Figure 26 of Appendix A: size number four, size number five, size number 56 or size number six.

(g) Barrier material shall consist of continuous layers of drainage fabric and shall be placed throughout the entire length of the drain, above, below and along the sides of the filter material. The following requirements shall be met:

1. The edges of adjacent sheets shall be overlapped by a minimum of six inches.

2. The type of drainage fabric used shall be specified in the engineering design and shall have adequate tensile strength to prevent ripping during installation and backfilling, adequate permeability to allow unimpeded passage of water, and adequate particle retention to prevent migration of soil particles into the filter material.

(h) Drainage pipe shall be laid throughout the entire length of the excavation and shall be placed immediately above the barrier material at the bottom of the excavation and midway between the sides. The type of drainage pipe used shall be as follows:

1. Upslope of the downslope side of the disposal field, where the excavation is filled with filter material, the pipe shall be perforated or laid with open joints.

2. Downslope of the downslope edge of the disposal field, and beyond the extent of the filter material, the pipe shall be non-perforated and laid with tight joints.

3. The size of the pipe shall be large enough to handle the expected amount of flow and in no case shall the pipe diameter be less than six inches.

4. Materials used for drainage pipe shall be as allowed in N.J.A.C. 7:9A-9.5(b).

(i) Free-flowing outlets shall be provided downslope of the drain, on each end of the disposal field. Outlets shall meet the following requirements:

1. Outlets may empty into a surface water body, a drainage swale discharging to a surface water body, a ground water recharge basin or a gravel bed.

2. Outlets shall be designed, constructed, located and maintained in a manner which does not cause soil erosion, surface flooding or damage to adjacent properties, does not create a public nuisance, and does not violate any applicable Federal, State or local laws or regulations.

3. Adequate measures shall be taken to protect each outlet from entry of rodents or other small animals.

(j) Backfill over the drain and the drain discharge pipes shall be of earth similar to that found at the site and free of large stones, broken masonry, stumps or other waste construction material.

(k) Where an interceptor drain is proposed to divert laterally moving perched ground water away from the area of the disposal field, the drain shall be installed and its satisfactory performance confirmed prior to granting of final approval, as follows.

1. After installation of the drain has been completed, borings or pits shall be excavated to the top of (but not penetrating) the hydraulically restrictive horizon, hydraulically restrictive substratum or massive rock substratum above which the perched zone of saturation is located. This shall be done on the upslope and downslope sides of the drain and during a time of year when the presence of the perched zone of saturation is anticipated. Piezometers may also be used for this purpose provided that they do not penetrate through the hydraulically restrictive horizon and provided that the requirements of N.J.A.C. 7:9A-5.9(e) are met.

2. The drain shall be considered to be performing adequately if no perched zone of saturation is observed on the downslope side of the drain at the same time that a perched zone of saturation is observed on the upslope side of the drain. This test shall be witnessed by the administrative authority or its authorized agent.

## SUBCHAPTER 11. SEEPAGE PITS

### 7:9A-11.1 Site/soil requirements

(a) Seepage pits shall not be approved except as specified in N.J.A.C. 7:9A-7.6. When a seepage pit is approved, the following site/soil requirements shall be met:

1. The bottom of any seepage pit shall be a minimum of eight feet above any hydraulically restrictive horizon or substratum not fully penetrated or any massive rock substratum.

2. The bottom of any seepage pit shall be a minimum of four feet above any fractured rock substratum.

3. The bottom of any seepage pit shall be a minimum of four feet above the level of the seasonally high water table.

### 7:9A-11.2 Design requirements

(a) The percolating area shall be considered to be the total outside surface of the seepage pit lining below the inlet and exclusive of any soil horizons with a percolation rate slower than 40 minutes per inch. The bottom of the seepage pit shall not be counted as part of the percolating area.

(b) The minimum required percolating area for dwelling units shall be determined from the following table, based upon a weighted average, of the percolation rates of all the soil layers exposed in the sidewalls, determined as prescribed in N.J.A.C. 7:9A-6.4(f)4. In no case, however, shall the percolating area be less than 110 square feet per dwelling unit.

| Average Percolation Rate (Min/inch) | Minimum Area Per Bedroom Per Day (Square feet) |
|---|---|
| 10 or less | 72 |
| 11 to 20 | 108 |
| 21 to 30 | 144 |
| 31 to 40 | 180 |
| over 40 | not acceptable |

(c) The minimum percolating area for facilities other than individual dwellings shall be determined from the following table based upon the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, and a weighted average of the percolation rates of all soil layers exposed in the sidewalls, determined as prescribed in N.J.A.C. 7:9A-6.4(f)4. In no case, however, shall the percolating area be less than 110 square feet.

| Average Percolation (Min/inch) | Minimum Area Per Gallon Per Day (Square feet) |
|---|---|
| 10 or less | 0.48 |
| 11 to 20 | 0.72 |
| 21 to 30 | 0.96 |
| 31 to 40 | 1.20 |
| over 40 | not acceptable |

7:9A-11.3 Construction requirements

(a) Seepage pits shall be constructed within an excavation affording adequate working space and shall be constructed of stone, brick, cinder or concrete block, or similar material laid dry with open joints where permeable strata has been penetrated, except that if the seepage pit is not of circular construction or if the surrounding ground is subject to cave-in, all horizontal joints shall be mortared in such a manner as to prevent structural failure. The following requirements shall be met:

1. All joints above the inlet, in all cases, shall be made water-tight.
2. Before placement of backfill, all sidewall areas shall be scarified.
3. The bottom of the seepage pit shall be filled with coarse gravel to a depth of one foot unless the bottom is in a sand or gravel formation.

(b) Seepage pits shall be backfilled according to the following procedure:

1. The space between the excavation and the seepage pit wall shall be backfilled with at least three inches of coarse gravel or filter material meeting the requirements of N.J.A.C. 7:9A-10.3(e)2.
2. Where cinder or concrete blocks are laid with core openings exposed, the space between the excavation and seepage pit wall shall be backfilled with at least six inches of two and one-half inch crushed stone or gravel.
3. Backfill above the inlet shall be as required for disposal fields in N.J.A.C. 7:9A-10.3(f)2 and shall be thoroughly compacted by hand or mechanical tamping methods. The use of heavy machinery for this purpose is prohibited.

(c) Covers shall be constructed of reinforced concrete, shall be a minimum of three inches in thickness, water-tight, and shall be designed and constructed so as not to be damaged by any load which is likely to be placed upon them.

(d) At least one access opening with a removable water-tight cover and a minimum dimension of 24 inches shall be provided. Access openings shall meet the following requirements:

1. Access shall be adequate to permit pumping out of the pit as well as inspection and maintenance of the inlet.
2. When the cover of the seepage pit is deeper than 12 inches below finished grade, the access opening shall be extended to within 12 inches of finished grade by means of a concrete riser with a cast-iron manhole cover.
3. When the access opening is below finished grade, a permanent marker at finished grade shall be provided to indicate its location.
4. When the access opening is at or above finished grade, the cover shall be bolted, locked or otherwise secured to prevent access by children.

## SUBCHAPTER 12. OPERATION AND MAINTENANCE

7:9A-12.1 System use

(a) The individual subsurface sewage disposal system shall be used only for the disposal of wastes of the type and origin provided for in the approved engineering design. No permament or temporary connection shall be made to any source of wastes, wastewater or clean water other than those plumbing fixtures which are normally present within the type of facility indicated in the approved engineering design.

(b) Drainage from basement floors, footings or roofs shall not enter the individual subsurface sewage disposal system and shall be diverted away from the area of the disposal field. Backwash from water softeners shall not be disposed of within the individual sewage disposal system but may be discharged into a drywell located away from the area of the disposal field.

(c) As set forth in N.J.S.A. 58:10A-17, no person shall use or introduce or cause any other person to use or introduce into any individual subsurface sewage disposal system any sewage system cleaner containing any restricted chemical material.

(d) Disposal of materials containing toxic substances into an individual subsurface sewage disposal system is prohibited. Material containing toxic substances include, but are not limited to, waste oil (other than cooking oil), oil-based or acrylic paints, varnishes, photographic solutions, pesticides, insecticides, paint thinners, organic solvents or degreasers and drain-openers.

(e) Inert or non-biodegradable substances shall not be disposed of in the individual subsurface sewage disposal system. Such substances include, but are not limited to, disposable diapers containing plastic, cat box litter, coffee grounds, cigarette filters, sanitary napkins, facial tissues and wet-strength paper towels.

(f) Large quantities of cooking greases or fats shall not be discharged into systems not equipped with a grease trap designed and constructed as prescribed in N.J.A.C. 7:9A-8.1.

(g) Major plumbing leaks shall be repaired promptly to prevent hydraulic overloading of the system.

7:9A-12-2 System inspection requirements

(a) Inspection of the system shall be required once every year except for the first three years following the installation or pump-out of the septic tank. Annual inspection of the system shall begin three years after installation or pump-out of the septic tank.

(b) In the following cases, the administrative authority may require inspection of the system once every year regardless of whether the septic tank has been pumped out:

1. The system is malfunctioning or has malfunctioned in the past;
2. The size or capacity of one or more components of the system does not meet the current requirements of these standards;
3. When actual measured water usage is greater than the design capacity of one or more system components;
4. In residential facilities, when the estimated water useage based upon the actual number of residents is greater than the design capacity of one or more system components. For the purpose of making this determination, the design flow shall be estimated by multiplying the number of persons living in the residence by a factor of 100 gallons per day; or
5. Facilities in which a grease trap is required.

(c) Results of system inspections shall be reported on standard forms provided by the Department, or on equivalent forms which are acceptable to the administrative authority.

(d) During each inspection, the following information shall be noted and recorded on the appropriate form:

1. A general description of the system type and configuration including size, number and location of each system component and the type of disposal field installation.
2. For residential facilities, the current number of persons residing in the building(s) served by the system.
3. Measured water useage in gallons per day from water meter readings, if available.
4. For each septic tank or each compartment of multiple compartment septic tanks:
   i. Vertical distance in inches between the bottom of the scum or grease layer and the bottom of the outlet baffle;
   ii. Vertical distance in inches between the top of the sludge layer and the bottom of the outlet baffle;
   iii. Physical condition of inlet and outlet baffles;
   iv. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, a liquid level prior to pumping which is below the invert of the outlet, or noticeable seepage of ground water into the unit after it has been pumped out; and
   v. Signs of clogging or effluent back-up indicated by a liquid level higher than the invert of the outlet.
5. For distribution boxes equipped with access risers extending to finished grade:
   i. Evidence of solids carry-over from the septic tank;
   ii. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, a liquid level prior to pumping which is below the invert of the outlet, or noticeable seepage of ground water into the unit after it has been pumped out;
   iii. Levelness of distribution box as indicated by height of each outlet in relation to liquid level; and
   iv. Signs of clogging or effluent back-up indicated by liquid level higher than invert of the outlets.
6. For dosing tanks with pumps or siphons:
   i. Evidence of solids carry-over from the septic tank;
   ii. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, or noticeable seepage of ground water into the unit; and

iii. Condition and operation of pumps, siphons, switches, electrical wiring and alarms. Sufficient water shall be added to activate a dose cycle.

7. For disposal fields:

i. Signs of hydraulic failure including but not limited to ponding of rainwater or effluent, surface breakout of effluent, wet or soggy soil conditions or sewage odors emanating from the area of the disposal field;

ii. Condition of surface grading and vegetation, evidence of uneven ground settlement, slope failure, erosion or ruts caused by vehicle traffic;

iii. Level of effluent ponding within the disposal bed or each individual disposal trench determined by means of inspection ports where available;

iv. Encroachments onto the area of disposal field including driveways, patios, accessory buildings, additions to the main building or any other form of encroachment which may adversely affect the functioning of the system; and

v. Improperly directed drainage from roofs, footing drains, ditches or swales, discharges from water softener backwashing, or any other unauthorized source of hydraulic loading which may adversely affect the functioning of the disposal field.

8. For seepage pits or cesspools:

i. Hydraulic failure indicated by ponding of water in the vicinity of the disposal area, overflow of effluent or sewage onto the surface of the ground or foul odors emanating from the vicinity of the disposal area;

ii. Physical condition of the cover and inlet pipe, signs of ground subsidence or structural collapse; and

iii. Improperly directed drainage from roofs, footing drains, ditches or swales, discharges from water softener backwashing, or any other unauthorized source of hydraulic loading which may adversely affect the functioning of the seepage pit or cesspool.

(f) Any problems or malfunctions noted during the inspection shall be corrected in a manner and within a timeframe acceptable to the administrative authority.

7:9A-12.3 Septic tank maintenance

(a) The contents of the septic tank shall be removed by pumping whenever either of the following conditions are noted during the course of inspection:

1. The bottom of the scum layer is within three inches of the bottom of the outlet baffle.

2. The top of the sludge layer is within eight inches of the bottom of the outlet baffle.

(b) Pumping of septic tanks shall be performed by a solid waste hauler registered with the Department in accordance with the requirements of N.J.A.C. 7:26-3.1.

(c) Equipment used in the pumping of septic tanks shall meet the following requirements:

1. Mobile tanks shall be securely mounted on trucks or trailers, shall be water-tight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.

2. Pumps and hoses shall be maintained and operated in a condition that will prevent the leakage of sewage.

3. Equipment shall be available to permit accurate measurement of the sludge and scum levels in relation to the bottom of the outlet baffle.

(d) Pumping of septic tanks shall be conducted in such a manner that the entire contents of the septic tank including both liquids and solids are removed.

(e) Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs, the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using a suitable chlorine-bearing compound.

(f) Septage shall be disposed of at a sewage treatment plant designated in accordance with District and/or State Solid Waste Management Plans pursuant to the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 58:11A-1 et seq.

7:9A-12.4 Additional inspection and maintenance requirements for grease traps

(a) Grease traps shall be inspected and cleaned out at a frequency adequate to prevent the volume of grease from exceeding the grease retention capacity. Grease shall be removed whenever 75 pecent of the grease retention capacity has been reached. Grease traps serving restaurants may require pumping as frequently as once a week to once every two to three months.

(b) Pumping of grease traps shall be performed by a solid waste hauler registered with the Department in accordance with the requirements of N.J.A.C. 7:26-3.1.

(c) Equipment used in the pumping of grease traps shall meet the following requirements:

1. Mobile tanks shall be securely mounted on trucks or trailers, shall be water-tight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.

2. Pumps and hoses shall be maintained in a condition that will prevent the leakage of sewage.

3. Equipment shall be available to permit accurate measurement of the volume of grease in relation to the grease retention capacity of the grease trap.

(d) Pumping of grease traps shall be conducted in such a manner that the entire contents of the grease trap including both liquids and solids are removed.

(e) Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using suitable chlorine-bearing compound.

(f) Grease and other waste mateials removed from grease traps shall be disposed of in accordance with the requirements of the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 58:11A-1 et seq., as well as any other applicable State or local rules, regulations, ordinances or directives.

7:9A-12.5 Maintenance of dosing tanks

(a) Dosing tanks and associated pumps, siphons, switches, alarms, electrical connections and wiring shall be maintained in proper working order.

(b) Any solids which accumulate in the dosing tank shall be removed and disposed of in a sanitary manner.

7:9A-12.6 Disposal field maintenance

(a) The area of the disposal field shall be kept free of encroachments from driveways, patios, accessory buildings, additions to the main building and trees or shrubbery whose roots may cause clogging of any part of the system.

(b) Grading shall be maintained in a condition that will promote run-off of rainwater and prevent ponding.

(c) Drainage from roofs, footing drains, ditches or swales shall be diverted away from the disposal field.

(d) Vegetation shall be maintained to prevent soil erosion.

(e) Vehicle traffic shall be kept away from the area of the disposal field.

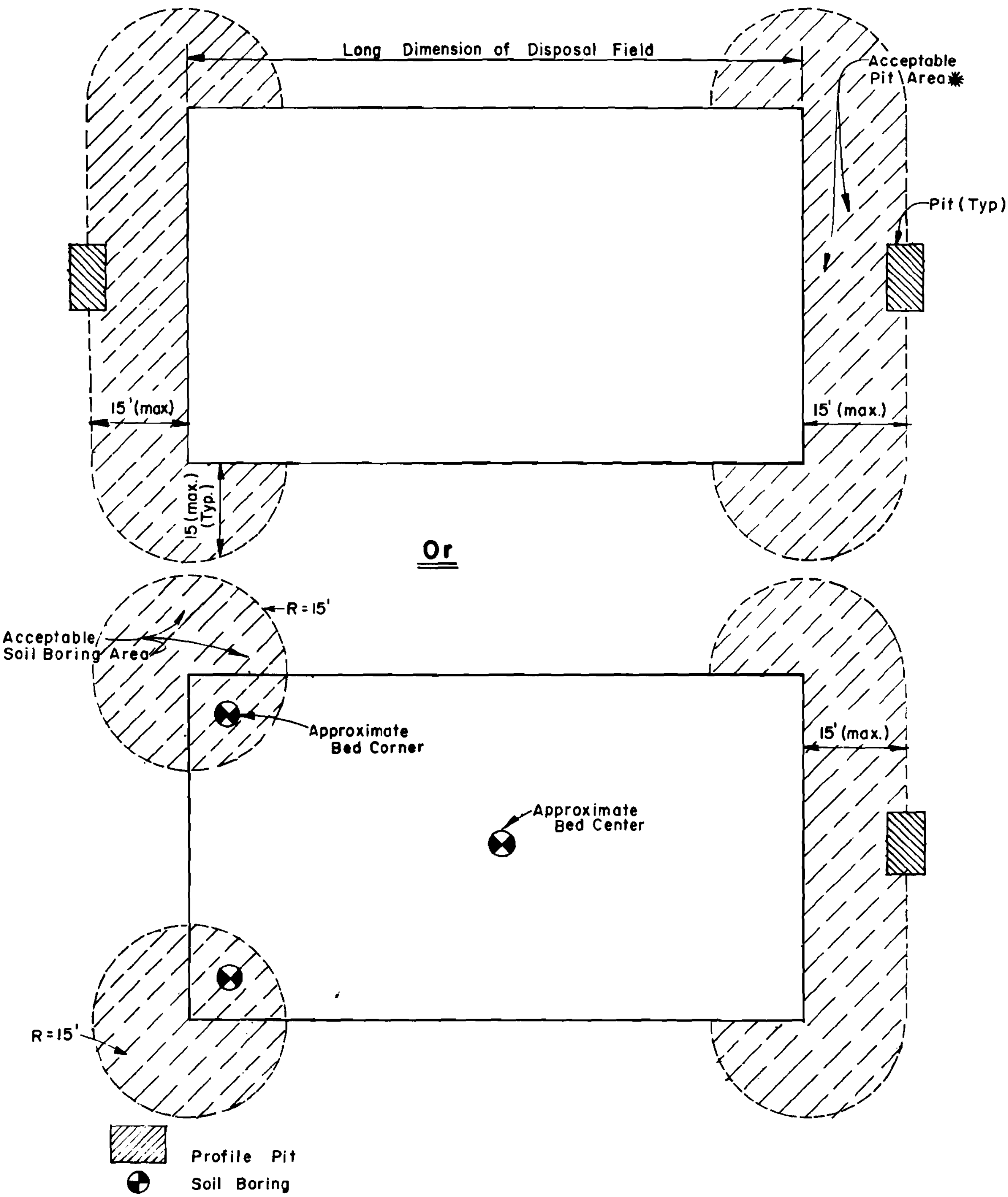
7:9A-12.7 System testing

No person shall test an individual subsurface sewage disposal system in a manner that will adversely affect the functioning of the system. Hydraulic loading shall not be applied in excess of the design flow capacity of the septic tank and/or grease trap unless all solids have been removed from the septic tank and/or grease trap prior to testing or unless the hydraulic loading is applied at a point that will bypass the septic tank and/or grease trap.

7:9A-12.8 Abandoned systems

When it is necessary to abandon a system or components of a system, all septic tanks, dosing tanks, seepage pits, dry wells and cesspools which are to be abandoned shall be emptied of wastes and removed or filled completely with gravel, stones or soil material in a manner which is acceptable to the administrative authority.

APPENDIX A—FIGURES




*Profile pits may be located within the boundaries of the disposal field also, provided that they are backfilled after use as prescribed in N.J.A.C. 7:9A-5.2(c).

**Figure 1. Location of Soil Profile Pits and Borings**

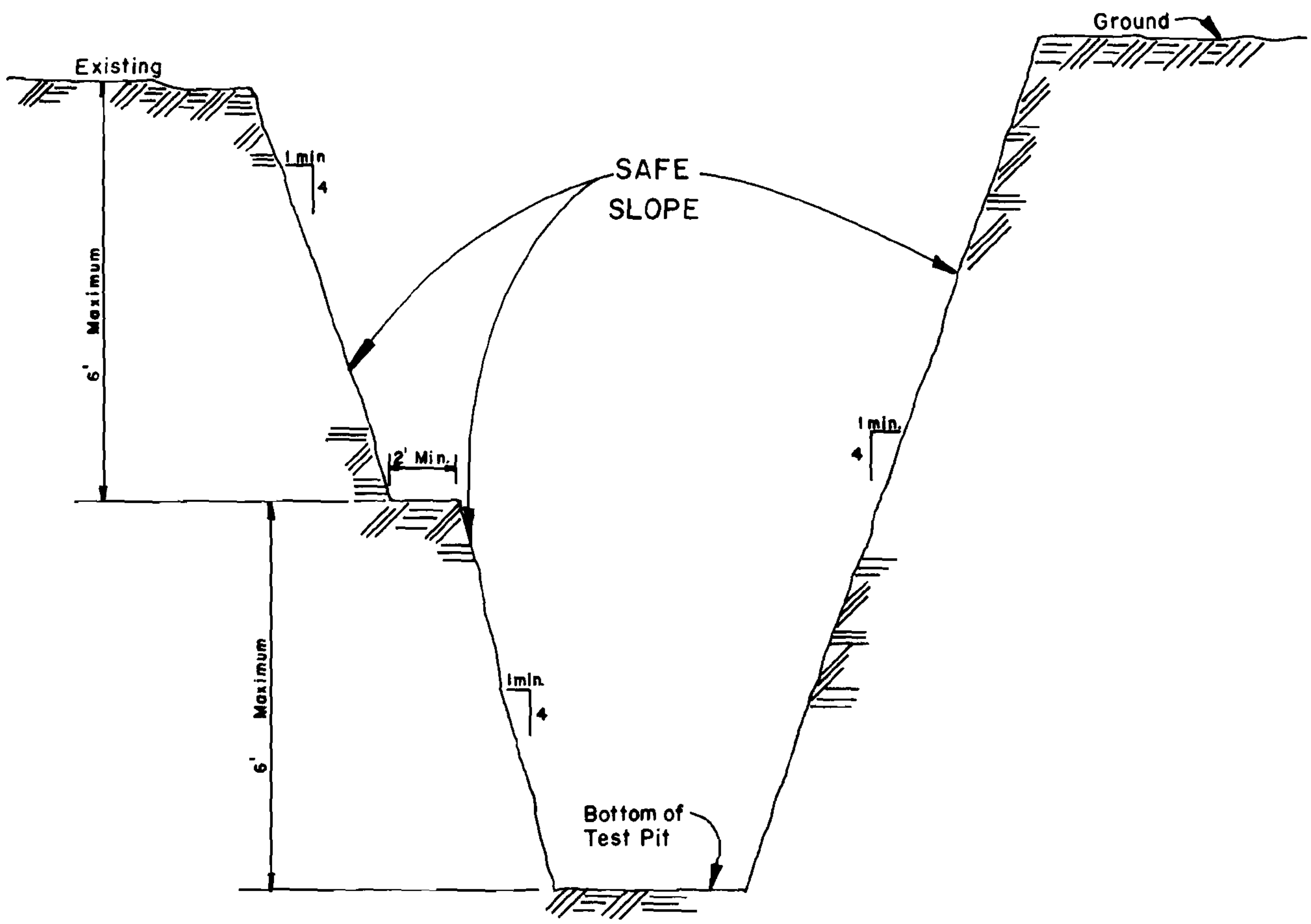
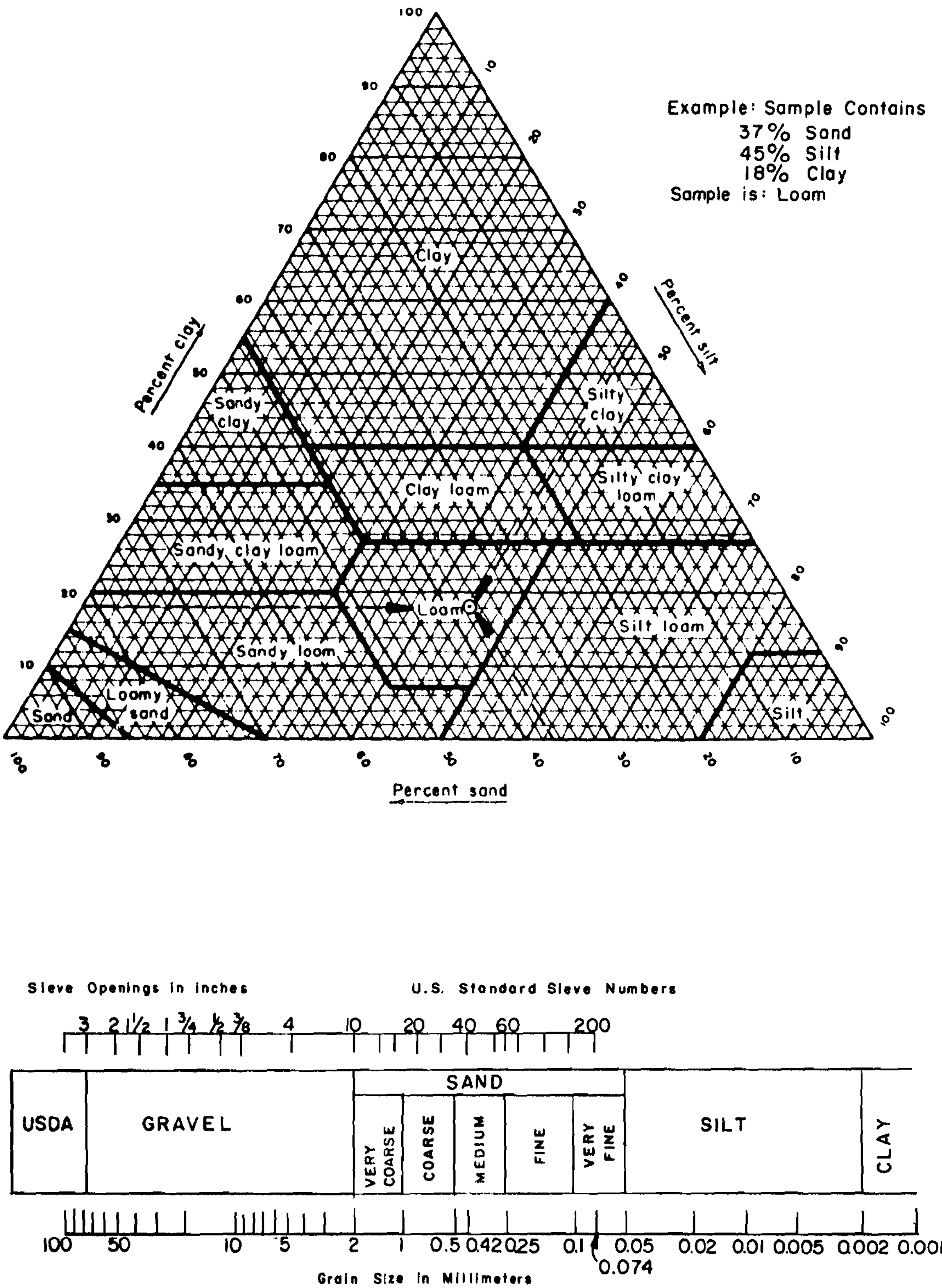
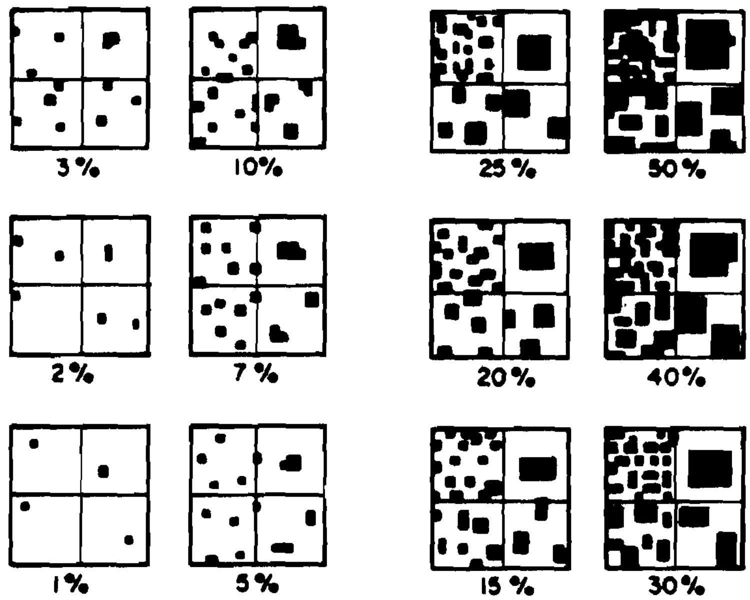



Figure 2. Recommended Cross-section of Soil Profile Pit.




Adapted from U.S. Dept. of the Interior, Water & Power Research Service (1974) *Earth Manual,* 2nd Edition, pg. 82

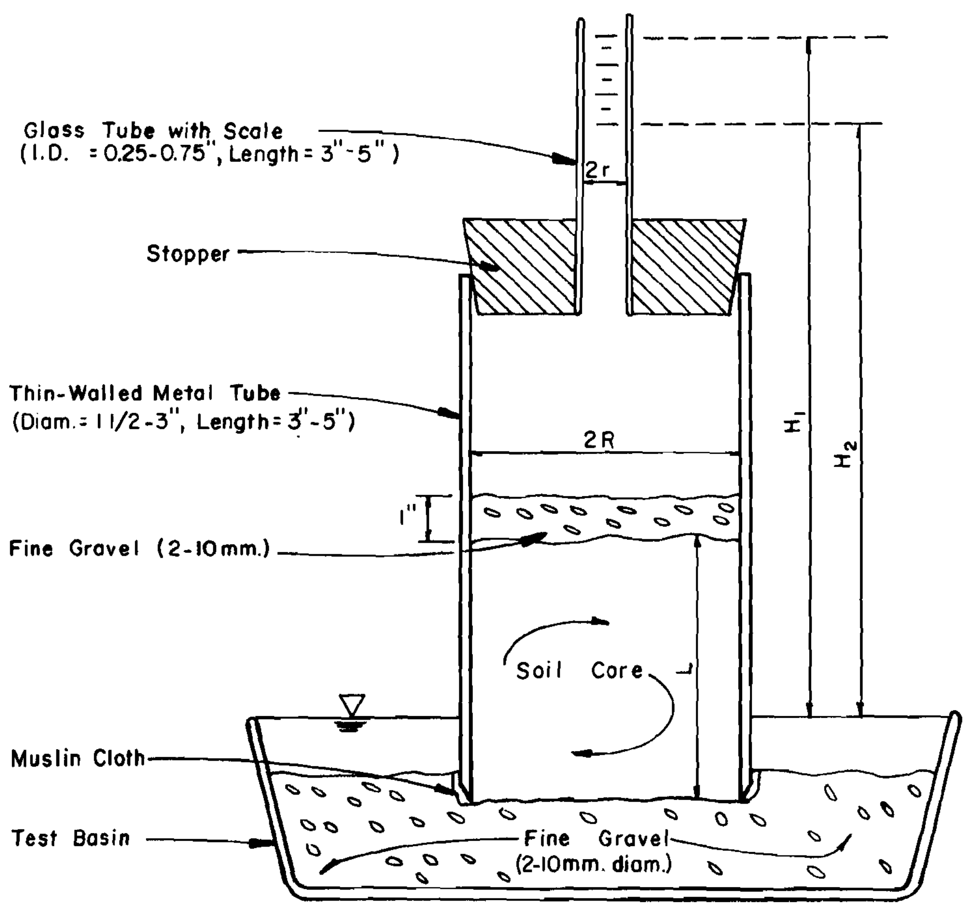
**Figure 3. U.S.D.A. System of Soil Textural Classification**




Charts for estimating proportions of Mottles and Coarse Fragments.
Each fourth of any one square has the same amount of black.

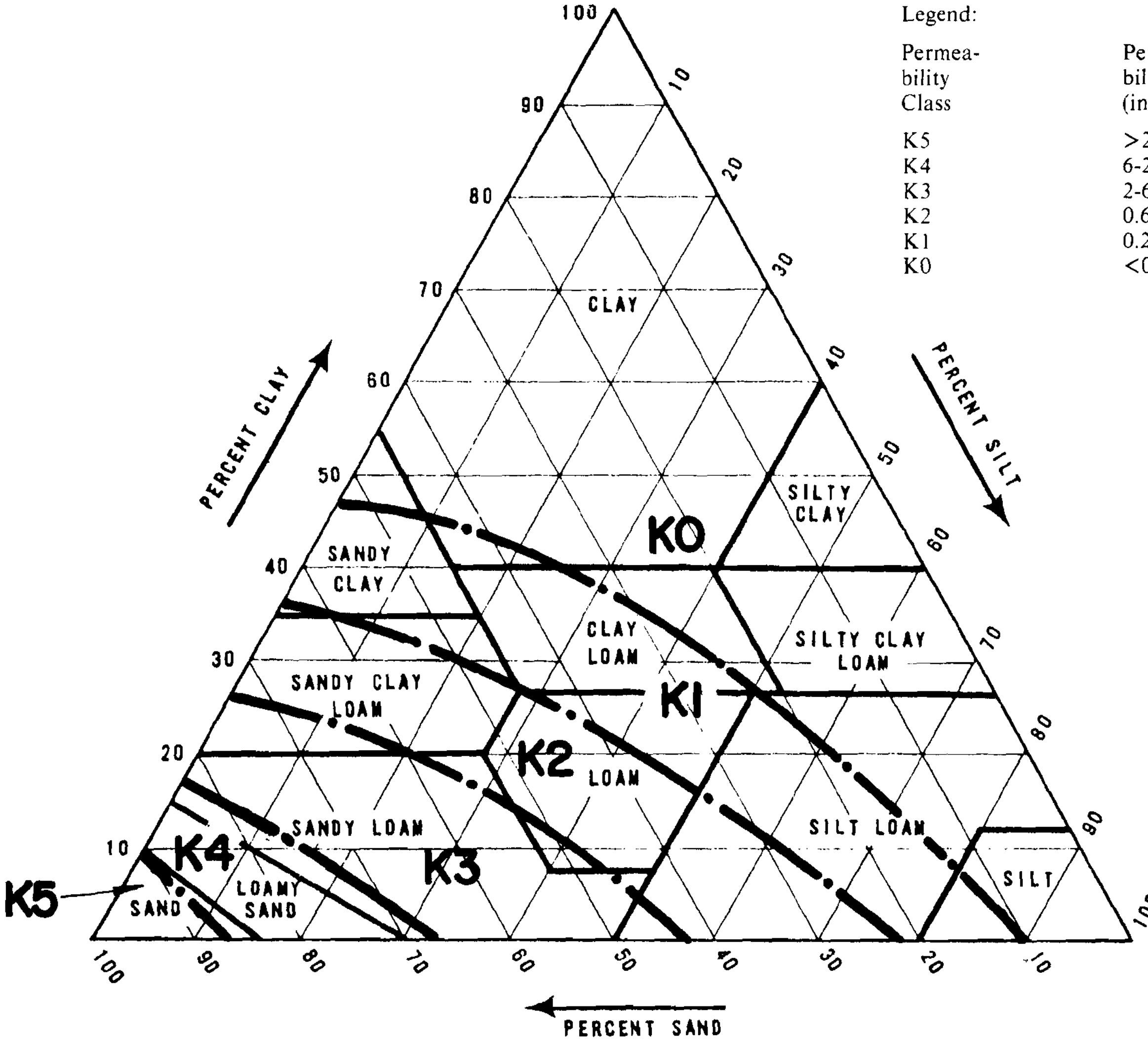
Adapted from *Technical Manual for Sewage Enforcement Officers* Commonwealth of Pennsylvania, Dept. of Environmental Resources, Div. of Local Environmental Services, Bureau of Water Quality Management

**Figure 4. Charts for Visual Estimation of Volume Percentage**




$$K(\text{in./hr.}) = 60(\text{min./hr.}) \times r^2/R^2 \times L(\text{in.})/T(\text{min.}) \times ln\ (H_1/H_2)$$

**Figure 5. Tube Permeameter (with standpipe)**




Legend:

| Permeability Class | Permeability (in/hr) |
|---|---|
| K5 | >20 |
| K4 | 6-20 |
| K3 | 2-6 |
| K2 | 0.6-2 |
| K1 | 0.2-0. |
| K0 | <0.2 |

Adapted from N.N. Hantzsche et al. (1982) Soil Textural Analysis for Onsite Sewage Disposal Evaluation, Proc. 3rd Nat. Symposium on Individual and Small Community Sewage Treatment, Am. Soc. Agric. Eng., St. Joseph, Michigan

**Figure 6. Soil Permeability/Textural Triangle**

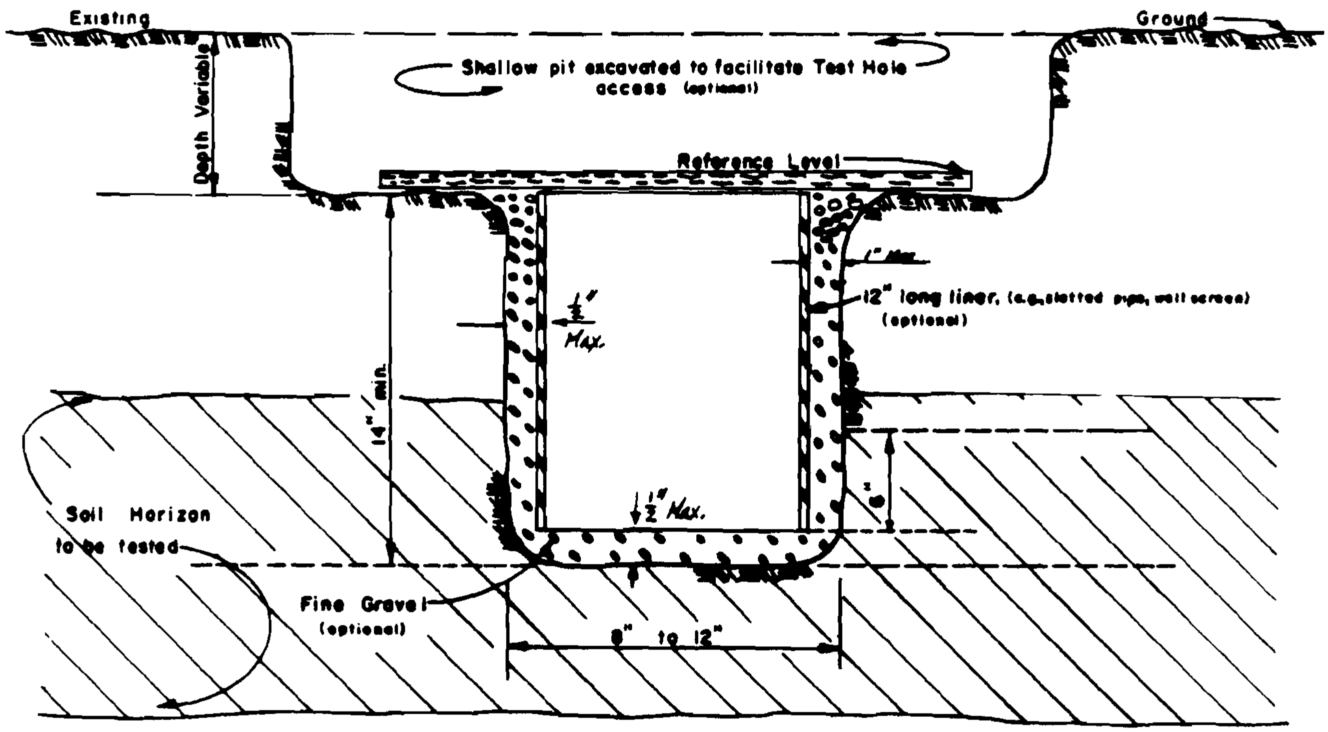
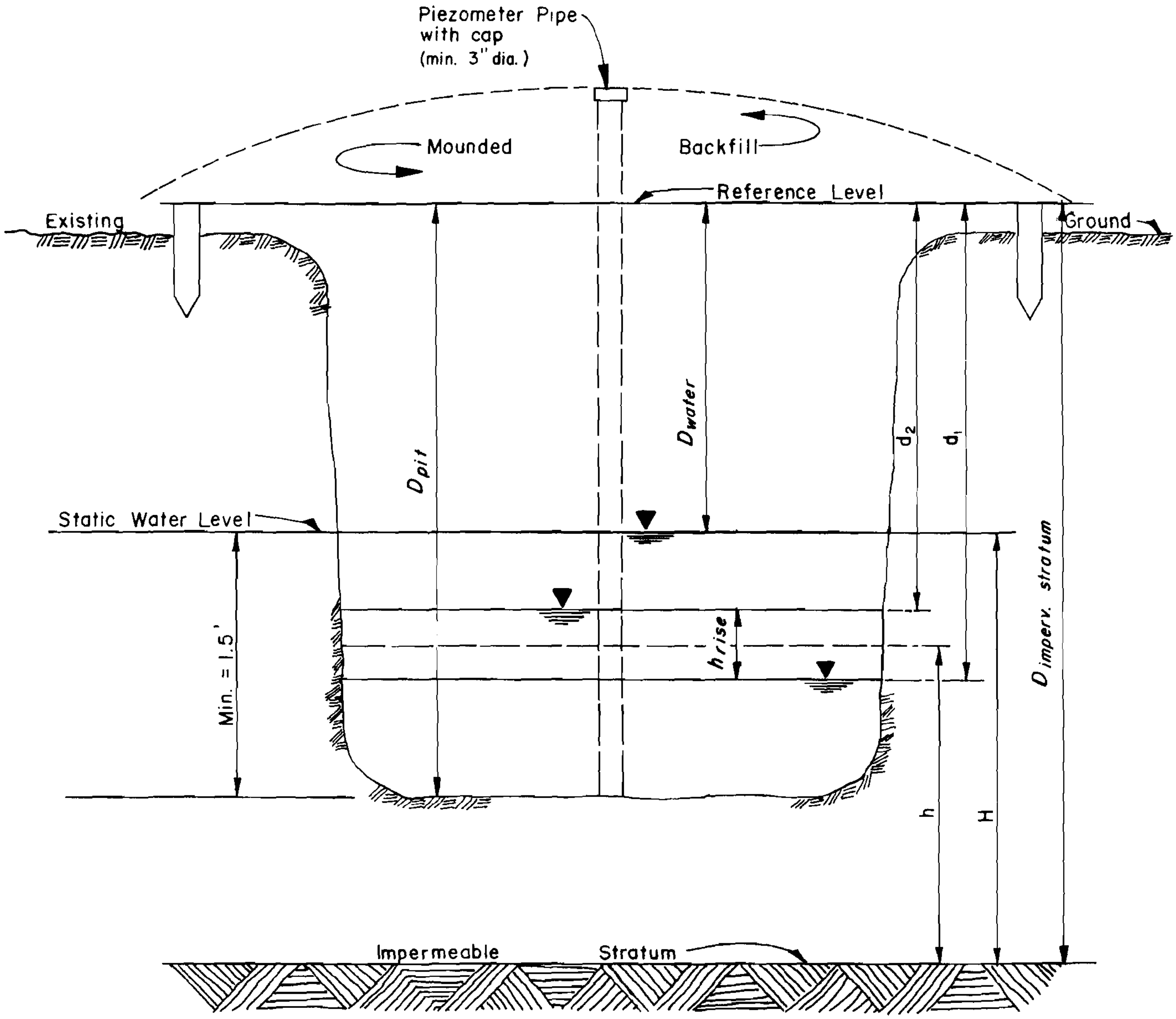
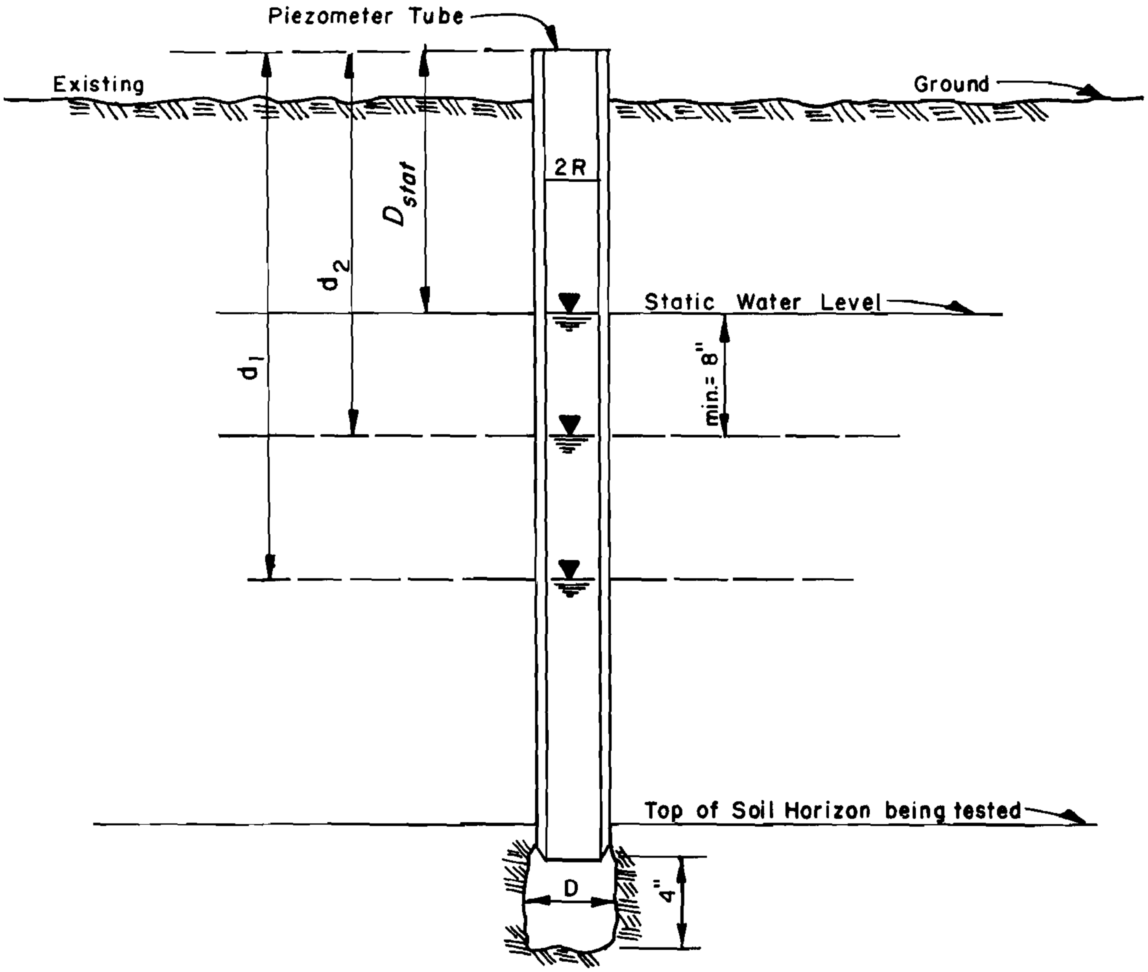



Figure 7. Percolation Test




$$K\,(\text{in./hr.}) = \left[(h_{rise})/t\right] \times \left[A_{AV.}/2.27\,(H^2 - h^2)\right] \times 60\ \text{min./hr.}$$

**Figure 8. Pit-bailing Test.**




$$K = 60\ \text{min/hr.} \times (3.14\ R^2/At) \times ln\left[(d_1 - D_{stat}) / (d_2 - D_{stat})\right]$$

**Figure 9. Piezometer Test.**

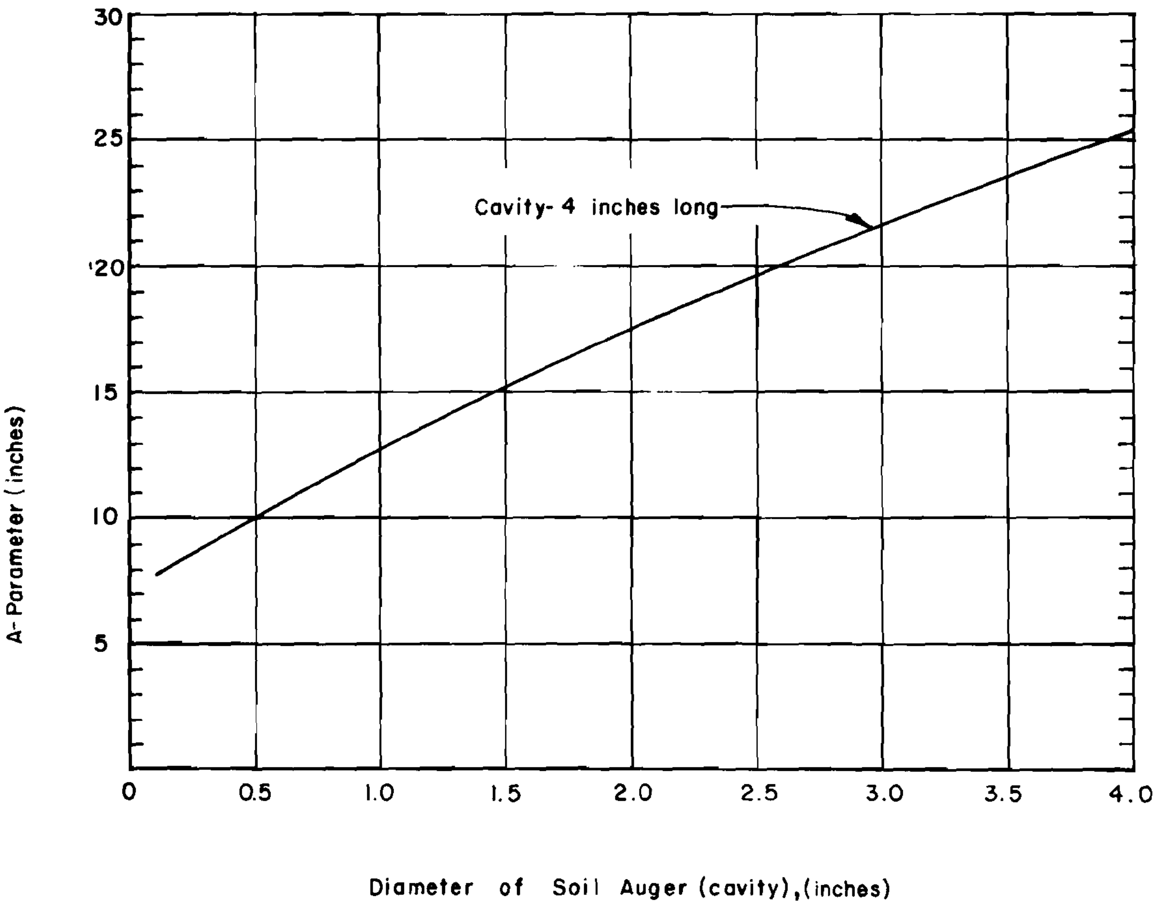
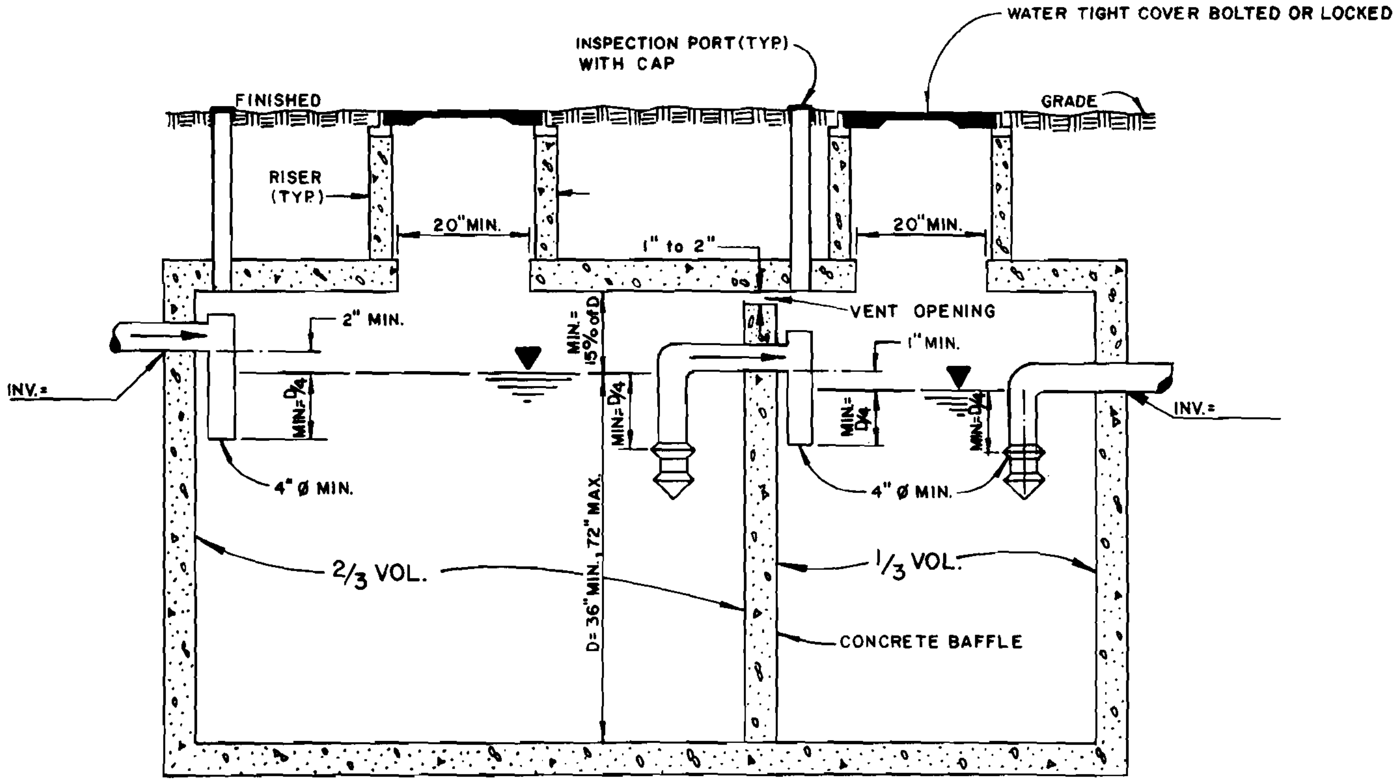
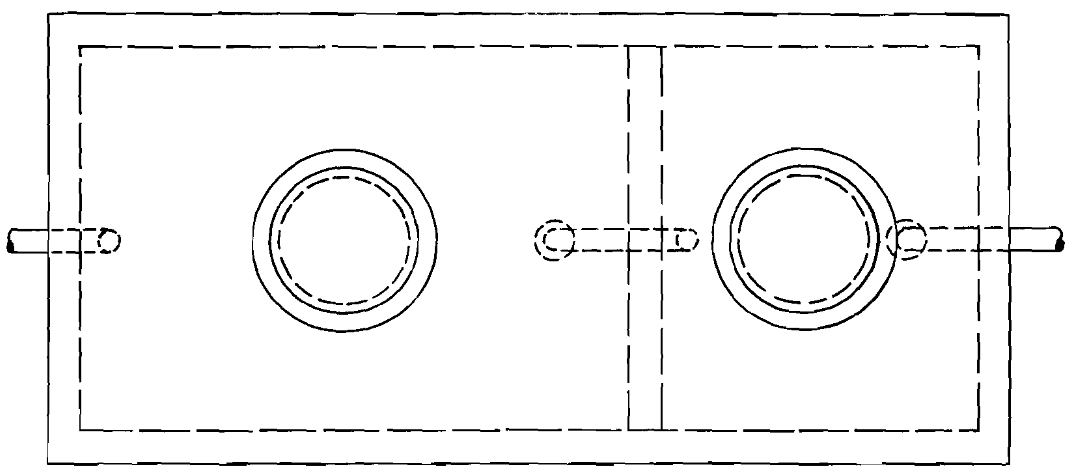



Figure 10. "A" Parameter for Piezometer Test.




ELEVATION

VOL.=TOTAL LIQUID CAPACITY



PLAN

Figure 11. Multiple Compartment Septic Tank with Septic Solids Retainer

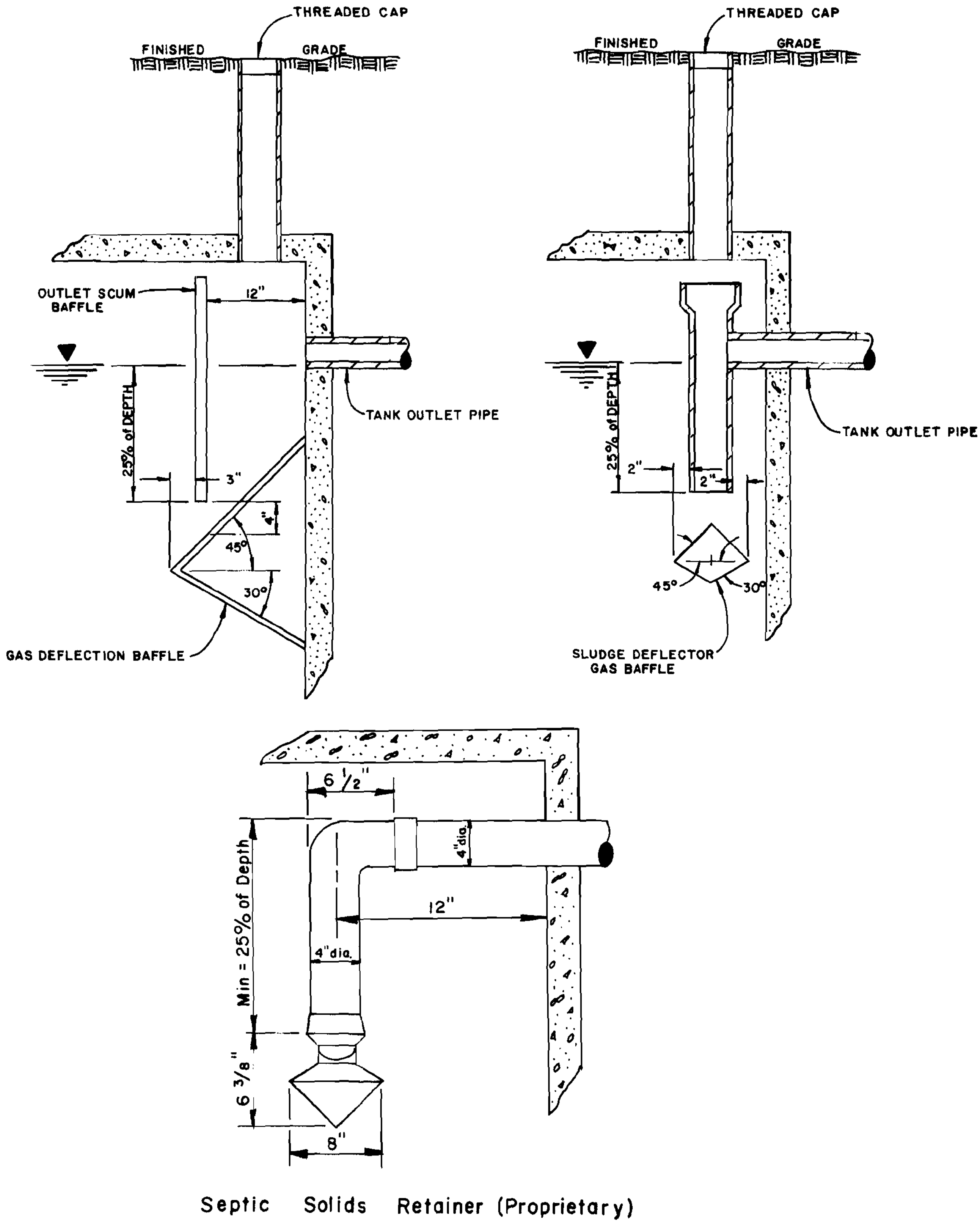



Figure 12. Gas Deflection Baffles

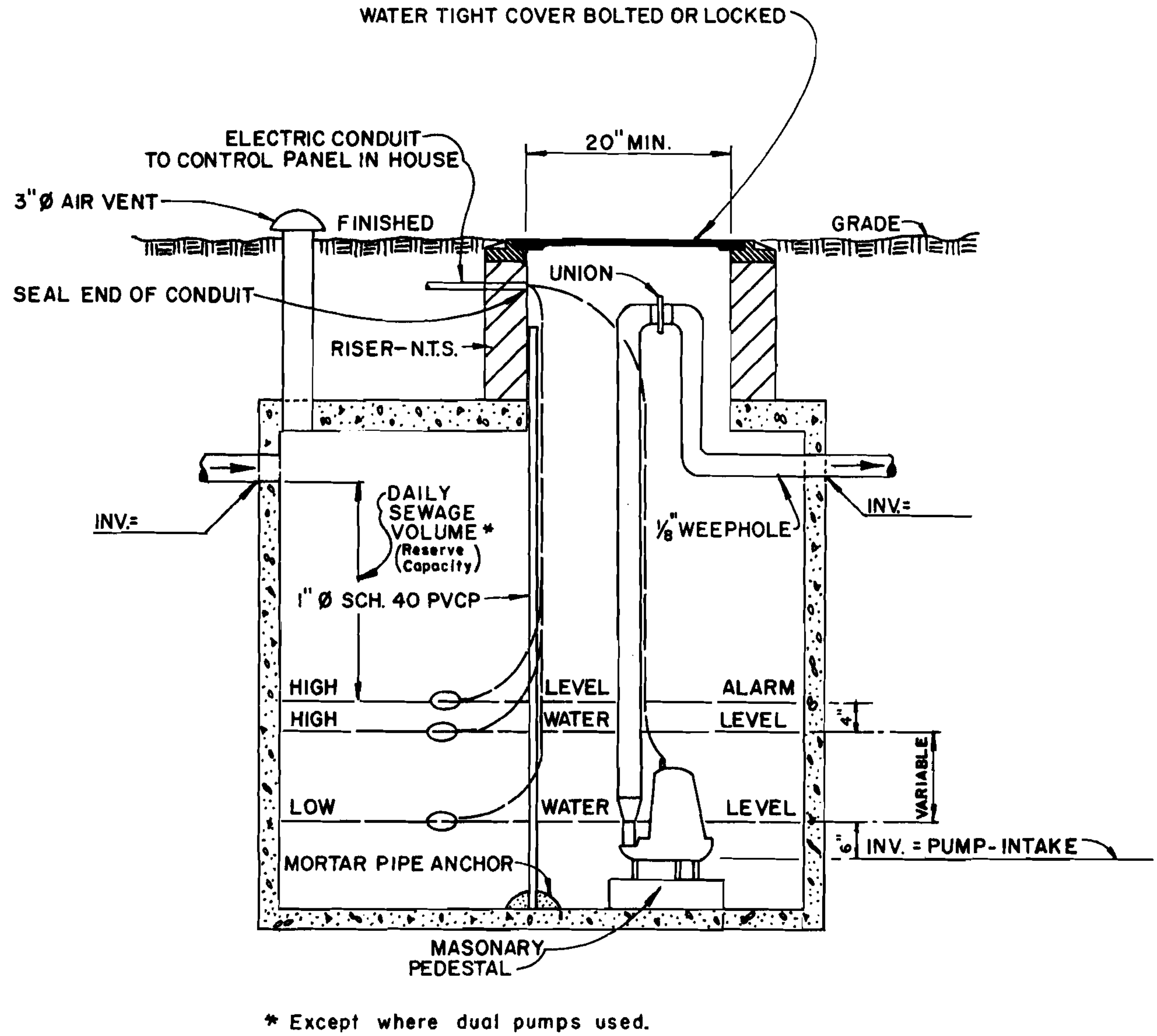
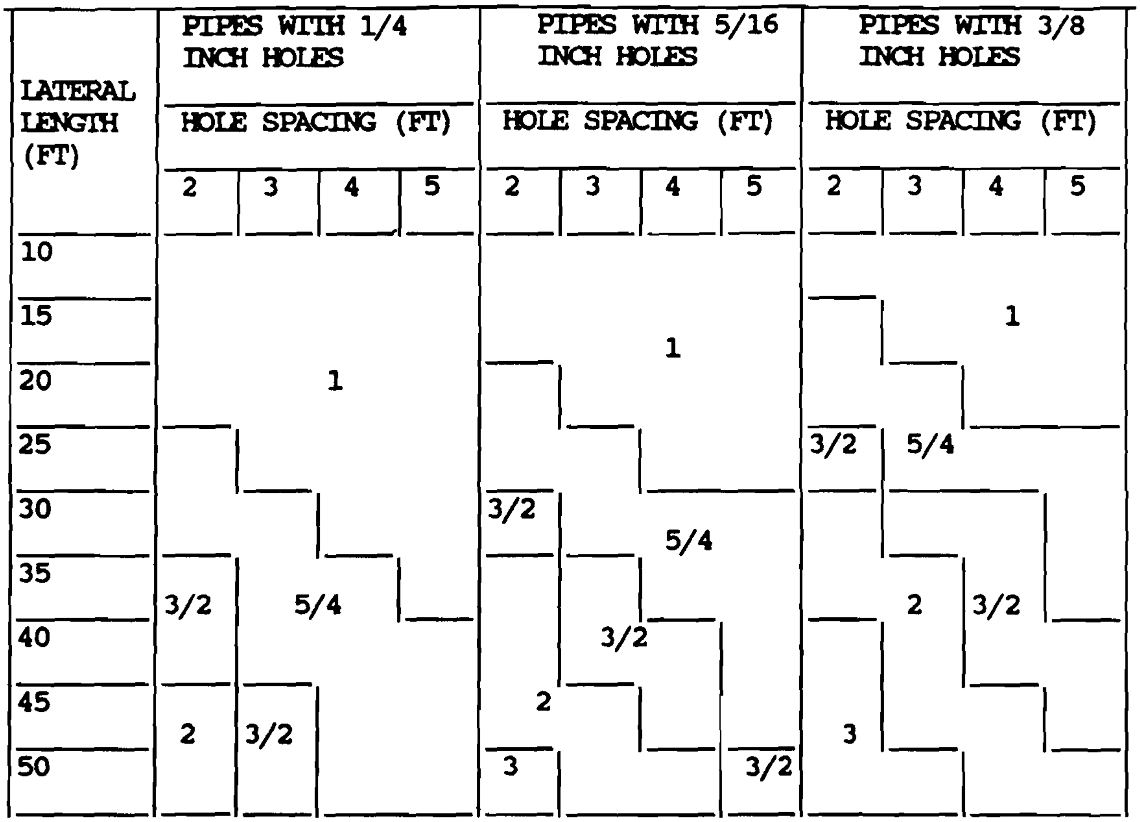
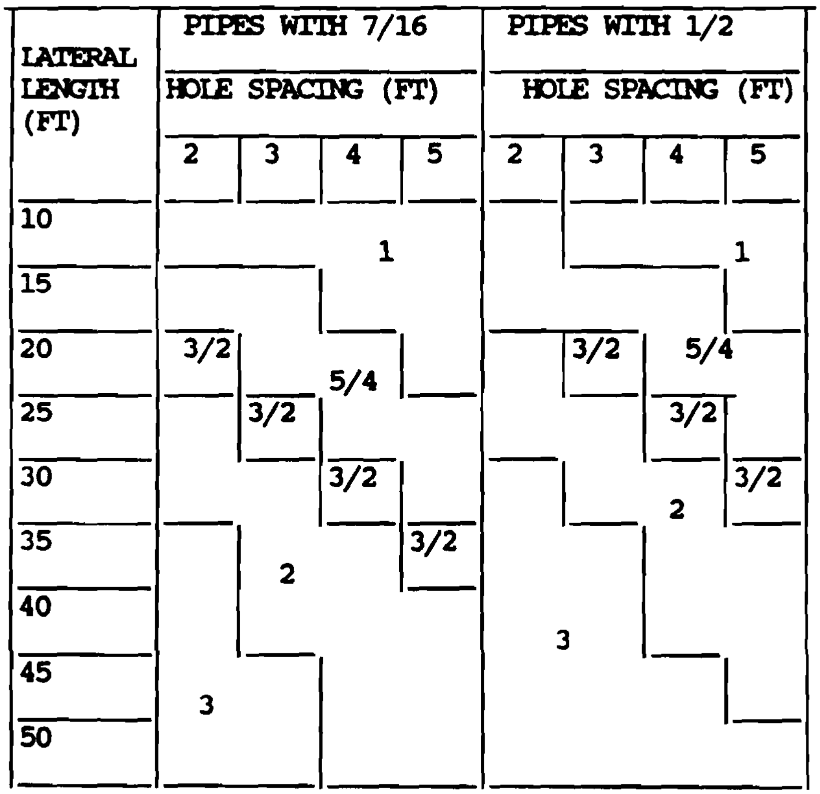



Figure 13. Dosing Tank with Pump.




Computed for plastic pipe. The Hazen-Williams equation was used to compute head-losses through each pipe segment. (Hazen-Williams C = 150). The orifice equation for sharp-edged orifices (discharge coefficient = 0.6) was used to compute discharge rates through each orifice. The maximum lateral length for a given hole and spacing was defined as that length at which the difference between the rates of discharge from the distal end and the supply end orifices reached 10% of the distal orifice rate.

Figure 14. Required Lateral Diameters, in Inches, For Various Hole Diameters, Hole Spacings and Lateral Lengths

MANIFOLD DIAMETER (IN)

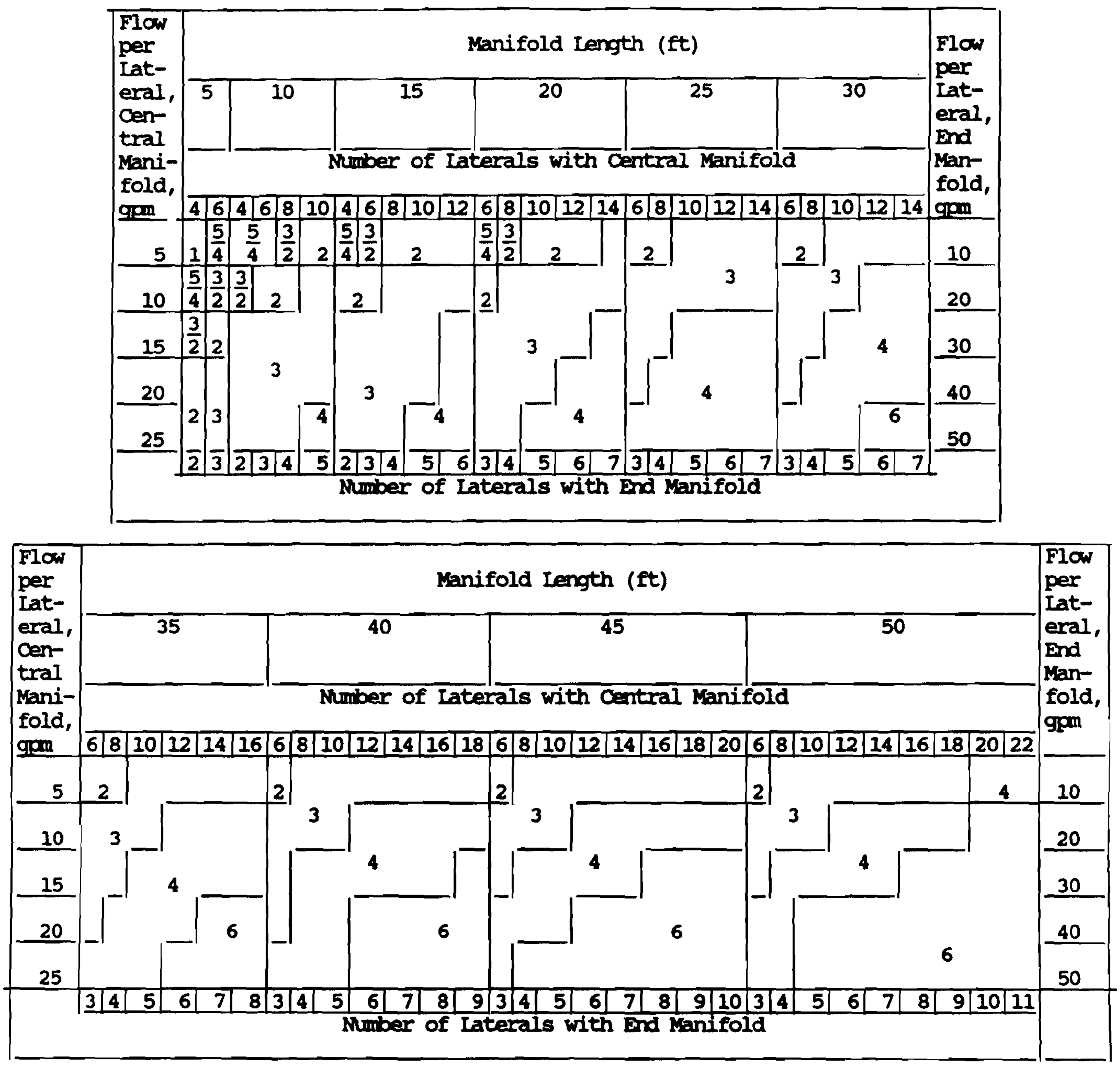



Figure 15. Required Manifold Diameters For Various Manifold Lengths, Number of Laterals and Lateral Discharge Rates

FRICTION LOSS IN SCHEDULE 40 PLASTIC PIPE, C = 150
(ft/100 ft)
Pipe Diameter (in)

| Flow (gpm) | 1 | 1¼ | 1½ | 2 | 3 | 4 | 6 | 8 | 10 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 0.07 | | | | | | | | |
| 2 | 0.28 | 0.07 | | | | | | | |
| 3 | 0.60 | 0.16 | 0.07 | | | | | | |
| 4 | 1.01 | 0.25 | 0.12 | | | | | | |
| 5 | 1.52 | 0.39 | 0.18 | | | | | | |
| 6 | 2.14 | 0.55 | 0.25 | 0.07 | | | | | |
| 7 | 2.89 | 0.76 | 0.36 | 0.10 | | | | | |
| 8 | 3.63 | 0.97 | 0.46 | 0.14 | | | | | |
| 9 | 4.57 | 1.21 | 0.58 | 0.17 | | | | | |
| 10 | 5.50 | 1.46 | 0.70 | 0.21 | | | | | |
| 11 | | 1.77 | 0.84 | 0.25 | | | | | |
| 12 | | 2.09 | 1.01 | 0.30 | | | | | |
| 13 | | 2.42 | 1.17 | 0.35 | | | | | |
| 14 | | 2.74 | 1.33 | 0.39 | | | | | |
| 15 | | 3.06 | 1.45 | 0.44 | 0.07 | | | | |
| 16 | | 3.49 | 1.65 | 0.50 | 0.08 | | | | |
| 17 | | 3.93 | 1.86 | 0.56 | 0.09 | | | | |
| 18 | | 4.37 | 2.07 | 0.62 | 0.10 | | | | |
| 19 | | 4.81 | 2.28 | 0.68 | 0.11 | | | | |
| 20 | | 5.23 | 2.46 | 0.74 | 0.12 | | | | |
| 25 | | | 3.75 | 1.10 | 0.16 | | | | |
| 30 | | | 5.22 | 1.54 | 0.23 | | | | |
| 35 | | | | 2.05 | 0.30 | 0.07 | | | |
| 40 | | | | 2.62 | 0.39 | 0.09 | | | |
| 45 | | | | 3.27 | 0.48 | 0.12 | | | |
| 50 | | | | 3.98 | 0.58 | 0.16 | | | |
| 60 | | | | | 0.81 | 0.21 | | | |
| 70 | | | | | 1.08 | 0.28 | | | |
| 80 | | | | | 1.38 | 0.37 | | | |
| 90 | | | | | 1.73 | 0.46 | | | |
| 100 | | | | | 2.09 | 0.55 | 0.07 | | |
| 150 | | | | | | 1.17 | 0.16 | | |
| 200 | | | | | | | 0.28 | 0.07 | |
| 250 | | | | | | | 0.41 | 0.11 | |
| 300 | | | | | | | 0.58 | 0.16 | |
| 350 | | | | | | | 0.78 | 0.20 | 0.07 |
| 400 | | | | | | | 0.99 | 0.26 | 0.09 |
| 450 | | | | | | | 1.22 | 0.32 | 0.11 |
| 500 | | | | | | | | 0.38 | 0.14 |
| 600 | | | | | | | | 0.54 | 0.18 |
| 700 | | | | | | | | 0.72 | 0.24 |
| 800 | | | | | | | | | 0.32 |
| 900 | | | | | | | | | 0.38 |
| 1000 | | | | | | | | | 0.46 |

**Figure 16. Friction Loss in Schedule 40 Pipe**

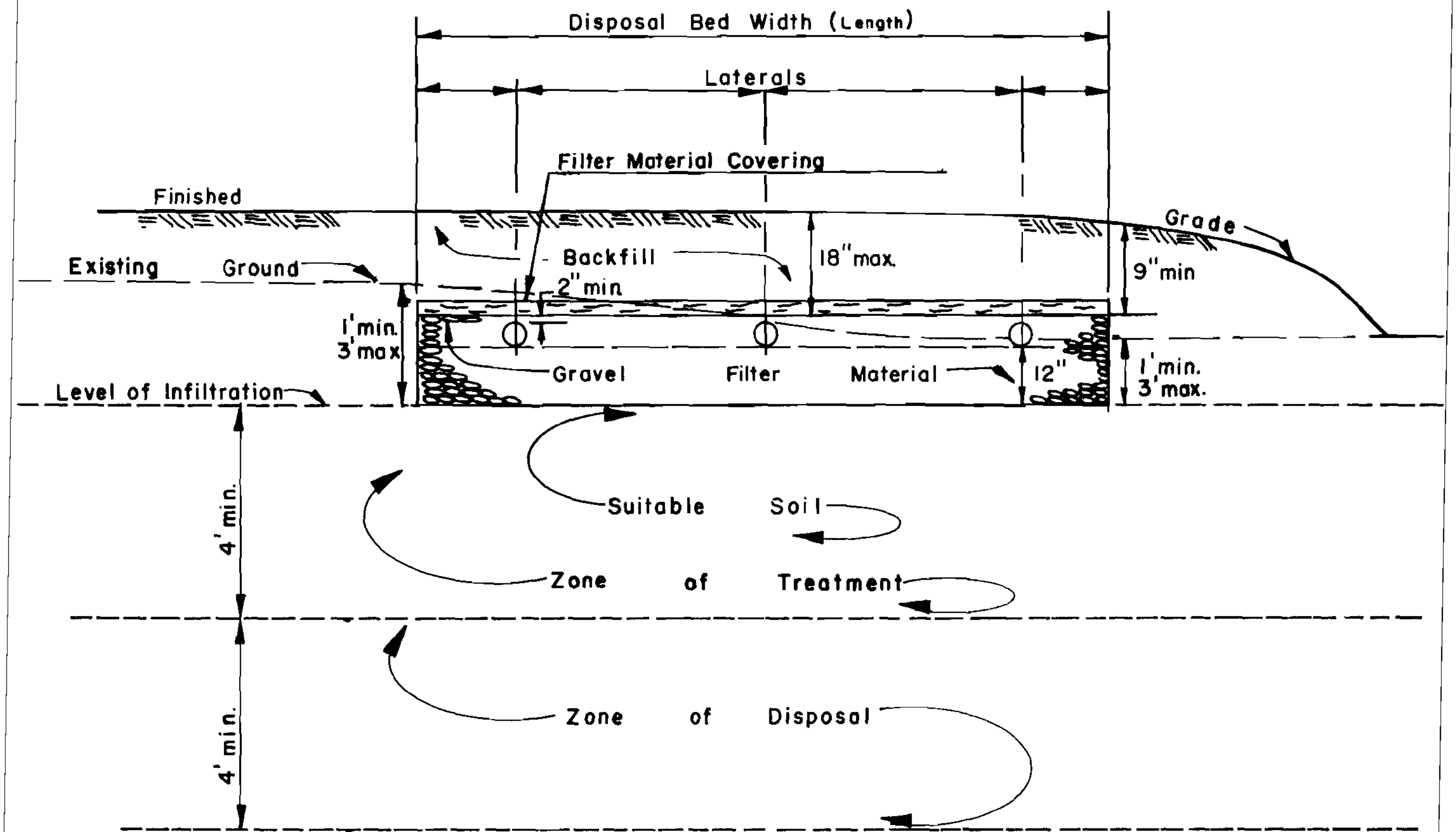



Figure 17. Conventional Disposal Field Installation.

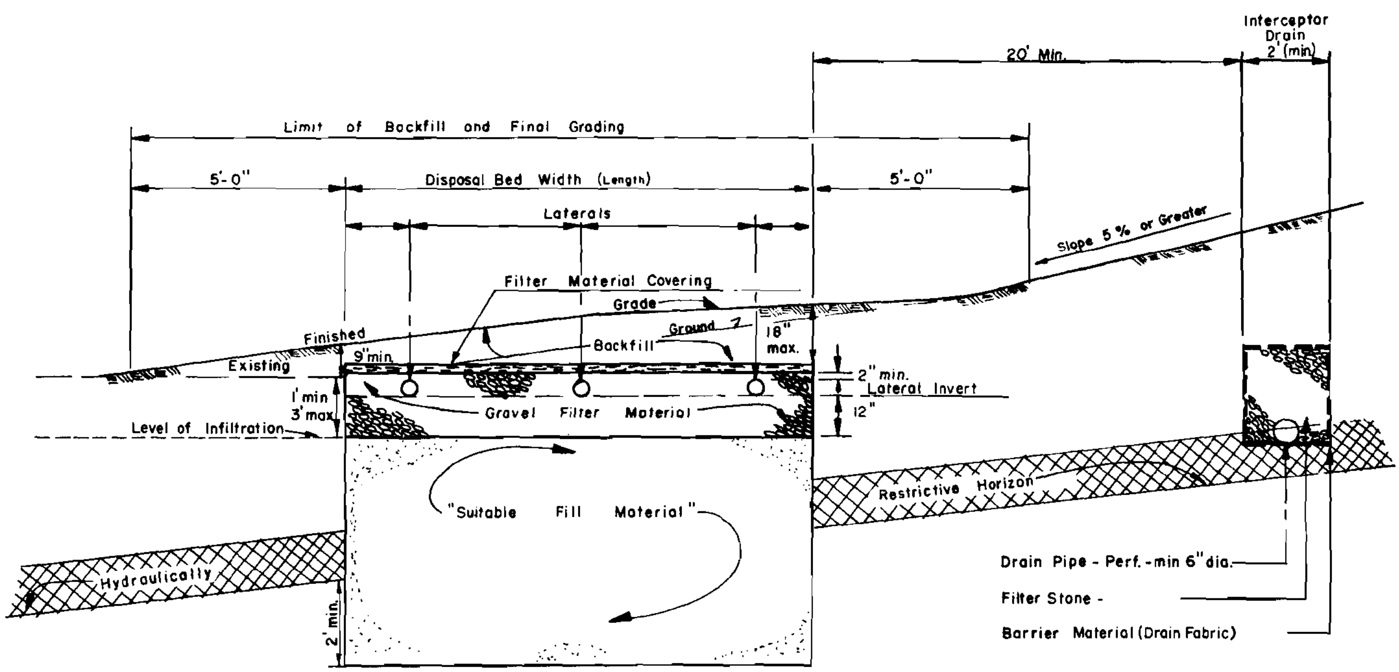



Figure 18. Soil Replacement, Bottom-Lined Disposal Field Installation.

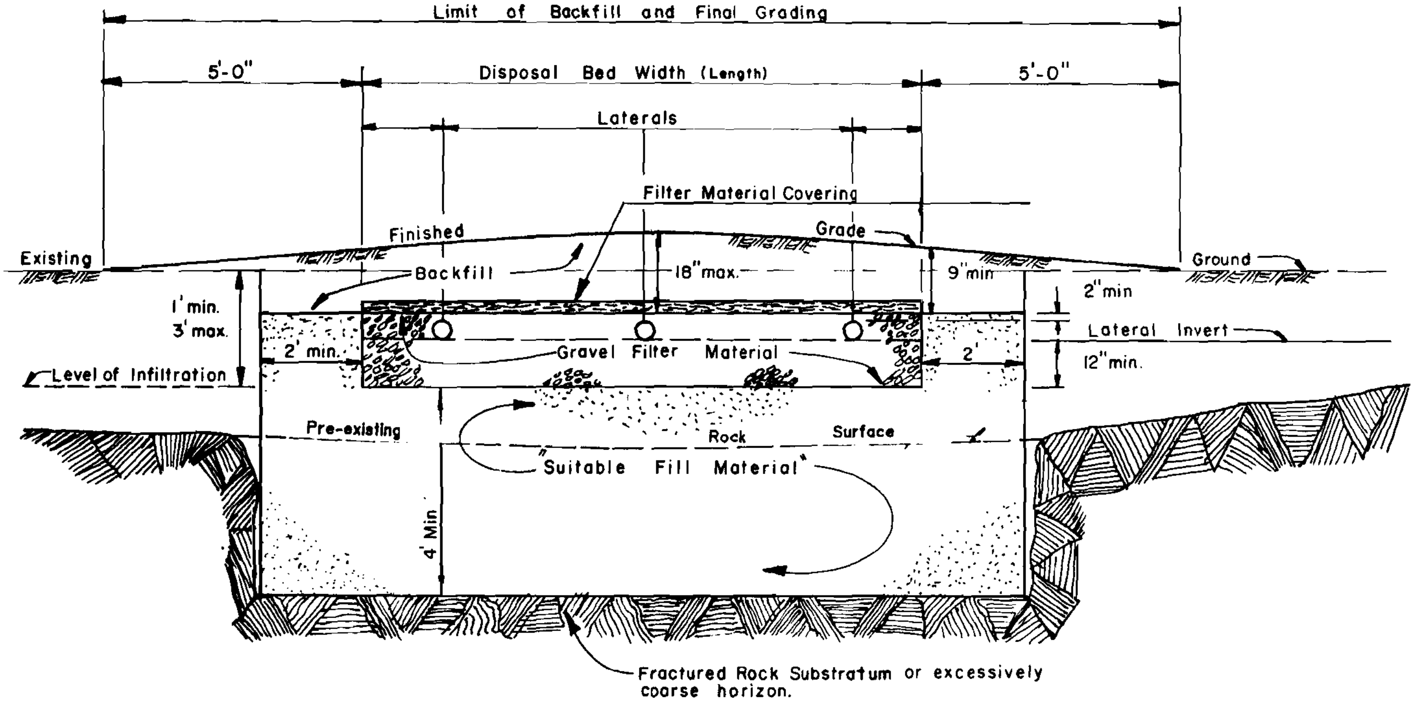



Figure 19. Soil Replacement, Fill-enclosed Disposal Field Installation.

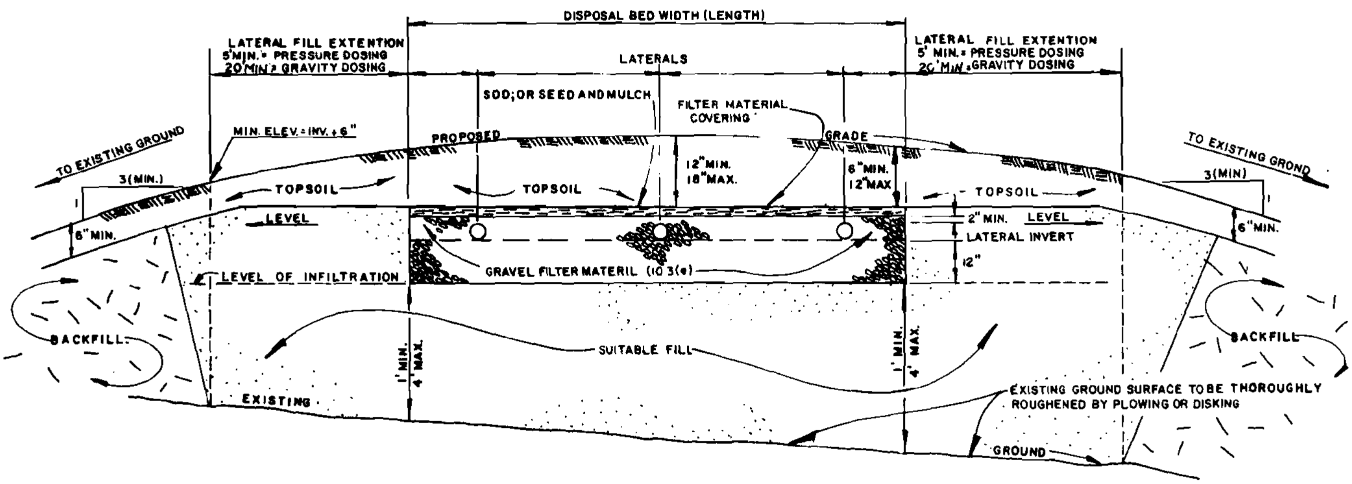



Figure 20. Mounded Disposal Field Installation.

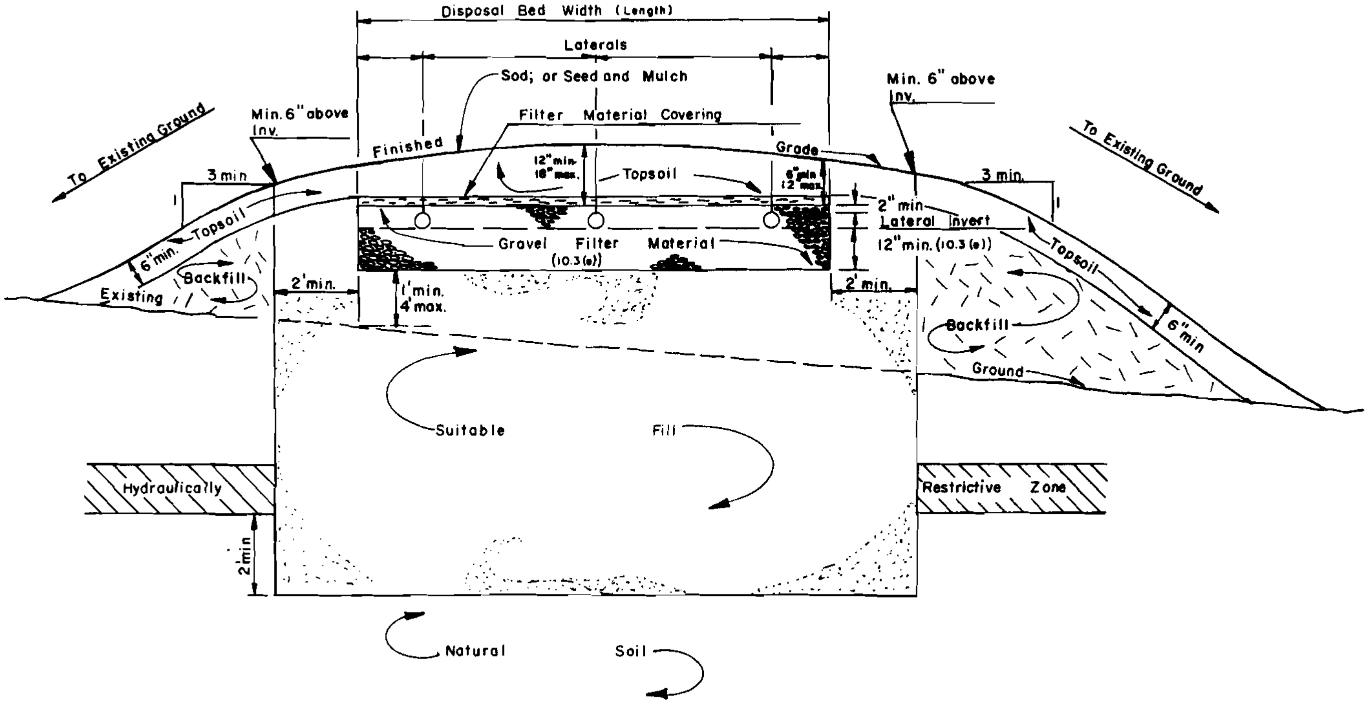



Figure 21. Mounded Soil Replacement Disposal Field Installation.

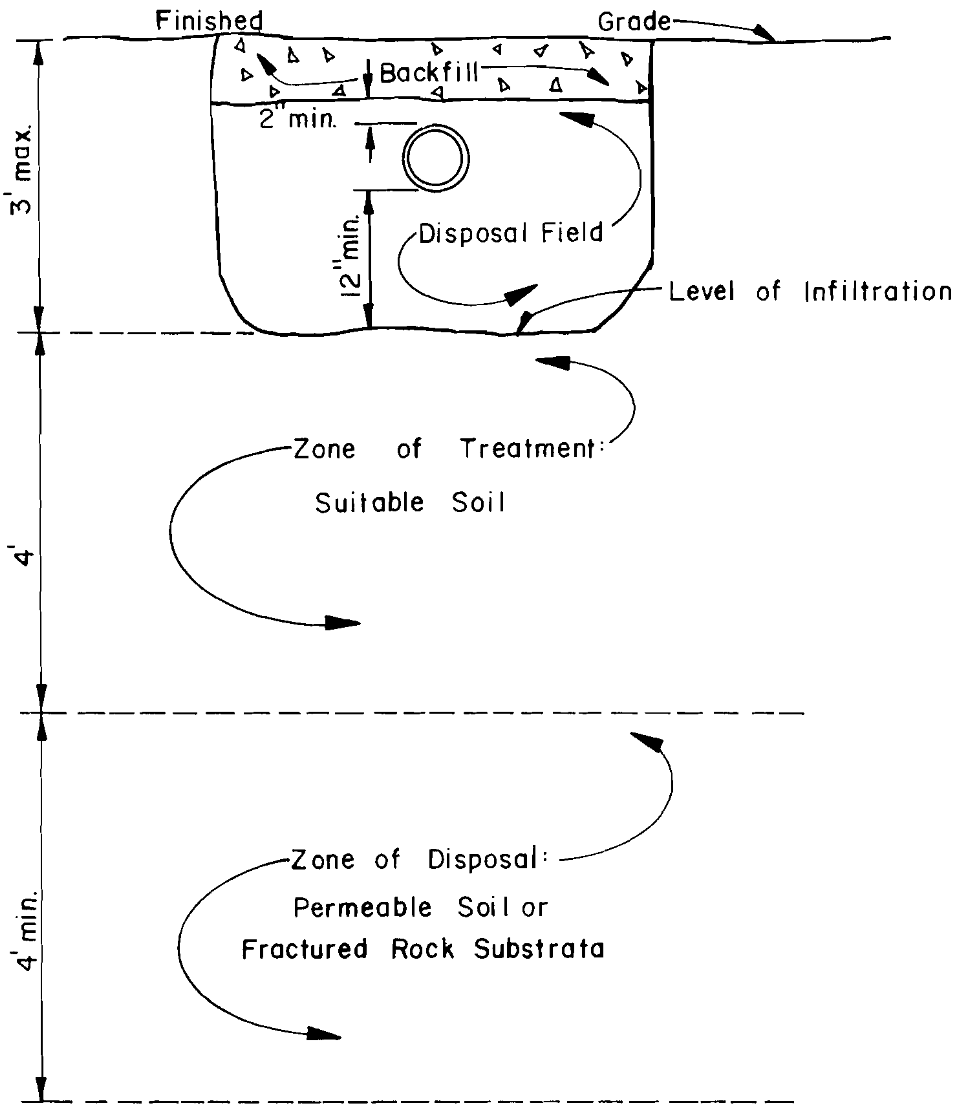



**Figure 22. Zone of Treatment and zone of Disposal, Conventional Installations.**

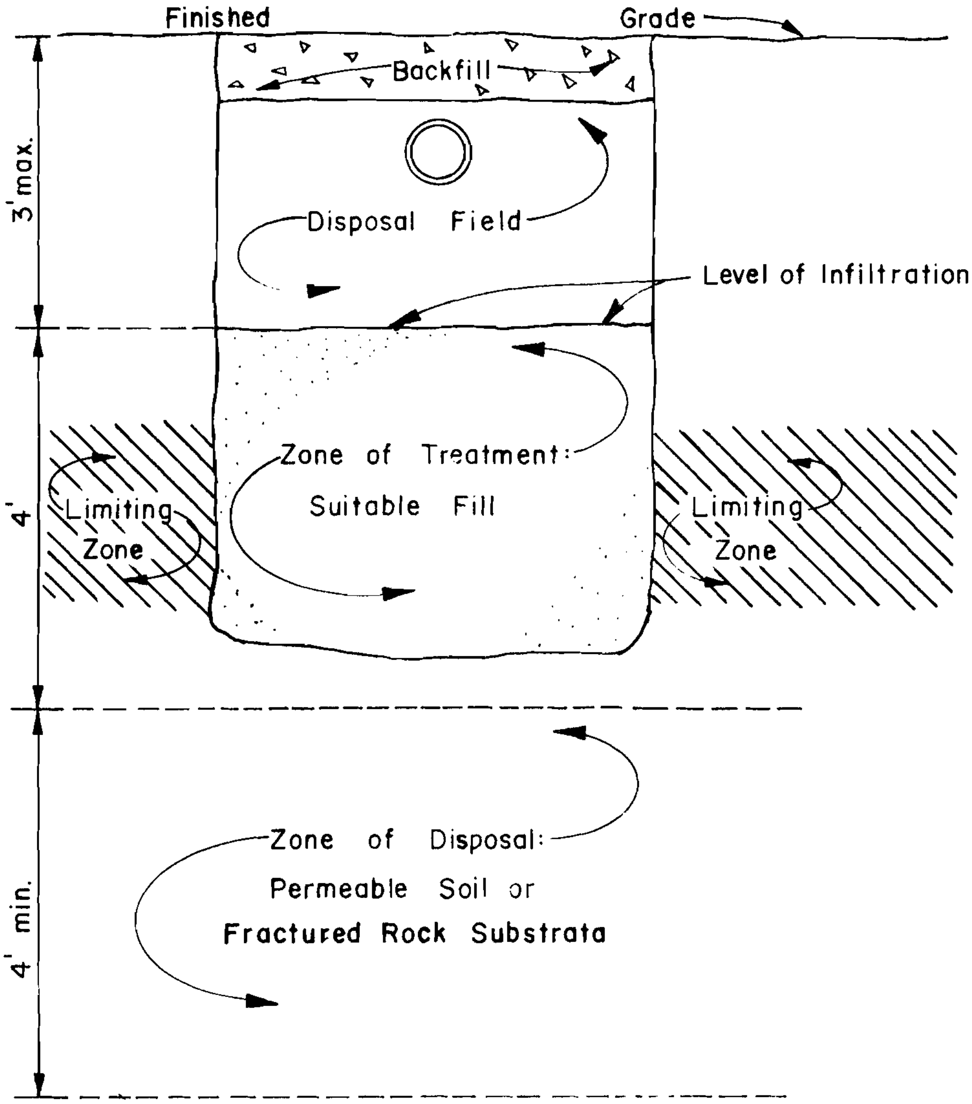



Figure 23. Placement of Fill Material Within Zone of Treatment.

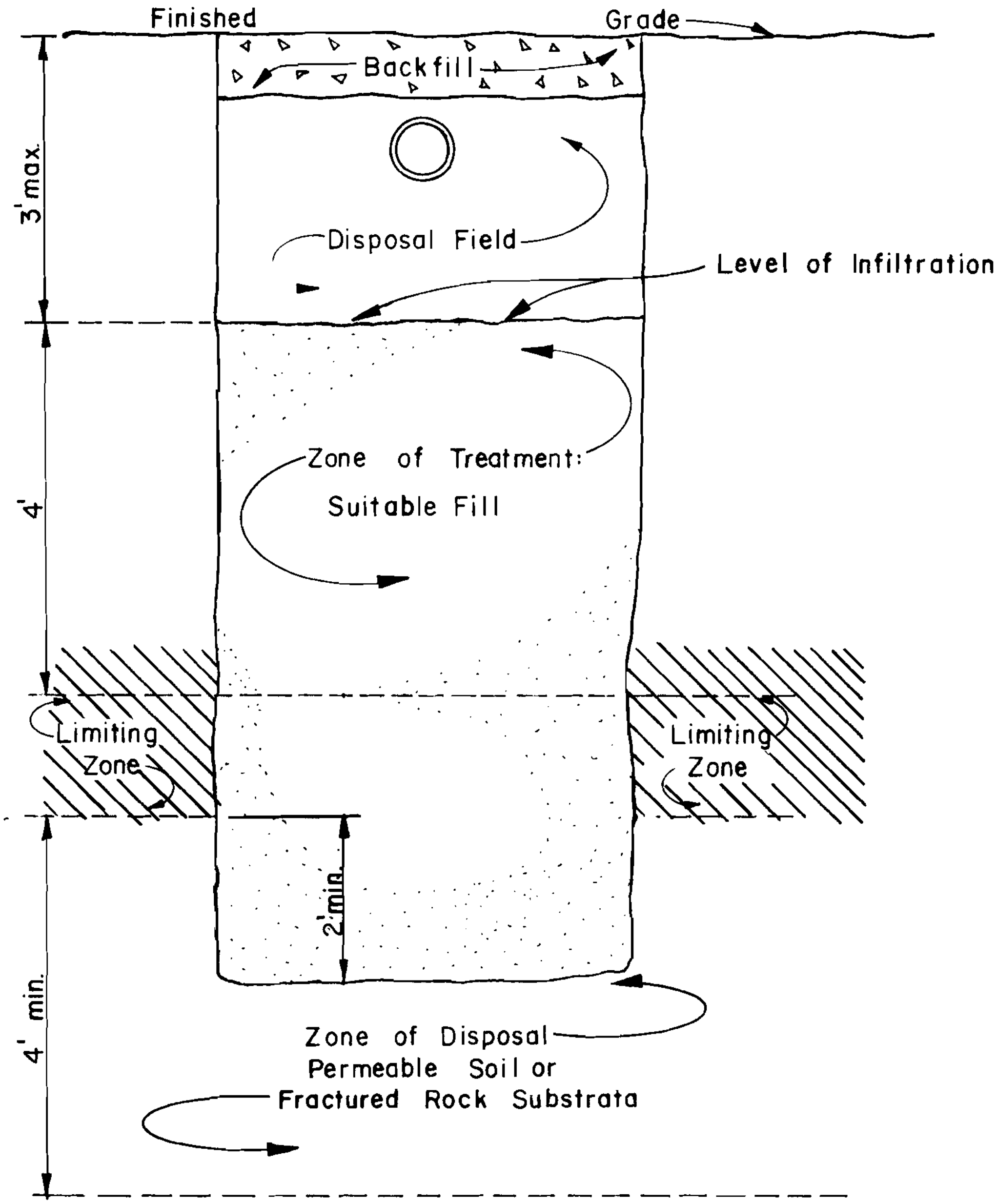



**Figure 24. Placement of Fill Material Within Zone of Disposal.**

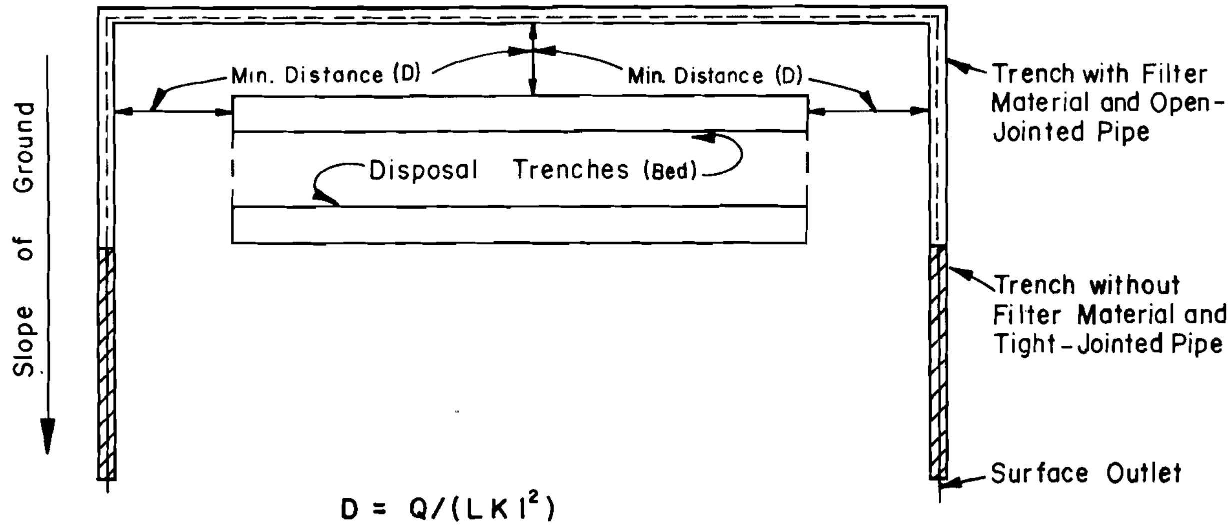



**Figure 25. Disposal Field with Interceptor Drain.**

| Size Number | Nominal Size Square Openings (1) | Amounts finer than each laboratory sieve (square openings), percentage by weight | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 4 | 3½ | 3 | 2½ | 2 | 1½ | 1 | ¼ | ½ | ⅜ | No. 4 | No. 8 | No. 16 | No. 50 | No. 100 |
| 1 | 3½ to 1½ | 100 | 90–100 | | 25–60 | | 0–15 | | 0–5 | | | | | | | |
| 2 | 2½ to 1½ | | | 100 | 90–100 | 35–70 | 0–15 | | 0–5 | | | | | | | |
| 24 | 2½ to ¼ | | | 100 | 90–100 | | 25–60 | | 0–10 | 0–5 | | | | | | |
| 3 | 2 to 1 | | | | 100 | 90–100 | 35–70 | 0–15 | | 0–5 | | | | | | |
| 357 | 2 to No. 4 | | | | 100 | 95–100 | | 35–70 | | 10–30 | | 0–5 | | | | |
| 4 | 1½ to ¼ | | | | | 100 | 90–100 | 20–55 | 0–15 | | 0–5 | | | | | |
| 467 | 1½ to No. 4 | | | | | 100 | 95–100 | | 35–70 | | 10–30 | 0–5 | | | | |
| 5 | 1 to ½ | | | | | | 100 | 90–100 | 20–55 | 0–10 | 0–5 | | | | | |
| 56 | 1 to ⅜ | | | | | | 100 | 90–100 | 40–75 | 15–35 | 0–15 | 0–5 | | | | |
| 57 | 1 to No. 4 | | | | | | 100 | 95–100 | | 25–60 | | 0–10 | 0–5 | | | |
| 6 | ¼ to ⅜ | | | | | | | 100 | 90–100 | 20–55 | 0–15 | 0–5 | | | | |
| 67 | ¼ to No. 4 | | | | | | | 100 | 90–100 | | 20–55 | 0–10 | 0–5 | | | |
| 68 | ¼ to No. 8 | | | | | | | 100 | 90–100 | | 30–65 | 5–25 | 0–10 | 0–5 | | |
| 7 | ½ to No. 4 | | | | | | | | 100 | 90–100 | 40–70 | 0–15 | 0–5 | | | |
| 78 | ½ to No. 8 | | | | | | | | 100 | 90–100 | 40–75 | 5–25 | 0–10 | 0–5 | | |
| 8 | ⅜ to No. 8 | | | | | | | | | 100 | 85–100 | 10–30 | 0–10 | 0–5 | | |
| 89 | ⅜ to No. 16 | | | | | | | | | 100 | 90–100 | 20–55 | 5–30 | 0–10 | 0–5 | |
| 9 | No. 4 to No. 16 | | | | | | | | | | 100 | 85–100 | 10–40 | 0–10 | 0–5 | |
| 10 | No. 4 to 0[2] | | | | | | | | | | 100 | 85–100 | | | | 10–30 |

[1]In inches, except where otherwise indicated. Numbered sieves are those of the United States Sieve Series.
[2]Screenings.

**Figure 26. N.J. Department of Transportation Standard Sizes for Coarse Aggregate**

## APPENDIX B— STANDARD FORMS FOR SUBMISSION OF SOILS/ENGINEERING DATA

COUNTY/MUNICIPALITY____________________________

APPLICATION FOR PERMIT TO CONSTRUCT/ALTER/REPAIR AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1—General Information

1. Type of Permit Needed (Check applicable categories):

   ___ New Construction ___ Alteration/No Expansion or Change of Use

   ___ Alteration/Expansion or Change in Use

   ___ Alteration/Malfunctioning System

   ___ Deviation from Standards ___ Repairs to Existing System

2. Location of Project:

   Municipality____________ Block No.____Lot No.____

3. Name of Applicant (print):____________________

4. Applicant's Present Address:____________________

5. Applicant's Phone Number:____________________

6. Type Of Facility:

   ___ Residential

   ___ Commercial/Institutional

   Specify Type of Establishment:________________

7. Type of Wastes to be Discharged:

   ___ Sanitary Sewage

   ___ Industrial Wastes

   ___ Other—Specify Type

8. Other Approvals/Certification/Waivers/Exemptions (Attach to Application):

   ___ Pinelands Commission

   ___ U.S. Army Corps of Engineers

   ___ NJDEP—Bureau of Flood Plain Management

   ___ Other—Specify:

9. I hereby certify that the information furnished on Form 1 of this application is true. I am aware that false sweaning is a crime in this State and subject to prosecution.

Signature of Applicant________________Date________

---

FOR AGENCY USE ONLY

___ Application Denied—Reason for Denial/Citation of Rules Violated:___

______________________________________

___ Application Approved

___ Application Approved Subject to Approval by NJDEP

Date of Action________Signature of Authorized Agent__________

Name and Title____________________________

Form 2a—General Site Evaluation Data

1. Name of Site Evaluator (print):____________________

2. Business Address of Site Evaluator:____________________

3. Business Phone Number of Site Evaluator:________________

4. Special Site Limitations Identified (Check appropriate Categories):

   ___ Flood Plains ___ Bedrock Outcrops ___ Wetlands

   ___ Excessively Stony ___ Disturbed Ground ___ Sink Holes

   ___ Sand Dunes ___ Steep Slopes

   ___ Other—Specify____________________

5. Soil Logs—Enter on Form 2b—Use one sheet for each soil log.

6. Considerations Relating to Disturbed Ground:

   a) Type of Disturbance (Check appropriate categories):

      ___ Filled Area ___ Excavated Area ___ Re-graded Area

      ___ Subsurface Drains ___ Other—Specify____________

   b) Pre-existing Natural Ground Surface

      Elevation Relative to Existing Ground Surface__________

      Method of Identification____________________

   c) Suitability of Disturbed Ground

      ___ Unsuitable: Objects Subject to Disintegration or Change in Volume

      ___ Excessively Coarse

      ___ Proctor Test performed—% Standard Proctor Density =_____

7. Hydraulic Head Test:

   a) Hydraulically Restrictive Horizon: Depth Top to Bottom_______

   b) Piezometer A: Depth to Bottom____Depth of Water Level (24 hrs)____

   c) Piezometer B: Depth to Bottom____Depth of Water Level (24 hrs)____

   d) Witnessed by________ Signature________ Date________

8. Attachments (Check items included):

   ___ Site Plan

   ___ Key Map Showing Location of Site On U.S.G.S. Quandrangle or Other Accurate Map

   ___ Key Map Showing Location of Site on U.S.D.A. Soil Survey Map

   ___ Other—Specify____________________

9. I hereby certify that the information furnished on Form 2a of this application (and the attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator________________Date________

Form 2b—Soil Log and Interpretation

1. Log Number______Method (Check One): ___ Profile Pit ___ Boring

2. Soil Log

| Depth (inches) Top-Bottom | Munsel Color Name and Symbol; Estimated Textural Class; Estimated Volume % Coarse Fragment, If Present; Structure; Moist or Dry Consistence; Mottling—Abundance, Size and Contrast, If Present |
|---|---|
| | |

3. Ground Water Observations:

___ Seepage—Indicate Depth__________

___ Pit/Boring Flooded—Depth after ___ Hours__________

4. Soil Limiting Zones (Check Appropriate Categories):

___ Fractured Rock Substratum—Depth to Top__________

___ Massive Rock Substratum—Depth to Top__________

___ Excessively Coarse Horizon—Depth Top to Bottom__________

___ Excessively Coarse Substratum—Depth to Top__________

___ Hydraulically Restrictive Horizon—Depth Top to Bottom__________

___ Hydraulically Restrictive Substratum—Depth to Top__________

___ Perched Zone of Saturation—Depth Top to Bottom__________

___ Regional Zone of Saturation—Depth to Top__________

5. Soil Suitability Classification:

6. I hereby certify that the information furnished on Form 2b of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator__________Date__________

Form 3a. Soil Permeability Data

Assign a number for each test and a letter for each test replicate. Show test data and calculations on Form 3b, 3c, 3d, 3e, 3f or 3g. Use one sheet for each separate test or test replica.

1. Summary of Data—Enter data for each test replicate on a separate line.

| Type of Test | Test (number) | Replicate (letter) | Depth (inches) | Result* |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

*For tube permeameter, pit-bailing and piezometer tests report results in inches per hour. For Soil permeability class rating give soil permeability class number. For percolation test report result in minutes per inch. For basin flooding test report result as positive if basin drains completely within 24 hours after second filling, negative otherwise.

2. Design Permeability/Percolation Rate: Specify Test Number__________

___ Average of Test Replicates ___ Single Replicate

___ Slowest of Replicates

3. Type of Limiting Zone Identified

| Type of Limiting Zone Identified | Test Number |
|---|---|
| | |
| | |
| | |

4. Attachments (Check items included):

___ Form 3b—Tube Permeameter Test Data—Number of Sheets______

___ Form 3c—Soil Permeability Class Rating Test Data—
Number of Sheets__________

___ Form 3d—Percolation Test Data—Number of Sheets______

___ Form 3e—Pit-Bailing Test Data—Number of Sheets______

___ Form 3f—Piezometer Test Data—Number of Sheets______

___ Form 3g—Basin Flooding Test Data—Number of Sheets______

5. I hereby certify that the information furnished on Form 3a of this application (and the attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator__________Date__________

Form 3b. Tube Permeameter Test Data

1. Test Number______ Replicate (Letter)______ Date Collected______

2. Material Tested: ___ Fill ___ Test in Native Soil—Indicate Depth___

3. Type of Sample: ___ Undisturbed ___ Disturbed

4. Sample Dimensions: Inside Radius of Sample Tube, R, in cm.______
Length of Sample, L, in inches______

5. Bulk Density Determination (Disturbed Samples Only):
Sample Weight (Wt. Tube Containing Sample—Wt. of Empty Tube), grams__________
Sample Volume (L x 2.54cm./inch x $3.14R^2$), cc.__________
Bulk Density (Sample Wt./Sample Volume), grams/cc.__________

6. Standpipe Used: ___ No ___ Yes
—Indicate Internal Radius, cm.__________

7. Height of Water Level Above Rim of Test Basin, in inches:
At the Beginning of Each Test Interval, $H_1$__________
At the End of Each Test Interval, $H_2$__________

8. Rate of Water Level Drop (Add additional lines if needed):

| Time, Start of Test Interval, $T_1$ | Time, End of Test Interval, $T_2$ | Length of Test Interval, T, minutes |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

9. Calculation of Permeability:

$K, (in/hr) = 60\ min/hr \times r^2/R^2 \times L(in)/T(min) \times \ln (H_1/H_2)$

$= 60\ min/hr \times$ ___ / ___ x ___ / ___

x in ( ___ / ___ ) = ___

10. Defects in the Sample (Check appropriate items):

___ None ___ Cracks ___ Worm Channels

___ Root Channels ___ Soil/Tube Contact

___ Large Gravel ___ Large Roots

___ Dry Soil ___ Smearing ___ Compaction

___ Other—Specify___

11. I hereby certify that the information furnished on Form 3b of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evalvator___Date___

Form 3c. Soil Permeability Class Rating Data

1. Test Number___Replicate (Letter)___
2. Sample Depth___Soil Pit/Boring Number___Date Collected___
3. Coarse Fragment Content:

   Total Weight of Sample, W.T., grams___

   Weight of Material Retained on 2mm sieve, W.C.F., grams___

   Wt. % Coarse Fragment (W.C.F./W.T. x 100):___
4. Oven Dry Weight (24 hrs, 105°C of 40 Gram Air Dry Sample,

   grams, Wt___
5. Hydrometer Calibration, Rc___
6. Hydrometer Reading—40 seconds, grams, R1___

   Temperature of Suspension, °F___
7. Corrected Hydrometer Reading, grams, R1′___
8. Hydrometer Reading—2 hours, grams, R2___

   Temperature of Suspension, °F___
9. Corrected Hydrometer Reading, grams, R2′___
10. % sand = (Wt. - R1′)/Wt. x 100 = ( ___ - ___ )/ ___ x 100 =___
11. % clay = R2′/Wt. x 100 = ___ / ___ x 100 =___
12. Sieve Analysis:

    a. Oven Dry Wt. (2 hrs., 105°C) Total Sand Fraction (Soil Retained in 0.047 mm Sieve), grams___

    b. Wt. of Fine Plus Very fine Sand Fraction (Sand Passing 0.25 mm Sieve), grams ___

    c. % Fine Plus Very Fine Sand (b/a)___
13. Soil Morphology (Natural Soil Samples Only):

    Structure of Soil Horizon Tested___

    Consistence of Soil Horizon Tested: Dry___Moist___
14. Soil Permeability Class Rating (Based upon average textural analysis of this replicate and other replicate samples)___
15. I hereby certify that the information furnished on Form 3c of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator___Date___

Form 3d. Percolation Test Data

1. Test Number___Replicate (Letter)___Date Tested___
2. Depth___
3. Pre-soak:___

   ___ Sandy Textured Soil Only, Shortened Pre-soak—Indicate Time Required for 12 Inches of Water to Drain After Second Filling, Minues ___

   ___ Four Hour Pre-soak Completed—Indicate Result:

   ___ Test Hole Drained Within 16 to 24 Hours After Pre-soak

   ___ Test Hole Did Not Drain Within 24 Hours After Pre-soak
4. Rate of Fall Data:

   a. Time Interval Selected, Minutes___

   b. Record the Drop in Water Level During Each Time Interval to the Nearest 1/10th-Inch On the Lines Below:

| Depth of Water, Start of Interval (inches) | Depth of Water, End of Interval (inches) | Drop in Water Level (inches) |
|---|---|---|
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |
| ___ | ___ | ___ |

5. Percolation Rate:

   a. Time, minutes, Required for a Six-inch Drop in Water Level___

   b. Percolation Rate = a/6 = ___ /6 = ___ min/in
6. I hereby certify that the information furnished on Form 3d of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator___Date___

Form 3e. Piezometer Test Data

1. Test Number___Reference Soil Log___Date Tested___
2. Diameter of Soil Auger, in.___Depth of Test Hole, in.___

   Inside Radius of Pipe, R, in.___

3. Depth to Apparent Static Water Level, in.____________

4. Measure and Record:

| Water Depth, Start of Interval inches, $d_1$ | Time at Start of Interval, | Water Depth, End of Interval inches, $d_2$ | Time at End of Interval, | Length of Interval, min, t |
|---|---|---|---|---|
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |
| ____ | ____ | ____ | ____ | ____ |

5. Depth to Water Level After 24 Hour Stabilization Period, $D_{static}$, in.____

6. Value of A-parameter____________

7. Calculation of Permeability:

K, in/hr = $[(3.14R^2)/(A \times t)] \times [\ln(d_1\text{-}D_{stat}/d_2\text{-}D_{stat})] \times 60$ min/hr

= [(3.14 ____ )/( ____ x ____ )] x [ln( ____ - ____ / ____ - ____ )]

x 60 min/hr = ____________

8. I hereby certify that the information furnished on Form 3e of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator____________Date________

Form 3f. Pit-Bailing Test Data

1. Test Number______ Reference Soil Log______ Date Tested______

2. Using the reference level established, measure and record the following:

—Depth to Bottom of Pit, ft, $D_{pit}$____________

—Depth to Water Level after 2 hr. Stabilization Period, ft, $D_{water}$____

—Depth to Impermeable Stratum, ft, $D_{stratum}$____________
(If depth is unknown assume it to be 1.5 times the depth of the pit.)

—Height of Water Level Above Impermeable Stratum, ft, H______
($H = D_{stratum} - D_{water}$)

—Length of Time Interval, T, in minutes____________

3. At the interval chosen, record the following data in the table below:

—Time of Measurement, $t_n$, minutes

—Depth of Water Level Below Reference Level, $d_n$, inches

—Water Surface Dimensions, ft: l,w

4. Calculate the following values and enter in the table below:

—Water Surface Area, $ft^2$, $A_n$

—Water level Risem $h_{rise}$ (Subtract current value of $d_n$ from previous value)

—Ave. Water Surface Area, $ft^2$, $A_{av}$ (Take average of $A_n$ and previous $A_n$)

—Ave. Height of Water Level Above Impermeable Stratum, ft, h
(Take ave. of $d_n$ and previous value of $d_n$, convert ft., and subtract from $D_{stratum}$)

—Permeability, in/hr, $K_a$ (Calculate using formula):
$K_a = [h_{rise}/T] \times [A_{av.}/2.27 (H^2\text{-}h^2)] \times 60$ min/hr

| $t_n$ | $d_n$(in.) | l,w (ft.) | $A_n(ft^2)$ | $h_{rise}$(in.) | $A_{av}(ft^2)$ | h (ft) | $K_a$ |
|---|---|---|---|---|---|---|---|
| $t_0$ ____ | ____ | ____ | ____ | XXXXXX | XXXXXX | XXXXXX | XXXXXX |
| $t_1$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_2$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_3$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_4$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_0$ ____ | ____ | ____ | ____ | XXXXXX | XXXXXX | XXXXXX | XXXXXX |
| $t_1$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_2$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_3$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_4$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_0$ ____ | ____ | ____ | ____ | XXXXXX | XXXXXX | XXXXXX | XXXXXX |
| $t_1$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_2$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_3$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |
| $t_4$ ____ | ____ | ____ | ____ | ____ | ____ | ____ | ____ |

5. Record the Following Data:

—Final Depth of Pit, $D_{pit}$, ft____________

—Depth to Impermeable Stratum, ft, $D_{stratum}$____________
(If no impermeable stratum is encountered assume $D_{stratum} = D_{pit}$)

—Height of Standpipe Above Reference Level, ft, $h_{pipe}$________

—Depth to Water Level after 24 hr. Stabilization Period, ft, $D_{water}$____
(Take measurement from top of standpipe. Subtract $h_{pipe}$)

—Height of Static Water Level Above Impermeable Stratum, ft, H____
($H = D_{stratum} - D_{water}$)

—Average Height of Water Level Above Impermeable Stratum, ft, h__
(Take average of $d_n$ from beginning and end of last time interval recorded in section 4, convert this to ft., subtract from $D_{stratum}$)

6. Re-calculation of K using data from section 5 above and from final time interval of section 4:

$K = [h_{rise}/t] \times [A_{av}/2.27(H^2\text{-}h^2)] \times 60$ min/hr
= [ ____ / ____ ] x [ ____ /2.27
( ____ - ____ )] x 60 min/hr = ____________

7. I hereby certify that the information furnished on Form 3f of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator____________Date________

Form 3g. Basin Flooding Test Data

1. Test Number______ Reference Soil Log______ Date Tested______

2. Depth of Pit, ft______

3. Area of Pit, $ft^2$______

4. Description of Rock Substratum Within Test Zone:

   Type of Rock______

   Name of Formation______

   Average Fracture Spacing______

   Type of Fractures (Check Appropriate Category):

   ___ Open (Wide), Clean—Width of Openings, mm______

   ___ Open (Wide), Infilled with Fines—Width of Openings, mm______

   ___ Tight (Closed)

   Orientation of Fractures:

   ___ Horizontal (Parallel to Pit Bottom) Or Nearly So

   ___ Inclined

   ___ Vertical (Parallel to Sides of Pit) Or Nearly So

   Hardness of Rock:

   ___ Rippable with Hand Tools

   ___ Not Rippable with Hand Tools, Rippable by Machine

   ___ Not Rippable by Machine, Explosives Used

5. Time of First Basin Flooding______

   Volume of Water Added, Gal.______

6. Result of First Basin Flooding:

   ___ Basin Drained within 24 Hrs.—Indicate Time______

   ___ Basin Not Drained within 24 Hrs.

7. Time of Second Basin Flooding______

   Volume of Water Added, Gal.______

8. Result of Second Basin Flooding:

   ___ Basin Drained within 24 Hrs.—Indicate Time______

   ___ Basin Not Drained within 24 Hrs.

9. I hereby certify that the information furnished on Form 3g of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator______Date______

Form 4. General Design Data

1. Volume of Sanitary Sewage, gal.______

   ___ Residential: No. of Dwelling Units___Total No. of Bedrooms___

   ___ Commercial/Institutional—Indicate type of establishment and show method of calculation. If estimate is based on water meter data, indicate source of data, frequency of readings, average daily flow, and maximum recorded daily reading______

2. Alterations or Repairs

   a) Reason for Alteration or Repair (Check appropriate categories):

   ___ Expansion or Change in Use ___ Upgrade Existing Facilities

   ___ Correct Malfunctioning System ___ Other—Specify______

   b) Describe Nature of Alteration or Repairs:______

3. System Components:

   a) Grease Trap Capacity, gals______

   Show Calculation Used:______

   b) Septic Tank Capacities, gals: ___ First (Single) Compartment___

   ___ Second Compartment___ ___ Third Compartment___

   c) Effluent Distribution

   Method: ___ Gravity Flow ___ Gravity Dosing

   ___ Pressure Dosing

   Dosing Device: ___ Pump ___ Siphon

   d) Dosing Tank Capacities, gals: Total Capacity___Dose Volume___

   Reserve Capacity______

   e) Laterals: Number___Total Length___Pipe Size___Spacing ___

   f) Connecting Pipe: Size______Length______

   g) Manifold: Size______Length______

   h) Disposal Field: Type of Installation______

   Design Permeability (Percolation Rate)______

   Trenches: Width______Total Length______Bed: Area______

   i) Seepage Pits: Design Percolation Rate______

   Number of Pits______Total Percolating Area Provided______

4. Attachments (Check items included):

   ___ General Plan of System Showing Location of All System Components

   ___ X-Sections of Each System Component Including Grease Trap, Septic Tank, Dosing Tank, Disposal Field, Seepage Pits and Interceptor Drains

   ___ Pump Performance Curve

   ___ Other—Specify______

5. I hereby certify that the information furnished on Form 4 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Design Engineer______Date______

Form 5. Design of Pressure Dosing System

1. Configuration of Distribution Network:

   Type of Manifold: ___ End ___ Central

   Distribution Laterals: Number ___ Length, ft ___ Spacing, ft ___

   Hole Diameter, ins ___ Hole Spacing, ins ___

   Diameter of Laterals, ins ___

2. Lateral Discharge Rate:

   Design Pressure Head at Supply End of Laterals, $H_p$, ft ___

   Hole Discharge Rate, Q, gpm ___

   Number of Holes per Lateral, n ___

   Lateral Discharge Rate, (Q x n) gpm ___

3. Manifold Length, ft ___ Manifold Diameter, ins ___

4. System Discharge Rate, gpm ___

5a. Pump Selection:

Diameter of Delivery Pipe ___ Length of Delivery Pipe ___

Friction Loss in Delivery Pipe, $H_f$, ft ___

Elevation of Dosing Tank Low Water Level ___

Elevation of Lateral Invert ___

Elevation Head, $H_e$, ft ___

Total Operating Head, $H_t$ ($H_p + H_f + H_e$), ft ___

Pump Model ___ Rated Horsepower ___

Pump Discharge Rate at Total Operating Head, gpm ___

5b. Siphon Elevation:

Diameter of Delivery Pipe ___ Length of Delivery Pipe ___

Friction Loss in Delivery Pipe, $H_f$, ft ___

Velocity Head, $H_v$, ft ___

Total Operating Head, $H_t$ ($H_p + H_f + H_v$), ft ___

Elevation of Lateral Invert ___

Elevation of Siphon Invert ___

6. Dose Volume:

Design Volume of Sewage, gal/day ___

Design Permeability, in/hr ___ or Percolation Rate, min/in ___

Internal Volume of Distribution Network ___

Dose Volume ___

7. I hereby certify that the information furnished on Form 4 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Design Engineer__________ Date__________

APPLICATION FOR LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1. General Information

1. Municipality__________ Block No.__________ Lot No.__________

2. Name of Applicant (print):__________

3. Applicant's Address:__________

4. Applicant's Phone Number:__________

5. Certificate of Compliance: Date of Issuance__________

If no Certificate Was Issued, Indicate Approximate Age of System__________

6. Type of Facility: ___ Residential—Indicate Number of Occupants__________

___ Commercial/Institutional—Specify Type of Establishment__________

7. Type of Wastes Discharged: ___ Sanitary Sewage Only

___ Industrial Wastes

___ Other—Specify__________

8. Volume of Wastes: Ave. Flow, gal/day ___ Max. Daily Flow, gal ___

___ Based On Water Meter Data

___ Assumed Based On Data Related to water Usage—Show Data Below:

—Number of Users (Patrons, Guests, Visitors, etc.) per Day___

—Number of Employees ___

Total Employee Hours per Day ___

—Number of Fixtures ___, Specify Type__________

—Size of Building, $ft^2$ ___

—Other—Specify__________

9. Indicate System Components, Provide What Information is Available:

___ Grease Trap: Capacity, gals ___

___ Septic Tank: Capacity, gals ___ No. of Compartments ___

___ Dosing Tank: Capacity, gals ___ Dosing Device:

___ Pump ___ Siphon

___ Disposal Bed: Area, $ft^2$ ___

___ Disposal Trenches: Width, ft ___ Number ___

Total Length, ft ___

___ Seepage Pits: Number ___ Diameter, ft ___ Depth, ft ___

___ Interceptor Drain

___ Other—Specify__________

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Septic System Inspector__________ Date__________

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___ Application Denied—State Reason for Denial__________

___ Application Approved—License Number__________

Date of Action__________ Signature of Authorized Agent__________

Name and Title__________

RENEWAL OF LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1. Report of Septic System Inspection/Maintenance

1. Municipality__________ Block No.__________ Lot No.__________

2. Name of Applicant (print):__________

3. Applicant's Address:__________

4. Applicant's Phone Number:__________

5. Expiration Date of Current License__________ License Number__________

6. Maintenance Performed at Time of Inspecition: ___ Septic Tank Pumped

___ Other—Specify__________

7. If the Septic Tank Was not Pumped, Provide Following Information:

| Date of Last Pump Out__________ Record Vertical Distance in inches: | 1st Comp | 2nd Comp | 3rd Comp |
|---|---|---|---|
| Bottom of Scum Layer to Bottom of Outlet Baffle | ___ | ___ | ___ |
| Top of Sludge Layer to Bottom of Outlet Baffle | ___ | ___ | ___ |

8. Indicate Problems Identified During Inspection:
   - ___ Septic Tank Not Accessible
   - ___ Inlet Baffle Needs Repair
   - ___ Outlet Baffle Needs Repair
   - ___ Effluent Backs-Up into Septic Tank
   - ___ Septic Tank Leaks
   - ___ Dosing Tank Not Accessible
   - ___ Dosing Tank Leaks
   - ___ Solids in Dosing Tank
   - ___ Operation/Condition of Pump, Switches, Alarm, Siphon, etc.
   - ___ Solids in D-Box
   - ___ D-Box Not Level
   - ___ Hydraulic Failure of Disposal Field or Seepage Pit
   - ___ Settlement or Improper Grading
   - ___ Encroachments in Disposal Area
   - ___ Improperly Directed Drainage
   - ___ Physical Condition of Seepage Pit
   - ___ Other—Specify___________

9. Observed Malfunctions:
   - ___ Back-up into Plumbing
   - ___ Seepage of Sewage/Effluent into Bldg.
   - ___ Surface Break-out or Ponding
   - ___ Contamination of Well Water
   - ___ Odors
   - ___ Other—Specify___________

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Septic System Inspector___________Date___________

FOR AGENCY USE ONLY

___ Renewal of License Denied—Reason for Denial___________

___ Approval Pending Completion of Repairs—Description of Repairs Required:___________

___ License Renewed—Expiration Date of New License___________

## APPENDIX C— UNIFORM PLACEMENT OF PERCOLATION TESTS

**Uniform Placement of Percolation Tests**

N.J.A.C. 7:9A-6.1(e)7 of these standards requires that percolation tests be spaced uniformly within the area of the disposal field. Acceptable patterns or arrangements for percolation test placement depend upon the size and shape of the disposal field as outlined below. Patterns other than those provided below may be approved provided that it is determined by the Administrative Authority that the test results submitted are representative of the soil conditions throughout the entire area of the disposal field.

**Definitions**

The following words and terms shall have the following meanings when used within Appendix B of this chapter:

"Center" means the intersection of the two disposal field diagonals.

"Diagonal" means a line connecting opposite corners of the disposal field.

"Elongated disposal field" means a disposal field with a length/width ratio of 3.0-5.0.

"End" means one of the two shorter sides in a disposal field which has a length/width ratio not equal to 1.0.

"Length" means the longest dimension of the disposal field, or the distance between the ends of the disposal field.

"Long axis" means a line connecting the midpoints of the disposal field ends.

"Rectangular disposal field" means a disposal field with a length/width ratio of 1.5-3.0.

"Side" means one of the two longer sides of a disposal field which has a length/width ratio not equal to 1.0.

"Square disposal field" means a disposal field with a length/width ratio of 1.0-1.5.

"Very elongated disposal field" means a disposal field with a length/width ratio greater than 5.0.

"Width" means the shortest dimension of the disposal field, or the distance between the sides of the disposal field.

A. When the disposal field is less than 1500 square feet, a minimum of two percolation tests are required and the following arrangements are acceptable:

**All Disposal Field Shapes**

1. Both tests spaced along the long axis of the field, the minimum distance between tests one third of the length of the field.
2. Both tests spaced along the diagonal of the field, the minimum distance between tests one third the length of the diagonal.

B. When the disposal field size is 1500 to 3000 square feet, a minimum of three percolation tests are required and the following arrangements are acceptable:

**All Disposal Field Shapes**

1. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one quarter the length of the diagonal.
2. One test near the midpoint of a side, one test near each of the two opposite corners.

**Field Shape Rectangular to Very Elongated (L/W >1.5)**

3. All three tests spaced evenly along the long axis; minimum distance between tests one quarter the length of the disposal field.

C. When the disposal field size is 3000 to 4500 square feet, a minimum of four percolation tests are required and the following arrangements are acceptable:

**Field Shape Square to Rectangular (L/W = 1.0 - 3.0)**

1. One test near the midpoint of each of the sides and ends.
2. One test near each of the four corners.

**All Field Shapes**

3. A zig-zag pattern with tests placed at points along one side which are approximately zero thirds and two thirds the distance from end to end, and along the opposite side at points which are approximately one third and three thirds the distance from end to end.

**Field Shape Elongated to Very Elongated (L/W > 3.0)**

4. All tests spaced evenly along the long axis of the field, the minimum distance between tests one fifth the length of the field.
5. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one fifth the length of the diagonals.

D. When the disposal field size exceeds 4500 square feet, a minimum of five percolation tests are required and the following arrangements are acceptable:

**Square Fields**

1. One test near the midpoints of each of the sides and ends, one test near the center of the field.

**Field Shape Square to Rectangular (L/W = 1.0 - 3.0)**

2. One test near each corner of the field, one test near the center of the field.

**All Field Shapes**

3. A zig-zag pattern with tests placed at points along one side which are approximately zero fourths, two fourths and four fourths the distance from end to end, and along the opposite side at points which are approximately one fourth and three fourths the distance from end to end.

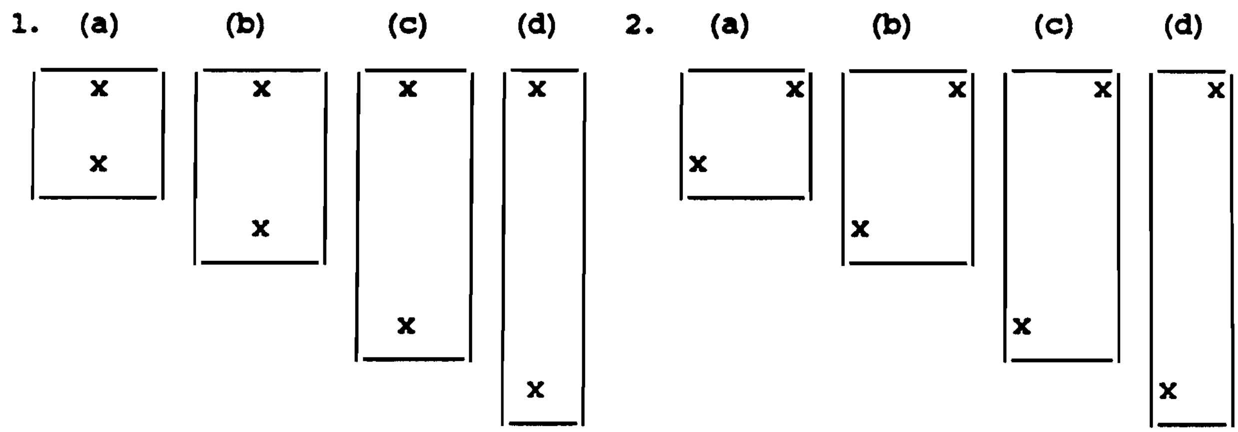
**Field Shape Elongated to Very Elongated (L/W > 3.0)**

4. All tests spaced evenly along the long axis of the field, the minimum distance between tests one sixth the length of the field.
5. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one sixth the length of the diagonal.

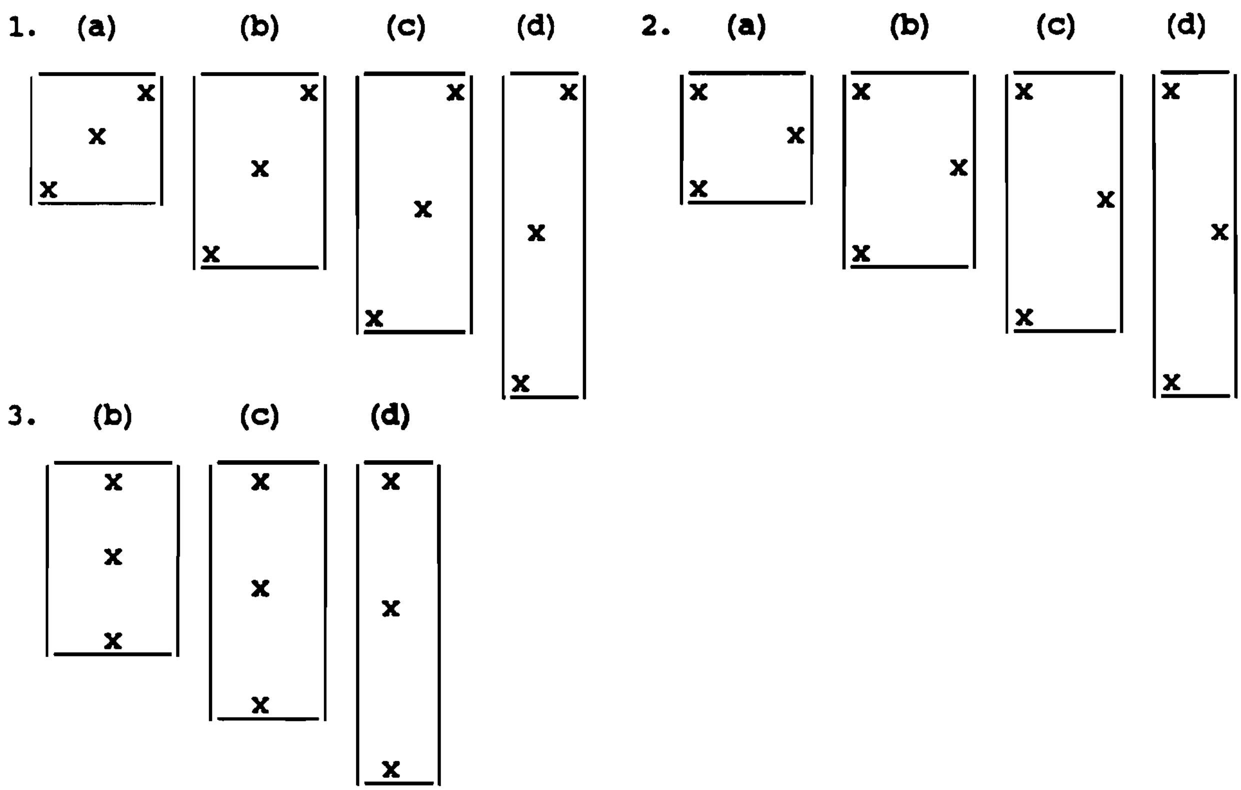
**Uniform Placement of Percolation Tests—Figures**

(a) Square Disposal Fields, L/W = 1.0 – 1.5
(b) Rectangular Disposal Fields, L/W = 1.5 – 3.0
(c) Elongated Disposal Fields, L/W = 3.0 – 5.0
(d) Very Elongated Disposal Fields, L/W > 5

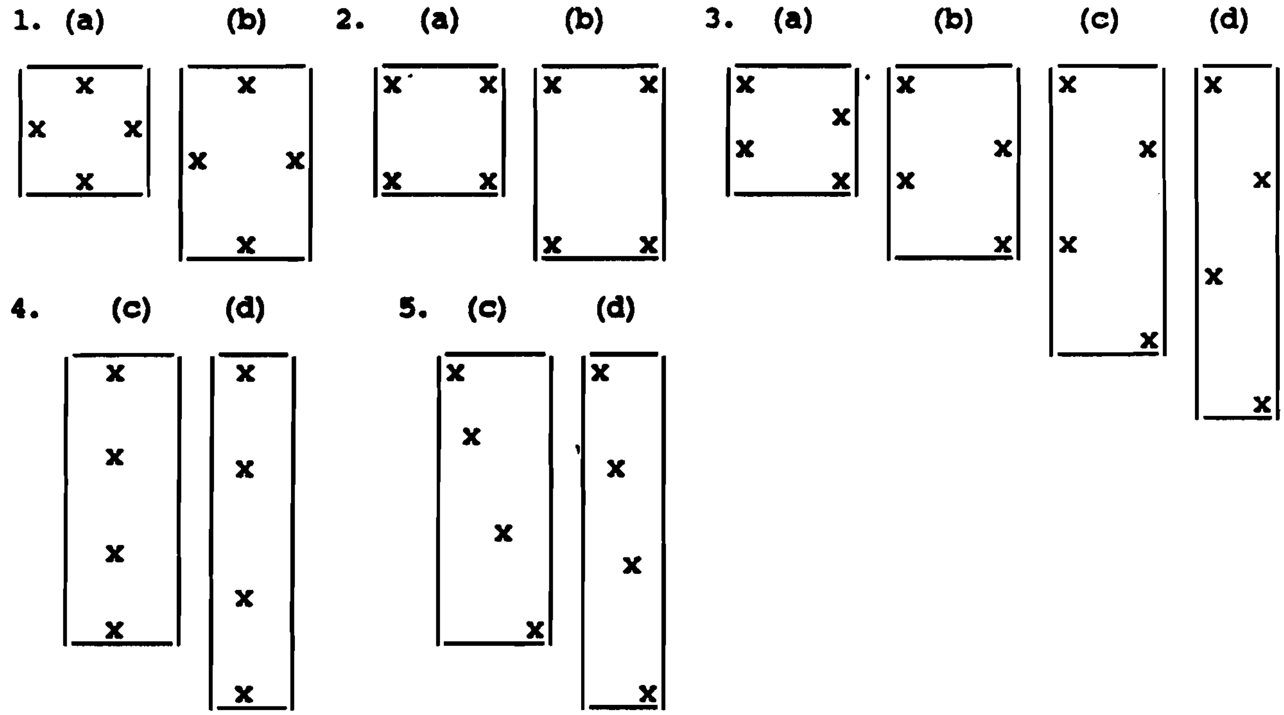
**A. Disposal Field Size Up To 1500 Square Ft.—Minimum of 2 Percolation Tests Required**



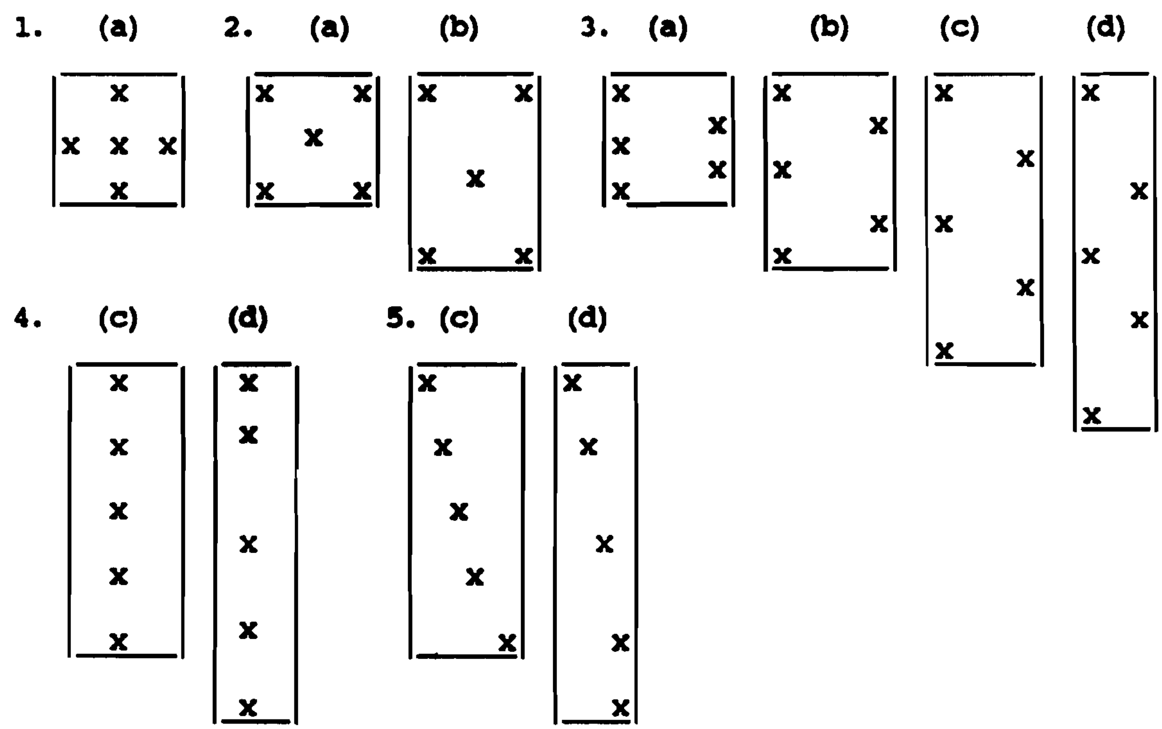

**B. Disposal Field Size 1500-3000 Square Ft.—Minimum of 3 Percolation Tests Required**



C. Disposal Field Size 3000-4500 Square Ft.—Minimum of Four Percolation Tests Required




D. Disposal Field Size Greater Than 4500 Square Ft.—Minimum of 5 Percolation Tests Required



# APPENDIX D— SOIL SUITABILITY CLASSIFICATION OF NEW JERSEY SOILS

## Explanation of the Soil Suitability Classification System

The suitability of soil for onsite disposal of sanitary wastewater by means of individual subsurface sewage disposal systems is classified based upon the type and depth of soil limiting zones as outlined below. Definitions and criteria for recognition of soil limiting zones are provided in Subchapters 2 and 5 of this chapter.

| Type of Limiting Zone | Depth, ft. | Suitability Class |
|---|---|---|
| Fractured Rock or Excessively Coarse Substrata | >5 | I |
| | 0-5 | IISc |
| Massive Rock or Hydraulically Restrictive Substrata | >9 | I |
| | 4-9 | IISr |
| | 0-4 | IIISr |
| Hydraulically Restrictive Horizon, Permeable Substratum | >9 | I |
| | 4-9 | IIHr |
| | 0-4 | IIIHr |
| Excessively Coarse Horizon | >5 | I |
| | 0-5 | IIHc |
| Zone of Saturation, Regional | >5 | I |
| | 2-5 | IIWr |
| | 0-2 | IIIWr |
| Zone of Saturation, Perched | >5 | I |
| | 2-5 | IIWp |
| | 0-2 | IIIWp |

The soil suitability classification consists of a Roman numeral from I to III which is indicative of the severity of the limitation and a letter symbol which indicates the type of limiting zone. (In general the limitation is considered more severe when the limiting zone occurs at a shallower depth in or below the soil profile). Where more than one type of limiting zone is present, the primary classification of the soil is based upon whichever limiting zone(s) presents the most severe limitation (highest numerical symbol). Secondary limitations are given based upon limitations which are less severe (lower numerical symbols). The primary classification is stated first, followed by secondary classifications in parentheses. For example, the classification for a soil with a seasonally high water table (top of a regional zone of saturation) at a depth of 1.5 feet and a massive rock substratum at a depth of 7 feet would be IIIWr(IISr).

Where two or more limiting zones are present with the same degree of limitation, a compound symbol is used in primary or secondary classifications, consisting of a Roman numeral showing the degree of limitation together with a letter symbol for each type of limited zone. For example, the classification for a soil with a seasonally high water table at a depth 2.5 feet and a fractured rock substratum at a depth of 3 feet would be IIWrSc.

### Soil Suitability Classes of New Jersey Soil Series

The type of standard septic system installation, if any, which can be approved on a specific site depends upon the soil suitability class which must be determined based upon detailed onsite soil evaluation. Such evaluation is costly and would normally not be performed prior to the purchase of land or the granting of preliminary or conceptual approvals for large tracts of land which are to be subdivided for residential or commercial development. In these or other situations where more general information regarding soil suitability is required, preliminary determinations may be made based upon information contained in the county soil surveys which are published by the U.S.D.A.—Soil Conservation Service in cooperation with the N.J. Agricultural Experiment Station and Cook College of Rutgers, The State University. These soil surveys contain descriptions of the various soil series which occur in New Jersey together with maps showing the geographic distribution of the soils. At present, published soil surveys or preliminary field maps are available for every county in the state with the exception of Essex and Hudson.

A soil series is a group of similar soil types having major horizons which are similar in thickness, arrangement and other important characteristics. The soil suitability classes provided for each New Jersey soil series listed below are based primarily upon the soil profile descriptions given in the soil survey reports.

Soil series may be divided into one or more soil phases which differ in the texture of the surface horizon, stoniness or some other property. Although soil phase differences may affect design and construction requirements, they are generally not a factor in determination of the soil suitability class given for a particular soil series. In some cases a soil series may have one or more variants which may differ significantly with respect to the types or depths of soil limiting zones. In such cases each variant is treated as a separate soil type with respect to the classification.

Each soil series is characterized by a range of soil profile characteristics so that two or more soil suitability classes may be possible for a given soil series. The soil suitability classes given below are those which are considered most typical for a given soil series. Other soil suitability classes are possible depending upon conditions which may vary from location to location.

Soil survey maps delineate the boundaries of soil mapping units in which a specific soil series, soil phase, soil complex, association or other grouping is predominant. Within every soil mapping unit however, there may be areas of dissimilar soils which are too small and scattered or otherwise impractical to show at the scale of mapping used. For this reason, use of the soil survey is not a substitute for onsite soil evaluation when detailed information for a specific site is required.

Many soil series in the coastal plain region of southern New Jersey are underlain by stratified sedimentary formations which consist of layers of contrasting grain size. In some cases layers of highly permeable sand and gravel may alternate with hydraulically restrictive layers of silt and clay. Where hydraulically restrictive layers occur at depths less than nine feet they will be a determining factor for the soil suitability classification. The presence of such layers below a depth of five feet however, is generally not indicated in the soil survey reports and therefore may not be reflected in the soil suitability classes given here. As a result, coastal plain soils series which are classified as having no limitation (Roman numeral I) with respect to hydraulically restrictive horizons and substrata may in some locations have IIHr or IISr limitations. In other cases, soil series which are assigned classifications of IISr or IIISr may in some locations have permeable substrata at depths below the extent of soil survey data such that a classification of IIHr or IIIHr may be appropriate.

In the northern portion of the state many soil series are described as having bedrock substrata at shallow depths below the soil profile. Soil survey reports generally do not provide information relative to the permeability of these rock substrata. Rock substrata underlying soil profiles of the same soil series may often range from excessively permeable to relatively impermeable. Soil suitability classes are given to represent those conditions which are considered most typical for a soil series. In many cases however soil series which are given classes of I or IISc may in some locations have the more severe limitations associated with classes IISr or IIISr. Classifications of rock substrata given here must be regarded as preliminary in nature and may be subject to modification based upon detailed onsite evaluation and testing.

| Soil Series (Variant) Name | Typical Classification(s) |
|---|---|
| Abbottstown | IIIHR,Wp(IIISc); IISr,Wp(IIISc) |
| Adelphia | IIWr |
| Adelphia Clayey Substratum | IIISr(IIWr) |
| Adelphia Glauconitic Variant | IIISr(IIWr) |
| Adelphia Truncated | IIIWr |

| | |
|---|---|
| Adrian | IIIWr |
| Albia | IIIHr,Wp; IIISr,Wp |
| Amwell | IIIHr,Wp; IIIHr,Wp(IISr) |
| Amwell Rock Substratum | IIIHr,Wp; IIIHr,Wp(IIsr) |
| Annandale | IIIHr |
| Arendtsville | I; IISc |
| Atherton | IIIWr |
| Athol | I |
| Atsion | IIIWr |
| Atsion Tide Flooded | IIIWr |
| Aura | I; IIHr |
| Aura Moderately Firm | I; IIHr |
| Aura Ironstone Variant | I; IIHr |
| Barclay | IIWr; IIIWr |
| Bartley | IIIHr(IIWp) |
| Bath | IIIHr(IIWpSc) |
| Bath Stony | IIIHr(IIWpSc) |
| Bayboro | IIISrWr |
| Bayboro Ponded | IIISrWr |
| Bedington | IISc |
| Berks | IISc |
| Berryland | IIIWr |
| Berryland Flooded | IIIWr |
| Berryland Freq. Flooded | IIIWr |
| Berryland Heavy Subsoil Var. | IIIWr |
| Bertie | IIIWr |
| Bibb | IIIWr |
| Biddeford | IIISrWr |
| Birdsboro | I; IIWr; IISc; IIWrSc |
| Birdsboro Gravelly Solum Var. | I |
| Birdsboro Sandy Subsoil Var. | IISc |
| Boonton | IIIHrWp; IIISrWp |
| Bowmansville | IIIWr |
| Braceville | IIIHrWp |
| Bucks | IISc; IISr |
| Califon | IIIHrWp |
| Califon Friable Subsoil Var. | IIIWr |
| Carisle Muck | IIIWr |
| Chalfont | IIISrWp |
| Chenango | IISc |
| Chillum | I; ISc; IIISr |
| Chippewa | IIISrWr |
| Cokesbury | IIIHrWp |
| Colemantown | IIIHrWp |
| Collington | I |
| Colonie | I |
| Colts Neck | I, IIHr |
| Croton | IIISrWp; IIISrWr |
| Donlonton | IIIHrWr |
| Downer | I |
| Downer Clayey Substratum | I |
| Downer Gravelly Substratum | I; IISc |
| Downer Loamy Substratum | I |
| Downer Truncated | I |
| Doylestown | IIISrWr |
| Dragstown | IIIWr; IIWr |
| Duffield | I; IISr |
| Duffield Very Rocky | IISr |
| Dunellen | I |
| Dunellen Mod. Well Drained Var. | IIIWr |
| Edneyville | I;IISc |
| Elkton | IIISrWr |
| Ellington Loamy Subsoil Var. | IISrWpWr; IIISrWpWr |
| Evesboro | I |
| Evesboro Clayey Substratum | IIISr; IIIHr |
| Evesboro Sandy Loam Subsoil Var. | I |
| Fallsington | IIIWr |
| Fallsington Clayey Substratum | IIIHr |
| Fallsington Var. | IIIHrWrWp |
| Fort Mott | I |
| Fredon | IIIWr |
| Freehold | I |
| Freehold Clayey Substratum | IIISr |
| Fripp | I |
| Galestown | I |
| Galestown Clayey Substratum | IISr |
| Haledon | IIIHrWp |
| Haledon Wet Var. | IIIHrWpWr |
| Halsey | IIIWr; IIIWr(IISc) |
| Hammonton | IIWr; |
| Hammonton Clayey Substratum | IIISr(IIWrWp); IIIHr(IIWrWp) |
| Hazen | I; IISc |
| Hazleton | IISc |
| Hero | IIScWr; IIWr |
| Hibernia | IIIHrWp |
| Holmdel | IIIWr; IIWr |
| Holmdel Clayey Substratum | IIISrWr |
| Holyoke Rocky | IISc; IIISr |
| Hoosic | I; IISc |
| Howell | IIWr; IIIWr |
| Keansburg | IIIWr |
| Keyport | IIISr(IIWp) |
| Klej | IIWr; IIIWr |
| Klej Clayey Substratum | IIISrWr; IIISr(IIWr) |
| Klej Loamy Substratum | IIISrWr; IIISr(IIWr) |
| Klinesville Shaly | IISc; IISr |
| Kresson | IIIHrWp(IIWr) |
| Lakehurst | IIWr; IIIWr |
| Lakehurst Clayey Substratum | IIISrWrWp; IIISr(IIWrWp) |
| Lakehurst Loamy Substratum | IIWr; IIIWr |
| Lakehurst Thick Surface | IIWr; IIIWr |
| Lakeland | I |
| Lakeland Firm Substratum | I |
| Lakeland Water Table | IIWr |
| Lakewood | I |
| Lakewood Loamy Substratum | I |
| Lakewood Thick Surface | I |
| Lamington | IIIHrWpWr |
| Lansdale | IISc |
| Lansdowne | IIIHrWp(IISc); IIIHrWp(IISr) |
| Lansdowne Var. | IIIHrWp(IISc); IIISrWp |
| Lawrenceville | IIISrWp; IIIHrWp |
| Legore | I; IISr |
| Lehigh | IIISrWp; IIIHrWp(IISc) |
| Lenoir | IIISrWr |
| Leon | IIIWr |
| Livingston | IIISrWr |
| Lyons | IIIWr; IIISrWr; IIISrWr(IISc) |
| Manahawkin | IIIWr; |
| Marlton | IIIHr(IIWp); IIIHr |
| Matapeake | IIISr(IIWp); IISrWp; I |
| Matapeake Thin Solum | I |
| Matawan | IIWr; IIIHrWp(IIWr) |
| Mattapex | IIISr(IIWr); IIWr |
| Mattapex Clayey Substratum | IIISrWr |
| Mattapex Glauconitic Substratum | IIWr |
| Meckesville | IIIHr(IIWp) |
| Middlebury | IIIWr |
| Minoa | IIIWr |
| Mount Lucas | IIWp(IISr) |
| Mullica | IIIWr |
| Mullica Loamy Substratum | IIIWr |
| Nassau | IIISr; IISc |
| Neshaminy | IISr |
| Neshaminy Fragipan Var. | IIISrWp; IIIHrWP |
| Netcong | I |
| Nixon | I |
| Nixon Var | IIWr; IIIWr |
| Nixonton | IIIWr |
| Norton | IIIHr |
| Norwich | IIIHrWr |
| Oquaga | IISc; IIISr(IISc) |
| Othello | IIIWr |
| Otisville | IISc |

| | |
|---|---|
| Palmyra | IISc |
| Parker | IISc |
| Parker Rocky | IISc |
| Parsippany | IIHrWr; IIISrWr |
| Parsippany Sandy Loam Substratum | IIIHrWr |
| Parsippany Var. | IIISrWr |
| Pasquotank | IIIWr |
| Pattenburg | IISc |
| Pattenburg Moderately Wet | IIScWr; IIIWr(IISc) |
| Pemberton | IIWr; IIIWr |
| Pemberton Thick Surface | IIWr;IIIWr |
| Penn | IISc; IIISr |
| Penn Shaly | IISc; IIISr |
| Phalanx | IISc |
| Plummer | IIIWr |
| Plummer Very Wet | IIIWr |
| Pocomoke | IIIWr |
| Pompton | IIIWr; IIIWr(IISc) |
| Pope | I; IISc |
| Portsmouth | IIIWr |
| Preakness | IIIWr |
| Preakness Dark Surface Var. | IIIWr |
| Quakertown | IISc; I |
| Quakertown Channery | IISc |
| Raritan | IIIHrWp; IIIHrWp(IISc); IIIHrWp(IISr) |
| Raynham | IIIWr |
| Readington | IIIHrWp(IISc); IIWpSrSc; IIWrSc |
| Reaville | IIISrWp(IIHc) |
| Reaville Deep Var. | IIISrWp(IIHc) |
| Reaville Wet Var. | IIISrWp(IIHc) |
| Ridgebury | IIIHrWp |
| Riverhead | I; IISc |
| Riverhead Neutral Var. | I; IISc |
| Rockaway | IIIHrWp |
| Rowland | IIIWr |
| Royce | IISc |
| Sassafras | I |
| Sassafras Clayey Substratum | IIISr; IISr; IIIHr; IIHr |
| Sassafras Water Table | IIWr |
| Shrewsbury | IIIWr |
| Shrewsbury Clayey Substratum | IIIWrSr |
| Shrewsbury Ironstone Var. | IIIWrHr |
| Shrewsbury Truncated | IIIWr |
| Sloan | IIIWr |
| Steinsburg | IISc |
| St. Johns | IIIWr |
| St. Johns Clayey Substratum | IIIWrSr |
| Swartswood | IIIHrWp |
| Tinton | I |
| Tinton Thick Surface | I; |
| Tioga | I; IIWr; IIWrSc; IISc |
| Turbotville | IIIHrWp |
| Unadilla | I |
| Valois | I |
| Venango | IIIHrWp; IIISrWp |
| Wallkill | IIIWr |
| Washington | I; IISc |
| Wassaic | IISc; IIISr |
| Wassaic Rocky | IISc; IIISr |
| Watchung | IIIHrWpWr |
| Wayland | IIIWr; IIIWrSr |
| Weeksville | IIIWr |
| Westphalia | I |
| Whippany | IIISrWp; |
| Whippany Sandy Loam Substratum | IIIHrWp |
| Whitman | IIIHrWp |
| Woodmansie | I |
| Woodmansie Firm Substratum | I |
| Woodmansie Loamy Substratum | I |
| Woodstown | IIIWr; IIWr |
| Woodstown Clayey Substratum | IIIWrSr; IIIWr(IISr); IIWrSr; |
| Woodstown Loamy Substratum | IIIWr; IIWr |
| Wooster | IISc; I |
| Wurtsboro | IIIHrWp; IIIHrWp(IISc) |

Following is a listing of miscellaneous mapping unit designations which do not consist of any one specific soil series or soil series variant. In general these mapping units cannot be assigned a soil suitability class due to extreme variability or a lack of data. The type of limitations which are generally associated with these mapping units are indicated below:

| Mapping Unit Designation | Type(s) of Limitations |
|---|---|
| Alluvial Land (Various Modifying Terms) | Flooding, Wetland |
| Clayey Land-Keyport Materials | Hydraulically Restrictive Substrata |
| Clayey Land-Marlton Materials | Hydraulically Restrictive Substrata |
| Clay Pits | Disturbed Ground, Hydraulically Restrictive Substrata |
| Coastal Beach | Dunes, Excessively Coarse Substrata |
| Cut and Fill Land | Disturbed Ground |
| Dune Land | Dunes, Excessively Coarse Substrata |
| Fill Land (Various Modifying Terms) | Disturbed Ground |
| Fluvaquents | Flooding |
| Fresh Water Marsh | Wetland |
| Gravel Pits | Disturbed Ground, Excessively Coarse Substrata |
| Humaquepts | Wetland |
| Made Land (Various Modifying Terms) | Disturbed Ground |
| Marsh (Various Modifying Terms) | Wetland |
| Mine Dump | Disturbed Ground |
| Muck (Various Modifying Terms) | Wetland |
| Peat (Various Modifying Terms) | Wetland |
| Pits (Various Modifying Terms) | Disturbed Ground |
| Psamments | Dunes, Excessively Coarse Substrata |
| Quarries | Disturbed Ground |
| Rock Land-Edneyville Material | Rock Outcrops, Excessively Coarse Substrata |
| Rock Outcrop | Rock Outcrops |
| Rough Broken Land | Excessively Stony |
| Sand Pits | Disturbed Ground, Excessively Coarse Substrata |
| Sandy Land | Excessively Coarse Substrata |
| Steep Stony Land Parker Material | Slope, Excessively Stony |
| Sulphaquents | Wetland |
| Sulphihemists | Wetland |
| Swamp | Wetland |
| Tidal Marsh | Wetland |
| Urban Land | Disturbed Ground |

(a)

## DIVISION OF WATER RESOURCES

### Surface Water Quality Standards
### Specific Hearing Locations

**Take notice** that the July 18, New Jersey Register at 20 N.J.R. 1597(a) includes proposed repeals, amendments and a proposed new rule for the New Jersey Surface Water Quality Standards N.J.A.C. 7:9-4. This notice of proposal includes the locations where the September 1, 1988 public hearings for this matter will be held. The full addresses of the two public hearings are:

September 1, 1988
10:00 A.M. until the close of testimony
Room 208
Cherry Hill Municipal Building
820 Mercer Street
Cherry Hill, New Jersey 08002

September 1, 1988
7:00 P.M. until the close of testimony
Auditorium
Labor Education Center
Rutgers University—Cook College Campus
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

**Copies** of the proposed changes to the Surface Water Quality Standards and the "Basis and Background for the Proposed Surface Water Quality Standards" are available by writing to: Bureau of Water Quality Standards and Analysis; Division of Water Resources; 401 East State Street; CN-029; Trenton, New Jersey 08625; or by calling (609) 633-7020.

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# (a)

## DIVISION OF ENVIRONMENTAL QUALITY

## Control and Prohibition of Air Pollution by Volatile Organic Substances

## Proposed Amendments: N.J.A.C. 7:27-16.1 and 16.3

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 025-88-07.

Proposal Number: PRN 1988-375.

A **public hearing** concerning this proposal will be held on:
September 8, 1988 at 10:00 A.M.
Library for the Blind and Handicapped
2300 Stuyvesant Avenue
Trenton, New Jersey

Submit comments by September 12, 1988 to:
Gary J. Brower, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

**Copies** of this notice and of the proposed amendment are being deposited and will be available for inspection during normal office hours until September 12, 1988 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330

New Jersey Department of Environmental Protection
Central Regional Office
Twin Rivers Professional Building
Route #33
East Windsor, New Jersey 08520

New Jersey Department of Environmental Protection
Environmental Enforcement
Northern Regional Office
1259 Route #46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Environmental Enforcement
Southern Regional Office
20 East Clementon Road
3rd Floor North
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
Environmental Enforcement
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

These amendments will become operative 60 days after adoption by the Commissioner. (See N.J.S.A. 26:2C-8.)

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-16, hereinafter referred to as Subchapter 16. This subchapter controls the emission of volatile organic substances (VOS) to the atmosphere. The Department is proposing to control the emission of VOS during the marine loading of gasoline. The marine loading of gasoline refers to the transfer of gasoline into a barge or tankship. These controls are proposed as part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

Volatile organic substances, in the presence of sunlight, participate in the formation of ozone and other reactive pollutants. Ozone is a known respiratory irritant seriously affecting those with chronic respiratory illnesses. Further, it significantly reduces the yield of important food crops and causes serious degradation of plastics and rubber. Control strategies for reducing atmospheric ozone concentrations are primarily directed toward the control of emissions of VOS.

The concentration of ozone in the ambient air in New Jersey during the late spring and summer often exceeds the NAAQS for ozone established by the Federal government. This standard was exceeded in New Jersey on 32 days between May and September of 1987. As of June 27, 1988, there have been 15 days on which violations of the ozone standard have been recorded in New Jersey for 1988.

Emissions of VOS from barges and tankships result from (1) loading of product, (2) loading of ballast water, (3) lightering (transfer between vessels), and (4) washing, gas freeing or purging of tanks (housekeeping). The proposed amendment to N.J.A.C. 7:27-16.3(e) will apply to emissions resulting from the loading of product. The only product which will be affected is gasoline.

Emission factors were used to estimate the emissions attributable to marine loading in New Jersey. These factors estimate the mass of VOS that enters the atmosphere based on a standard measure, such as hours of operation or amount of liquid transferred. For marine loading, the emission factor consists of two parts: an arrival component and a generated component.

The arrival component consists of the vapors that are left in a tank by the previous cargo and which are forced out when a new cargo is loaded. The tank to be loaded may have been filled with gasoline or other petroleum product, or with ballast water, or may have been purged in preparation for maintenance. The magnitude of the arrival component is dependent on which of these conditions apply. For barges, the emitted vapor concentration has been measured at about 12 percent by volume during the first two-thirds of the loading time.

The generated component consists of emissions caused by turbulence in the cargo being loaded. During the last third of the loading time when this component is predominant, the concentration of emitted vapor reaches about 55 percent. The surface area of the liquid cargo determines the magnitude of the generated component. This surface area is greater for barges than tankships, and thus the emission factor for barge loading is generally greater than that for tankship loading.

Several emission factors have been developed by the U.S. Environmental Protection Agency, the American Petroleum Institute, and others. The overall average emission factors are 3.4 pounds of VOS per 1,000 gallons loaded for barges and 1.8 pounds of VOS per 1,000 gallons loaded for tankships.

The average emission factors were applied to the marine gasoline loading inventory for the State of New Jersey for the year 1986 which was provided to the Department by the U.S. Army Corps of Engineers. The facility which transferred the most gasoline into marine vessels that year generated VOS emissions of over 1,000 tons. The facility transferring the least gasoline generated slightly over one ton of VOS emissions. Statewide, 6,950 tons of VOS emissions can be attributed to this source category for 1986. N.J.A.C. 7:27-16.3(e) will affect at least 73 percent of the facilities loading gasoline into marine vessels in New Jersey and 99.5 percent of the emissions inventory.

There are a number of vapor control devices which can achieve the required reductions for barge and tankship loading of gasoline, including refrigeration, lean-oil absorption, adsorption, and incineration. One factor which will influence the choice of control device is the loading rate, which varies with ship size, cargo, number and size of pumps, temperature and viscosity of cargo, number of tanks open, and distance from ship to shore. Typical loading rates for barges and tankships range from 3,500 to 7,000 gallons per minute and may continue for several hours. The cargo may be loaded using the main piping system or may flow directly into the ship's tank. Open loading, that is, with vents and hatches open to allow visual inspection of the cargo level, is generally done on barges and occasionally on tankships. This must be taken into consideration when designing a marine vapor control system.

The use of shoreside vapor control apparatus will also require changes on board ships. Systems that allow for closed loading will have to be installed. Such systems include tank overpressurization protection devices, level monitoring and alarm systems to prevent overfilling, and cargo gauging and sampling devices. In addition, piping and manifolds to

collect the vapors and direct them to the vapor control system will be necessary.

The primary hazards associated with applying vapor control to marine loading are over and underpressurization, overfilling, and fires. Systems will need to be designed to prevent these hazards. The United States Coast Guard is responsible for the safety of marine vessels in the United States and thus for the design of safe vapor control systems. The Coast Guard derives its authority for regulating waterborne transportation of materials in bulk quantities from 46 U.S.C. §§3701 et seq. Regulations regarding ballasting, crude oil washing, and inert gas systems for the purpose of reducing water pollution have already been implemented. The Coast Guard is currently developing safety standards for the equipment that will be used in marine vapor recovery to reduce air pollution.

At the present time, the Coast Guard is working in conjunction with representatives of shipping interests in order to develop these safety requirements. Both shoreside and onboard systems will need to contain items such as detonation arrestors and other inline safety equipment to prevent fires and explosions. The requirements that will be adopted will standardize equipment nationally and prevent compatibility problems. All equipment installed to meet the requirements of the proposed amendments will have to meet the requirements of Coast Guard regulations also.

The schedule under which the Coast Guard is working will result in draft safety requirements being proposed in February 1989. Final safety requirements are expected in February 1990. These will be the standards that equipment used for marine vapor recovery will have to meet. However, since the final safety requirements are expected in the same month as compliance with these proposed amendments, equipment will need to be reviewed on a facility by facility and ship by ship basis by the Coast Guard.

Compliance with these proposed amendments will reduce emissions from the marine loading of gasoline in a safe and effective manner. Approximately 6,570 tons of VOS will be prevented from reaching the atmosphere. Also, depending on the type of control apparatus used, these emissions can be captured and recycled, saving up to one million gallons of gasoline a year.

The marine vapor recovery requirements are set forth in N.J.A.C. 7:27-16.3. N.J.A.C. 7:27-16.3(e)4i requires that the transfer of gasoline into barges and tankships be performed using a vapor control system which is designed, operated and maintained to prevent VOS emissions to the outdoor atmosphere by no less than 95 percent by weight at all facilities with an annual throughput of 6,000,000 gallons or greater into marine vessels. The provisions of N.J.A.C. 7:27-16.3(e)4 will require that approximately 22 marine loading facilities be equipped with vapor recovery equipment. N.J.A.C. 7:27-16.3(e)4ii applies the same standards to any facility transferring 60,000 gallons of gasoline or greater into marine vessels in a single day during the ozone season, which is defined as May 1 to September 15.

A throughput of 6,000,000 gallons of gasoline transferred into barges in a year is the equivalent of a 10 ton per year source. Existing provisions in Subchapter 16 already affect other VOS sources down to that level. Thus, this amendment is consistent with existing rules. The 60,000 gallons in any single day during the ozone season is equivalent to 0.1 tons of VOS. This is a significant amount for any one source to emit. Therefore, in order to have the greatest effect on ozone formation, this provision has been included.

N.J.A.C. 7:27-16.3(e)4iii requires that all barges and tankships being loaded with gasoline at regulated facilities have vapor collection piping which can be connected to the shoreside control equipment. This will require that approximately 100 barges and tankships install vapor collection piping.

N.J.A.C. 7:27-16.3(n) is being deleted. The transfer of VOS into marine delivery vessels will no longer be exempt from certain provisions of this subchapter.

N.J.A.C. 7:27-16.3(p) is redesignated N.J.A.C. 7:27-16.3(o) and a correction is being made. When N.J.A.C. 7:27-16.3 was amended in December, 1987, certain existing provisions were redesignated. However, references to these provisions in subsection (p) were not corrected. This change is to correct that oversight.

Proposed N.J.A.C. 7:27-16.3(q) will require facilities transferring gasoline into marine delivery vessels to report their annual throughput for such activity to the Department. This information will be used to determine applicability of the rules and to ensure that the throughput of a facility does not increase to above the applicable limit without controls being installed.

**Social Impact**

The proposed amendments to Subchapter 16 are designed to control emissions of VOS, which are part of a mixture of pollutants that participate in the formation of ozone in the outdoor atmosphere. The Federal government has established an NAAQS of 0.12 parts per million for ozone. Attainment of this standard will have a positive social impact by alleviating the effects of exposure to elevated ozone concentrations on the inhabitants of New Jersey.

Exposure to ozone in concentrations greater than the NAAQS causes a significant decrease in the pulmonary functions in humans and may cause lung damage. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ozone concentrations.

Implementation of the marine vapor recovery requirements as proposed in N.J.A.C. 7:27-16.3(e) will require the shipping industry to raise operating and training standards to a consistent high level. The skills of ship crews will need to be upgraded to meet the demands of working with the higher level of technology marine vapor recovery will entail. This will mean additional training time for members of ship crews and for workers at the loading facilities.

**Economic Impact**

The costs associated with implementing a marine vapor recovery program in New Jersey will directly affect two groups: terminal operators and marine vessels handling gasoline. Actual capital equipment costs and operating expenditures will vary from terminal to terminal and from ship to ship due to the different configurations and operating parameters of each one.

The Marine Board of the National Research Council (NRC) has prepared a report entitled "Controlling Hydrocarbon Emissions from Tank Vessel Loading" which was issued early in 1988. For this report, cost estimates were developed for various scenarios by United Technical Design Inc. Factors that will influence the cost of control apparatus for a marine loading terminal include type of control chosen, maximum loading rate, and distance from the dock to the control unit. For barges and tankships, the influencing factors on cost are the age of the ship and whether it has been in clean or dirty service.

The NRC report contains cost estimates for two sizes of marine loading facilities using incineration as the control option. These estimates are a good indication of the costs involved in installing and operating marine vapor control. The capital costs include major equipment, piping, safety equipment, instrumentation, and installation. Operating costs include maintenance, energy, and added labor. These factors will be different for each facility, but the estimates developed in this report are quite inclusive and can be applied to a size range of facilities.

The large facility in the NRC report corresponds to the upper end of the range of throughputs for facilities in New Jersey. It has a throughput of 820 million gallons of gasoline per year. The capital costs for installing an incinerator system at this facility are estimated to be $1.9 million. The annual operating costs are estimated at $295,000. Another source, "Vapor Controls for Barge Loading of Gasoline" by PEDCo Environmental, Inc. and issued in December 1983, has provided cost estimates for alternative control options. These other options are: refrigeration at $3.0 million capital costs and $220,000 operating costs; lean oil absorption at $3.8 million capital costs and $199,000 operating costs; and carbon adsorption at $1.2 million capital costs and $153,000 operating costs. All costs are in 1987 dollars.

The other size facility covered in the NRC report has an annual throughput of 76 million gallons of gasoline. This falls in the middle of the throughput range for New Jersey. The capital costs for an incineration system for this facility are estimated to be $745,000. The annual operating costs are estimated at $140,000. Cost estimates on the other options are: refrigeration at $2.2 million capital costs and $130,000 operating costs; lean oil absorption at $2.6 million capital costs and $121,000 operating costs; and carbon adsorption at $972,000 capital costs and $86,000 operating costs. All costs are in 1987 dollars.

Costs for facilities on the lower end of the throughput range for New Jersey are not included in the NRC report. Therefore, they were estimated using information from the United Technical Design, Inc. study and from other information included in the NRC report. Based on a facility with an annual throughput of 14 million gallons of gasoline, which falls in the low end of the New Jersey range, the estimated capital costs for incineration are $475,000. Annual operating costs are estimated to be $87,000. Cost estimates on the other options are not available for this size range. However, it can be assumed that capital costs will be similar to those for the midsized facilities, while operating costs will be slightly less.

The costs for ships include the piping and instrumentation needed for closed loading. Data obtained from the U.S. Army Corps of Engineers indicates that all marine loading of gasoline in New Jersey is done into barges. There are two types of barges, with different costs associated with them. Ocean barges move petroleum products along the coast and have a capacity of 2.75 million gallons or more. Inland barges move a variety of cargoes on rivers, lakes, and within harbors, and have a capacity of 2.75 million gallons or less. The estimated cost of retrofitting an ocean barge with a vapor collection system is $266,000. For an inland barge, it is $168,000. The operating costs of the vapor collection system only consider annual maintenance, and do not include the costs of increased time for loading and increased training for barge crews. For an ocean barge, maintenance is $13,000, and for an inland barge it is $10,000. These estimates are also from the NRC report and are in 1987 dollars.

The cost of implementing this proposal was determined on a Statewide basis. A high estimate and a low estimate were developed. For the high estimate, the most expensive control option was chosen for each size range. For all facilities, it is lean oil absorption. A fleet of 70 ocean barges and 30 inland barges were assumed to be retrofitted. The total capital costs for this scenario are $86.8 million in 1987 dollars. The total annual operating costs are $4.3 million. Annualized capital costs are $10.2 million, and total annual costs are then $14.5 million. This gives a cost effectiveness of $2,160 per ton of VOS removed in 1987 dollars. The cost per gallon of gasoline transferred is $0.004.

For the low estimate, the least expensive control options were chosen. For the large facilities this is carbon adsorption, and for the medium and small facilities this is incineration. The total capital costs for this scenario are $39.6 million. Annualized capital costs are $4.7 million. Annual operating costs are $3.8 million. This yields an annual total cost of $8.5 million in 1987 dollars. The cost effectiveness is $1,300 per ton of VOS removed. The cost per gallon of gasoline transferred is $0.002.

The annual operating costs and resulting cost per gallon above do not take into account any savings the facility may realize. Cost savings will be dependent on the type of control chosen and can include recovery of gasoline or use of recovered heat.

**Environmental Impact**

When the marine vapor recovery program reaches full implementation in February 1990, approximately 6,570 tons of VOS per year will be prevented from being emitted to the atmosphere. This is an average of 18 tons of VOS reductions per day, which is higher than the 11 tons originally projected for this source category in the 1982 State Implementation Plan. However, the actual emissions from this source category in a single day during the ozone season could be much higher.

The loading of a single barge of 2.75 million gallons capacity would take an average of 12 hours and result in 4.7 tons of VOS emissions. If every facility in New Jersey loaded such a barge on the same day, that would result in approximately 140 tons of VOS emissions Statewide. If they load two such barges, approximately 280 tons of VOS will be emitted in a single day. This would significantly affect ozone concentration levels in New Jersey.

The reduction in Statewide emissions of VOS provided by marine vapor recovery will provide significant progress towards achieving attainment with the NAAQS for ozone. This will alleviate the effects of exposure to elevated ozone concentrations on the environment of New Jersey.

Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Additional effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and thereby improve agricultural productivity and support healthier growth of both natural vegetation and ornamental plantings.

Materials such as rubber, textiles, and dyes and paints can be susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate due to oxidation when exposed to air with an elevated ozone concentration than when exposed only to atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate such degradation of natural and man-made materials.

**Regulatory Flexibility Statement**

These proposed amendments will apply to marine loading facilities with an annual throughput of 6,000,000 gallons of gasoline or greater, as well as any facility loading 60,000 gallons of gasoline or greater in a single day during the ozone season. The majority of the marine loading facilities in New Jersey are owned and operated by major oil companies or national terminal companies. Approximately six of these facilities would be considered "small businesses" as defined in the New Jersey Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. All of these small facilities fall below the exemption rate of 6,000,000 gallons per year, but may be affected by the 60,000 gallons per day exemption rate. In order to comply with these amendments, the small businesses will either rearrange their shipping schedule, if possible, to avoid loading gasoline into barges during the ozone season, or install the necessary control apparatus. To install control apparatus, it is likely that small businesses will need consultants to help in the design of the system. It is expected that initial capital costs could range from $0.5 to 2.2 million, with the annual cost of compliance ranging from $60,000 to $87,000, not taking into account any cost saving that may be realized. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the amendments on small marine loading facilities and has determined that the effect of the amendments on these small businesses is reasonable. Therefore, no further exemption from coverage is provided.

The adoption of these amendments will also affect barge and tankship owners. Since no tankship loading was reported in New Jersey, only barge owners are considered. Petroleum is transported in marine vessels owned by three different entities: oil companies, independent shipping companies, and the government. Of the United States fleet, approximately 30 percent of the tonnage is owned by oil companies, 55 percent by independent shipping companies and 15 percent by the government. Based on information in a 1987 report by Booz, Allen and Hamilton, 50 companies operate roughly 70 percent of all barges nationwide. These companies include major oil companies and large transport companies. Therefore, approximately 15 percent of barge operators could be considered "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). These percentages are assumed to be true in New Jersey, and thus 15 barges of a total fleet of 100 can be assumed to be owned by small businesses.

In order to comply with these amendments, the small businesses will need to install vapor collection piping on their barges. To do so, they will need to go to shipyards to have the work performed. It is expected that initial capital costs would range from $90,000 to $275,000, with the annual cost of compliance ranging from $10,000 to $13,000.

The effectiveness of these amendments is dependent on the vapors generated onboard a marine vessel being captured and routed to a shoreside control apparatus. If any vessel is exempted from the requirement to install vapor collection equipment, either on a size basis or an ownership basis, the full effect of these amendments will not be achieved. In balancing the need to protect the environment and human health against the economic impact of these amendments, the Department has determined that no exemption can be provided.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

7:27-16.1 Definitions

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

. . .

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks, [or] railroad tank cars, **barges, or tankers**.

. . .

7:27-16.3 Transfer operations

(a)-(d) (No change.)

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel at a gasoline loading facility unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1.-3. (No change.)

**4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, (k) and (m) below and the following shall apply:**

**i. Effective February 28, 1990, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operat-**

**ing a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.**

**ii. Effective February 28, 1990, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.**

**iii. Effective February 28, 1990, any marine delivery vessel receiving gasoline at a facility subject to the provisions of (e)4i or ii above shall have vapor collection piping and connections which route displaced vapors to the control apparatus.**

(f)-(m) (No change.)

[(n) The provisions of this section shall not apply to the transfer of VOS into marine delivery vessels.]

[(o)](**n**) (No change in text.)

[(p)](**o**) Any delivery vessel subject to the provisions of [(f)](**i**) above found in violation of [(h)](**k**) or [(j)](**m**) above shall be repaired within 15 days and shall be recertified.

[(q)](**p**) (No change in text.)

**(q) Any person subject to the provisions of (e)4 above shall submit yearly documentation of the annual throughput of each gasoline loading facility to the Department by June 1 of the calendar year following the year for which the documentation is valid. The annual throughput of gasoline shall be based on the period January 1 through December 31.**

(r)-(u) (No change.)

# RULE ADOPTIONS

## AGRICULTURE

## (a)

### DIVISION OF ANIMAL HEALTH

### Equine Embargoes
### Equine Infectious Anemia
### Adopted Amendments: N.J.A.C. 2:5-2.2 through 2.7
### Adopted New Rules: N.J.A.C. 2:5-2.1 and 2:5-2.8

Proposed: April 4, 1988 at 20 N.J.R. 695(a).
Adopted: June 28, 1988 by State Board of Agriculture and
Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 8, 1988 as R.1988 d.369, **without change.**
Authority: N.J.S.A. 4:5-6 et seq.
Effective Date: August 1, 1988.
Expiration Date: June 18, 1989.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

SUBCHAPTER 2. EQUINE INFECTIOUS ANEMIA

2:5-2.1 Definitions

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

"Equine infectious anemia (EIA)" means an infectious and contagious disease of equidae caused by a transmissible virus, known colloquially as swamp fever.

"Herd" means a discrete group of equidae maintained on a common ground.

"Herd test" means an examination by official test of all animals that have been a part of the herd for more than 60 days.

"Infected animal" means an animal which has been examined by two or more official tests and is positive to both.

"Natural additions" means animals born and raised in the herd.

"New Jersey EIA certified free equidae (herd)" means an individual horse or group of equidae recognized as being free of equine infectious anemia as a result of a negative herd test or proof of an official test on the farm within the past 12 months of all equidae on the farm, with the proviso that the animals were on the farm for 60 days prior to the test.

"Non-certified additions" means animals without EIA certified free status brought into an EIA certified free herd.

"Non-certified horse/herd" means animals which have not met the requirements for certification.

"Official test" means the equine infectious anemia agar gel immuno-diffusion procedure recognized and controlled by the United States Department of Agriculture as conducted by the New Jersey Department of Agriculture's Division of Animal Health Laboratory.

"Official test requirements" means blood samples taken by accredited veterinarians, tested by the Department of Agriculture Laboratory.

2:5-2.2 Quarantining and branding of infected equine infectious anemia horses

(a)-(f) (No change.)

(g) As EIA is an infectious disease of equines for which there is no known cure, official positive animals shall be permanently identified by being freeze branded with an identification number on the left side of the neck in a humane manner by an authorized agent. The identification number shall be preceded by the coding number 22A.

(h) (No change in text.)

2:5-2.3 Horses consigned from out-of-State to horse auction markets

(a) Horses consigned from out-of-State to horse auction markets will be permitted to enter these markets if they do not have a negative Coggins test provided:

1. All horses sold to stay in New Jersey for other than slaughter purposes will have blood taken from them for the purpose of testing for EIA before leaving the sale.

2. These horses are to be fully identified as to purchaser, breed, color, sex, and marketing and mane and tail tag as well as being identified by sale identification number on charts to be supplied by the Department.

3. A list of all consignors and purchasers with complete address and phone number is to be mailed to the Department within 48 hours after the sale.

4. A veterinarian is to be provided by the sales auction to draw the necessary blood samples.

5. The auction sale will also be responsible for the fee charged by the Department of Agriculture to run the AGID test (Coggins test).

6. It will be the responsibility of the auction markets to see that horses sold into other states meet their requirements.

2:5-2.4 (No change in text).

2:5-2.5 Test requirements for transport

(a) No horse or other equidae six months or more of age unless exempted by the provisions of N.J.A.C. 2:5-2.3, 2.6, or 2.7 shall be transported on any public highway within the State unless the custodian of such animal has in his or her possession during the period of such movement a report of a negative agar gel immunodiffusion test for equine infectious anemia for such animal taken within the past 12 months or proof of origin from a certified free herd.

1. Said test shall have been conducted by a laboratory approved for the purpose by the United States Department of Agriculture and by the New Jersey State Department of Agriculture.

2. Said test shall have been conducted during the 12 months prior to transportation.

3. Said test report shall include the following:

i. A complete description of the animal including name, registration number if any, breed, brand, tattoo if any, sex, age and color;

ii. The name and address of the owner;

iii. The date the test was conducted; and

iv. The name and address of the laboratory that conducted the test.

4. Said test reports shall be signed by a duly licensed accredited veterinarian and also must be either:

i. Embossed by the laboratory where the test was conducted; or

ii. Signed or otherwise endorsed by the Chief Livestock Health Officer of the state or country of origin of the said animal.

2:5-2.6 Test requirements for sale or other change of ownership

(a) No horse or other equidae six months or more of age, unless exempted by provisions of this section or N.J.A.C. 2:5-2.3 or 2.8, shall be sold, exchanged, bartered or given away unless such animal has been subjected to an agar gel immunodiffusion test for equine infectious anemia and reacted negatively within 90 days prior to such transfer of ownership or has proof of origin as a member of a certified free herd.

1. Said test shall have been conducted by a laboratory approved for the purpose by the United States Department of Agriculture and by the New Jersey Department of Agriculture.

2. At the time of such transfer of ownership, the transferor shall deliver personally or by certified mail to the transferee, a copy of the report of such negative test or the official proof of origin as a member of a certified free herd. The negative test report shall include:

i. A complete description of the animal including name, registration number if any, breed, brand, tattoo if any, sex, age and color;

ii. The name and address of the owner;

iii. The date the test was conducted; and

iv. The name and address of the laboratory that conducted the test.

3. Said test reports shall be signed by a duly licensed-accredited veterinarian and also must be either:

i. Embossed by the laboratory where the test was conducted; or

ii. Signed by the Chief Livestock Health Officer of the state or country of origin of the said animal.

2:5-2.7 Other authorized movement or transfer

(a) The provisions of N.J.A.C. 2:5-2.5 and 2.6 shall not apply to any horse or other equidae which is imported, sold, exchanged, bartered, given away or transported under permit from the Director of the Division of Animal Health, New Jersey Department of Agriculture for purposes of immediate slaughter, research, return of the animal to the state, country or farm of its origin, or other authorized purpose provided written authorization for such movement or transfer is obtained in advance thereof from the Director.

1. In the case of importation or transport, such authorization must be in the possession of the custodian of the animal at all times during such movement.

2. In the case of change ownership or transport for the purpose of immediate slaughter, the aforesaid permit may be issued by an accredited veterinarian or an employee of the Department of Agriculture authorized in writing by the Director.

(b) The provisions of N.J.A.C. 2:5-2.6 apply to any horse claimed in any race conducted by any race track licensed by the New Jersey State Racing Commission and such horse need not be retested for equine infectious anemia provided such horse and all other horses admitted to said track had been tested and found negative for the disease within one year prior to the date of the claim.

2:5-2.8 Certified free herd

(a) All resident equidae in a herd for more than 60 days must be tested and free of infection during a complete herd test to be considered EIA certified free. If any animals are in the herd for less than 60 days at the time of the herd test, they shall be retested not less than 45 days nor more than 60 days after the initial test. The certification date will be the date of the herd test.

(b) All non-certified additions to the herd following the herd test must be tested negative upon receipt and a second time not less than 45 days nor more than 60 days after addition and shall be kept apart from the resident animals until the second negative test at which time they will be considered part of the official certified herd. Animals from a certified herd may be added to a herd without test and will be considered certified.

1. Any animal leaving the herd for more than five days and being at a non-certified premise shall be deemed a non-certified addition to the herd upon its return. Attendance at a Jersey Thoroughbred or Standardbred race meet shall be regarded as having attended a premise of equal standard. If EIA infection is revealed at a New Jersey race meet, the EIA certified status may be removed at the discretion of the Division of Animal Health. Any animal having attended a race meet out-of-state shall be considered a non-certified addition unless it can be shown that standards equal to New Jersey tracks have been maintained at all times, including during shipment. Applications for such consideration are to be made directly to the Director of the Division of Animal Health.

2. An EIA infected animal in a herd shall remove the certified status and all animals must satisfy previous requirements to be acceptable.

3. All natural born animals in EIA certified herds shall be deemed to be of the same status of those in the herd test. Owners must notify the Division of Animal Health of birth on forms to be provided by the Division and to be completed within one year of birth.

4. Identification of animals shall be the responsibility of the attending accredited veterinarian.

5. In the event of suspected or proven infection near or proximal to the certified herd, additional official testing may be directed. The owner will cooperate in such testing.

(c) Certified herd (animals) are recognized as certified for a period of 36 months (1,080 days) for the purpose of sale and movement in New Jersey. Certification may be affected by:

1. Maintaining prescribed standards; and

2. Having a triennial test not less than 33 months from the certification date or more than 37 months; or

3. Maintaining prescribed standards; and

4. Testing at least 30 percent of the herd in each 12 month period from the date of certification. If a 12 month period passes without such testing, the last anniversary date shall determine the end of the triennial certification period. In those originally certified without a herd test the date of certification will be that on which all requirements are fulfilled.

(d) For either method of effecting certification set forth in (c) above, application for certification must be made to the Director, Division of Animal Health, on forms provided by him or her.

## DIVISION OF REGULATORY SERVICES

## (a)

### Grades and Standards

### Readoption with Amendments: N.J.A.C. 2:71

Proposed: May 2, 1988 at 20 N.J.R. 953(a).

Adopted: June 28, 1988 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: July 8, 1988 as R.1988 d.370, **without change.**

Authority: N.J.S.A. 4:10 et seq.

Effective Date: July 8, 1988 for Readoption.
August 1, 1988 for Amendments.

Expiration Date: July 8, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:71.

**Full text** of the adopted amendments to the readoption follows.

2:71-2.3 Charges for Jersey Fresh Quality Grading Program logo labels and use of New Jersey Fresh Quality logo imprinted containers

(a)-(c) (No change).

(d) Licensees packing Jersey Fresh Quality Grading Program commodities in wooden containers may, upon payment of a $75.00 fee in the first year and a $50.00 in the second and subsequent years to the New Jersey Farm Products Publicity Fund, use a rubber stamp to identify those commodities as being packed under the "logo" program. The stamps shall remain the property of the New Jersey Department of Agriculture. The use of such stamps shall be restricted to containers constructed of wood.

Recodify existing (d) and (e) as (e) and (f) (No change in text).

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Fairly tight" means, in the case of eggplants, that the package is sufficiently filled to prevent any appreciable movement of the eggplants and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall be not more than three-quarter inch below the top edge of the carton.

...

"Fairly well filled" means that cucumbers, sweet peppers, tomatoes (fresh market), summer squash or sweet potatoes are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of peaches, the container is level full and there is practically no movement of the fruit when the container is closed.

In the case of nectarines, the contents of the container may be slightly below the top edge but not more than ½ inch.

...

"Well trimmed means, in the case of asparagus that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head have no more than four wrapper leaves. In the case of Sweet Anise (Fennel), that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than ½ inch in length. Tops may be either full length or cut back to not less than 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb.

2:71-2.28 Charges for inspection or grading and certification services; written agreements

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to written agreements between the New Jersey Department of Agriculture and the requestor of the services, shall be made according to the following schedule:

1. (No change.)

2. Charges for inspection or grading and certification of one fruit or vegetable other than potatoes for fresh market:

i. A charge of \$.06 will be made for all packages inspected or graded and certified in excess of 6,545 packages during the seven day week (Saturday through Friday).

3. (No change.)

2:71-2.29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule:

i. A charge of \$720.00 per five day week (Monday through Friday) of 40 hours or less for each inspector for the inspection and/or grading of more than one commodity;

ii. A charge of \$27.00 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of \$108.00 assessed for each inspector assigned work on Saturday and/or Sunday;

iv. A charge of \$27.00 per hour, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;

v. There will be at least a four hour minimum charge of \$108.00 assessed for each inspector assigned work on legal State holidays occurring Monday through Friday;

vi. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of 6,545 packages during the seven day week (Saturday through Friday).

2:71-2.30 Charges, oral agreements; trailer, car, warehouse and storage lots

(a) Charges for inspection or grading and certification services performed to an oral agreement between the New Jersey Department of Agriculture and the requestor, for all trailer, car, warehouse and storage lots, shall be made according to the schedule detailed below. A minimum of \$18.00 for inspection or grading and certification services shall be charged. However, if the conditions listed in N.J.A.C. 2:71-2.30 are met, the charges shall be calculated according to the hourly rate schedule set out in N.J.A.C. 2:71-2.31.

1. Basic charge schedule for products other than potatoes:

i. A charge of \$0.11 per container for all containers;

2. Basic charge schedule for potatoes:

i. A charge of \$0.12 per hundredweight;

ii. All other size containers and bulk loads shall be converted to hundredweight equivalents. Charges for these equivalents shall be at the rate of \$0.12 per hundredweight.

3. (No change.)

4. Delayed inspections: delayed inspections are those inspections requiring more than two hours to complete (exclusive of travel time) due to delays of any kind not attributable to the inspector. Additional charges for delayed inspections shall be assessed according to the following schedule:

i. \$13.00 per hour charged in half hour increments.

ii. The minimum charge shall be \$6.50.

2:71-2.31 Charges; oral agreements between Department of Agriculture and requestor

(No change in text.)

2:71-2.32 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of \$17.00 per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;

2. A charge of \$25.50 per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday;

3. A charge of \$25.50 per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requestor.

## (a)

## Licensing and Bonding
## Readoption: N.J.A.C. 2:72

Proposed: May 2, 1988 at 20 N.J.R. 955(a).
Adopted: July 6, 1988 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 8, 1988 as R.1988 d.371, **without change.**

Authority: N.J.S.A. 4:11 et seq.

Effective Date: July 8, 1988.
Expiration Date: July 8, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:72.

## (b)

## Eggs
## Official Seal
## Readoption: N.J.A.C. 2:73-2

Proposed: May 2, 1988 at 20 N.J.R. 956(a).
Adopted: July 6, 1988 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 8, 1988 as R.1988 d.372, **without change.**

Authority: N.J.S.A. 4:10-18 et seq.

Effective Date: July 8, 1988.
Expiration Date: July 8, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:73-2.

## (a)

### Controlled Atmosphere Storage for Apples
### Readoption: N.J.A.C. 2:74-1

Proposed: May 2, 1988 at 20 N.J.R. 956(b).
Adopted: July 6, 1988 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 8, 1988 as R.1988 d.368, **without change.**

Authority: N.J.S.A. 4:10-26 et seq.

Effective Date: July 8, 1988.
Expiration Date: July 8, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:74-1.

# COMMUNITY AFFAIRS

## (b)

### DIVISION OF HOUSING AND DEVELOPMENT
### Uniform Construction Code
### Barrier Free Subcode—Recreation Standards
### Adopted Amendments: N.J.A.C. 5:23-2.38, 3.11, 7.2 and 7.3
### Adopted New Rules: N.J.A.C. 5:23-7.100 through 7.116

Proposed: July 20, 1987 at 19 N.J.R. 1270(a).
Adopted: June 29, 1988 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Filed: July 1, 1988 as R.1988 d.352, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-123 and 52:32-5.

Effective Date: August 1, 1988.
Expiration Date: March 1, 1993.

**Summary** of Public Comments and Agency Response:

A number of letters were received offering general support for the intent and provisions of these proposed amendments and new rules. Specific comments are set forth below.

N.J.A.C. 5:23-2.38 Department appeal

COMMENT: The Department of Environmental Protection, Division of Parks and Forestry, suggested that all complaints be forwarded to the facility manager and owner or agency responsible for administration of a facility. The Department of Education also submitted that complaints should be directed to the facility owner or manager. Additionally, the Division of Parks and Forestry stated that all of the Barrier Free Subcode should be subject to the same provisions for appeal. Another commentor suggested that there be further restrictions on those allowed to bring an appeal. Finally, the Developmental Disabilities Council requested that the appeals process be clarified.

RESPONSE: The Department has added language to also require forwarding of a complaint copy to a facility owner or administering agency. The balance of the Barrier Free Subcode, which contains the requirements for buildings, utilizes the Construction Board of Appeals. Because the recreation standards involve exterior facilities and because they allow appeals to be brought by potential users, appeals of these standards are more appropriately handled in an Office of Administrative Law hearing. The range of individuals who may bring an appeal of these requirements is purposely broad and the Office of Administrative Law hearing is used as a mechanism to accommodate these appeals. The language used is standard regulatory language for describing such a process. If further clarification is necessary, this may be done through training or through an informational mailing.

N.J.A.C. 5:23-3.11(f) Enforcenent activities reserved to the State

COMMENT: The Department of Education requested that language be added to clarify that the Department of Education will be the enforcing agency for public schools.

RESPONSE: Language has been added to clarify that the Department of Education is responsible for the enforcement of these standards in public schools.

N.J.A.C. 5:23-7.3(a)1i and 2i Exemptions

COMMENT: The New Jersey Builders Association objected to the inclusion of recreation facilities associated with building or projects which would otherwise be exempt. The Builders Association further commented that recreational facilities on private property should be excluded from the provisions of this subcode.

RESPONSE: While a building may be exempt as a one- to four-family private residence, any public or common areas associated with that residential building should not be exempt. The enabling legislation gives a broad meaning to the word "public" which is mirrored by the provisions of this subchapter.

N.J.A.C. 5:23-7.100(b)1 Recreation

COMMENT: The Division of Parks and Forestry asked that the language requiring that the facility manager certify that work is done in compliance with these standards be amended to require co-certification by the facility manager and the owner or agency responsible for the administration of the facility. The Green Acres Committee on Recreation and the Handicapped suggested that the project engineer also share responsibility for compliance and that a certification from the engineer be required.

RESPONSE: Language has been added to allow certification by the facility manager and/or the owner or agency responsible. While the rules do not require a certification from the design professional, the client is free to request one.

N.J.A.C. 5:23-7.100(b)2 Recreation

COMMENT: The Division of Parks and Forestry indicated that the "agency of record", if any, should also be notified of any complaints.

RESPONSE: Language has been added to institute this policy.

N.J.A.C. 5:23-7.100(b)3 Recreation

COMMENT: The New Jersey Builders Association suggested that this paragraph be changed to clarify that the facility manager is given discretion in deciding whether a greater degree of compliance may be achieved by altering other facilities or equipment.

RESPONSE: No change has been made at this time as this is already stated in the rules as written.

N.J.A.C. 5:23-7.101 Definitions

COMMENT: The Division of Parks and Forestry and the Green Acres Committee suggested that wilderness be further defined.

RESPONSE: No change has been made to the definition as no more satisfactory definition has been suggested.

COMMENT: The Department of Education suggested that spectator seating be included in the definition of support facility.

RESPONSE: This suggestion has been incorporated.

N.J.A.C. 5:23-7.104 Pools

COMMENT: The New Jersey Commission for the Blind suggested that in pools where a vertical lift is used, there should also be steps or other means of access. Additionally, the edges of the ramp or steps should be painted and textured to define the edge for the safety of the visually impaired.

RESPONSE: A proposed amendment has been published in this issue of the New Jersey Register at 20 N.J.R. 1764(b) incorporating the suggestion to require that the edges of ramps or steps be marked for the visually impaired.

N.J.A.C. 5:23-7.105 Swimming and skating areas

COMMENT: The Division of Parks and Forestry objected to the requirement for visual markings of underwater portions of ramps as hazardous and difficult to maintain. Additionally, another commentor suggested the inclusion of a definition of the word "beach."

RESPONSE: The visual marking of underwater portions of a ramp are necessary for safety reasons. The fulfillment of this requirement does not appear to be a problem in areas where this practice is already employed. The word "beach" has been deleted from this section.

N.J.A.C. 5:23-7.106 Boating areas

COMMENT: The Green Acres Committee commented that boat docks in tidal areas should be treated on an individual basis, dependent upon the site constraints and project design requirements. Another commentor stated that the maximum of 36 inches above mean water level in non-tidal areas should be reduced to 18 inches.

RESPONSE: The 36 inch standard, which is employed by landscape architects, will remain. Specific problems may be addressed through the variation process.

N.J.A.C. 5:23-7.108, 7.110 Court games, playing fields

COMMENT: Concern was expressed with retrofitting existing bleachers in spectator areas with special railing to make them usable by the disabled.

RESPONSE: Because the requirements of this subchapter are not retroactive, this will not be necessary.

N.J.A.C. 5:23-7.112 Ski lifts, aerial tramways, and conveyors

COMMENT: The Division of Parks and Forestry suggested that conveyors should be further defined to indicate that it does not include motorized "people movers".

RESPONSE: In the context of the rule, conveyors are considered to be a system of moving seats used for sightseeing purposes in mountainous or hilly areas, with ingress, intermediate and egress terminals to and from which access must be provided. A "moving sidewalk" type of conveyance, unusable in non-horizontal terrain, was not contemplated in the use of the term "conveyor" in the proposed rule. Therefore, language has been added to clarify this point.

N.J.A.C. 5:23-7.113 Trails

COMMENT: The Division of Parks and Forestry stated that all trails should be exempt from this chapter as they constitute a specific class of recreational experience.

RESPONSE: In keeping with the intent of these rules, trails cannot be exempted as this would result in the exclusion of the disabled. However, trails through wilderness areas are exempt and other specific problems may be handled through the variation process.

N.J.A.C. 5:23-7.115 Recreation equipment

COMMENT: It was suggested that definitions of the terms "fixed manipulative play equipment" and "resilient safety areas" be included.

RESPONSE: These are terms of art commonly used in the area of recreation and have meanings which are generally understood among recreation providers.

COMMENT: Concern was raised over the prohibition on the use of sand or pea gravel around play equipment.

RESPONSE: Other materials, such as wood chips, which provide for a safety area around play equipment, may be used.

COMMENT: Questions were raised as to the types of play equipment which may be used by the disabled.

RESPONSE: Manufacturers routinely identify play equipment as usable by both the disabled and nondisabled in their catalogs. While it is not suggested that all individuals with various types and degrees of disability will be able to use all pieces of play equipment, the installation of play equipment designated as usable by the disabled will afford disabled children.

N.J.A.C. 5:23-7.116 Equestrian facilities

COMMENT: The North American Riding for the Handicapped organization suggested that the height of the mounting platform be changed from 42 inches to 32 inches.

RESPONSE: A proposed amendment has been published in this issue of the New Jersey Register at 20 N.J.R. 1764(b) to effect this change.

Other Comments

COMMENT: The Deaf Contact Center suggested that requirements for the safety of the hearing impaired, such as the provision of visual fire alarm, be included.

RESPONSE: These requirements are included in the balance of the Barrier Free Subcode. They are not part of the recreation standards which deal only with outdoor facilities.

COMMENT: The Developmental Disabilities Council asserted that there is a need to provide for public notice of planned work at recreational sites.

RESPONSE: The Department has not incorporated such a requirement as it is believed that such a requirement would be too burdensome and would not provide a commensurate benefit in the construction of accessible recreational facilities.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:23-2.38 Departmental appeal

(a) (No change.)

(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.100 through 7.116) shall have the right to appeal the decision to the Department. The Department shall forward a copy of the complaint to the facility manager ***and to the facility owner or agency responsible for administration of the facility*** and shall request a response from the facility manager. The facility manager shall respond in writing within 45 days of receipt of the request. The Department shall review the response and the complaint and shall determine whether a contested case exists. The Department shall make such determination within 60 days. In the event that the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.).

1. A "party in interest" may be either the owner, or authorized representative of the owner, of the premises that is the subject of the decision or an occupant, user or prospective occupant or user, of the premises, or a group representative of such occupants, users or prospective occupants or users; provided, however, that an occupant, user or representative group shall only be deemed to be a party in interest if notice of such interest has been given to the Department by the party prior to the issuance of the Department's determination.

5:23-3.11 Enforcement activities reserved to the State

(a)-(e) (No change.)

(f) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.100 through 7.116). Any complaint of noncompliance with these regulations shall be forwarded to the Department.

***1. As an exception to (f) above, The Department of Education shall be the agency for the enforcement of the Barrier Free Recreation Standards for public school facilities.***

5:23-7.2 Scope and applicability

(a)-(b) (No change.)

(c) Outdoor recreational equipment and/or facilities shall comply with N.J.A.C. 5:23-7.100 through 7.116.

1. Compliance with the provisions of this subchapter that relate to outdoor recreational equipment, facilities or sites shall be the responsibility of the manager of that recreational facility, of the owner of the facility, whether publicly or privately held, and of the agency responsible for the administration of that facility.

(d) Indoor swimming pools shall comply with all technical criteria of N.J.A.C. 5:23-7.104, and indoor court games shall comply with all technical criteria of N.J.A.C. 5:23-7.108. Notwithstanding any provision of these sections, all indoor swimming pools and court games shall be made accessible.

5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

1. Buildings or projects of Use Group R-2 or R-3 with four or fewer dwelling units, having common or separate entrances directly from the exterior, whether for rental or arranged for sale shall be exempt. A dwelling unit shall be deemed to be "arranged for sale" if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

i. Public facilities, including entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, exercise rooms, swimming pools, conference facilities, community rooms, mailbox areas, locker rooms, restrooms, recreational facilities and storage facilities associated with buildings exempted by (a)1 above shall comply with all applicable provisions of this subchapter.

2. Buildings or projects of Use Group R-2 or R-3 which have dwelling units arranged for sale each of which has a separate entrance directly from the exterior shall be exempt. A dwelling unit shall be deemed to be arranged for sale if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

i. Public facilities, including entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, exercise rooms, swimming pools, conference facilities, community rooms, mailbox areas, locker rooms, restrooms, recreational facilities and storage facilities associated with buildings exempted by (a)2 above shall comply with all applicable provisions of this subchapter.

3.-8. (No change.)

5:23-7.100 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor, active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.101 through 7.116. All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.

(b) Compliance with the provisions of this subchapter that relate to outdoor recreational equipment, facilities or sites shall be the responsibility of the manager of that recreational facility, of the owner of the facility, whether publicly or privately held, and of the agency responsible for the administration of that facility.

1. The facility manager ***and/or the facility owner or agency responsible for administration of the facility*** shall certify, in writing, that any work performed complies with all applicable provisions of this subchapter and shall retain this certification on file.

2. Complaints regarding lack of enforcement of these provisions shall be directed to the facility manager ***and the facility owner or agency responsible for administration of the facility***. The facility manager shall respond within 30 days to any written complaint received detailing the position taken with respect to this complaint. If the facility manager fails to respond in a manner satisfactory to the party registering the complaint, then that party shall have recourse to the appeals process as set forth at N.J.A.C. 5:23-2.38 and 3.11.

3. Any alteration, renovation and/or addition to any existing recreational facility, the cost of which meets or exceeds the limit set forth in N.J.S.A. 40A:11-3, shall be performed in compliance with all applicable provisions of this subchapter. This limit shall apply to both privately- and publicly-owned recreational facilities. If it is feasible to achieve a greater degree of compliance with this subchapter with respect to the entire recreation area, then the facility manager may make alterations, renovations or additions in compliance with the applicable provisions of this subchapter to other facilities or equipment in lieu of the facility or equipment originally being altered, renovated and/or added.

i. Notwithstanding the above provisions, no alteration, renovation or addition shall be made which reduces or diminishes the degree to which any facility meets the criteria of this subchapter.

5:23-7.101 Recreation: definitions

"Park" or "recreation area" means an area set aside and designated for recreation, including either active participation, as in sports, or passive recreation, as in the observation of nature.

"Recreation equipment" means equipment and prescribed surrounding safety areas, including, but not limited to, fixed equipment, fixed manipulative play equipment (such as playground equipment), picnic tables, benches, fire places and grills, ski lifts, and aerial tramways.

"Recreation facility" means a facility, body of water, dock, court, field, location, or portion thereof, intended for active or passive recreation.

"Site access points" means entrances, waiting areas, drop-off zones, parking areas, and public transportation stops serving the recreational area or facility, except those used solely for maintenance purposes.

"Support facility" means a facility ancillary to a recreation facility including, but not limited to, toilet facilities, food services, information services, first aid stations, drinking fountains, telephones, ***spectator seating*** and shelters. Facilities primarily housing mechanical equipment or those exclusively used for storage are not included in this definition.

"Undeveloped areas" means wilderness areas used for activities such as camping, hunting, fishing or the observation of nature or open space conservation areas.

5:23-7.102 Recreation: exceptions

These recreation requirements do not apply to undeveloped areas as defined in N.J.A.C. 5:23-7.101. These requirements also shall not apply to facilities, equipment or sites which are associated with buildings exempted by N.J.A.C. 5:23-7.3(a)3, 4, 5, 6, 7 or 8.

5:23-7.103 Recreation: route of travel

There shall be an accessible route of travel connecting the following elements: at least 25 percent, but not less than one, of each type of support facility provided, at least one site access point and those recreation facilities and recreation equipment required to be accessible.

5:23-7.104 Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.104a:

i. Designed by its manufacturer for independent operation by the user;

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of N.J.A.C. 5:23-7.81. A wheelchair shall be provided to the user if this option is used.

iii. Adjoining a clear level floor area meeting the criteria of N.J.A.C. 5:23-7.17 whose minimum dimensions are five feet by five feet;

iv. Having controls which meet the criteria of N.J.A.C. 5:23-7.81; and

v. Located to meet the criteria of Figure 7.104a.

2. Interior/exterior steps meeting the criteria of Figure 7.104b;

3. A ramp meeting the criteria of Figure 7.104c.

i. A wheelchair shall be provided to the user if this option is used.

Figure 7.104a
Pool Entry

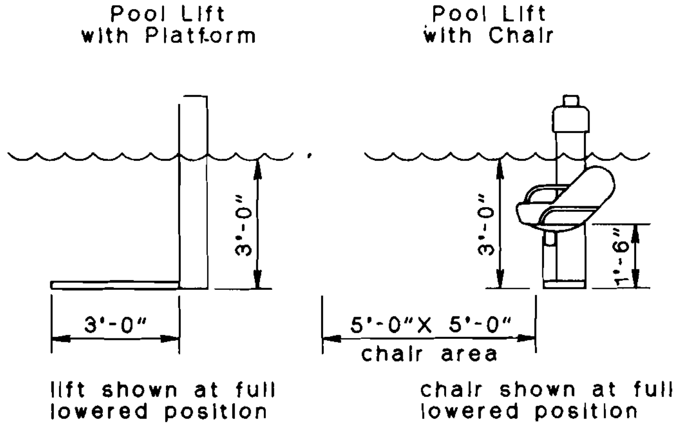



Figure 7.104c
Ramp Into Water

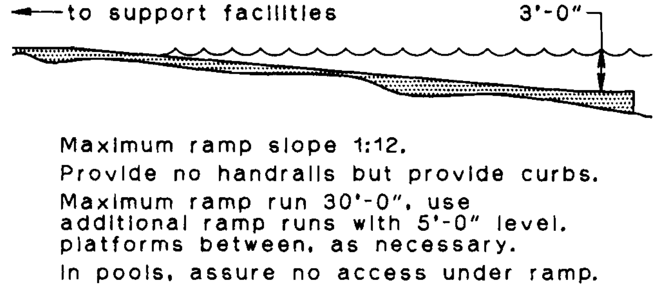
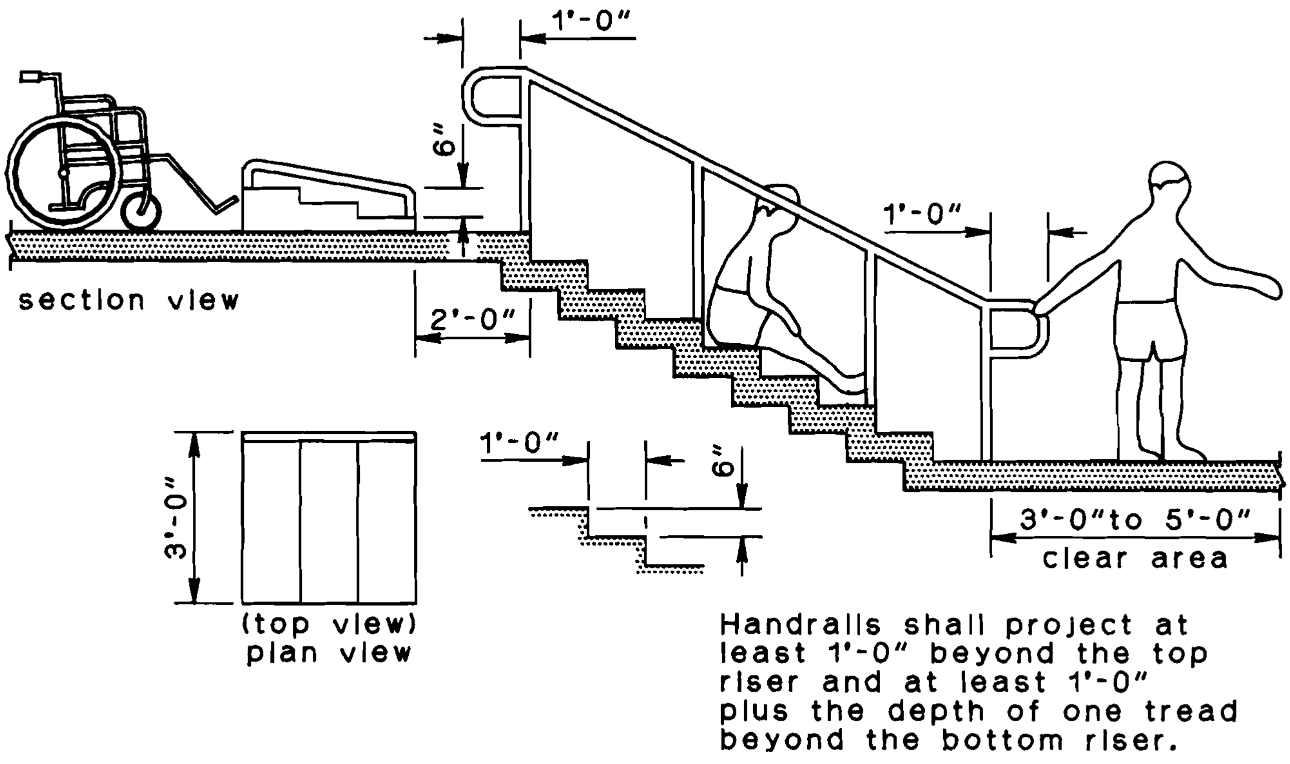



Figure 7.104b
Pool Entry




5:23-7.105 Recreation: swimming and skating areas

(a) At each designated swimming and/or skating area at natural or man-made bodies of water, there shall be an accessible route of travel connecting at least one point *[on the beach, and a point]* at the water's edge, defined as the mean high water mark.

1. At designated swimming and/or skating areas, the provision of access as described in (a) above at one location per site shall be deemed as satisfying the requirements of this section.

(b) Where swimming is provided, there shall be a ramp leading into the water to a depth of three feet. The ramp shall meet the criteria of N.J.A.C. 5:23-7.24 and of Figure 7.104c except that handrails shall not be provided. Visual markings for the underwater portion of the ramp, such as floats or flags, shall be provided to define the side edges. Alternately, means of access to a minimum water depth of three feet may be achieved by other methodologies as specified in N.J.A.C. 5:23-7.104. This provision shall not apply in those ocean front areas where wave action would render the provision of a ramp impractical from an engineering standpoint.

5:23-7.106 Recreation: boating areas

(a) Each boating area with docking facilities shall have one accessible mooring space.

(b) Each accessible mooring space shall adjoin an accessible route of travel and shall have a minimum clear space of five feet by five feet to allow transfer to the boat. Additionally, each accessible mooring space shall be a maximum of 36 inches above the mean water level in non-tidal areas.

5:23-7.107 Recreation: fishing areas

If docks are provided in a fishing area,.the criteria of N.J.A.C. 5:23-7.106 shall apply.

5:23-7.108 Recreation: court games

(a) The surface of the court must adjoin an accessible route of travel. Entrances to courts required to be accessible shall meet criteria of N.J.A.C. 5:23-7.37. On sites with more than one court, at least one of each type of court in each distinct area at a site shall adjoin an accessible route of travel. Where there is a main or center court, this court shall be included as one of those on an accessible route of travel. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

(b) Court surfaces shall meet the criteria of N.J.A.C. 5:23-7.17 except in those instances where the recognized rules of the particular game dictate another surface.

5:23-7.109 Recreation: ice rinks and roller rinks

The surface of at least one of each type of rink provided in each distinct area on a site shall adjoin an accessible route of travel.

5:23-7.110 Recreation: playing fields

There shall be an accessible route of travel to at least one of each type of playing field provided in each distinct area on a site. For an overlay field, an accessible route of travel to the primary field shall fulfill the requirements of this section. For a complex of playing fields in a single area, an accessible route of travel to the area shall fulfill the requirements of this section. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

5:23-7.111 Recreation: golf facilities

(a) For golf facilities, there shall be an accessible route of travel to the area where the transfer to golf carts is made.

(b) Bridges, if provided, shall either be designed for use by golf carts or shall meet the criteria of N.J.A.C. 5:23-7.24.

(c) Where curbs are provided at points where courses cross thoroughfares, ramps or curb ramps meeting the criteria of N.J.A.C. 5:23-7.24 shall be provided.

5:23-7.112 Recreation: ski lifts, aerial tramways, and conveyors

(a) In areas where ski lifts or other comparable mechanisms for skiing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible with the area where the transfer to skis is made.

(b) In areas where aerial tramways, conveyors or other comparable mechanisms for sightseeing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible and the moving seat, car or platform of the aerial tramways, conveyors, or comparable mechanisms. A five feet by five feet clear, level area meeting the criteria of N.J.A.C. 5:23-7.17 shall be provided immediately adjacent to the upper, lower, and any intermediate terminals of such mechanisms to facilitate transfer from a wheelchair to the seat, car, or platform. If seats are involved, they shall be at a height of 16 inches to 18 inches above the clear, level area.

(c) There shall be a control immediately available to the operator of the ski lift, aerial tramway or conveyor to stop and restart the mechanism to allow the transfer of a disabled person on and off.

***(d) The requirements of this section shall not apply to moving sidewalks or other horizontal conveyors guided by a track or tracks.***

5:23-7.113 Recreation: trails

(a) Trails through undeveloped areas are exempted from the requirements of this subchapter.

(b) All other trails shall meet the criteria of N.J.A.C. 5:23-7.17.

1. Signs, where provided, shall meet the criteria of N.J.A.C. 5:23-7.86.

5:23-7.114 Recreation: camping sites

(a) In camping areas in other than undeveloped areas, at least four percent (rounded off to the next higher whole number) of camp sites shall meet the following criteria:

1. There shall be an accessible route of travel connecting these accessible camp sites with site access point(s) and support facilities required to be accessible;

2. Sites and signs leading to such sites shall be marked with the International Symbol of Accessibility displayed as specified in N.J.A.C. 5:23-7.86;

3. Where tent platforms are provided, each shall be equipped with a ramp meeting the criteria of N.J.A.C. 5:23-7.24;

4. The accessible camp sites shall be distributed throughout the camping area to the degree feasible as determined by the topography of the area.

5:23-7.115 Recreation equipment

(a) There shall be an accessible route of travel connecting site access point(s) required to be accessible, recreation facilities required to be accessible, support facilities required to be accessible, and each piece of recreation equipment required to be accessible as delineated below.

(b) Four percent of all picnic tables, benches, fireplaces and grills provided, rounded off to the next higher whole number, but not less than one, shall be on an accessible route of travel.

1. Such equipment shall be distributed throughout the picnic area to the degree feasible as determined by the topography of the area.

(c) At least 25 percent of all fixed manipulative play equipment within each play area on a site shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons and shall be on an accessible route of travel.

1. For each piece of recreation equipment required to be accessible whose manufacturer specifies a surrounding, resilient safety area, providing access to that safety area shall constitute compliance with the requirements of this section.

i. Sand or pea gravel shall not be used within resilient safety areas associated with equipment required to be accessible.

2. As existing playground equipment is replaced in any play area which is on an accessible route of travel, at least 50 percent of the replacement equipment shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons until the percentage as specified in (c) above is met.

5:23-7.116 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height 42 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.24 except that a maximum slope of 1:9 shall be allowable.

## DIVISION OF HOUSING AND DEVELOPMENT

## (a)

### Senior Citizen and Disabled Protected Tenancy Determination of Eligibility

### Adopted Amendment: N.J.A.C. 5:24-2.5

Proposed: May 16, 1988 at 20 N.J.R. 1026(b).

Adopted: June 30, 1988 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Filed: July 7, 1988 as R.1988, d.362, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 2A:18.61-38.

Effective Date: August 1, 1988.

Expiration Date: September 1, 1990.

**Summary** of Public Comments and Agency Responses:

COMMENT: Both the Public Advocate and the Bergen County Division on Aging protested that opening tenant tax returns to inspection by owners prior to an administrative hearing would be an unjustified intrusion upon the tenants' privacy and that, instead, inspection by the owner of a summary sheet prepared by the administrative agent should be sufficient.

RESPONSE: The Department points out that this documentation is already made reviewable by the owner at a hearing by N.J.A.C. 5:24-2.7(e), so there is already no reasonable expectation of confidentiality, and disclosure by the tenant is voluntary, just as disclosure of tax returns to a bank to whom one applies for a loan is voluntary. If you do not seek a benefit, you do not have to disclose the information that supports your claim for that benefit. Contrariwise, if you do seek a benefit at someone else's expense, fundamental fairness requires that you not insist on the confidentiality of your proof of entitlement. (Is it not in "Alice in Wonderland" that one character insists on deference on the grounds that she is the eldest one present, but then refuses to tell how old she is?)

This circumstance is completely distinguishable from disclosure of tax information by taxing authorities without the taxpayer's consent or disclosure of tax information not needed for the making of a determination. Disclosure of summary sheets prepared by administrative agents will not solve the problem of unnecessary hearings because owners who have reason to doubt that the information presented is accurate will still want access to the original records and, without this amendment, will have to ask for a hearing to get it, with the end result being the needless inconvenience and hardship to many tenants that the companion amendment to N.J.A.C. 5:24-2.7, proposed March 7, 1988 at 20 N.J.R. 437(a), was intended to prevent.

COMMENT: The Division of Aging of the Department of Community Affairs recommended that the application form contain a notice, in large type, indicating that the documents submitted in support of the application are subject to review by the building owner and that a notice, in similar large type, be included in determination notices to advise the parties of their right to review the documentation on which the determination was based.

RESPONSE: The Division on Aging is advised that the application form, which is prepared by the Department, will contain a prominent notice, in capital letters, indicating that the application and the documents submitted along with it may be reviewed by the building owner and that the amendment is being revised to require inclusion of a prominent statement, in capital letters, advising recipients of their rights under N.J.A.C. 5:24-2.5(c).

**Full text** of the adoption follows (additions indicated in bold face with asterisks ***thus***).

5:24-2.5 Determination of eligibility

(a)-(b) (No change.)

(c) Both the owner and the tenant shall have the right to review any documentation upon which a determination by the administrative agency or officer was based within five days of receipt by the owner or tenant, as the case may be, of notice of the determination.

***1. The notice of determination shall include the following sentence, which shall be printed prominently and in capital letters: "YOU HAVE THE RIGHT TO REVIEW, AT THIS OFFICE, ANY DOCUMENTATION UPON WHICH THIS DETERMINATION WAS BASED WITHIN FIVE DAYS OF YOUR RECEIPT OF THIS NOTICE."***

# (a)

## Senior Citizen and Disabled Protected Tenancy Administrative Hearings

## Adopted Amendment: N.J.A.C. 5:24-2.7

Proposed: March 7, 1988 at 20 N.J.R. 437(a).

Adopted: June 30, 1988 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Filed: July 7, 1988 as R.1988, d.361, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 2A:18.61-38.

Effective Date: August 1, 1988.

Expiration Date: September 1, 1990.

**Summary** of Public Comments and Agency Responses:

Two comments were received in opposition to this proposed amendment.

COMMENT: The Public Advocate claimed that the verified statement requirement would be an onerous burden on some senior citizens and disabled people, who would also be unable to understand how to set forth a "credible factual basis that the determination was incorrect or contrary to law."

RESPONSE: The Department, recognizing that the verification requirement might be more of a deterrant to legitimate claimants than to persons intent on pursuing frivolous hearing requests, agrees to delete the word "verified." In response to the second issue raised, the Department points out that all an applicant has to do is to write down the bases (age or disability, income, residence) on which he or she believes himself or herself to be qualified. The companion amendment to N.J.A.C. 5:24-2.5, which appeared on May 16, 1988 at 20 N.J.R. 1026(b), and is being adopted in conjunction with this amendment, would allow the tenant to learn the basis for his or her being denied protected tenancy, so he or she would be able to say something in response other than "I appeal." In any event, the tenant is going to have to be able to state his or her reason for disagreeing with an adverse decision if he or she expects to be able to prevail at a hearing.

COMMENT: The other comment was from an attorney who advised the Department that he has often represented owners in protected tenancy matters and that he finds that owners cannot get access to application documentation without having a hearing and that determinations are sometimes made without supporting documentation. He recommended that owners have the right to review tenants' documentation within five days of receiving determinations and that no determinations be made until the tenant supplies the administrative agent with certified copies of tax returns for all occupants of the apartment, a sworn statement as to the absence of tax free income, and proof of age.

RESPONSE: The Department agrees that, while its main concern in proposing the amendment was, to the extent possible, to spare tenants the ordeal of unnecessary hearings, it must also recognize that building owners, who are being required to bear the cost of protected tenancy, clearly have the right to be assured that those who are receiving this benefit are truly entitled to it. Consequently, the companion amendment to 5:24-2.5, which allows inspection prior to the making of a hearing request by either party, was proposed.

With regard to the recommendation that no determination be made until certain specified documentation is provided, the Department does not think this advisable since making no determination will leave applications open indefinitely, with consequent uncertainty for both parties. The rules already indicate what is required by way of proof of income, age and disability and any person who willfully supplies false information in order to obtain a benefit from somebody else would be exposing himself to prosecution for fraud, so it is not clear that very much would be gained from a requirement that tax returns be certified in order to be considered.

**Full text** of the adoption follows (deletions indicated in brackets with asterisks *[thus]*).

5:24-2.7 Administrative hearings

(a) (No change.)

(b) Application for an administrative hearing shall be made within 10 days of receipt by the aggrieved person of notice of such determination. The application shall include a *[verified]* statement setting forth a credible factual basis for a finding that a determination either granting or denying protected tenancy status, as the case may be, was based upon incorrect or incomplete information and/or setting forth the manner in which the determination is alleged to be contrary to law.

(c) All notices of determination issued by an administrative agency or officer shall advise the recipient of the right to a hearing and of the 10 day application requirement, including the information required to be included in the application, and shall give the name and address of the person to whom applications for hearings are to be made.

(d)-(g) (No change.)

## (a)

## DIVISION OF LOCAL GOVERNMENT SERVICES

### Local Finance Board

### Readoption: N.J.A.C. 5:30

Proposed: May 16, 1988 at 20 N.J.R. 1027(a).
Adopted: June 29, 1988 by Local Finance Board, Barry Skokowski, Sr., Chairman.
Filed: June 29, 1988 as R.1988 d.350, **without change.**
Authority: N.J.S.A. 52:27BB-10, 52:27BB-32, 52:27D-18, 40A:4-83, 40A:5-38, 40A:11-11, 40A:12-6.
Effective Date: June 29, 1988.
Expiration Date: June 29, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:30.

# EDUCATION

## STATE BOARD OF EDUCATION

## (b)

### Readoption with Amendments: N.J.A.C. 6:3

Proposed: May 16, 1988 at 20 N.J.R. 1027(b).
Adopted: July 6, 1988 by Saul Cooperman, Commissioner, Department of Education and Secretary, State Board of Education.
Filed: July 8, 1988 as R.1988 d.367, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:6-7A-1, 18A:7A1.1, 18A:10-6, 18A:13-14, 18A:16-1, 18A:17-14.1 to 14.3, 18A:17-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 18A:22-13, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1, 18A:40-12.2, and 18A:49-1 to 49-8.
Effective Date for Readoption: July 8, 1988.
Effective Date for Amendments: August 1, 1988.
Expiration Date: July 8, 1993.

**Summary** of Public Comments and Agency Responses:

Public testimony was heard on March 17, 1988 at the State Board's monthly forum for comments, regarding N.J.A.C. 6:3, School Districts. Representatives from the New Jersey Education Association (NJEA) as well as the New Jersey School Boards Association (NJSBA) spoke. The subject of seniority was addressed by both speakers.

COMMENT: NJEA disagreed with limiting seniority entitlement to actual employment under an endorsement and sought return to acquisition of seniority in all endorsements held.

RESPONSE: Since experience in a category or under a subject matter endorsement is educationally sounder than overall services in a district, the Department felt that seniority entitlement should be limited to categories in which individuals actually serve.

COMMENT: NJEA requested that seniority entitlement not be limited to the grade level classification but that it extend to the scope of the certificate endorsement (K-12). According to NJEA art, music, or physical education teachers with a K-12 endorsement should be able to bump any less senior teacher with the same endorsement.

RESPONSE: The Department felt this provision was designed to permit local boards to retain tenured individuals experienced at working with children of a specific age and level of maturity rather than to require them to retain persons holding the same endorsement but lacking the experience of working with children of that grade level classification. This rationale was based upon the belief that local districts most often seek persons of different areas of concentration, qualities and temperament for elementary positions in these fields than for secondary positions.

COMMENT: NJSBA requested that the sentence in N.J.A.C. 6:3-1.10(f), "not more than one year of employment maybe counted toward seniority in any one academic or calendar year", not be omitted because it will create rather than reduce confusion and thus lead to greater litigation. They cite decision of State Board in *Schmidt v. New Providence Board of Education,* 1982 S.L.D. 883.

RESPONSE: The Department felt NJSBA's interpretation of the aforementioned case was correct. However, the sentence in question has also variously been interpreted as standing for the proposition that one may not acquire more than the total of one year's seniority for one year's services which the second sentence contradicts. Therefore, the Department proposed the omission of the sentence but the inclusion of a sentence which states, "For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

COMMENT: NJSBA recommended the creation of a separate category of Remedial Instruction so that persons in Title I Compensatory Education programs would not be able to "bump" persons with less seniority in regular classroom assignments and recommends that persons who teach in part-time positions not be permitted to "bump" teachers in full-time positions even though their pro-rated number of total years of experience exceed those of the full-time teacher. They cite the implications of *Spiewak v. Rutherford Board of Education*, 90 N.J. 63 (1982), which accords tenure status to remedial teachers and *Lichtman v. Ridgewood Board of Education*, 93 N.J. 362 (1983), which eliminated any distinction between part-time and full-time teachers.

RESPONSE: The Department felt that simply because a teacher works in a remedial capacity or on a part-time basis within their endorsement and category was no reason to deny them seniority entitlement over another teacher working under the same endorsement and within the same category. This is consistent and with the overall thrust of the seniority solely in the endorsement and category in which they have actually served. The argument advanced by NJSBA that part-time teachers should not "bump" full-time teachers because they have not been evaluated as full-time teachers is without merit because rules governing nontenured and tenured teachers evaluations do not distinguish between full-time and part-time nor can such a distinction be reasonably argued since a lesson and observation of a part-time teacher in math is indistinguishable from a lesson and observation of a full-time teacher in math.

Additionally, the subject of evaluation of non-tenured teaching staff members and chief school administrators was also addressed by NJSBA at the public testimony session.

COMMENT: NJSBA felt N.J.A.C. 6:3-1.19 should be amended to recognize alternate route teachers who receive continuous evaluations throughout the course of their provisional years. Is not this an additional layer of observation? Are the evaluations completed by the same person? If not the same person, will different standards be applied?

RESPONSE: The Department felt that this rule cites the minimum number of observations required pursuant to N.J.S.A. 18A:27-3.1 which states that a local district may conduct as many observations as it deems necessary.

COMMENT: NJSBA felt that since the word annual appears throughout this subchapter with regularity, that should a school district wish to conduct more frequent evaluations, they might have difficulty enforcing such a policy. They recommended a change N.J.A.C. 6:3-1.22(a) to read "Every district board of education . . . requiring [the annual] at least one evaluation of the chief school administrator . . ."

RESPONSE: The Department felt that an annual evaluation is a summative evaluation based on periodic assessments of chief school administrator's performance. The rule requires an annual written performance report to be prepared by April 30, based on year-long evaluation of chief school administrator's performance against a job description and specified evaluation criteria.

The Department has made eight typographical corrections to the text of the readopted rules.

**Full text** of the readoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

6:3-1.1 (Reserved)

6:3-1.2 through 1.4 (No change.)

6:3-1.5 Minimum bond requirements for treasurer of school moneys

(a) The minimum requirements for the surety bond shall be such percentage of the current year's school budget as is required in the schedule set forth in (b) below.

| (b) Total School Board | Minimum Bond Required |
|---|---|
| Up to $100,000.00 | 10 percent of budget (Minimum $5,000) |
| $100,000.01 to $250,000.00 | $10,000 plus eight percent of all over $100,000 |
| $250,000.01 to $500,000.00 | $22,000 plus six percent of all over $250,000 |
| $500,000.01 to $750,000.00 | $37,000 plus four percent of all over $500,000 |
| $750,000.01 to $1,000,000.00 | $47,000 plus two percent of all over $750,000 |
| $1,000,000.01 to $2,000,000.00 | $52,000 plus one percent of all over $1,000,000 |
| $2,000,000.01 to $5,000,000.00 | $62,000 plus 1/2 percent of all over $2,000,000 |
| $5,000,000.01 to $10,000,000.00 | $77,000 plus 1/4 percent of all over $5,000,000 |
| $10,000,000.01 and upwards | $89,500 plus 1/8 percent of all over $10,000,000 |

(c) In fixing such minimum bond, the nearest *[event]* ***even*** $1,000 shall be used.

(d) (No change.)

6:3-1.6 (Reserved)

6:3-1.7 Purchase of food supplies in school cafeterias and in home economics classes

(a) For the purpose of these rules, "food supplies" shall include only those supplies which are to be eaten or *[drank]* ***drunk*** and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

1. Whenever any district board of education elects to purchase food supplies pursuant to these rules, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations and outlining the method by which the board will solicit and accept quotations.

2. (No change.)

(b) Rules regarding specifications and quotations are as follows:

1.-2. (No change.)

3. The food supplies on which quotations are obtained shall be purchased from the vendor giving the lowest quotation unless the person or persons designated by the district board of education to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation. Such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education and the State Department of Education for review and/or for audit for a minimum of three years.

4. (No change.)

(c) (No change.)

6:3-1.8 (Reserved)

6:3-1.9 Special meetings of district boards of education

In every school district of the State, it shall be the duty of the secretary of the board of education to call a special meeting of the board whenever requested by the president of the board to do so or whenever there shall be presented to such secretary a petition signed by a majority of the whole number of members of the district board of education requesting the special meeting. Public notice of such ***special*** meeting shall be made pursuant to law and regulation.

6:3-1.10 Standards for determining seniority

(a)-(b) (No change.)

(c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the district and the time of service in or with the military or naval forces of the United States or this State, pursuant to the provisions of N.J.S.A. 18A:28-12.

(d) (No change.)

(e) The holder of an emergency certificate shall not be entitled to seniority rights but, when he or she becomes the holder of a standard certificate, the years of employment under the emergency certificate shall count toward seniority under the standard certificate. Upon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority.

(f) Whenever a person shall hold employment simultaneously under two or more subject area endorsements or in two or more categories, seniority shall be counted in all subject area endorsements and categories in which he or she is or has been employed. For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

(g)-(h) (No change.)

(i) Whenever any person's particular employment shall be abolished in a category, he or she shall be given that employment in the same category to which he or she is entitled by seniority. If he or she shall have insufficient seniority for employment in the same category, he or she shall revert to the category in which he or she held employment prior to his or her employment in the same category and shall be placed and remain upon the preferred eligible list of the category from which he or she reverted until a vacancy shall occur in such category to which his or her seniority entitles him or her.

(j) If he or she shall have insufficient seniority in the category to which he or she shall revert, he or she shall, in like manner, revert to the next category in which he or she held employment immediately prior to his or her employment in the category to which he or she shall have reverted and shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until he or she shall have been employed or placed upon all the preferred eligible lists of the categories in which he or she formerly held employment in the school district.

(k) In the event of his or her employment in some category to which he or she shall revert, he or she shall remain upon all the preferred eligible lists of the categories from which he or she shall have reverted and shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which his or her seniority entitles him or her.

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1. Superintendent of schools;
2. Director of county vocational schools;
3. Assistant director of county vocational schools;
4. Assistant superintendent (each assistant superintendency shall be a separate category);
5. Local director of vocational education;
6. High school principal;
7. Adult high school principal;
8. Alternative school principal;
9. Vocational school principal;
10. Junior high school principal;
11. Elementary principal;
12. Supervisors (each approved supervisory title shall be a separate category. District boards of education shall adopt job descriptions for each supervisory position which set forth the qualifications and specific endorsements required for such position);
13. High school vice-principal or assistant principal;
14. Adult high school vice-principal or assistant principal;
15. Alternate school vice-principal or assistant principal;
16. Junior high school vice-principal or assistant principal;
17. Elementary school vice-principal or assistant principal;
18. Vocational school vice-principal or assistant principal;
19. Secondary. The word "secondary" shall include grades nine through 12 in all high schools, grades seven and eight in junior high

schools and grades seven and eight in elementary schools having departmental instruction.

i.-iv. (No change.)

20. Elementary. The word "elementary" shall include Kindergarten, grades one through six and grades seven and eight without departmental instruction.

i.-iii. (No change.)

iv. Persons serving under elementary endorsements in departmentally organized grades seven and eight prior to September 1, 1983 shall continue to accrue seniority in the elementary category for all such service prior to and subsequent to September 1, 1983. In addition, such persons shall accrue seniority in the secondary category but limited to the district's departmentally organized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983.

21. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in the State Board rules dealing with teacher certification (N.J.A.C 6:11).

(m) In the event of a restructure of grade*[s]* levels which results in the elimination of all junior high schools (as defined by N.J.A.C. 6:27-1.2) in the district and the creation of schools with a grade level organization which includes grade seven and eight with or without one or more elementary grades, the seniority rights of the junior high principals, vice-principals and assistant principals displaced by such restructuring shall be transferable to the newly reorganized school, in the category designated by the district board of education in its classification plan adopted in compliance with N.J.A.C. 6:27-1.2.

6:3-1.11 (No change.)

6:3-1.12 Duties of district superintendent of schools; chief school administrator

(a)-(b) (No change.)

(c) He or she shall exercise such educational and administrative leadership, supervision, and guidance as may be necessary for producing the best possible educational conditions and outcome.

(d) He or she shall appoint such clerks as may be authorized by the district board(s) of education.

(e) He or she shall nominate to the district board(s) of education such assistant superintendents as shall be authorized by the district board(s) of education.

(f) He or she shall recommend to the district board(s) of education formal appointment of all teaching staff members.

(g) It shall also be his or her duty to recommend and prepare for the district board(s) of education a list of textbooks and reference and library books, materials of instruction, instructional equipment and school supplies for the approval by the district board(s) of education.

(h) (No change in text.)

(i) (No change in text.)

(j) Each chief school administrator who is an administrative principal shall perform all of the duties enumerated in this section.

6:3-1.13 (No change.)

6:3-1.14 Eye protection in public schools

(a) Each district board of education shall require each pupil, teacher and visitor in the public schools of the district, including evening adult schools programs, to wear appropriate eye protective devices while participating in any regular school program as defined in N.J.A.C. 6:8-1.1 in which caustic or explosive chemicals or materials, hot liquids or solids, molten materials, welding operations of any type, repairing or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials and laser device operation and experimentation or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.

(b) The term "appropriate eye protective device" shall include plano or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules.

1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1979.

2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacture*r* of the laser device.

i. These documents are available for review at the Administrative Code Office, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625-0500.

ii. These documents may be purchased from the American National Standards Institute, Incorporated, 1430 Broadway, New York, New York 10018.

(c) Emergency eye wash foundations or similar devices, capable of a minimum 15 minutes continuous flow of eye wash solution shall be provided in classrooms, shops, laboratories or other areas where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.

(d) The following types of eye protective devices shall be used to fit the designated activities or processes:

Potential Eye Hazard—Eye Protective Device(s)

1.-2. (No change.)

3. Electric arc welding—Welding helmet in combination with spectacles with eye cup or semi- or flat-fold side shields;

4. Oxy-acteylene welding—Welding goggle, eye cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lenses;

5.-8. (No change.)

9. Glare operations—Tinted goggles, tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;

10.-13. (No change.)

(e) Each district board of education shall establish and implement a specific eye protective policy and program to assure that:

1.-4. (No change.)

5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications.

6. (No change.)

7. The use of contact lenses shall be restricted in learning environments which entail exposure to chemical fumes, vapors or splashes, intense heat, molten metals, or highly particulate atmospheres. Contact lenses, *[whem]* ***when*** permitted, shall only be worn in conjunction with appropriate eye protective devices and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments.

8. All spectacle type eye protective devices shall have side shields of the eye cup, semi- or flat-fold type.

9. Pupils, teachers or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless it can be certified, by competent authority, that the personal eyewear meets or exceeds standards identified in (b) above.

6:3-1.15 through 1.17 (No change.)

6:3-1.18 School business administrator

(a) Any school district establishing the position of school business administrator shall meet the conditions established in this section:

(b) School district with more than 25 teachers:

1.-2. (No change.)

3. Upon certification by the county superintendent of schools of the necessity for such a position, the Commissioner and the State Board of Education may approve the establishment of a position of school business administrator.

4. Any person appointed by a district board of education to the position of school business administrator shall hold an appropriate certificate prescribed by the State Board of Education, and he or she shall be considered a member of the professional staff of the school district.

5. The school business administrator shall perform those business functions as outlined in the policy of the district board of education and as approved by the Commissioner and the State Board of Education.

6. (No change.)

(c) School districts with 25 teachers or less:

1. (No change.)

2. The major area of the duties and responsibilities which may be considered by the participating district boards of education as functions of the school district administrator are those set forth in (b)2 above.

3. Upon certification of the county superintendent of schools of the necessity for position, the Commissioner and State Board of Education may approve the establishment of a position of school business administrator for two or more school districts.

4. (No change.)

5. A school business administrator shall perform those business functions as outlined in the policies of the respective district boards of education and as approved by the Commissioner and the State Board of Education.

6. The salary shall be equitably apportioned among two or more school districts in accordance with the administrative plan outlined in (c) above.

7. (No change.)

(d) All changes or modifications in the original plan concerning the position of school business administrator as submitted to the county superintendent of schools, the Commissioner of Education and the State Board of Education must be approved in the same manner as the original plan.

6:3-1.19 Supervision of instruction, observation and evaluation of nontenured teaching staff members

(a) For the purpose of this section, the term "observation" shall be construed to mean a visitation to an assigned work station by a certified supervisor of the local school district for the purpose of formally collecting data on the performance of a nontenured teaching staff member's assigned duties and responsibilities and of a duration appropriate to those duties and responsibilities.

1. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the work station for the purpose of observing a teaching staff member's performance of the instructional process.

(c) Each district board of education shall adopt a policy for the supervision of instruction, setting forth procedures for the observation and evaluation of all nontenured teaching staff members. Such policy shall be distributed to each teaching staff member at the beginning of his or her employment.

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations hereinbefore described, a written evaluation of the nontenured teaching staff member's total performance as an employee of the district board of education, including but not limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member; and

4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators related to the effectiveness of the overall program and the performance of the individual teaching staff member.

(e) Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be followed within a reasonable period of time, but in no instance more than 15 days, by a conference between the administrative or supervisory staff member who has made the observation and written evaluation, and the nontenured teaching staff member. Both parties to such a conference will sign the written evaluation report and retain a copy for his or her records. The nontenured teaching staff member shall have the right to submit his or her written disclaimer of such evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the evaluation report.

(f) (No change.)

(g) "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, or any educational services commission, holding office, position or employment of such character that the qualifications for such office, position or employment require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this subchapter but shall instead be evaluated pursuant to N.J.A.C. 6:3-1.22.

6:3-1.20 (No change.)

6:3-1.21 Evaluation of tenured teaching staff members

(a)-(g) (No change.)

(h) For the purposes of this section:

1. "Appropriately certified personnel" means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and the supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction.

2. "Indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1.

3. "Individual professional improvement plan" is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

4. "Job description" means a written specification of the function of the position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and district;

5. "Observation conference" means a discussion between supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation;

6. "Observation" means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties and responsibilities and of a duration appropriate to same;

7. "Performance report" means a written appraisal of the teaching staff member's performance prepared by an appropriately certified supervisor;

8. "Supervisor" means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members;

9. "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this section but shall instead be evaluated pursuant to N.J.A.C. 6:3-1.22.

6:3-1.22 Evaluation of tenured and nontenured chief school administrators

(a) Every district board of education shall adopt a policy and implementation procedures requiring the annual evaluation of the chief school administrator by the district board of education.

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of the chief school administrator;
2. Improve the quality of the education received by the pupils served by the public schools; and
3. Provide a basis for the review of the performance of the chief school administrator.

(c) Such policy and procedures shall be developed by each district board of education after consultation with the chief school administrator and shall include, but not be limited to:

1. (No change.)
2. Development of a job description and evaluation criteria, based upon the district's local goals, program objectives, policies, instructional priorities, State goals, statutory requirements, and the functions, duties and responsibilities of the chief school administrator;
3. (No change.)
4. Provision for the preparation of an individual plan for professional growth and development based in part upon any needs identified in the evaluation, which shall be mutually developed by the district board of education and the chief school administrator; and
5. Preparation of an annual written performance report by a majority of the full membership of the district board of education and an annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present.

(d) (No change.)

(e) Such policy shall be distributed to the chief school administrator upon adoption. Amendments to the policy shall be distributed within 10 working days after adoption.

(f) The annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present, shall be held before the written performance report is filed. The conference shall be held in private, unless the chief school administrator requests that it be held in public. The conference shall include, but not be limited to:

1. Review of the performance of the chief school administrator based upon the job description;
2. Review of the chief school administrator's progress in achieving and/or implementing the district's goals, program objectives, policies, instructional priorities, State goals and statutory requirements; and
3. Review of available indicators of pupil progress and growth toward the program objectives.

(g) The annual written performance report shall be prepared by April 30 by a majority of the total membership of the district board of education and shall include, but not be limited to:

1.-3. (No change.)

4. A summary of available indicators of pupil progress and growth and a statement of how these available indicators relate to the effectiveness of the overall program and the performance of the chief school administrator; and
5. Provision for performance data which have not been included in the report prepared by the board of education to be entered into the record by the chief school administrator within 10 working days after the completion of the report.

(h) These provisions are the minimum requirements for the evaluation of chief school administrators.

(i) For purposes of this section:

1.-2. (No change.)

3. "Job description" means a written specification of the functions, duties and responsibilities of the chief school administrator and the relationship of such functions, duties and responsibilities to those of the district board of education.

(j) The evaluation procedure for a nontenured chief school administrator shall be completed by April 30 each year.

6:3-1.23 (Reserved)

SUBCHAPTER 2. PUPIL RECORDS

6:3-2.1 through 2.8 (No change.)

SUBCHAPTER 3. WITHDRAWAL FROM LIMITED PURPOSE REGIONAL SCHOOL DISTRICTS

6:3-3.1 Application and data for investigation of advisability of withdrawal

(a) Any district board of education constituting part of a limited purpose regional school district or the governing body of such local school district, may apply to the county superintendent of schools to make an investigation as to the feasibility of withdrawal of such constituent district from the regional district. Such body shall adopt a resolution by a recorded roll call vote of the majority of the full membership requesting that the county superintendent make such investigation. The resolution request submitted to the county superintendent shall include the following information:

1. (No change.)
2. Enrollment data, including, but not limited to, the number of pupils enrolled as reported by grade on the October 1 Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district and the remaining regional district, based on growth factors using average percentages for the last three school years;

3.-5. (No change.)

(b) (No change.)

6:3-3.2 Investigation and report by county superintendent of schools

(a) Upon receipt of the resolution and accompanying data pursuant to N.J.A.C. 6:3-3.1, the county superintendent shall make an investigation and shall within 60 days after receipt of such request issue a report, in accordance with N.J.S.A. 18A:13-52, to governing bodies of the municipalities constituting the regional district, the boards of education of the constituent districts and the board of education of the regional district. When the county superintendent has begun such investigation, no action shall be taken upon a subsequent request from another constituent district of the same regional district until the investigation, report and action thereon have been completed. This report shall be based on data supplied by the petitioning district(s) including, but not be limited to, the following:

1. (No change.)
2. Enrollment data, including the number of pupils enrolled as reported by grade on the October 1 Application for State School Aid and estimated projected enrollment, by grade level, for the succeeding five years for both the withdrawing district and the remaining regional district, based on growth factors using average percentages for the last three school years;

3.-12. (No change.)

13. A summary of the advantages of withdrawal to both the withdrawing constituent district and the remaining regional district and the disadvantages to the withdrawing constituent district and the remaining regional district; and
14. (No change.)

6:3-3.3 Special school election

(a) If the application is granted upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56, the county superintendent shall confer with the regional board and the boards of education of the constituent districts and fix a day and time for holding a special school election, in accordance with the provisions of N.J.S.A. 18A:13-57.

(b) (No change.)

6:3-3.4 and 3.5 (No change.)

SUBCHAPTER 4. SENIOR CITIZEN'S TRANSPORTATION

6:3-4.1 (No change.)

# ENVIRONMENTAL PROTECTION

## (a)

## DIVISION OF WATER RESOURCES

### Civil Administrative Penalties and Adjudicatory Hearings

### Adopted Repeal: N.J.A.C. 7:14-8
### Adopted New Rules: N.J.A.C. 7:14-8
### Adopted Amendment: N.J.A.C. 7:19-6.14

Proposed: March 7, 1988 at 20 N.J.R. 455(a).
Adopted: July 11, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: July 11, 1988 as R.1988 d.380, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 58:10A-1 et seq., particularly 58:10A-10; 58:11-64 et seq., particularly 58:11-71; 58:1A-1 et seq., particularly 58:1A-16; and 58:10A-21 et seq., particularly 58:10A-32.

DEP Docket Number: 006-88-02.
Effective Date: August 1, 1988.
Expiration Date: April 27, 1989 (N.J.A.C. 7:14-8), April 15, 1990 (N.J.A.C. 7:19-6.14).

**Summary** of Public Comments and Agency Responses:

This rule was proposed in the March 7, 1988 New Jersey Register. A public hearing was held in Trenton on April 4, 1988 in which two members of the public attended, one of which provided comments at that time. Sixteen additional commenters submitted written comments prior to the close of the comment period on April 6, 1988.

General Comments

COMMENT: One comment stated that the proposed rules are incorrect and contrary to the penalty procedures in the Water Pollution Control Act. The comment further stated that before a civil administrative penalty should be assessed, a warning for the violation should be issued and time given to correct the violation.

RESPONSE: The Department believes that the rules concerning civil administrative penalty assessment pursuant to the Water Pollution Control Act are consistent with that statute. The commenter has apparently misinterpreted the statutory scheme in N.J.S.A. 58:10A-10 requiring the Department to issue a notice of a civil administrative penalty assessment to a violator, and then giving the violator the opportunity to request an adjudicatory hearing on the civil administrative penalty assessment prior to the penalty being due and payable. If the violator does not request an adjudicatory hearing, the notice of civil administrative penalty assessment becomes a final order and the penalty is due and payable at that time. If the violator requests an adjudicatory hearing on the civil administrative penalty, the civil administrative penalty is not due and payable until after the adjudicatory hearing and the Department issues a final order. This procedure was not modified by either P.L. 1986, c. 170, section 3, or the proposed rules on civil administrative penalties. The Legislation did not include a requirement for a warning prior to the Department's assessment of a civil administrative penalty, nor does the Department believe that such a warning is either appropriate, nor in furtherance of the objectives of the Water Pollution Control Act.

COMMENT: One comment opposed the assessment of civil administrative penalties on a daily basis.

RESPONSE: The Water Pollution Control Act, as amended by P.L. 1986, c. 170, currently reads at N.J.S.A. 58:10A-10d "each day during which such a violation continues shall constitute an additional, separate, and distinct offense." The rules are consistent with this statutory language.

COMMENT: One comment opposed the tenfold increase in the maximum penalties which may be assessed for violations of the Water Pollution Control Act.

RESPONSE: As indicated in the summary of the proposed civil administrative penalty rule (see 20 N.J.R. 455(a), March 7, 1988), the Legislature, pursuant to P.L. 1986, c. 170, section 3, increased the maximum allowable civil administrative penalty for each violation of the Water Pollution Control Act by a factor of 10. The increase in the civil administrative penalties set forth in the rule reflects this statutory increase.

COMMENT: One comment suggested that the procedures for assessing the proposed administrative penalties follow a sound and prudent, "common sense" approach.

RESPONSE: The rules concerning civil administrative penalty assessments follow the statutory guidance in the Water Pollution Control Act, as amended by P.L. 1986, c. 170.

COMMENT: One comment stated that the Department should not immediately assess civil administrative penalties, but should first evaluate the violation to determine whether a penalty is warranted.

RESPONSE: Each time the Department assesses a civil administrative penalty it believes that the circumstances warrant that penalty.

COMMENT: One commenter stated that the proposed rules do not provide any warning or opportunity for a hearing.

RESPONSE: The commenter is correct in stating that neither the statutory framework nor the rules as proposed include any type of a warning to violators. The commenter was incorrect, however, in suggesting that the rules do not contain an opportunity for a hearing. The procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment are set forth in N.J.A.C. 7:14-8.4.

COMMENT: One comment cited the case of *Gwaltney of Smithfield v. Chesapeake Bay Foundation,* 108 S.Ct. 376 (1987), in which the United States Supreme Court stated that compliance is the goal of environmental laws. This commenter submits that the proposed rules do not promote compliance, but instead promote hiding or non-reporting violations.

RESPONSE: The rules proposed here are being promulgated pursuant to State law, namely the Water Pollution Control Act, and not the Federal Clean Water Act that was interpreted by the U.S. Supreme Court in the *Gwaltney* case cited by the commenter. The rules as proposed, while implementing the changes required by P.L. 1986, c. 170, also include specific and significant penalties for any data falsification or non-reporting violations. The violators should understand that the risk they run with that kind of behavior may subject them to civil administrative penalties as well as criminal sanctions. The Department fully intends to refer all instances of alleged falsifications or non-reporting to the Division of Criminal Justice in the Department of Law and Public Safety, for investigation and prosecution.

COMMENT: One comment opposed the new rules and amendment. The commenter stated that "the majority of the treatment facilities in New Jersey are doing everything in their capacity to avoid any violations of their NJPDES permit. Surely, no one intentionally seeks to be out of compliance. There are more sensible ways to ensure compliance than to fine a community $50,000 a day. This could be devastating to a small community. . . . The N.J.D.E.P. has a very effective program in existence now that is called the 'Administrative Consent Order'. The last thing we need is more laws and regulations." The commenter asks that the Department reconsider the proposed rules and their effect on the regulated community, small plants in particular.

RESPONSE: As stated above, these civil administrative penalty rules are in response to a statutory change and the Department believes the higher penalties will be an important enforcement tool in deterring noncompliance.

COMMENT: One comment stated that if the intent of stricter civil administrative penalties is to force the meeting of quality standards, then it should be the Department's responsibility to show that these standards are in severe violation before heavy civil administrative penalties are levied.

RESPONSE: The intent of the higher dollar amount of the civil administrative penalty rules is to be consistent with the statutory change referenced above. The Department has, furthermore, developed the civil administrative penalty rules according to the concept that the more severe violations should carry a higher civil administrative penalty assessment. See N.J.A.C. 7:14-8.5. The Water Pollution Control Act does not impose the burden on the Department of demonstrating severe violation of standards prior to assessing a civil administrative penalty. The Department believes this would be inconsistent with the present enforcement scheme of that Act.

COMMENT: One comment suggested that in lieu of assessing civil administrative penalties against violators, a trust fund should be established into which the violator would pay the amount of penalties and which would be used by the violator to remedy the violations.

RESPONSE: The Department disagrees with this comment. As a condition of discharging pollutants into the waters of this State, a permittee has an obligation to comply with the regulatory program established pursuant to the Water Pollution Control Act and its New Jersey Pollutant Discharge Elimination System (NJPDES) permit. The purpose of civil administrative penalties is to punish and deter violators and not to create a revolving loan program for the benefit of violators. Furthermore, all civil administrative penalties collected pursuant to the Water Pollution Control Act are deposited by the Department into the General Treasury of the State of New Jersey, and therefore are not accessible by either the Department or the violators as proposed by this comment.

COMMENT: One commenter stated that an economic impact statement should have been prepared for these rules. The commenter suggested that the Department could have reviewed its New Jersey Pollutant Discharge Elimination System (NJPDES) files to determine what types and amounts of fines would have been imposed in the previous year had these rules already been in place. The commenter stated that with this information, the public, as well as the permit holder, would be able to judge the economic impact of these rules and would be better able to comment on these rules.

RESPONSE: As stated in the Economic Impact Section of the rule proposal (see 20 N.J.R. 455(a), 456), there will be no economic impact resulting from these rules to facilities which comply with the regulatory program established pursuant to the Water Pollution Control Act. Conversely, and specifically by design, these rules are intended to have an economic impact on all violators under the Water Pollution Control Act. Furthermore, the Department does not believe that the analysis suggested by this commenter is necessary in light of the statutory change to the Water Pollution Control Act as a result of P.L. 1986, c. 170. The Legislature has mandated the magnitude of the economic impact that violators of these statutory schemes should incur.

COMMENT: One comment stated that a social impact statement should have been prepared with respect to permit holders with fixed budgets such as public agencies, authorities and municipalities. To illustrate the social impact to such entities, the commenter stated that in the event that a municipality was faced with a civil administrative penalty assessment in excess of a million dollars, to pay those fines the municipality would have to cut back in other areas, thereby causing a significant social impact.

RESPONSE: The Department disagrees with this comment. One of the purposes of these civil administrative penalty rules is to deter noncompliance. Therefore, public agencies, authorities and municipalities, which may have certain fixed operating budgets, need to provide the appropriate attention, personnel and dollars to the operation of their facilities discharging into the waters of this State to decrease the likelihood of regulatory violations. The Department has developed this regulatory scheme based on the severity of the violation, considering both the conduct of the violator and the gravity of the violation, and not on the violator's ability to pay penalties for the violation.

COMMENT: One comment suggested that a provision such as N.J.A.C. 7:14A-8.5, Comprise of penalties, of the current rules be incorporated in the proposed rules to provide the Department with greater discretion to vary a civil administrative penalty assessment based on the facts of each case.

RESPONSE: The Department will consider amending the rule in the future to incorporate provisions regarding penalty compromises.

COMMENT: One comment noted that N.J.S.A. 58:10A-10d provides that penalties may be compromised upon the posting of a performance bond or upon such terms and conditions as may be established by regulation. The comment suggested that terms and conditions for compromise be incorporated into the proposed rules, including but not limited to, the Department's assessment of litigation risks and costs to the Department, as the basis for authorizing the Department to compromise civil administrative penalties.

RESPONSE: See response to preceding comment.

COMMENT: One commenter contended that because public agencies must use money from their operating budgets to pay civil administrative penalties, which may reduce their ability to meet permit requirements, civil administrative penalties should not be assessed against a public agency unless it can be shown that the public agency unreasonably acted with disregard to the public and caused a pollution incident.

RESPONSE: All permittees, including public agencies, are required to meet all permit conditions. They will also be assessed civil administrative penalties for any violations of those permit conditions based on the severity of the penalties, as discussed above, and not on their ability to pay.

COMMENT: Several comments stated that the Department must give recognition to the special problems that publicly owned treatment works face. Furthermore, the Department must realize that a publicly owned treatment works must provide service continually and cannot cease its discharge, even during a period of an upset, which occasionally occurs because of the nature of biological treatment which uses live organisms to treat wastewater and which results in variable wastewater quality even with a strong industrial pretreatment program. It was suggested that the rules be changed to allow a publicly owned treatment works to recover from an upset without being subjected to daily civil administrative penalties. It was stated that imposition of civil administrative penalties in such cases will not have a deterring effect on publicly owned treatment works and will do nothing more than have a negative impact on their credibility.

RESPONSE: Recognition of the special situation of the publicly owned treatment works is taken into account when establishing the permit limitations for publicly owned treatment works by the use of weekly and monthly averages as opposed to daily limitations established in other permits. It may be appropriate, however, in certain circumstances for the Department to consider such factors in the settlement of the civil administrative penalty assessment.

COMMENT: One comment stated that civil administrative penalties should not be assessed against a public agency unless it can be shown that the public agency acted unreasonably with disregard to the public and caused a pollution incident. It was further stated that in order for a public agency to pay a penalty it must use money from its operating budget, which could result in reducing the public agency's ability to meet permit requirements and which results in increased costs to the customer.

RESPONSE: See response to the two previous comments.

COMMENT: One comment asserted that while the rules propose fines which combat the problem of pollution for profit, they fail to respond to the problem of public agencies, which work to serve the public and should not be unnecessarily subjected to fines if no environmental damage occurs as a result of a permit violation. The comment stated that municipalities and authorities within the State of New Jersey do not have the benefits that the Department does in its ability to raise rates. In this regard, the comment stated that the unprecedented increase in permit fees in the past few years may have been necessary to fund an uncontrollable bureaucracy, but the municipalities and authorities must answer to the people—their customers.

RESPONSE: The permit establishes terms and conditions, including limitations, on which a permittee, including a public agency, has an opportunity to comment and challenge pursuant to the Administrative Procedure Act. The Department views any exceedance of an effluent limitation as a violation, which subjects the violator, including public agencies which violate the permit, to the imposition of a penalty. This proposal did not include an amendment to N.J.A.C. 7:14A-1.8 which addresses permit fees. Therefore, the comment as it pertains to permit fees is not relevant to this proposal and is not responded to here.

COMMENT: One comment stated that Title 59 of the New Jersey Statutes gives public bodies certain immunity against suit and fines for unexpected, uncontrollable acts of God. The commenter requests that this principle of immunity be incorporated in the rules.

RESPONSE: The statutes authorizing these rules do not include the principle of immunity for public bodies as suggested by this commenter.

COMMENT: One commenter stated that its permit limitation for total chlorine residual is non-detectable (.02). The commenter expressed concern that if one reading out of the 90 taken in a month reads .1 part per million for total chlorine residual, this would be 100 percent over the effluent limitations, would be considered major environmental damage, and would subject it to a minimum civil administrative penalty of $15,000. The commenter contended that such a penalty is inappropriate for such an inconsequential environmental impact.

RESPONSE: The Department disagrees with the commenter on the significance of a chlorine discharge in excess of permit limitations. Chlorine is a pollutant of concern to the Department in certain areas of the State, particularly as it affects aquatic life.

COMMENT: One comment stated that in drafting these rules, the Department has been overly strict, as it has failed to recognize that for inland discharge, the permit effluent limitations are based upon the seven-day low flow, with a 10 year re-occurrence, which on a percentage basis is only .2 percent of the time. Therefore, the comment stated that 99.8 percent of the time, the effluent limitations could be more liberal and that for technical violations of the permit, civil administrative penalties are unmerited because there is no measurable environmental impact to a receiving stream.

RESPONSE: This rulemaking does not address issues related to effluent limitations in permits and, therefore, the comment is not relevant to these rules. However, a permittee is afforded the opportunity to challenge the terms and conditions of a permit pursuant to the Administrative Procedure Act. The appropriate time to challenge an effluent limitation in a permit is during the appeal period following issuance of a permit. See N.J.A.C. 7:14A-8.9. Once a permit becomes final and all avenues of appeal have been exhausted, the permit is not subject to challenge, except through a permit modification. See N.J.A.C. 7:14A-2.12.

COMMENT: One comment queried whether civil administrative penalties will be assessed for violations which occur during events considered "acts of God".

RESPONSE: Civil administrative penalties apply to all violations as defined in the proposed rules. To the extent that the violator believes that the violations occurred during events it considers to be "acts of God", the violator may attempt to raise this as a defense in an adjudicatory hearing appealing the notice of civil administrative penalty assessment issued by the Department.

COMMENT: One comment questioned whether an overflow of a collection system, where there is no discharge permit, constitutes a "violation" pursuant to the rules. This comment objected to considering such an overflow as a violation because of the "millions of miles of sewer lines that must exist in New Jersey"; therefore, there will be many instances where the sewer plugs up and an overflow results. It was additionally stated that it is important that the agency operating the collection system unclog the sewer line and restore service to its customers, and that no civil administrative penalty should be assessed unless it is established that the operator of the collection system did not properly operate the system.

RESPONSE: Pursuant to section 6 of the Water Pollution Control Act, at N.J.S.A. 58:10A-6, any discharge of a pollutant not in conformance with a valid NJPDES permit is a violation of that statute. The Department wants to do what it can to promote and encourage adequate inspection and maintenance to identify and remove any problems with collection systems. The Department believes that the civil administrative penalties will provide such an incentive in the form of a deterrence.

COMMENT: One comment stated that where an overflow occurs at a pumping station, no civil administrative penalty should be assessed unless it is established that the operator of the pumping station did not properly maintain it, thereby causing the failure.

RESPONSE: See response to preceding comment. In addition, the comment suggests that the Department should not assess penalties unless it can show that the violator was negligent. The Department notes that the Water Pollution Control Act does not require a finding of negligence before imposing civil liability for a violation; nor does the Water Pollution Control Act contemplate non-negligence as a defense to such liability. Further, the "conduct" of the violator is taken into consideration when calculating the amount of the penalty to be assessed. See N.J.A.C. 7:14-8.5.

COMMENT: One commenter stated that its NJPDES permit has a minimum permit limitation of 7 Dissolved Oxygen (DO) at any time, which it contends is unreasonably high and without technical basis. The commenter is concerned that if any reading revealed that DO was less than 7, it would be subject to a minimum penalty of $1,000. It is further contended by the commenter that such a penalty bears no relationship to the true environmental impact, because even if dissolved oxygen is less than 7 there is no measurable environmental impact to the quality of the water in the receiving stream. The commenter stated that it may make sense to assess a civil administrative penalty against a violator if true environmental impact can be proven, but that the proposed regulation "makes up" an environmental impact by comparing effluent values with permit limitations, ignoring whether there is a true adverse environmental impact.

RESPONSE: If the commenter believes that any effluent limitation in a NJPDES permit is inappropriate, the NJPDES rules, at N.J.A.C. 7:14A-8, provide specific procedures to challenge those effluent limitations and provide procedures to modify a permit, at N.J.A.C. 7:14A-2.

COMMENT: One commenter stated that his permit requires it to report excursions, and questioned whether an excursion constitutes a "violation" of its permit.

RESPONSE: An excursion is an exceedance of the effluent limitations in the permit, which is a violation of the permit.

COMMENT: One commenter asserted that discharge monitoring reports are only guidelines and should not be used by the Department as conclusive evidence of a violation. The commenter further asserts that the Department should be required to set forth their own case.

RESPONSE: The Department disagrees with this comment. The New Jersey Pollutant Discharge Elimination System developed pursuant to the Water Pollution Control Act, similar in this regard to the Federal National Pollutant Discharge Elimination System developed pursuant to the Clean Water Act, is structured as a self-monitoring program. A condition of the privilege to discharge into the waters of the State pursuant to a New Jersey Pollutant Discharge Elimination System permit is that the permittee monitor its own discharge and report that monitoring on a regular basis to the Department as established in its discharge permit. Further, the permittees are required by law to submit accurate data to the Department. There is no basis in law to support the commenter's assertions.

COMMENT: One commenter commended the Department for eliminating many of the distinctions made between discharge and non-discharge violations. However, the commenter is concerned that the omission of data and falsification of data are serious problems in the State and that such problems must be handled in a timely fashion to be effective. The comment stated that missing data may indicate serious discharge violations and a penalty will not effectively prevent future omissions unless the penalty is assessed at the time the data is transmitted to the Department. Therefore, the comment stated that there must be a policy in the rules which guides the Department in determining when non-discharge violations should be addressed.

RESPONSE: There is no longer a distinction between discharge and non-discharge violations, and all violations subject the violator to civil administrative penalties. The submission of inaccurate data, including data rendered inaccurate as a result of omissions, is a violation of N.J.A.C. 7:14-8.6, which clearly provides that each day, from the day that inaccurate information is submitted until the day of receipt by the Department of a written correction by the violator, consititutes an additional, separate and distinct violation for which a penalty can be assessed. The Department agrees that timeliness of an enforcement action is important to the effectiveness of that action and will continue to assess penalties in a timely manner. Additionally, the failure to carry out monitoring or sampling activities or to submit discharge or monitoring reports is a violation of N.J.A.C. 7:14-8.9.

COMMENT: Two comments stated that the Department should have included a definition of "violation" in the rules in order to make the rules clear and to make the potential impact of these rules comprehensible to the regulated community.

RESPONSE: The Department does not agree that a definition of "violation" is appropriate or needed for these rules. The Department is not proposing any special definition of that term so that it is appropriate to rely on the dictionary definition of that term. Any failure to comply with any provision of the law is a violation.

COMMENT: One comment requested that the terms "significant violation" and "chronic violations" be defined in the rules.

RESPONSE: The Department does not use these terms in the rules, so definitions of the terms are not needed.

7:14-8.2

COMMENT: One commenter expressed concern that the definition of "hazardous pollutant" is very broad for a rule under the water statutes. The commenter stated that one would need to read all of the water statutes to determine whether the definition falls within their scope.

RESPONSE: The Department proposed to define a subset of all pollutants pursuant to the Water Pollution Control Act. The purpose of defining this subset, that is, hazardous pollutants, is to allow the Department to differentiate as to the amount of the civil administrative penalties assessed relative to the nature of the pollutant illegally discharged.

7:14-8.3 and 8.4

COMMENT: One comment expressed concern that N.J.A.C. 7:14-8.3(b)3 did not state a time limit as did paragraphs (b)1 and 2.

RESPONSE: The Department agrees with this comment and has modified the paragraph (b)3 consistent with the Water Pollution Control Act.

COMMENT: One comment opposed these sections, which require the Department to advise the violator of the right to request an adjudicatory hearing and the procedures that the violator must follow to do so, on the ground that they depart from the current terms of N.J.A.C. 7:14-8.4(a)4, which states that the Department must advise the alleged violator of its right to a hearing and notice of the procedures for requesting a hearing. The commenter stated that "obviously, one who has a right to a hearing also has a right to request a hearing, the former being the pivotal right and which is made clear by the current regulation." The commenter further stated that N.J.S.A. 58:10A-10d entitles an alleged violator as a matter of right to a hearing to contest a Notice of Civil Administrative Penalty Assessment and that this aspect of the statute was not amended by P.L. 1986, c. 170. Therefore, the Department should retain the language in the current rules.

RESPONSE: The Water Pollution Control Act, specifically N.J.S.A. 58:10A-10d, must be read together with the Administrative Procedure Act, N.J.S.A. 52:14F-7a, which gives the Commissioner the authority to determine whether a case is contested. To make this determination, the Commissioner needs certain information. The Department believes that the requirements for the contents of a hearing request included in these rules is both appropriate and reasonable. The Department modeled N.J.A.C. 7:14-8.3(a)4 and 8.4 after the requirements in the court rules concerning an answer to a civil complaint. See New Jersey Court Rule 4:5-3. While the commenter is correct in stating that this provision of the Water Pollution Control Act was not amended by P.L. 1986, c. 170, the Department has decided to modify the previous rule in N.J.A.C. 7:14-8.4(a)4 consistent with its authority in the Water Pollution Control Act and the Administrative Procedures Act, as referenced above.

COMMENT: One comment opposed N.J.A.C. 7:14-8.2(a)2 which requires the violator to submit to the Department its defenses to each of the findings of fact when requesting a hearing. The commenter contended that this section is overbroad in that discovery could provide an additional defense that the Department would seek to limit by the terms of the original adjudicatory hearing request.

RESPONSE: The Department believes that the information required to be submitted by a violator in its request for an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order are necessary for the Commissioner to make a determination as to which cases constitute a contested case, as referenced in the preceding response.

COMMENT: One comment stated that N.J.A.C. 7:14-8.4(a)3, which requires the violator to submit to the Department in its hearing request, an admission or denial of each of the findings of fact, deprives the alleged violator of the ability to utilize information obtained during discovery as the basis for the admission or denial.

RESPONSE: The requirements established by this section are no different and in fact are modeled after the New Jersey Court Rule 4:5-3 concerning the content of an answer filed in response to a civil complaint. The violator, in its request for an adjudicatory hearing, must admit or deny each of the findings of fact.

COMMENT: One comment stated that an entity requesting a hearing should be permitted to rely on documents by reference. The commenter stated that the Department does not attach supporting documents to most of the administrative orders that it issues and that those entities requesting a hearing should be provided the same option.

RESPONSE: The Department agrees with this comment and has modified N.J.A.C. 7:14-8.4(a)4 accordingly.

COMMENT: One comment requested an explanation of what is meant by a "barrier-free" hearing location in N.J.A.C. 7:14-8.4(a)6.

RESPONSE: In order to locate an appropriate hearing location, the Office of Administrative Law has informed the Department that all hearing requests should contain information as to whether or not a barrier-free hearing location is required for physically disabled persons. The Department has modified the rule to state this more clearly.

COMMENT: One comment satated that the proposed rules should provide citizens with the same rights to adjudicatory hearings as permittees. The commenter stated further that the knowledge that citizens have the right to question and the legal basis to challenge a poor decision could be used as a powerful tool for the Department in negotiations with violators.

RESPONSE: The Department does not believe that the statutory scheme established in the Water Pollution Control Act provides anyone other than the violator with a right to an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order issued pursuant thereto. Therefore, the rules are consistent with the Water Pollution Control Act as amended by P.L. 1986, c. 170.

COMMENT: One commenter stated that after N.J.A.C. 7:14-8.4, the rules become too restrictive, too binding and work against the flexibility that a regulatory agency needs in assessing appropriate penalties under all fact situations.

RESPONSE: The Department disagrees with this comment and believes that the rules allow for the flexibility needed to respond to different circumstances.

7:14-8.5

COMMENT: One comment stated that N.J.A.C. 7:14-8.5(b), which treats each violation of a pollutant parameter as a separate, distinct violation, is exactly the opposite of Section 313(c) of the Federal Water Quality Act of 1987 which treats a single operational upset, which leads to simultaneous violations of more than one pollutant parameter, as a single violation. The comment expressed concern that in the world of wastewater management, this is inconsistent. For example, biochemical oxygen demand (BOD) and total suspended solids (TSS) correlates 1:1 nearly all of the time. Therefore, a plant upset resulting in a violation of BOD will generally also result in a violation of TSS. The comment contended that double fines in this case for a single operational upset appears inequitable and absolutely contradictory to federal law.

RESPONSE: These rules were not promulgated pursuant to Federal law. These rules were promulgated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The Department is not bound, therefore, by Federal law as suggested by this commenter, but is required to develop rules consistent with the Water Pollution Control Act. The increased penalties provided in P.L. 1986, c. 170 reflect a legislative finding that each violation of each provision of the Water Pollution Control Act is a separate and distinct offense triggering liability for separate penalties.

COMMENT: One comment challenged the proposed ranges in N.J.A.C. 7:14-8.5(c) as being arbitrary. The commenter stated that no justification was provided for the inclusion of the ranges and suggested that the criteria used to establish the ranges should be subject to public comment and review prior to implementation.

RESPONSE: The Department disagrees with this comment. There is a rationale for the Department's establishment of the ranges in these rules which is inherent in the ranges and their definitions. Based on the maximum allowable civil administrative penalty dollar amount, the Department defined the worst violation based on gravity of the violation and conduct of the violator and established a range for that violation. The Department, in a logical and reasonable approach, proceeded to define lesser violations and assigned lower penalty ranges accordingly.

COMMENT: One comment opposed N.J.A.C. 7:14-8.5(c) which states that the Department "shall" assess a civil administrative penalty and which fixes a minimum penalty. The comment stated that the Department should recognize that there will be cases "in which the facts support suspending the imposition of statutory penalties," quoting from *Department of Environmental Protection v. Lewis*, 215 N.J. Super. 564 (App. Div. 1987).

RESPONSE: The Department agrees that the subchapter establishes minimum civil administrative penalties. N.J.A.C. 7:14-8.5 and 7:14-8.9 provide that penalties be assessed at the mid-points of ranges on the basis of the seriousness of the violation and the conduct of the violator and that the Department may adjust the penalty to an amount not less than the minimum. The Department has determined that assessment of penalties of less than the minimum penalty amounts set forth in the subchapter would not provide the appropriate deterrent effect. The Department disagrees with this comment to the extent that it suggests the Department does not have the discretion to settle penalties "in those cases" in which the facts support suspending the imposition of statutory penalties. Pursuant to N.J.S.A. 58:10A-10 and N.J.S.A. 13:1D-9, the Department has clear statutory authority to settle any enforcement action.

COMMENT: One commenter stated that it is particularly concerned over the Department's proposed definition of "violation", as it relates to the following issues: 1) that any infraction of an effluent limitation which is measured by concentration or mass is a major violation; 2) that each violation will be a separate and distinct violation for purposes of administering penalties; and 3) that a major violation is determined if the discharge violates a permit parameter by 100 percent.

RESPONSE: The Department did not propose a definition of violation as suggested by this commenter. Furthermore, this commenter has misinterpreted N.J.A.C. 7:14-8.5. Only violations of an effluent limitation which is measured by concentration or mass for a discharge exceeding the effluent limitation by more than 50 percent for a hazardous pollutant or more than 100 percent for a non-hazardous pollutant are major violations. Similar discharges exceeding effluent limitations by 26 to 50 percent for hazardous pollutants or 51 to 100 percent for non-hazardous pollutants are considered moderate violations. Finally, similar discharges exceeding effluent limitations by up to 25 percent for hazardous pollutant or up to 50 percent for a non-hazardous pollutant are defined to be minor violations. P.L.1986, c. 170, as stated above, specifically provides that "each day during which such a violation continues shall constitute an additional, separate and distinct offense." N.J.S.A. 58:10A-10(b).

COMMENT: One comment asserted that effluent standards should be either concentration based or mass based, but not both, because both types of parameters simultaneously enforced leads to an apparent violation where there is no real environmental impairment, for example a single discharge violation even by as much as 100 percent, which may have little or no effect on receiving waters during heavy stream flows in the spring.

RESPONSE: This commenter appears to be confusing the effluent standards that the Department establishes in a NJPDES permit with the Department's proposed use of those standards to determine the amount of the civil administrative penalty to be assessed. To the extent that the comment addresses the Department's use of the effluent limits in the permits, the comments are misplaced and inappropriate in the context of the proposed civil administrative penalty rules.

COMMENT: One commenter stated that, at its facility, a large portion of the flow in the winter months constitutes tap water which summer residents leave running throughout the winter to avoid the freezing of pipes in their vacation homes. The tap water has no biochemical oxygen demand (BOD), which is reflected by an extremely low BOD at the facility. The commenter stated further that during those periods it has no difficulty in producing an effluent BOD of 12 mg/l vs. the 30 mg/l permit limitation, but cannot achieve the minimum 85 percent removal also required by the permit. The commenter questioned how the Department would classify this violation on the Conduct/Environmental Damage Chart and expresses concern that there is no leeway in the proposed rules to avoid a civil administrative penalty for each and every day that this occurs.

RESPONSE: This comment appears to be more directed at the appropriateness of the effluent limitations in its NJPDES permits than its applicability to the assessment of civil administrative penalties. The Department cannot respond to the hypothetical posed to determine the appropriate classification of a violation pursuant to these rules as the hypothetical is too general in nature. The commenter should refer to P.L. 1986, c. 170, which establishes that each day during which a violation continues is a separate, additional, and distinct offense. Additionally, the commenter should note that the Conduct/Environmental Damage Chart has been redesignated as the Conduct/Seriousness Chart.

COMMENT: One commenter questioned whether the following constitutes a violation: "Where an entity has a zero chlorine residual requirement and one day it has a one part per million chlorine residual."

RESPONSE: Yes.

COMMENT: One commenter stated that its NJPDES permit has a chlorine residual limitation no greater than 2.0 mg/l. The commenter questioned if a penalty would be assessed against it if its sampling results revealed a chlorine residual of 2.1 mg/l, which often happens since chlorine is necessary to reduce the fecal coliform in the final effluent.

RESPONSE: Pursuant to N.J.S.A. 58:10A-6, any discharge of a pollutant not in conformance with the effluent limitations of a NJPDES permit is a violation.

COMMENT: One comment stated that the imposition of civil administrative penalties "should be based upon pollution not upon water quality impairment resulting from permit violations," when the conditions upon which the permit limitations were based do not exist. As an example, the commenter stated that it does not make sense for the Department to have the ability to assess a civil administrative penalty for a violation of a permit limitation, when the violation occurs in the middle of the wet season or a hurricane, but when the permit limitations were based upon drought conditions.

RESPONSE: Permit limitations are either water quality based or technology based; they are not established on weather conditions. A permittee may challenge a permit limitation within a specified time after issuance pursuant to the Administrative Procedure Act. The Department determines the appropriateness of a civil administrative penalty on a case-by-case basis.

COMMENT: Two comments suggested that the proposed rules be changed to allow the Department to assess penalties as low as "nothing". These commenters stated that there is no reason not to start the lower end of the scale at zero, and that with the minimum fine being $1,000, most public agencies will request a hearing, resulting in the Department having to expend much time and effort to collect these fines, where if the fines for "technical violations" were smaller, such agencies might be willing to pay them, noting that their "hand had been slapped" by the Department for failing to abide by the rules.

RESPONSE: The Department disagrees with this comment. Zero penalties will not have a deterrent effect on violators. Once the Department has issued a notice of civil administrative penalty assessment it is up to the violator whether or not to contest the notice of civil administrative penalty assessment through an adjudicatory hearing, which may, as suggested by this commenter, involve much time and money, or to pay the penalty. P.L. 1986, c. 170 has made it very clear that "slaps on the hand" are not an effective enforcement tool under the Water Pollution Control Act.

COMMENT: One comment concerned the determination of "major environmental damage" in N.J.A.C. 7:14-8.5(d). The commenter contended that defining "major environmental damage" as a discharge exceeding an effluent limitation set forth in a permit by more than 100 percent for a pollutant does not provide the Department with the flexibility required to evaluate actual environmental impact resulting from a violation.

RESPONSE: The penalty to be imposed upon violators is not only for actual environmental damage, but also for discharges in exceedance of permit limitations as described in N.J.A.C. 7:14-8.5. N.J.A.C. 7:14-8.5(f) affords the Department the ability and flexibility to consider a variety of factors when assessing a penalty. The commenter should also note that the reference in N.J.A.C. 7:14-8.5(d) to the "environmental damage" factor of the violation has been changed to the "seriousness" factor of the violation.

COMMENT: One comment expressed concern with respect to the commenter's interpretation of N.J.A.C. 7:14-8.5(d) as follows: 1) priority pollutants are included as hazardous pollutants; 2) many permits limit priority pollutants to 50 parts per billion or less, but 75 parts per billion would not be a significant analytical difference even though it is a 50 percent exceedance; 3) Pt. 136, App. A, method 601 and 602 (40 CFR ch.1) lists percent recovery of a variety of priority pollutants. As shown in tables submitted by the commenter, with actual levels within compliance, recoveries greater than 150 percent (that is, major exceedance) could be measured according to EPA's own data. The comment suggested that a technical basis, which includes overall measurement accuracy studies in complex matrices, be developed before a meaningful definition of "major" can be reasonably made.

RESPONSE: Firstly, the commenter is questioning the appropriateness of a limitation in a permit. The time to take issue with a permit limitation is during the comment period for each permit on a case-by-case basis or during the appeal process following issuance of a permit or by a request to modify a permit. Secondly, in many cases where appropriate, the Department uses averages to determine whether a discharge violates a permit limitation thereby mitigating the inherent inaccuracy of measurements. It is also noted that inaccuracies may show under-reporting as well as over-reporting of effluents.

COMMENT: One comment stated that N.J.A.C. 7:14-8.5(d)1ii would be clearer if it were revised to read as follows: "A violation of an effluent limitation which is measured by concentration or mass if the related discharge exceeds the effluent limitation set forth in a permit or administrative order (1) by more than 50 percent for a hazardous pollutant, or (2) by more than 100 percent for a non-hazardous pollutant." The comment also states that a similar revision would clarify N.J.A.C. 7:14-8.5(d)2 and (d)3.

RESPONSE: The Department agrees with this comment and has modified the rule accordingly.

COMMENT: Although one commenter stated that it strongly supported the use of percent over permitted limit as a good estimate for the measure of short term environmental harm of a pollutant discharge, it stated that this policy does not adequately address long term environmental harm, chronic violations or synergistic effects. The comment suggested that the use of a tiered, standard response-to-violation policy would remedy the aforementioned inadequacies. A tiered, standard response-to-violation policy would work as follows: violators would be subject to fines for any single violation exceeding the permitted limit by at least 20 percent (significant violation) or after any four nonsignificant violations in a six month period; permittees that continue to violate their permits are subject to additional fines with higher minimum penalties; and permittees with chronic violations over a one year period would be referred to the Attorney General's office for possible criminal action.

RESPONSE: It is difficult to assess the synergistic effects of multiple violations. The Department has attempted to respond to this situation by assessing a civil administrative penalty for each violation of each parameter in a discharge permit. The rules do contain a tiered approach to violations. In fact, the rules provide for a two-tiered approach: one for hazardous pollutants, the other for non-hazardous pollutants. The Department agrees that frequent violations should be assessed higher penalties and believes that the rules provide for increased penalties for continual violations. N.J.A.C. 7:14-8.5(f) authorizes the Department to increase the amount of the penalty based on compliance history and the number, frequency and severity of the violations. The Department routinely refers cases involving suspected criminal violations to the Attorney General's Office.

COMMENT: One comment requested that the fourth criterion of N.J.A.C. 7:14-8.5(f), "[t]he deterrent effect of the penalty", be omitted from the criteria used to adjust the penalty. The comment states that, instead, economic benefit derived from not complying with the Water Pollution Control Act should be included as one of the criteria because economic benefit must be specifically addressed as part of the formal policy if the Department intends to meet the goal stated in the Environmental Impact of the proposed rules, that "those who violate a State statute, should neither profit by their actions nor escape responsibility for such action." See 20 N.J.R. 455(a), 456.

RESPONSE: The Department disagrees with this comment. The impact of a civil administrative penalty as a deterrent is an important and legitimate goal of enforcement of the Water Pollution Control Act. In addition, to these penalties assessed pursuant to N.J.A.C. 7:14-8.5, the Department may include as a civil administrative penalty, the economic benefit, in dollars, which the violator has or could have realized as a result of non-compliance, or by delaying compliance. See N.J.A.C. 7:14-8.12. The Department believes that this approach maximizes the impact of both of these provisions as discussed in this comment.

COMMENT: One comment suggested that if a permit violation occurs despite the best efforts of a permittee, such as a major breakdown of a treatment device where the permittee has made every effort to repair or replace the equipment, no civil administrative penalty should be assessed against the permittee. This comment stated that penalties are not warranted where the permittee makes every effort to comply with permit limitations, and for reasons beyond its control, the permit limitation is violated.

RESPONSE: The conduct of the violator is only one of the factors the Department will use in determining the amount of the civil administrative penalty to be assessed. The seriousness of the violation is also an important consideration. N.J.A.C. 7:14-8.5(f) allows the Department to consider these types of factors in adjusting the amount of the civil administrative penalty to be assessed.

COMMENT: One comment recommended changing N.J.A.C. 7:14-8.6 so that the submission of inaccurate information, which is not done to avoid a penalty or which is done completely in error, such as a transposition in numbers, does not constitute a violation resulting in a mandatory penalty.

RESPONSE: As stated above, the regulatory program outlined in the Water Pollution Control Act is designed as a self-monitoring program. The Department relies on the accuracy and precision of the information submitted by permittees pursuant to this program. Without appropriate incentives on the part of the permittees to make sure to the maximum extent possible that this information submitted to the Department is error free, the Department would lose its ability to rely on this data. Further, the court in *Department of Environmental Protection v. Lewis,* 215 N.J. Super. 564 (App. Div. 1987), held that the Water Pollution Control Act, among other environmental statutes, does not contemplate a finding of intentional conduct before statutory penalties may be imposed. As the *Lewis* court stated, "[to] conclude that penalties may only be imposed in the face of intentional conduct would severely restrict their application and greatly hamper the State's efforts to prevent the illegal dumping of toxic pollutants." Therefore, the rule is consistent with the statutes and relevant case law and no change is appropriate.

COMMENT: One comment stated that N.J.A.C. 7:14-8.6 attempts to address the submission of inaccurate information and the submission of false information and suggested that these issues be treated in separate sections because they are significantly different matters. It was stated that the submission of false information is a serious matter, while the submission of inaccurate information, which may be the best available information (for example, not disclosing an unknown, unused underground storage tank), should not be considered a violation.

RESPONSE: The Department does not see any distinction between false information and inaccurate information. The potential impact of the Department relying on any information, if it is false or inaccurate, does not change the potential negative result. The only distinction that the Department has proposed is that for intentional acts maximum civil administrative penalties are appropriate.

COMMENT: Two comments stated that there is no legal or factual justification for a permittee to be held liable for an unintentional submission of inaccurate data, for example, inaccurate DMR, and also for additional violations for each day until the error is corrected. The comments asserted that it is arbitrary and unconscionably punitive for the Department to treat a permittee's failure to correct an unintentional error, of which the permittee is unaware, as though it was a continuous stream of violations and that nothing in N.J.S.A. 58:10A-10 supports such a harsh result. Therefore, the comments requested that this section should be modified to exclude such unintentional errors from the description of an "additional, separate, and distinct violation". The comments asked the Department to recognize that with the multitude of complex data required to be submitted, unintentional errors will occur and that it would be common for such errors to be discovered at the time of the next data submittal.

RESPONSE: The Department disagrees with this comment and believes that the suggestions made by this commenter are inconsistent with the Water Pollution Control Act, as amended by P.L. 1986, c. 170. Part of the regulatory program implemented by the Department pursuant to the Water Pollution Control Act requires anyone who discharges pollutants into the waters of this State to monitor that discharge and submit the monitoring information to the Department for review and analysis. As discussed above, it is only through this self-monitoring mechanism that the Department is able to monitor the compliance of the thousands of discharges to the waters of this State.

7:14-8.7

COMMENT: Several comments opposed N.J.A.C. 7:14-8.7 which authorizes the Department to assess a civil administrative penalty against "each violator who refuses, inhibits, or prohibits immediate entry and inspection of any premises, building or place by any authorized Department representative." It was contended that this section is unconstitutional under both the State and Federal constitutions because it permits the Department to penalize a violator for exercising its constitutional right to refuse entry by government officials without a search warrant.

RESPONSE: The Department disagrees with this comment. The Department has, consistent with both the Federal and State constitutions, both general and specific statutory authority to investigate known or suspected discharges. Pursuant to N.J.S.A. 13:1D-9, the Department has the authority to "enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or non-compliance with any codes, rules and regulations of the Department." Pursuant to N.J.S.A. 58:10A-6(g), the Department has "a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying, or photographing." Pursuant to N.J.A.C. 7:14A-2.5, all NJPDES permittees are required to allow the Department access to its facility. Finally, in the case *In re Department of Environmental Protection,* 177 N.J. Super. 304 (App. Div. 1981), it was held that the Department may require a permittee as a condition of the permit to submit to warrantless inspections.

COMMENT: One comment stated that N.J.A.C. 7:14-8.7 may be abused by the Department and that this section should be amended to provide the Department with the right to reasonable entry. It is suggested that no civil administrative penalty be assessed against a permittee for refusing entry in the following situations: 1) where Department personnel failed to identify themselves; 2) where Department personnel did not allow their identity to be checked; 3) where Department personnel failed to follow the required safety requirements needed for all site visitors; or 4) other such matters.

RESPONSE: The Department disagrees with this comment. All of the issues raised by the commenter may be legitimate defenses in an adjudicatory hearing to the Department's assessment of a civil administrative penalty under certain circumstances. The Department has determined that it is not necessary to amend the rules as suggested by this commenter.

COMMENT: One comment stated that N.J.A.C. 7:14-8.7 should be rewritten to provide that any request by the Department to conduct a search or inspection must have been lawful in the first instance before a penalty can be assessed.

RESPONSE: Certainly the Department agrees with the underlying premise of this comment that there is an underlying assumption that before any civil administrative penalty can be assessed by the Department based on any action which involved Department personnel, the Department's action must have been lawful in the first instance. As stated above, however, the Department has determined that it is not necessary to amend the rule as suggested by this commenter, but under certain circumstances a violator may raise such an issue as a defense in an adjudicatory hearing in challenge to a civil administrative penalty assessment for such a violation.

COMMENT: One comment stated that N.J.A.C. 7:14-8.7 should take into consideration the security precautions required at nuclear facilities.

RESPONSE: The Water Pollution Control Act does not provide for consideration of security precautions in any determination of a violation of its access provisions (N.J.S.A. 58:10A-6g) nor has the Department done so under N.J.A.C. 7:14-8.7. To the extent that a violator believes that adherence to legitimate security precautions at a nuclear facility could be a defense to a penalty assessed pursuant to N.J.A.C. 7:14-8.7, the violator may raise such defense at a hearing pursuant to N.J.A.C. 7:14-8.4.

COMMENT: One comment expressed concern that N.J.A.C. 7:14-8.7(b), which provides that each day on which the Department's entry is denied (from the initial day of denial to the day the Department receives written notification that the violator will not refuse an inspection), is an additional, separate and distinct violation, is extreme and should only constitute a single violation, subject to a maximum penalty of $50,000. To illustrate the extreme impact of N.J.A.C. 7:14-8.7(b), the comment questioned whether two weeks of violations would accrue in the folowing situation: where a property owner believing he has a lawful right to refuse entry, directs the Department to get a search warrant and the Department obtains a search warrant and entry to the property two weeks later.

RESPONSE: As stated above, the Department has clear statutory authority, consistent with the United States and New Jersey Constitutions, to inspect any known or suspected source of pollution in this State. Furthermore, the amendment to the Water Pollution Control Act by P.L. 1986, c. 170 has redefined a violation such that "each day during which such violation continues shall constitute an additional, separate, and distinct offense." To the extent that the argument raised by the commenter could be a defense against a civil administrative penalty assessment, a violator has the opportunity to raise such a defense in an administrative hearing on the civil administrative penalty.

7:14-8.8

COMMENT: One comment received stated that N.J.A.C. 7:14-8.8(a) implies that an authority, which endorses a facility which violates an order, permit, or rule, would be exposed to substantial penalties. The commenter expressed concern because in many instances the violations may not be known to the endorser due to its limited scope of review and as a result of the withholding of information by the applicant or others. It was suggested that this section be clarified to state that penalties will be assessed when "the endorser knowingly violates a rule, administrative consent order, or permit . . ."

RESPONSE: This commenter has misinterpreted the rule. The authority will not be held responsible for a facility's violations of an order, permit, or rule, merely by the act of its endorsement of the facility. However, the authority which is required to approve or endorse a treatment works has the responsibility to comply with the Water Pollution Control Act and the rules promulgated pursuant thereto and will be subject to any violations thereof. Furthermore, P.L. 1986, c. 170 does not require the Department to establish intent of the violator before assessing a penalty.

COMMENT: One comment requested that the terms "building" and "installation" be defined in the rules.

RESPONSE: The Department disagrees with this comment. The terms "building" and "installation" as used in these rules are not "terms of art" and, therefore, no specific definition of those terms is required in these rules.

7:14-8.8 and 8.9

COMMENT: One comment asserted that N.J.A.C. 7:14-8.8 and 8.9 are overly restrictive and reduce the flexibility of the Department to enforce its rules.

RESPONSE: The Department disagrees with this comment. The Department believes that these sections allow the necessary flexibility for the Department to enforce the regulatory program pursuant to the Water Pollution Control Act and the New Jersey Underground Storage of Hazardous Substances Act.

7:14-8.9

COMMENT: One comment stated that the commenter is pleased to see that the rules set forth a policy governing monitoring and sampling. However, the commenter strongly suggested that subsection (a) be revised to read: "The Department *shall* assess a civil administrative penalty . . ." rather than: "The Department may assess a civil administrative penalty . . ." The commenter asserted that a very strict policy in the collection of data is necessary because the success of the entire permitting program is dependent on accurate self-monitoring information.

RESPONSE: The Department agrees that the collection of data is important to the success of the NJPDES self-monitoring permitting program. However, the Department believes that it should retain the ability to exercise the appropriate enforcement discretion for violations of the rules governing monitoring and sampling.

COMMENT: One comment challenged the proposed civil administrative penalty amounts in N.J.A.C. 7:14-8.9(b) as being arbitrary. The commenter stated that the penalty amounts in this subsection should be justified in terms of basis and background information prior to the implementation of this subsection.

RESPONSE: The Department disagrees that the rationale for the penalty amounts in this section were not included in the New Jersey Register notice of this rule proposal. These rules are for civil administrative penalty assessments for violations of the Water Pollution Control Act and the New Jersey Underground Storage of Hazardous Substances Act. Pursuant to N.J.S.A. 58:10A-6(a), it is illegal "for any person to discharge any pollutant, except in conformity with a valid New Jersey Pollutant Discharge Elimination System Permit . . ." P.L. 1986, c. 170 increased the maximum civil administrative penalty assessment to be assessed by the Department for violations of the Act, including the section referenced above, to $50,000 per violation. Within N.J.A.C. 7:14-8.9, the Department has established a rationale for pursuing civil administrative penalties for acts or omissions for violations involving failure to properly conduct monitoring or sampling based on the conduct of the violator. For intentional acts or omissions, the maximum civil administrative penalty is in the range of $40,000-$50,000, as allowed pursuant to P.L. 1986, c. 170. For unintentional but foreseeable acts or omissions, the administrative penalty is just below the maximum, in the range of $30,000-$40,000. For other violations as defined in that section, civil administrative penalties are in the range of $15,000-$25,000 per violation. The Department disagrees that any further basis or background information is necessary here.

7:14-8.10

COMMENT: One comment opposed the imposition of a penalty against an entity which refuses to pay a civil administrative penalty assessed against it. The comment stated that "[t]he normal procedure, when one refuses to pay a legal administrative penalty, is that the Department files a motion for a Default Judgement in State court and obtains a court order requiring the payment to be made. In any event, a penalty normally is not assessed on top of a penalty."

RESPONSE: The Department disagrees with the commenter's interpretation of what the "normal procedure" is. The commenter may have stated the appropriate procedure for pursuing the collection of a civil administrative penalty that is due and payable as a result of a final order being issued by the Department. What the commenter failed to see was that the violator's failure to pay the civil administrative penalty when due and payable as a result of that final order is in itself another violation of the Water Pollution Control Act subjecting the violator to additional penalties.

7:14-8.11

COMMENT: One comment suggested that a warning should be issued before a civil administrative penalty is assessed pursuant to this section, because the proposed penalties are staggeringly high.

RESPONSE: The Department disagrees with this comment. The Legislature has increased the maximum allowable civil administrative penalty assessment for the violations defined in this section. See response to similar comments in the General Comments portion of this summary above.

COMMENT: One comment opposed the assessment of a civil administrative penalty against a publicly owned treatment works (POTW) which violates N.J.A.C. 7:14-8.11. The comment stated that the Water Pollution Control Act did not contemplate the assessment of such penalties.

RESPONSE: There is no evidence to support the assertion made by this commenter.

COMMENT: One comment opposed the list of penalties in N.J.A.C. 7:14-8.11(c) as being overly restrictive and too binding.

RESPONSE: The Department disagrees with this comment and believes the civil administrative penalty amounts listed in N.J.A.C. 7:14-8.11(c) are appropriate for the violations identified there.

COMMENT: One comment stated that N.J.A.C. 7:14-8.11(d) is arbitrary. It was further stated that the failure to utilize a consistent period of time when determining whether a violation is considered a 1st, 2nd or 3rd violation invites abuse. It was suggested that a uniform standard be established.

RESPONSE: The purpose of N.J.A.C. 7:14-8.11(d) and identical provisions at N.J.A.C. 7:14-8.13(d) is to codify the Department's policy on settling violations. The Department believes these to be reasonable provisions which reduce the amount of penalties based on the period of time since a notice of a provision violation was received. To maintain regulatory consistency, the definition-by-example for what constitutes "notice" contained in N.J.A.C. 7:14-8.11(e) has been added to N.J.A.C. 7:14-8.13 as subsection(e).

7:14-8.12

COMMENT: One commenter expressed concern that N.J.A.C. 7:14-8.12 fails to provide an explanation as to how economic benefit, if any, would be determined. The comment stated that computation of economic benefit requires consideration of a number of variables (for example, capital and operating expenses avoided, cost of capital, etc.) and that this section should be revised to identify all variables to be considered and the manner in which they could be used to calculate economic benefit. The comment further stated that all interested parties should be afforded an opportunity to comment on the revised rule.

RESPONSE: A violator should not obtain any economic benefit for either its failure or delay in complying with the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act. Furthermore, where the Department determines the amount of any economic benefit as a result of such a delay or non-compliance, then the Department may include this economic benefit as part of the civil administrative penalty to be assessed pursuant to this section. The Department agrees with the comment that there are a number of variables that require consideration in determining the economic benefit in any particular case and that different factors as well as different variables may be relevant to consider on a case-by-case basis.

COMMENT: One comment suggested that the Department does not have the authority pursuant to the Water Pollution Control Act to assess a civil administrative penalty in an amount equal to the economic benefit realized by a non-complying violator. The comment states that the case of *State of New Jersey, Department of Environmental Protection and New Jersey Pinelands Commission vs. John Lewis,* 215 N.J. Super. 564 (App. Div. 1987) cannot be used by the Department to give it such authority because the Appellate Division's decision is dictum.

RESPONSE: The Department disagrees with this comment. P.L. 1986, c. 170 increased the maximum allowable amount for civil administrative penalties. The Legislature has authorized the Department, pursuant to N.J.S.A. 58:10A-4, to "prepare, adopt, amend, repeal and enforce, . . . codes, rules and regulations to prevent, control or abate water pollution and to carry out the intent of this act, . . ." The Department believes that violators should be stripped of all economic benefit and pay additional penalty amounts for the purpose of deterring subsequent non-compliance. The Department is not relying on the *Lewis* case to give it authority to assess penalties based upon economic benefit, but rather cited *Lewis* as further support for this provision. It is the statutory authorities cited above that authorize the Department to determine penalties based on seriousness and conduct, that also authorize the Department to include economic benefit in the civil administrative penalty amount.

COMMENT: One comment stated that N.J.A.C. 7:14-8.12 is similar to a penalty policy that the Environmental Protection Agency (EPA) uses. This comment opposed the Department's use of such a penalty policy because the Department's penalties as a whole are more stringent than EPA's.

RESPONSE: The Department disagrees with this comment. The Department does not believe that any civil administrative penalty dollar amount which includes the economic benefit that the violator has gained through the delay or non-compliance of any statutory or regulatory requirement is an effective deterrent to future non-compliance. Since this rule is adopted pursuant to State law and since there is no Federal prohibition requiring states to be no more stringent than the Federal government in this matter, the State is not prohibited from being more stringent.

COMMENT: One comment suggests that N.J.A.C. 7:14-8.12, which authorizes the Department to assess a civil administrative penalty based on any economic benefit that the violator has or could have realized as a result of non-compliance, follow the United States Environmental Protection Agency's Civil Penalty Policy, which reserves to the agency very broad discretion to reduce or eliminate a penalty based on mitigating circumstances.

RESPONSE: The Department disagrees with this commenter's suggestion that the Department should follow a civil penalty policy developed by a Federal agency. The Department, furthermore, believes that these rules as adopted here include appropriate enforcement discretion for the Department to exercise in particular circumstances. Further, as discussed in the previous comment, the State is not required to follow Federal law in the enforcement of State laws and rules.

7:19-6.14

COMMENT: One comment stated that it was strongly against the proposed amendment to N.J.A.C. 7:19-6.14.

RESPONSE: The Department is unable to respond to this comment because the commenter failed to include in its comment the specific reasons why it is opposed to the amendment to this section.

Other Changes

1. Editorial changes which do not alter the meaning of the text have been made to clarify the rules.

2. In N.J.A.C. 7:14-8.4(b), language was added to clarify that the Department will deny an untimely request for an administrative hearing.

3. In N.J.A.C. 7:14-8.5(c) and 8.9(c), which set forth penalty ranges, language was added to provide that a penalty would be assessed at the midpoint of the range unless adjusted by the Department. The proposed new rules provided that the penalty be assessed at any point within the range unless adjusted by the Department. Rather than provide no starting point within a range for an assessment of a penalty, beyond its own discretion, the Department has decided that a more uniform approach, which would provide better notice to the regulated public of penalties for violation of the Water Pollution Control Act and the New Jersey Underground Storage of Hazardous Substances Act, would be to fix the assessments at the mid-range and adjust as appropriate in the exercise of the Department's discretion. Since the exercise of the Department's discretion in the fixing of penalty amounts under N.J.A.C. 7:14-8.5(c) was to be guided by the provisions of N.J.A.C. 7:14-8.5(f), those provisions no longer serve their original purpose. However, the Department is retaining those provisions on a discretionary basis to provide for adjustment of penalties in situations deemed appropriate. For the purpose of regulatory consistency, the provisions of revised N.J.A.C. 7:14-8.5(f) have been added to the penalty assessment provisions of N.J.A.C. 7:14-8.9 as subsection (d).

4. In N.J.A.C. 7:14-8.5(f)3, the proposed use of the term "mitigate" was intended to refer to the mitigation of the effects of a violation, that is, to lessen the impact of a violation. Since a violator cannot mitigate a violation itself, the Department has clarified the provision so that it now reads, "to mitigate the effects of the current violation."

5. In N.J.A.C. 7:14-8.5(d)1 and 2i, the phrase "or may cause" has been deleted as part of the serious or substantial harm determination, respectively. These phrases were deleted as possibly too conjectural for consistent assessment of penalties.

6. In N.J.A.C. 7:14-8.8(b)1 and N.J.A.C. 7:14-8.8(b)3 "value" has been changed to "capital cost" for consistency with N.J.A.C. 7:14-8.8(b)2. Capital costs are more readily ascertainable, and the Department does not foresee any increase or reduction in potential penalty amounts due to the change in penalty basis.

7. In N.J.A.C. 7:14-8.9(b) has been added to clarify that each violation for a parameter not monitored, sampled and reported is a separate violation. The change was made to make the provision consistent with N.J.A.C. 7:14-8.5(b) which provides, among other things, that each violation of each effluent limitation is a separate violation.

8. In N.J.A.C. 7:14-8.9(c), which sets forth penalties based on conduct of the violator, language was added to provide that a penalty would be assessed at the mid-point of the range unless adjusted by the Department. The proposed new rule provided that the penalty be assessed at any point within the range unless adjusted by the Department.

9. N.J.A.C. 7:14-8.9(d) was added to set forth factors to be used in adjusting penalty amounts in N.J.A.C. 7:14-8.9(c). The language was added to be consistent with N.J.A.C. 7:14-8.5(f).

10. The references to "certifications" and "administrative orders" in N.J.A.C. 7:14-8.11(a) and (b) have been deleted as erroneous, since the section only applies to violations of enumerated rules.

11. In N.J.A.C. 7:14-8.12 concerning penalty assessments based on economic benefit, language has been added to clarify that the benefit amount may be apportioned among the violations from which the benefit was derived. This clarification will not result in a change in the amount of any penalty that would have been assessed under the proposed rule. In addition, the phrase "or could have" has been deleted as possibly too conjectural for consistent assessment of penalties.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions to proposal indicated in brackets with asterisks *[thus]*).

7:19-6.14 Penalties

Any person who violates any provisions of this subchapter shall be subject to the civil administrative penalties provided pursuant to N.J.A.C. 7:14-8.

**Full text** of the adopted repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:14-8.

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18, and for violations of the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). This subchapter shall also govern the procedure for requesting an adjudicatory hearing *[with respect to the assessment of]* ***on*** a ***notice of*** civil administrative penalty ***assessment*** or *[the issuance of]* an administrative order.

(b) The Department may assess a civil administrative penalty of not more than $50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than $100,000 for a violation of both statutes. Each day during which such violation continues shall constitute an additional, separate, and distinct *[offense]* ***violation***.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Hazardous pollutant" means:

1. Any "toxic pollutant" as defined in N.J.A.C. 7:14A-1.9;
2. Any "hazardous substance" as defined in N.J.A.C. 7:14A-1.9;
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §135 et seq.;
4. Any substance the use or manufacture of which has been prohibited under the Federal Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
5. Any substance listed as a known carcinogen on the registry of the National Institute of Occupational Safety and Health (NIOSH); and
6. Any "hazardous waste" as defined or identified in N.J.A.C. 7:26-8 or as defined or identified in 40 CFR Part 261.

7:14-8.3 Procedures for assessment***, payment and settlment*** of civil administrative penalties

(a) To assess a civil administrative penalty under the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, and the Water Supply Management Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the statute, rule, *[regulation,]* water quality standard*[s]*, effluent limitation, administrative order or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of ***the*** civil administrative *[penalties]* ***penalty*** to be imposed *[pursuant to this subchapter]*; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to ***the procedures in*** N.J.A.C. 7:14-8.4.

(b) Payment of the civil administrative penalty is due upon *[issuance by the Department of a]* ***receipt by the violator of the Department's*** Final Order ***in a contested case,*** or when *[the]* ***a*** Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, *[the]* ***a*** Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment *[shall]* become***s*** a Final Order upon receipt of notice of such denial; or
3. If the Department conducts an adjudicatory hearing, *[the Department, after the hearing and upon a finding that a violation has occurred, shall issue]* ***a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of*** a Final Order *[of]* ***in*** a contested case *[specifying the amount of the civil administrative penalty being assessed]*.

7:14-8.4 Procedures *[for a]* ***to*** request *[for]* ***an*** adjudicatory hearing to contest an administrative order and/or a ***notice of*** civil administrative penalty assessment; ***procedures for conducting adjudicatory hearings***

(a) To request an adjudicatory hearing *[under]* ***to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to*** the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request *[and]* ***and specific reference to or*** copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location ***for physically disabled persons***.

(b) *[All requests for adjudicatory hearings shall comply with N.J.A.C. 7:14-8.4(a) and shall be received by the Department]* ***If the Department does not receive the hearing request*** within 20 days after receipt by the violator of *[a]* ***the*** Notice of a Civil Administrative Penalty Assessment and/or *[an]* ***the*** Administrative Order*[; failure to do so shall constitute grounds for denial of]* ***being challenged, the Department shall deny*** the hearing request.

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

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

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto.

(b) *[The Department shall consider each]* **Each** violation of any provision of **the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or** any rule, water quality standard, effluent limitation, administrative order or permit *[as]* **issued pursuant thereto, shall constitute** an additional, separate and distinct violation.

(c) Except for those violations set forth in N.J.A.C. 7:14-8.6 through 8.11, the Department shall assess a civil administrative penalty **for violations described in this section** on the basis of *[the environmental damage]* **the seriousness of the violation** and the conduct of the violator *[within]* **at the mid-point of** the following ranges *[except as]* **unless adjusted pursuant to (f) below**:

*[ENVIRONMENTAL DAMAGE]* **SERIOUSNESS**

| | | Major | Moderate | Minor |
|---|---|---|---|---|
| | Major | $40,000-$50,000 | $30,000-$40,000 | $15,000-$25,000 |
| CONDUCT | Moderate | $30,000-$40,000 | $10,000-$20,000 | $3,000-$6,000 |
| | Minor | $15,000-$25,000 | $3,000-$6,000 | $1,000-$2,500 |

(d) The *[environmental damage]* **seriousness** factor of the violation shall be determined as major, moderate or minor as follows:

1. Major *[environmental damage]* shall include:

i. Any violation which has caused *[or may cause]* serious harm to human health or the environment; or

ii. Any violation of an effluent limitation which is measured by concentration or mass **for any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows**:

(1) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** more than 50 percent for a hazardous pollutant; or

(2) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** more than 100 percent for a non-hazardous pollutant;

2. Moderate *[environmental damage]* shall include:

i. Any violation which has caused *[or may cause]* substantial harm to human health or the environment; or

ii. Any violation of an effluent limitation which is measured by concentration or mass **for any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows**:

(1) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** 26 to 50 percent for a hazardous pollutant; or

(2) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** 51 to 100 percent for a non-hazardous pollutant;

3. Minor *[environmental damage]* shall include:

i. Any violation not included in (d)1 or 2 above, or (d)3ii below; or

ii. *[For]* **Any** violation of an effluent limitation which is measured by concentration or mass **for any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows**:

(1) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** up to 25 percent for a hazardous pollutant; or

(2) *[Any discharge exceeding the effluent limitation set forth in a permit or administrative order by]* **By** up to 50 percent for a non-hazardous pollutant.

(e) The conduct factor of the violator shall be determined as major, moderate or minor as follows:

1. Major *[conduct]* shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate *[conduct]* shall include any unintentional but foreseeable *[action]* **act or omission** by the violator; or

3. Minor *[conduct]* shall include any other conduct not identified in (e)1 or 2 above.

(f) The *[penalty]* **Department may, in its discretion, adjust the amount** determined pursuant to (c) above *[shall be adjusted]* to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the **effects of the** current violation or to prevent future violations; and/or

4. The deterrent effect of the penalty.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal **by the violator** of the false or inaccurate information to the Department to the day of receipt *[of correction]* by the Department **of a written correction by the violator****[,]* shall be an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty **for violations described in this section** based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator**,** the civil administrative penalty shall be in an amount of not more than $50,000 nor less than $40,000 per act or omission; and

2. For each other violation, the civil administrative penalty shall be in the amount of $1,000.

7:14-8.7 Civil administrative penalty for failure to allow entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate entry and inspection of any premise, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty **for violations described in this section** as follows:

1. For refusing, inhibiting or prohibiting immediate entry and inspection of any premise**s**, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Strorage of Hazardous Substances Act the civil administrative penalty shall be in an amount of not more than $30,000 nor less than $20,000; and

2. For any other refusal, inhibition, or prohibition of immediate entry and inspection*,* the **civil administrative** penalty shall be in an amount of not more than $5,000 nor less than $3,000.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who:

1. Approves, endorses, builds, modifies, or operates a facility or treatment works, as defined by N.J.A.C. 7:14A-1 et seq., in violation of any rule, administrative order, or permit issued pursuant to the Water Pollution Control Act; or

2. Replaces, expands, or substantially modifies a facility as defined by N.J.A.C. 7:14C-1 et seq., in violation of any rule, administrative order, or permit issued pursuant to the New Jersey Underground Storage of Hazardous Substances Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in *[(a) above]* **this section** based on the following:

1. For the approval or endorsement of a treatment works, the penalty shall be in an amount equal to 25 percent of the *[value]* **capital costs** of the facility or treatment works up to a maximum of $50,000 per violation;

2. For the building, installation, substantial modification, replacement or expansion of a facility or treatment works, the civil administrative penalty shall be in an amount equal to 50 percent of the capital cost of the facility or treatment works up to a maximum of $50,000 per violation **per day** or part thereof that the construction of the facility or treatment works continues without the required Department approval; and

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to 100 percent of the *[value]* **capital costs** of the facility or treatment works to a maximum of $50,000 per violation **per day** or part thereof that the operation of the facility or treatment works continues without the required Department approval.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge or monitoring reports required by the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

***(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation.***

*[(b)]**(c)* The Department shall *[determine the amount of the]* **assess a** civil administrative penalty **for violations described in this section** based on the conduct of the violator *[as follows]* **at the mid-point of the following ranges except as adjusted pursuant to (d) below:**

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator**s** the civil administrative penalty shall be in an amount of not more than $50,000 nor less than $40,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount not more than $40,000 nor less than $30,000; or

3. For any other violation**s** the civil administrative penalty shall be in an amount not more than $25,000 nor less than $15,000.

***(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:**

**1. The compliance history of the violator;**

**2. The number, frequency and severity of the violation(s);**

**3. The measures taken by the violator to mitigate the efforts of the current violation or to prevent future violations; and/or**

**4. The deterrent effect of the penalty.***

7:14-8.10 Civil administrative penalty for failure to pay a permit fee or civil administrative penalty

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a permit fee or fails to pay a civil administrative penalty *[assessed]* **when due** pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act *[when due]*.

***(b) Each day a permit fee or a civil administrative penalty is not paid after it is due shall constitute an additional, separate and distinct violation.**

**(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section as follows:***

***1.****[(b) The Department shall assess a civil administrative penalty *[in]* **In** an amount equal to the unpaid permit fee, up to a maximum of $50,000 per violation.

*[(c) The Department shall assess a civil administrative penalty in]* **2. In** an amount equal to the unpaid civil administrative penalty up to a maximum of $50,000 per violation.

*[(d) Each day a permit fee or civil administrative penalty is not paid shall constitute an additional, separate and distinct violation.]*

7:14-8.11 Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of each provision of the rules **in N.J.A.C. 7:18** governing laboratory certification and standards of performance (N.J.A.C. 7:18), adopted pursuant to the Water Pollution Control Act *[including but not limited to, a violation of any certification or administrative order issued pursuant thereto]*.

(b) *[The Department shall consider each]* **Each** violation of each provision of *[any]* **each** rule*[, certification or administrative order as]* **shall be** an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty **for conduct and violations described in provisions of N.J.A.C. 7:18 referenced in this section** on the basis of the provision violated and the frequency of the violation as follows:

| Citation (N.J.A.C.) | *Civil Administrative Penalty Amount* 1st Violation | 2nd Violation | 3rd and Subsequent Violation |
|---|---|---|---|
| 7:18-2.1 | $10,000 | $25,000 | $50,000 |
| 7:18-2.3(f)1iv | $10,000 | $25,000 | $50,000 |
| 7:18-2.4(d) | $10,000 | $25,000 | $50,000 |
| 7:18-2.7 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.8 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.9 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.10(a) | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.10(c) | $ 300 | $ 900 | $ 3,00*0* |
| 7:18-2.10(d) | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.10(f) | $ 100 | $ 300 | $ 1,000 |
| 7:18-2.10(g) | $10,000 | $25,000 | $50,000 |
| 7:18-2.11(a) | $10,000 | $25,000 | $50,000 |
| 7:18-2.11(d) | $10,000 | $25,000 | $50,000 |
| 7:18-2.11(f) | $ 100 | $ 300 | $ 1,000 |
| 7:18-2.12(b)1 | $ 100 | $ 300 | $ 1,000 |
| 7:18-2.12(b)2 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.12(b)3 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.12(b)4 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.12(c)3 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.12(c)5 | $ 300 | $ 900 | $ 3,000 |
| 7:18-2.12(c)12 | $10,000 | $25,000 | $50,000 |
| 7:18-2.14 | $ 100 | $ 300 | $ 1,000 |
| 7:18-3 | $ 300 | $ 900 | $ 3,000 |
| 7:18-4 | $ 300 | $ 900 | $ 3,000 |
| 7:18-5 | $ 300 | $ 900 | $ 3,000 |
| 7:18-6 | $ 300 | $ 900 | $ 3,000 |

(d) The Department shall classify a violation as first, second, and third and subsequent, as follows:

1. A first violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has not received written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past four years;

2. A second violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past two years; and

3. A third and subsequent violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received more than one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past three years.

(e) Notice, for the purposes of (d) above, shall mean receipt by the violator of any one of the following documents from the Department:

i. Notice of Violation;

ii. Administrative Order;

iii. Notice of Civil Administrative Penalty Assessment;

iv. Notice of Intent to Suspend;

v. Notice of Decertification; and/or

vi. Notice of Intent to Revoke.

7:14-8.12 Civil administrative penalty for economic benefit

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has *[or could have]* realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto. ***If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $50,000 per violation.***

7:14-8.13 Water Supply and Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties

(a) The Department may assess a civil administrative penalty of not more then $5,000 per day for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act including, but not limited to, a violation of any rule, license, or administrative order issued pursuant thereto.

(b) The Department shall consider each violation of each provision of any rule, license or administrative order as a separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct offense subjecting the violator to the penalty schedule set forth in (c) below.

(c) Except as provided in (d) and (e) below, the Department shall assess a civil administrative penalty for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license as follows:

1. For the first violation, not more than $1,000;

2. For the second violation, not more than $2,500; and

3. For the third and subsequent violation, not more than $5,000.

(d) The Department shall classify a violation as first, second, and third and subsequent, as follows:

1. A first violation shall include a violation where, within the four years prior to such violation, the violator has not received written notice from the Department, as provided for in (f) below, for violation of the same provision;

2. A second violation shall include a violation where, within the two years prior to such violation, the violator has received one written notice from the Department, as provided for in (f) below, for violation of the same provision; and

3. A third and subsequent violation shall include a violation where, within the three years prior to such violation, the violator has received more than one written notice from the Department, as provided for in (f) below, for violation of the same provision.

***(e) Notice, for the purposes of (d) above, shall mean receipt by the violator of any one of the following documents from the Department:**

**i. Notice of Violation;**

**ii. Administrative Order;**

**iii. Notice of Civil Administrative Penalty Assessment;**

**iv. Notice of Intent to Suspend;**

**v. Notice of Decertification; and**

**vi. Notice of Intent to Revoke.***

*[(e)]**(f)* The Department shall assess a civil administrative penalty of $5,000 for refusing, inhibiting or prohibiting immediate entry and inspection of any premise, building, or place by any authorized Department personnel. Each day, from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit, or prohibit immediate entry and inspection, shall be an additional, separate and distinct violation.

*[(f)]**(g)* The Department shall assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act. Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction of the inacurrate information or falsified statement, shall be an additional, separate and distinct violation. The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator*,* the civil administrative penalty shall be in an amount of not more than $5,000 nor less than $4,000;

2. For any unintentional but foreseeable act or omission the civil administrative penalty shall be in amount not more than $4,000 nor less than $3,000; or

3. For any other violation the civil administrative penalty shall be in an amount not more than $2,500 nor less than $1,500.

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## (a)

## DIVISION OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

### 1988-89 Game Code

### Adopted Amendments: N.J.A.C. 7:25-5

Proposed: May 16, 1988 at 20 N.J.R. 1035(b).

Adopted: July 7, 1988 by the Fish and Game Council, George McCloskey, Chairman.

Filed: July 11, 1988 as R.1988 d.376, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-29 et seq., specifically 13:1B-30, and 23:1-1 et seq.

DEP Docket Number: 017-88-04.

Effective Date: August 1, 1988.

Expiration Date: February 18, 1991.

**Summary** of Public Comments and Agency Responses:

The public comment period ended on June 16, 1988. Seven written comments were received during this period. A public hearing was held by the Fish and Game Council (hereinafter, "the Council") on June 8, 1988. Five commenters presented oral or submitted written comments. Some of the commenters provided multiple comments. A number of the comments received were not relevant to the proposed amendments.

COMMENT:. Two comments expressed general opposition to hunting and/or trapping, one of which also opposed the proposed amendments in their entirety. The other made specific reference to hunting at the Great Swamp National Wildlife Refuge and the duration of the hunting seasons.

RESPONSE: The rights of individuals and organizations to be philosophically opposed to hunting and trapping is recognized by the Council. The Council is legally mandated to manage wildlife throughout the State of New Jersey, including the Great Swamp National Wildlife Refuge, as a renewable natural resource and to maximize the benefits to be derived from this resource while minimizing its negative impacts. The Council believes annual promulgation of amendments to the Game Code is essential to meet these responsibilities. The Council has considered the best scientific information available in establishing seasons, bag limits and methods of take.

COMMENT: One commenter expressed support of several amendments including farmer eligibility for both regular licensee deer permits as well as farmer permits, the banning of certain devices for deer hunting, additional muzzleloader permit hunting days, the added day for turkey hunting and the elimination of zoning for squirrels and ruffed grouse. This commenter did, however, object to the longer winter bow season and the duration of the grouse, rabbit, squirrel and quail season, suggesting that the animals need to conserve energy during the winter.

RESPONSE: The Council can find no indication that the present late season hunting activities places any excessive or undue stress on these animals.

COMMENT: A comment from a Cumberland County sportsmen's organization requested that the Council reconsider the proposed amendment which provides a shotgun permit season this year in Zones 45 and 46, stating that because of the amount of use of the public lands involved, it would result in an increased amount of conflicts between bow and shotgun hunters.

RESPONSE: The Council, upon review of this comment, determined that it did have merit and elected to delete the 90 proposed shotgun permits from Zone 45 and convert them to 175 bow permits, and to delete 83 of the 165 proposed shotgun permits from Zone 46 and convert them to 170 bow permits. This will reduce the possibility of conflicts and provide for more mandays of hunting opportunity. Therefore, these changes are consistent with the Division's deer management objectives of maximizing recreational opportunity and achieving deer harvest objectives.

COMMENT: A representative of the New Jersey Farm Bureau, concerned about deer damage to farm crops, suggested that Deer Management Zones 8 and 10, with a proposed shotgun permit season of five days, be included in the seven day shotgun permit season, the same as Zones 9 and 13.

RESPONSE: The amendments proposed for Zones 8 and 10, particularly an increase in the duration of the shotgun permit season (1988 compared to 1987) of from three days to five days with an anticipated increase of 457 deer in the shotgun permit harvest for Zone 8 and an anticipated increase of 358 deer in the shotgun permit harvest for Zone 10, will, along with other deer season proposals, meet the Division's deer harvest objectives of reducing the deer population in both zones. The Council also points out that the inclusion of two additional either sex deer days during the firearm buck season (December 10 and 15) provided for Zones 9 and 13, is considered experimental for 1988-89, the outcome of which will help determine future management strategies for other zones including Zones 8 and 10.

COMMENT: One comment from a sportsmen's organization, while expressing some concern about reporting of multiple deer taken in a given day by one person with multiple permits, did express support of all the proposed amendments.

RESPONSE: The Council appreciates the support expressed and will certainly review the outcome of the one deer per day permit provision prior to any subsequent proposed amendments to the Game Code.

COMMENT: One comment from a trapping organization suggested a two week extension of the beaver and otter trapping season, claiming that harvest objectives are not being met.

RESPONSE: Beaver permit quotas are based on an anticipated success rate of 70-80 percent. In 1988, 81.2 percent of the trappers were successful in taking beaver and, of the successful trappers, 82 percent caught their limit of three. Therefore, harvest goals are being achieved under the current season duration. Although the demand for otter permits is less than beaver, the otter season should continue to run concurrently with the beaver season. It is administratively more efficient for both management of the species and enforcement of the Code for both of these seasons to run concurrently. Also an extension of either season into March would reduce pelt primeness of both species. The Council, therefore, retained the amendment as proposed.

COMMENT: Other comments received addressed body gripping restraining snares, bear hunting, public safety, deer damage and deer fencing.

RESPONSE: These comments provided were outside the scope of the proposal and, therefore, not relevant.

Agency Initiated Changes: The Council, following a review of the proposed amendment concerning the pheasant hunting season on wildlife management areas, determined that since approximately 50 percent of the wildlife management areas would be included in the extended season which ends February 20, 1989 and the remaining 50 percent would fall within the season ending January 14, 1989, it would be in the best interest of hunters utilizing wildlife management areas as well as the pheasant liberation program, to close the pheasant season for all wildlife management areas at the same time. Since there would be no adverse impacts on the resource, which is introduced into the areas by the Council for recreational purposes, the Council amended 7:25-5.2(d) to extend the pheasant hunting season on all wildlife management areas to February 20, 1989. This will increase the recreational opportunity for hunters in these areas and it is administratively more efficient for both management and enforcement to have consistent rules for these areas.

Several typographical errors were corrected by the Council. The dates of January 27 and 29, 1989 as provided in N.J.A.C. 7:25-5.29(d)3, were changed to January 27 and 28, 1989 as provided elsewhere in the Code (for example, N.J.A.C. 7:25-5.2(d)).

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions to proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 5. 1988-89 GAME CODE

7:25-5.1 General provisions

(a)-(b) (No change.)

(c) This Code, when adopted and when effective, shall supersede the provisions of 1987-88 Game Code.

(d)-(e) (No change.)

(f) For the purpose of this subchapter, "Trenton Office" shall mean the Bureau of Wildlife Management, Division of Fish, Game and Wildlife, New Jersey Department of Environmental Protection, 501 East State Street, 5 Station Plaza, CN 400, Trenton, New Jersey 08625.

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torquatus), English or blackneck (P. c. colchicus), Mongolian (P. c. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November 12, to December 3, 1988, inclusive, and December 12, 1988 through January 7, 1989, excluding December 14, 15 and 16, 1988 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 3, 1988, inclusive, and December 12, 1988 through March 31, 1989, excluding November 11 and December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the areas described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May ***and on all wildlife management areas*** is November 12 to December 3, 1988, inclusive, and December 12, 1988 through February 20, 1989, excluding December 14, 15 and 16, 1988 and

January 27 *[amd]* **and** 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open. *[Except for those wildlife management areas located within the above described area, the pheasant season on wildlife management areas shall close on January 14, 1989.]*

(e) The hours for hunting pheasants on November 12, 1988 are 8:00 A.M. to 1/2 hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to 1/2 hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves coincides with the listed Statewide opening of November 12, 1988.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 12 through December 3, 1988, inclusive, and December 12, 1988 to February 20, 1988, excluding December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December 3, 1988, inclusive, and December 12, 1988 through March 31, 1989, excluding November 11 and December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) The bobwhite quail season as described in (a) above is closed within the area described as that portion of Sussex County lying within a continuous line beginning at the intersection of Rt. 519 and Rt. 618; then south and east along Rt. 618 to its intersection with Rt. 206; then south along Route 206 to its intersection with Rt. 517 at Andover; then south and west along Rt. 517 to its intersection with Rt. 611 at Tranquility; then north and west along Rt. 611 to its intersection with Henry Road; then north and west along Henry Rd. to its intersection with Hibler Rd.; then west along Hibler Road to its intersection with Rt. 519; then northeast along Rt. 519 to the point of beginning. This closure does not preclude the hunting of bobwhite quail on commercial shooting preserves located within the closed area, provided they are licensed for quail.

(d) (No change in text.)

(e) The hunting hours for the animals enumerated in this section are as follows: November 12, 1988, 8:00 A.M. to 1/2 hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to 1/2 hour after sunset.

(f) (No change in text.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October 15 through December 3, 1988, inclusive, and December 12, 1988 to February 20, 1989, excluding December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change in text.)

(c) The hunting hours for ruffed grouse are sunrise to 1/2 hour after sunset, with the exception of November 12, 1988 when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change in text.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October 15 through December 3, 1988, inclusive, and December 12, 1988 to February 20, 1989, excluding, December 14, 15, and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December 3, 1988, inclusive, and December 12, 1988 through March 31, 1989, excluding December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change in text.)

(d) Hunting hours for squirrels are sunrise to 1/2 hour after sunset, with the exception of November 12, 1988 when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(e) (No change in text.)

7:25-5.6 (No change.)

7:25-5.7 Wild Turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April 24, 1989—Friday, April 28, 1989
2. Monday, May 1, 1989—Friday, May 5, 1989
3. Monday, May 8, 1989—Friday, May 12, 1989
4. Monday, May 15, 1989—Friday, May 19 and Monday, May 22, 1989—Friday, May 26, 1989
5. Saturday, April 29, 1989; Saturday, May 6, 1989; Saturday, May 13, 1989 and Saturday May 20, 1989

(b)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, 1989 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, 1989, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1989, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, 1989. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Spring Turkey Hunting Season Permit Quotas are as follows:

1989 SPRING TURKEY HUNTING SEASON
PERMIT QUOTAS

| Turkey Hunting Area Number | Weekly Permit Quota* | Season Total | Portions of Counties Involved |
|---|---|---|---|
| 1 | 100 | 500 | Sussex |
| 2 | 120 | 600 | Sussex, Warren |
| 3 | 80 | 400 | Sussex, Warren |
| 4 | 100 | 500 | Sussex, Warren, Morris |
| 5 | 100 | 500 | Sussex |
| 6 | 150 | 750 | Sussex, Passaic, Bergen |
| 7 | 150 | 750 | Sussex, Morris, Passaic |
| 8 | 50 | 250 | Warren, Hunterdon |
| 9 | 50 | 250 | Warren, Hunterdon, Morris |
| 10 | 25 | 125 | Essex, Middlesex, Morris, Somerset, Union |
| 11 | 25 | 125 | Middlesex, Mercer, Hunterdon, Somerset |
| 13 | 50 | 250 | Burlington, Mercer, Monmouth, Ocean |
| 14 | 50 | 250 | Burlington, Ocean |
| 15 | 50 | 250 | Burlington, Camden, Atlantic |
| 16 | 100 | 500 | Burlington, Atlantic |
| 17 | 50 | 250 | Burlington, Ocean |
| 18 | 50 | 250 | Atlantic, Cape May, Cumberland |
| 20 | 50 | 250 | Cumberland, Salem |
| 21 | 50 | 250 | Atlantic, Cumberland, Salem |
| 22 | 100 | 500 | Atlantic, Cape May, Cumberland |
| | 1,500 | 7,500 | |

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April 24, 1989—Friday, April 28, 1989

B. Monday, May 1, 1989—Friday, May 5, 1989

C. Monday, May 8, 1989—Friday, May 12, 1989

D. Monday, May 15, 1989—Friday, May 19, 1989 and Monday May 22, 1989—Friday, May 26, 1989

E. Saturday, April 29, 1989; Saturday, May 6, 1989; Saturday, May 13, 1989 and Saturday May 20, 1989

(l)-(m) (No change.)

7:25-5.8 Mink (Mustela vison), and muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1988 through March 15, 1989, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1988 through March 15, 1989, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1989, inclusive.

(c)-(e) (No change.)

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1989, inclusive.

(c) Special Permit: A special $7.00 permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period December 1, 1988—December 26, 1988. Applicants may apply for only one beaver trapping permit and shall provide their 1988 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—7, Zone 2—12, Zone 3—2, Zone 4—3, Zone 5—4, Zone 6—10, Zone 7—3, Zone 8—4, Zone 9—4, Zone 10—11, Zone 11—5, Zone 12—6, Zone 13—0, Zone 14—1, Zone 15—0. Total 72. Successful applicants shall provide their 1989 trapping license numbers to the Division before permit will be issued.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March 4, 1989.

(f)-(g) (No change.)

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, 1989, inclusive.

(c) Special Permit: A special $7.00 permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, 1988—December 26, 1988. Only one application per person may be submitted for trapping otter and applicants shall provide their 1988 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—5, Zone 2—6, Zone 3—2, Zone 4—4, Zone 5—4, Zone 6—5, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—7, Zone 11—5, Zone 12—9, Zone 13—14, Zone 14—7, Zone 15—12. Total 92. Successful applicants shall provide their 1989 trapping license numbers to the Division before permit will be issued.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March 4, 1989, where a pelt tag will be affixed and the carcass surrendered.

(f)-(h) (No change.)

(i) Beaver and Otter Zone Descriptions

1.-14. (No change.)

15. Zone 15: That portion of Salem and Cumberland Counties lying within a continuous line beginning at the intersection of the Delaware River at Rt. 25 at Oakwood Beach, then east on Rt. 25 to its intersection with Rt. 49 at Salem, then southeast on Rt. 49 to its intersection with Rt. 32, then east on Rt. 32 to its intersection with Rt. 540, then east on Rt. 540 to its intersection with Rt. 553, at Centerton, then south on Rt. 553 to its intersection with Rt. 631 near Port Norris, then south on Rt. 631 to the Delaware Bay, then northwest along the Delaware Bay and Delaware River to its intersection with Rt. 25 at Oakwood Beach, the point of beginning.

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus) and Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, 1988 to March 15, 1989, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 1988 to March 15, 1989, inclusive.

(d)-(h) (No change.)

7:25-5.12 (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November 12, 1989, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1988-89 hunting seasons. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1988-89 hunting season.

(d)-(h) (No change.)

(i) A special canvasback permit shall be required to hunt canvasback ducks, and a special swan permit shall be required to hunt swans, if the appropriate prescribed special season is established by Federal regulations. If a special season for canvasback ducks is established by Federal regulations, the special canvasback hunting area shall be that portion of the State south of Routes 287 and 440 (Perth Amboy), east of the Garden State Parkway and north of Rt. 36 (Long Branch) and that portion of the State south of Route 88 (Bay Head), east of the Garden State Parkway and north of Rt. 72 (Ship Bottom). If a special season for swan is established by Federal regulations, the special swan hunting area shall be the counties of Burlington, Cumberland and Salem.

(j)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 12, 1988. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1988-89 Game Code.

15. With shotgun shells loaded with pellets larger than No. 4 fine shot except those persons engaged in hunting waterfowl may use nothing larger than No. 2 lead fine shot or T. (.200 inch) steel shot.

16.-19. (No change.)

(n) Seasons and Bag Limits are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during 1988-89.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, 1988, inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for woodcock are sunrise to sunset except on November 12, when the hunting hours are 8:00 A.M. to sunset.

(p) (No change.)

(q) The special scaup hunting area for New Jersey is defined as the Delaware Bay, Delaware River and tidal waters east of the Garden State Parkway (tributaries of the Delaware Bay, Delaware River, or the non-tidal section of the Delaware River above Trenton Falls are not included).

(r) (No change in text.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules after the season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in the following designated area of New Jersey.

1. The State designated steel shot area for waterfowl hunting includes the counties and adjacent State-owned tidal waters of Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean, Salem, Hudson and that portion of Burlington County lying to the south and east of the New Jersey Transit Railroad which runs from Atsion to Woodmansie.

2. (No change.)

(b)-(c) (No change.)

7:25-5.15 Crow (Corvus spp.)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 15, 1988 through March 25, 1989, inclusive, excluding December 5-10 and December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to 1/2 hour after sunset, except on November 12, 1988 when the hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

7:25-5.16 (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1988 to one hour before sunrise on March 1, 1989. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 5-10 and on December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1988 and from March 1 to May 1, 1989. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 13-September 22, 1989. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Northern Zone: Bow and Arrow Only—October 1 through November 11, 1988; Firearm or Bow and Arrow—November 12, 1988 through February 25, 1989, inclusive, excluding December 5-10 and December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s), if declared open.

2. Southern Zone: Bow and Arrow Only—October 1 through November 11, 1988; Firearm or Bow and Arrow—November 12, 1988 through February 25, 1989, excluding December 5-10, 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s), if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of October 1-November 11, 1988 and during the period of February 6-February 25, 1989 in the Southern Zone. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) (No change.)

(d) The hours for hunting fox are 8:00 A.M. to 1/2 hour after sunset on November 12, 1988 and on other days from sunrise to 1/2 hour after sunset.

(e)-(f) (No change.)

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 11, 1988.

(b)-(c) (No change.)

7:25-5.21 (No change.)

7:25-5.22 (No change.)

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the late squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200 inch) steel fine shot or No. 2 or smaller lead fine shot and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and .22 short caliber cartridge only for the purpose of killing raccoon, or opossum or legally trapped furbearing animals other than muskrat.

(b)-(d) (No change.)

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their 1988 firearm hunting license may hunt for squirrels between January 23 and February 20, 1989 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 5-10, 1988, inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of a shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or T (.200 inch) steel shot.) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.

1.-3. (No change.)

(g)-(n) (No change.)

(o) No person shall hunt for deer with the aid of a deer decoy, an electronic calling device or any device which projects a beam of light upon the target.

(p) (No change in text.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a permit shotgun deer season is authorized, on any additional permit deer season day(s) if declared open, during the Six-Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c) During the season for taking deer or turkey with bow and arrow (as listed elsewhere in this subchapter), all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

1.-4. (No change.)

5. All bows, except compounds, must have a minimum draw pull weight of 35 pounds at the archers' draw length. Compound bows must have a minimum peak weight of 35 pounds.

(d) (No change.)

(e) No person shall hunt for deer with the aid of a deer decoy, an electronic calling device or any device which projects a beam of light upon the target.

(f) (No change in text.)

(g) (No change in text.)

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from October 1-November 11, 1988, inclusive. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b)-(d) (No change.)

7:25-5.26 White-tailed deer winter bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January 2 to 1/2 hour after sunset on January 21, 1989. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b)-(d) (No change.)

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December 5-10, 1988 inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December

5 and 10, 1988, subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag".

(c)-(d) (No change.)

(e) Hunting Hours: December 5-10, 1988, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer muzzleloader rifle, permit season (either sex):

(a)-(b) (No change.)

(c) Bag Limit: Two deer of either sex and any age per permit, except in Zones 37 and 52 where the limit shall be one deer with antlers at least three inches long during the first season segment which shall be November 12, 13, 14, 15, 16, 17, 18 and 19, 1988 and one deer of either sex and any age during the second season segment which shall be December 12, 13, 14, 15, 16, 17, 26, 27, 28, 29 and 30, 1988. Only one deer may be taken in a given day per permit. Deer shall be tagged immediately with the muzzleloader rifle permit season permit "transportation tag" completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during the current muzzleloader rifle permit season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer shall be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". It is unlawful to attempt to take or continue to hunt for more than the number of deer permitted.

(d) Duration of the muzzleloader rifle permit season is December 12, 13, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30, 1988 or any other time as determined by the Director. Legal hunting hours shall be 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T.

(e) No change.)

(f) Method: The taking of two deer of either sex and any age or the taking of deer as designated for special hunts is authorized to holders of valid permits for muzzleloader rifle permit season in designated deer management zones. Only one deer may be taken in a given day per permit. The taking of two deer of either sex and any age or the taking of deer as designated for special hunts is authorized to holders of valid farmer permits for muzzleloader rifle permit season only on the farm occupied and designated on the permit application. Only one deer may be taken in a given day per permit.

1. (No change.)

(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season 1988", signing as provided on the back, and sending the stub, together with a $17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, 1988 inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5. Unsuccessful applicants will be notified by return of permit fees, less a $2.00 application fee. Any permit obtained by fraud shall be void.

6.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15 1988. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4. Qualified farmers may apply for one shotgun permit season permit in any management zone in addition to one muzzleloader rifle permit season permit in any management zone where a muzzleloader rifle permit season is prescribed. Qualified farmers may also apply for either the muzzleloader rifle permit season permit or shotgun permit season permit as a regular firearm hunting license applicant. Application for more than the allowable number of permits during the initial application period will cause all applications by an individual to be void.

5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1988 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1988 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

| Deer Mgt. Zone No. | Season Dates Code | Anticipated Deer Harvest 1988 | Permit Quota 1988 | Portions of Counties Involved |
|---|---|---|---|---|
| 1 | | 172 | 600 | Sussex |
| 2 | | 122 | 450 | Sussex |
| 3 | | 121 | 650 | Sussex, Passaic, Bergen |
| 4 | | 209 | 765 | Sussex, Warren |
| 5 | | 417 | 1490 | Sussex, Warren |
| 6 | | 166 | 687 | Sussex, Morris, Passaic, Essex |

1988 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

| Deer Mgt. Zone No. | Season Dates Code | Anticipated Deer Harvest 1988 | Permit Quota 1988 | Portions of Counties Involved |
|---|---|---|---|---|
| 7 | | 192 | 685 | Warren, Hunterdon |
| 8 | | 412 | 1425 | Warren, Hunterdon, Morris, Somerset |
| 9 | | 125 | 365 | Morris, Somerset |
| 10 | | 256 | 820 | Warren, Hunterdon |
| 11 | | 144 | 516 | Hunterdon |
| 12 | | 311 | 915 | Mercer, Hunterdon, Somerset |
| 13 | | 40 | 178 | Morris, Somerset |
| 14 | | 75 | 433 | Mercer, Somerset, Middlesex, Burlington |
| 15 | | 89 | 374 | Mercer, Monmouth, Middlesex |
| 16 | | 69 | 362 | Ocean, Monmouth |
| 17 | | 67 | 200 | Ocean, Monmouth, Burlington |
| 18 | | 42 | 237 | Ocean |
| 19 | | 50 | 250 | Camden, Burlington |
| 20 | | 58 | 250 | Burlington |
| 21 | | 114 | 452 | Burlington, Ocean |
| 22 | | 14 | 81 | Burlington, Ocean |
| 23 | | 125 | 610 | Burlington, Camden, Atlantic |
| 24 | | 124 | 380 | Burlington, Ocean |
| 25 | | 77 | 408 | Gloucester, Camden, Atlantic, Salem |
| 26 | | 137 | 496 | Atlantic |
| 27 | | 142 | 407 | Salem, Cumberland |
| 28 | | 84 | 288 | Salem, Cumberland, Gloucester |
| 29 | | 119 | 456 | Salem, Cumberland |
| 30 | | 18 | 80 | Cumberland |
| 31 | | 10 | 40 | Cumberland |
| 32 | | 6 | 20 | Cumberland |
| 33 | | 21 | 114 | Cape May, Atlantic |
| 34 | | 93 | 390 | Cape May, Cumberland |
| 35 | | 76 | 300 | Gloucester, Salem |
| 36 | | 23 | 100 | Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex |
| 37 | 1 | 64 | 180 | Burlington (Fort Dix Military Reservation) |
| 38 | | 0 | 0 | Morris (Great Swamp National Wildlife Refuge) |
| 39 | 2 | 26 | 40 | Monmouth (Earle Naval Weapons Station) |
| 40 | | 16 | 72 | Warren (Allamuchy State Park) |
| 41 | | 128 | 325 | Mercer, Hunterdon |
| 42 | | 12 | 40 | Atlantic |
| 43 | | 15 | 90 | Cumberland |
| 44 | | 8 | 30 | Cumberland |
| 45 | | 38 | 161 | Cumberland, Atlantic, Cape May |
| 46 | | 31 | 96 | Atlantic |
| 47 | | 14 | 47 | Atlantic, Cumberland, Gloucester |
| 48 | | 23 | 197 | Burlington |
| 49 | | 10 | 40 | Burlington, Camden, Gloucester |
| 50 | | 12 | 103 | Middlesex, Monmouth |
| 51 | | 33 | 120 | Monmouth, Ocean |
| 52 | 1 | 29 | 100 | Ocean (Fort Dix Military Reservation) |
| 53 | 3 | 4 | 40 | Ocean (Lakehurst Naval Engineering Center) |
| 54 | 3 | 2 | 4 | Morris (Picatinny Arsenal-ARRAD Com) |
| 55 | | 0 | 0 | Atlantic (Federal Aviation Administration Technical Center) |
| 56 | | 0 | 0 | Atlantic (Forsythe National Wildlife Refuge) |
| 57 | | 25 | 50 | Atlantic (Forsythe National Wildlife Refuge) |
| 58 | | 12 | 60 | Burlington, Ocean (Forsythe National Wildlife Refuge) |
| 59 | | 0 | 0 | Salem (Supawna National Wildlife Refuge) |
| 61 | | 24 | 105 | Atlantic (Atlantic County Parks) |
| Total | | 4,846 | 18,174 | |

(l) The Season Dates Code referenced in the table in (k) above is as follows:

1. Indicates the season dates will be November 12-19, 1988 (first segment) and December 12-17, 26-30, 1988 (second segment).
2. Indicates the season dates will be December 12-16, 19-24 and 26-31, 1988.
3. Indicates the season dates will be December 12, 13, 15, 16, 20-24, 26-31, 1988.

(m) Permit quotas in Zones 37, 38, 39, 40, 52-59 and 61 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader, rifle permit season permits not applied for by September 10, 1988 will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season, (either sex)

(a)-(b) (No change.)

(c) The season bag limit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20-24, 26, 28, 30-34, 40, *[43-47]* ***43, 44, 46, 47***, 52, 54 and 61; three deer of either sex and any age with a shotgun permit season permit in Zones 2, 5-17, 19, 25, 27, 29, 35-37, 39, 41, 42, 48, 51-53, and 55-59; and six deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December 5 or 10, 1988 with a regular firearm license, subject to the provisions of N.J.A.C. 7:25:-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the shotgun permit deer season is from 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. on the following dates:

1. December 14, 1988 in Zones 1, 3, 4, 18, 20-24, 26, 28, 30-34, 40, *[43-47]* ***43, 44, 46, 47*** and 61;

2. December 14, 15 and 16, 1988 in Zones 6, 15-17, 19-25, 27, 29, 35, 42 and 56-59;

3. December 14, 15 and 16, 1988 and January 27 and *[29]* ***28***, 1989 in Zones 2, 5, 7, 8, 10, 11, 12, 14, 36, 41 and 48-51;

4. December 5, 10, 14, 15, and 16, 1988 and January 27 and 28, 1989 in Zones 9 and 13 only; or

5. At other times as determined by the Director (see (m) below).

(e) (No change.)

(f) Method: The taking of deer of either sex and any age with a shotgun under a shotgun permit season permit or a farmer shotgun permit season permit is permitted in designated deer management zones by holders of a shotgun permit season permit and, on their own property, by holders of a farmer shotgun permit season permit.

1. (No change.)

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on the date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the checking station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. A third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun pérmit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. The second and third permits are not valid on the day of issuance, and will only be available from checking stations designated to be open for the extended shotgun permit deer season.

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season 1988", signing as provided on the back, and sending the stub, together with a $17.00 permit fee per applicant and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, 1988. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1988. There is no fee required, and all qualified applicants will receive a farmer shotgun permit season permit, delivered by mail.

4. Qualified farmers may apply for one shotgun permit season permit in any management zone in addition to one muzzleloader rifle permit season permit in any management zone where a muzzleloader rifle permit season is prescribed. Qualified farmers may also apply for either the permit shotgun or permit muzzleloader season permit as a regular firearm hunting license applicant. Application for more than the allowable number of permits during the initial application period will cause all applications by an individual to be void.

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1988 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1988 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

| Deer Mgt. Zone No. | Season Dates Code | Anticipated Deer Harvest 1988 | Permit Quota 1988 | Portion of Counties Involved |
|---|---|---|---|---|
| 1 | 1 | 363 | 1450 | Sussex |
| 2 | 3 | 534 | 1190 | Sussex |
| 3 | 1 | 96 | 768 | Sussex, Passaic, Bergen |
| 4 | 1 | 55 | 482 | Sussex, Warren |
| 5 | 3 | 2232 | 3720 | Sussex, Warren |
| 6 | 2 | 330 | 1255 | Sussex, Morris, Passaic, Essex |
| 7 | 3 | 755 | 1324 | Warren, Hunterdon |
| 8 | 3 | 2214 | 3486 | Warren, Hunterdon, Morris, Somerset |
| 9 | 4 | 413 | 826 | Morris, Somerset |
| 10 | 3 | 1171 | 1945 | Warren, Hunterdon |
| 11 | 3 | 729 | 1429 | Hunterdon |
| 12 | 3 | 1738 | 2355 | Mercer, Hunterdon, Somerset |
| 13 | 4 | 458 | 460 | Morris, Somerset |
| 14 | 3 | 774 | 1653 | Mercer, Somerset, Middlesex, Burlington |
| 15 | 2 | 218 | 726 | Mercer, Monmouth, Middlesex |
| 16 | 2 | 154 | 684 | Ocean, Monmouth |
| 17 | 2 | 250 | 508 | Ocean, Monmouth, Burlington |
| 18 | 1 | 35 | 280 | Ocean |
| 19 | 2 | 121 | 403 | Camden, Burlington |
| 20 | 1 | 32 | 275 | Burlington |
| 21 | 1 | 0 | 0 | Burlington, Ocean |
| 22 | 1 | 38 | 200 | Burlington, Ocean |
| 23 | 1 | 20 | 200 | Burlington, Camden, Atlantic |
| 24 | 1 | 0 | 0 | Burlington, Ocean |
| 25 | 2 | 82 | 431 | Gloucester, Camden, Atlantic, Salem |
| 26 | 1 | 0 | 0 | Atlantic |
| 27 | 2 | 283 | 600 | Salem, Cumberland |
| 28 | 1 | 31 | 146 | Salem, Cumberland, Gloucester |
| 29 | 2 | 398 | 894 | Salem, Cumberland |
| 30 | 1 | 21 | 90 | Cumberland |
| 31 | 1 | 0 | 0 | Cumberland |
| 32 | 1 | 0 | 0 | Cumberland |
| 33 | 1 | 47 | 200 | Cape May, Atlantic |
| 34 | 1 | 61 | 244 | Cape May, Cumberland |
| 35 | 2 | 191 | 478 | Gloucester, Salem |
| 36 | 3 | 47 | 100 | Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex |
| 37 | 5 | 42 | 168 | Burlington (Fort Dix Military Reservation) |
| 38 | 6 | 194 | 600 | Morris (Great Swamp National Wildlife Refuge) |
| 39 | 7 | 85 | 84 | Monmouth (Earle Naval Weapons Station) |
| 40 | 1 | 6 | 60 | Warren (Allamuchy State Park) |
| 41 | 3 | 595 | 846 | Mercer, Hunterdon |
| 42 | 2 | 18 | 52 | Atlantic |
| 43 | 1 | 0 | 0 | Cumberland |
| 44 | 1 | 8 | 50 | Cumberland |
| 45 | 1 | *[18]* ***0*** | *[90]* ***0*** | Cumberland, Atlantic, Cape May |
| 46 | 1 | *[35]* ***17*** | *[165]* ***82*** | Atlantic |
| 47 | 1 | 11 | 92 | Atlantic, Cumberland, Gloucester |
| 48 | 3 | 173 | 404 | Burlington |
| 49 | 3 | 13 | 40 | Burlingon, Camden, Gloucester |
| 50 | 3 | 119 | 400 | Middlesex, Monmouth |
| 51 | 3 | 52 | 200 | Monmouth, Ocean |
| 52 | 8 | 16 | 64 | Ocean (Fort Dix Military Reservation) |
| 53 | 9 | 36 | 90 | Ocean (Lakehurst Naval Engineering Center) |
| 54 | 10 | 20 | 35 | Morris (Picatinny Arsenal-ARRAD Com) |
| 55 | 11 | 15 | 40 | Atlantic (Federal Aviation Administration Technical Center) |
| 56 | 2 | 22 | 20 | Atlantic (Forsythe National Wildlife Refuge) |
| 57 | 2 | 55 | 50 | Atlantic (Forsythe National Wildlife Refuge) |
| 58 | 2 | 20 | 60 | Burlington, Ocean (Forsythe National Wildlife Refuge) |
| 59 | 2 | 10 | 20 | Salem (Supawna National Wildlife Refuge) |
| 61 | 1 | 21 | 105 | Atlantic (Atlantic County Parks) |
| Total | | *[15,475]* ***15,439*** | *[32,538]* ***32,365*** | |

(l) Shotgun permit season permit not applied for by September 10, 1988 may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referenced in the table in (k) above is as follows:

1. Indicates one day shotgun permit season—December 14, 1988.
2. Indicates three-day shotgun permit season—December 14, 15 and 16, 1988.
3. Indicates five-day shotgun permit season—December 14, 15, and 16, 1988 and January 27 and 28, 1989.
4. Indicates seven-day shotgun permit season—December 5, 10, 14, 15 and 16, 1988 and January 27 and 28, 1989.
5. Indicates a two-day shotgun permit season—December 21 and 22, 1988.
6. Indicates a six-day shotgun permit season—December 8, 9, 10, 1988 and January 5, 6 and 7, 1989.
7. Indicates a three-day shotgun permit season—December 17, 1988 and January 14, 28, 1989.
8. Indicates a one-day shotgun permit season—December 21, 1988.
9. Indicates a two-day shotgun permit season—December 17 and 19, 1988.
10. Indicates a one-day shotgun permit season—December 17, 1988.
11. Indicates a three-day shotgun permit season—December 17, 1988 and January 7 and 14, 1989.

(n) (No change in text.)

(o) Permit quotas for Zones 37, 38, 39, 40, 52-59 and 61 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer management zones are located as follows:

1.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Route 521 and the Delaware River at Dingman's Ferry; then southeast along Route 521 to its intersection with Route 206; then southeast along Route 206 to its intersection with Route 521 at Culvers Inlet; then south along Route 521 to its intersection with Route 617 (Mountain Road); then south along Route 617 to its intersection with Old Schoolhouse Road; then southwest on Old Schoolhouse Road to Sand Pond Road; then south on Millbrook Road to Gaisler Road; then west on Gaisler Road to Corner Road; then north on Corner Road to the base of the Kittatinny Ridge; then southwest along the base of the Kittatinny Ridge to the Delaware River at the Delaware Water Gap north of Quarry Road; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry. Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.

5. Zone No. 5: That portion of Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 521 and Rt. 206 at Culvers Inlet; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 206 at Newton; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with the Zone 4 boundary at the Delaware Water Gap north of Quarry Road; then northeast along the base of the Kittatinny Ridge to Corner Road; then south on Corner Road to Gaisler Road; then east on Gaisler Road to Millbrook Road; then north on Millbrook Road to Sand Pond Road; then east on Sand Pond Road to Old Schoolhouse Road; then northeast on Old Schoolhouse Road to Route 617 at Wintermute's Foundry; then north along Rt. 617 to its intersection with Rt. 521; then north along Rt. 521 to the point of beginning at Culvers Inlet.

6.-18. (No change.)

19. Zone No. 19: That portion of Burlington and Camden Counties lying within a continuous line beginning at the intersection of Rt. 530 and Rt. 206 near Birmingham; then south along Rt. 206 to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Buttersworth Bogs Road; then south and west along Buttersworth Bogs Road to its intersection with Bozartown Road; then southwest along Bozartown Road to its intersection with Dingletown Road; then southwest along Dingletown Road to its intersection with Forked Neck Road; then west along Forked Neck Road to its intersection with Rt. 206; then south along Rt. 206 to its intersection with Rt. 541, Stokes Road; then northwest along Rt. 541 to its intersection with Rt. 534, Jackson Road; then west along Rt. 534 to its intersection with Rt. 73; then north along Rt. 73 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 38; then east along Rt. 38 to its intersection with Rt. 530; then east along Rt. 530 to its intersection with Rt. 206 near Birmingham, the point of beginning.

20.-22. (No change.)

23. Zone No. 23: That portion of Burlington, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. 542 and 563 at Green Bank; then west along Rt. 542 to its intersection with Rt. 30 near Hammonton; then northwest along Rt. 30 to its intersection with Rt. 73; then north on Rt. 73 to its intersection with Rt. 534, Jackson Road; then east along Rt. 534 to its intersection with Rt. 541, Stokes Road; then southeast along Rt. 541 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Forked Neck Road; then east along Forked Neck Road to its intersection with Dingletown Road; then northeast along Dingletown Road to its intersection with Bozartown Road; then northeast along Bozartown Road to its intersection with Buttersworth Bogs Road; then east and north along Buttersworth Bogs Road to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Rt. 563 at Chatsworth; then south along Rt. 563 to Rt. 542 the point of beginning at Green Bank.

24.-32. (No change.)

33. Zone No. 33: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 40 and 50 at Mays Landing; then south on Rt. 50 to its intersection with Rt. 631, Tuckahoe Road; then east along Rt. 631 to its intersection with Rt. 9 at Marmora; then north along Rt. 9 to its intersection with Rt. 623; then east along Rt. 623 to the Atlantic Ocean at Ocean City; then northeast along the Atlantic Ocean to Atlantic City; then northwest along Rt. 322 (40) to McKee City; then west on Rt. 40 to its intersection with Rt. 50 at Mays Landing, the point of beginning.

34. Zone No. 34: That portion of Cumberland and Cape May Counties lying within a continuous line beginning at Port Elizabeth; then east on Rt. 548 to its intersection with Rt. 49; then continuing east on Rt. 49 to its intersection with Rt. 50 at Tuckahoe; then south on Rt. 50 to its intersection with Rt. 631, Tuckahoe Road; then east along Rt. 631 to its intersection with Rt. 9 at Marmora; then north along Rt. 9 to its intersection with Rt. 623; then east along Rt. 623 to the Atlantic Ocean at Ocean City; then southeast along the Atlantic Ocean to Delaware Bay; then north and west along the east bank of Delaware Bay to the Maurice River; then north along the east bank of the Maurice River to Port Elizabeth and Rt. 548, the point of beginning.

35.-36. (No change.)

37. Zone No. 37: That portion of Fort Dix Military Reservation, U.S. Department of the Army, designated as open for deer hunting, lying within Burlington County.

38. Zone No. 38: That portion of Great Swamp National Wildlife Refuge, U.S. Department of the Interior, designated as open for deer hunting, lying within Morris County.

39. Zone No. 39: That portion of Naval Weapons Station Earle, U.S. Department of the Navy and Fort Monmouth, U.S. Department of the Army, designated as open for deer hunting, lying within Monmouth County.

40. (Reserved.)

Renumber existing 37. to 47. as 41. to 51. (No change in text.)

52. Zone No. 52: That portion of Fort Dix Military Reservation, U.S. Department of the Army, designated as open for deer hunting, lying within Ocean County.

53. Zone No. 53: That portion of Lakehurst Naval Air Engineering Center, U.S. Department of the Navy, designated as open for deer hunting, lying within Ocean County.

54. Zone No. 54: That portion of U.S. Army Armament Research and Development Command (ARRADCOM), U.S. Department of the Army, designated as open for deer hunting, lying within Morris County.

55. Zone No. 55: That portion of the Federal Aviation Administration Technical Center (FAATC), U.S. Department of Transportation, designated as open for deer hunting, lying with Atlantic County.

56. Zone No. 56: That portion of Edwin B. Forsythe National Wildlife Refuge, U.S. Department of the Interior, located south of Stoney Hill Road, designated as open for deer hunting, lying within Atlantic County.

57. Zone No. 57: That portion of Edwin B. Forsythe National Wildlife Refuge, U.S. Department of the Interior, located north of Stoney Hill Road and south of the Mullica River, designated as open for deer hunting, lying within Atlantic County.

58. Zone No. 58: Those portions of Edwin B. Forsythe National Wildlife Refuge, including the Barnegat Division, U.S. Department of the Interior, located north of the Mullica River, designated as open for deer hunting, lying within Burlington and Ocean Counties.

59. Zone 59: That portion of Supauna Meadows National Wildlife Refuge, U.S. Department of the Interior, designated as open for deer hunting, lying within Salem County.

60. Zone No. 61: Those portions of the Atlantic County Park System, County of Atlantic, designated as open for deer hunting, lying within Atlantic County.

7:25-5.30 White-tailed deer bow permit season, either sex

(a) The Director with the approval of the Council may authorize the issuance of bow permit season permits for the taking of deer anywhere within this State or at any State or Federal installation.

(b) If the anticipated harvest of deer has not been accomplished during this season, one additional day of bow permit deer hunting may be authorized by the Director. Such authorization and date thereof shall be announced by press and radio.

(c) Bag Limit: Two deer of either-sex and any age per permit. Only one deer may be taken in a given day per permit. Deer shall be tagged immediately with the bow permit "transportation tag" completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (Second Tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during bow permit season, provided the season is open on the following day. The second tag shall not be valid on the day of issuance, and all registration requirements apply.

(d) Duration of the bow permit season is from November 12 to December 3, 1988, in designated deer management zones, or any other time as determined by the Director. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(e) Bow permit season permits are valid only in the designated deer management zones or other designated areas and are not transferable.

(f) Method: The taking of two deer of either sex and any age with a bow under a bow permit season permit or a farmer bow permit season permit, is permitted in designated deer management zones by holders of a bow permit season permit and on the farm occupied and designated in the application by holders of a farmer bow permit season permit.

1. Bow permit season permits will be issued on an individual basis to holders of valid and current bow licenses and qualified farmers.

(g) Permits consist of back display which includes a deer transportation tag or proper and valid "second tag". The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid bow license, and without the license in the case of the farmer bow permit season permit. The "deer transportation tag" portion of the permit must be completely filled out and affixed to the deer immediately upon killing. This completely filled in deer transportation tag allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on the date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the checking station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Such deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has been concluded such deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1988, signing as provided on the back, and sending the stub together with a $17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. Application for a bow permit season permit shall not preclude an individual from applying for either the muzzleloader rifle or shotgun season permits.

3. Only one application may be submitted per regular bow license holder during the initial application period. Application for more than the allowable number of permits during the initial application period will cause all applications by an individual to be void.

4. The application form shall be filled in to include: Name, address, current bow hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-8. (No change.)

(i) Farmer Bow Permit Season Permits shall be applied for as follows:

1. Only the owner or lessee of a farm, who resides thereon, or the immediate members of his family 10 years of age or older who also reside thereon, may apply on forms provided for a farmer bow permit season permit. Under this section a farm is an area of five acres or more and producing a gross income in excess of $500.00 and is tax assessed as farmland. Farmer bow permit season permits will be issued only in those deer management zones where a bow permit season is prescribed.

2. (No change.)

3. The application form shall be filled in to include: name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15. There is no fee required, and all qualified applications will receive a farmer bow permit season permit, delivered by mail.

4. Only one farmer application may be submitted per individual. Application for a farmer bow permit season permit shall not preclude an individual from applying for either the farmer muzzleloader rifle or shotgun permit seasons permits, or from applying for one regular bow permit season permit as a bow hunting license applicant. Application for more than the allowable number of permits during the initial application period will cause all applications by the individual to be void.

(j) Bow and Farmer Bow Permit Season Permits shall be used as follows:

1. The bow permit season permit is valid only in the deer management zone (DMZ) designated and is not transferable. The farmer bow permit season permit is valid only on the farm occupied and designated in the application and is not transferable. The DMZ quota follows below at (k). The DMZ map is on file at the Office of Administrative Law. The bow and arrow permit season permit hunter

is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the bow permit season permit nor the farmer bow permit season permit is transferable from DMZ to DMZ, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the DMZ, and by the individual to whom it was issued.

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1988 Bow Permit Season Quotas (Either Sex) are as follows:

1988 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

| Deer Mgt. Zone No. | Season Dates Code | Anticipated Deer Harvest 1988 | Permit Quota 1988 | Portions of Counties Involved |
|---|---|---|---|---|
| 1 | | 79 | 700 | Sussex |
| 2 | | 78 | 800 | Sussex |
| 3 | | 53 | 750 | Sussex, Passaic, Bergen |
| 4 | | 0 | 0 | Sussex, Warren |
| 5 | | 231 | 2430 | Sussex, Warren |
| 6 | | 93 | 1000 | Sussex, Morris, Passaic, Essex |
| 7 | | 136 | 1150 | Warren, Hunterdon |
| 8 | | 270 | 2500 | Warren, Hunterdon, Morris, Somerset |
| 9 | | 98 | 800 | Morris, Somerset |
| 10 | | 162 | 1300 | Warren, Hunterdon |
| 11 | | 105 | 950 | Hunterdon |
| 12 | | 224 | 1900 | Mercer, Hunterdon, Somerset |
| 13 | | 56 | 575 | Morris, Somerset |
| 14 | | 90 | 1200 | Mercer, Somerset, Middlesex, Burlington |
| 15 | | 80 | 800 | Mercer, Monmouth, Middlesex |
| 16 | | 67 | 750 | Ocean, Monmouth |
| 17 | | 56 | 450 | Ocean, Monmouth, Burlington |
| 18 | | 35 | 403 | Ocean |
| 19 | | 40 | 400 | Camden, Burlington |
| 20 | | 37 | 370 | Burlington |
| 21 | | 0 | 0 | Burlington, Ocean |
| 22 | | 16 | 161 | Burlington, Ocean |
| 23 | | 26 | 419 | Burlington, Camden, Atlantic |
| 24 | | 0 | 0 | Burlington, Ocean |
| 25 | | 43 | 500 | Gloucester, Camden, Atlantic, Salem |
| 26 | | 0 | 0 | Atlantic |
| 27 | | 52 | 550 | Salem, Cumberland |
| 28 | | 0 | 0 | Salem, Cumberland, Gloucester |
| 29 | | 74 | 650 | Salem, Cumberland |
| 30 | | 10 | 90 | Cumberland |
| 31 | | 0 | 0 | Cumberland |
| 32 | | 0 | 0 | Cumberland |
| 33 | | 27 | 274 | Cape May, Atlantic |
| 34 | | 0 | 0 | Cape May, Cumberland |
| 35 | | 63 | 550 | Gloucester, Salem |
| 36 | | 18 | 140 | Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex |
| 37 | 1 | 17 | 150 | Burlington (Fort Dix Military Reservation) |
| 38 | | 0 | 0 | Morris (Great Swamp National Wildlife Refuge) |
| 39 | | 17 | 58 | Monmouth (Earle Naval Weapons Station) |
| 40 | | 6 | 65 | Warren (Allamuchy State Park) |
| 41 | | 67 | 650 | Mercer, Hunterdon |
| 42 | | 16 | 130 | Atlantic |
| 43 | | 0 | 0 | Cumberland |
| 44 | | 0 | 0 | Cumberland |
| 45 | | ***[0]**18*** | ***[0]**175*** | Cumberland, Atlantic, Cape May |
| 46 | | ***[0]**18*** | ***[0]**170*** | Atlantic |
| 47 | | 8 | 80 | Atlantic, Cumberland, Gloucester |
| 48 | | 32 | 400 | Burlington |
| 49 | | 4 | 40 | Burlingon, Camden, Gloucester |
| 50 | | 39 | 400 | Middlesex, Monmouth |
| 51 | | 24 | 304 | Monmouth, Ocean |
| 52 | 1 | 2 | 48 | Ocean (Fort Dix Military Reservation) |
| 53 | | 12 | 60 | Ocean (Lakehurst Naval Engineering Center) |
| 54 | | 4 | 22 | Morris (Picatinny Arsenal-ARRAD Com) |
| 55 | | 5 | 40 | Atlantic (Federal Aviation Administration Technical Center) |
| 56 | | 0 | 0 | Atlantic (Forsythe National Wildlife Refuge) |

1988 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

| Deer Mgt. Zone No. | Season Dates Code | Anticipated Deer Harvest 1988 | Permit Quota 1988 | Portions of Counties Involved |
|---|---|---|---|---|
| 57 | | 0 | 0 | Atlantic (Forsythe National Wildlife Refuge) |
| 58 | | 6 | 60 | Burlington, Ocean (Forsythe National Wildlife Refuge) |
| 59 | | 6 | 30 | Salem (Supawna National Wildlife Refuge) |
| 61 | | 14 | 135 | Atlantic (Atlantic County Parks) |
| Total | | *[2,598]* ***2,634*** | *[25,234]* ***25,579*** | |

(l) The Season Dates Code referenced in the table in (k) above is as follows:

1. Indicates the season dates will be November 21 through December 3, 1988 in zones 37 and 52.

(m) Permit quotas in Zones 37, 38, 39, 40, 51-59 and 61 are contingent upon approval by appropriate land management agencies for those zones.

(n) (No change in text.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38).

(a)-(b) (No change.)

(c) Duration of the Great Swamp Permit Shotgun Season shall be from 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. on the following dates: December 8, 9, 10, 1988 and January 5, 6, 7, 1989 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: Six deer of either sex and any age may be taken with a Great Swamp permit shotgun season permit. Only one deer may be taken in a given day.

(e) Great Swamp permit shotgun season permits are valid only in designated portions of the Great Swamp National Wildlife Refuge and are not transferable.

(f) Method: The taking of six deer of either sex and any age with a Great Swamp (Zone 38), permit shotgun season permit will be permitted in designated areas of the Great Swamp National Wildlife Refuge. A total of 600 Great Swamp shotgun permit season permits will be issued. Daily hunter quotas, hunt procedures and hunting methods in this area shall be provided by the U.S. Fish and Wildlife Service.

(g) Procedures for applying for a Great Swamp permit shotgun season permit will be the same as outlined for the permit shotgun season permit. (see N.J.A.C. 7:25-5.25 (h)), with the exception that applicants for the Great Swamp permit shotgun season permit must indicate Zone 38 on the application in the space reserved for deer management zone number.

(h)-(i) (No change.)

7:25-5.32-5.33 (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1988-89 season. However, hunting with firearms shall be prohibited on November 11, 1988 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.35 to 5.38 (No change.)

## DIVISION OF HAZARDOUS WASTE MANAGEMENT

## (a)

### Hazardous Waste Management: Definition of Authorized Facility, Generator Responsibility for Hazardous Waste Determination, Characteristics of EP Toxicity, Hazardous Waste from Specific Sources, General Facility Standards, Appendix A, Hazardous Waste Facility Permit Requirements, Existing Facilities, Transfer of Ownership or Operational Control and Public Participation in Permit Process

### Adopted Amendments: N.J.A.C. 7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, 9 Appendix A, 12.1, 12.3, 12.5, and 12.12

Proposed: November 2, 1987 at 19 N.J.R. 1936(a).
Adopted: July 6, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: July 11, 1988 as R.1988 d.377, **without change.**
Authority: N.J.S.A. 13:1E-6.
DEP Docket Number: 046-87-09.
Effective Date: August 1, 1988.
Expiration Date: November 4, 1990.

**Summary** of Public Comments and Agency Responses:

The comment period closed on December 2, 1987.

**No comments received.**

**Full text** of the adoption follows.

7:26-1.4 Definitions

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

. . .

"Authorized facility" means a hazardous waste facility which:

1. Has received a permit to operate from the United States EPA in accordance with the requirements of 40 CFR Parts 270 and 124; or

2.-3. (No change.)

4. Has received a permit or other permission to operate from a state authorized in accordance with 40 CFR 271; or

5.-6. (No change.)

. . .

7:26-8.2 Exclusions

(a) (No change.)

(b) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or associated non-waste-treatment-manufacturing unit, is not subject to regulation under N.J.A.C. 7:26-7 through 11 until it exits the unit in which it was generated, unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a)-(e) (No change.)

(f) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

1.-2. (No change.)

3. Either treat or dispose of the generator's hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

i. Permitted under 40 CFR 270; or

ii. In interim status under 40 CFR 270 and 265; or

iii. Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271; or

iv.-vi. (No change.)

(g)-(i) (No change.)

7:26-8.5 Hazardous waste determination: Generator responsibilities

(a)-(b) (No change.)

(c) If the waste generated is not a hazardous waste by reason of the operation of N.J.A.C. 7:26-8.1(a), then the generator shall, upon request by the Department, submit, in a timely manner on a schedule approved by the Department, a plan for analyzing the waste to detect the presence of hazardous waste constituents listed in N.J.A.C. 7:26-8.16 which the generator, through knowledge of the chemical composition of the waste in light of the materials and processes used, determines may be present in detectable quantities in the waste. The generator shall conduct the approved analysis plan and submit to the Department the results of the analysis as well as such other information as may be necessary to verify the data provided.

(d)-(e) (No change.)

7:26-8.12 Characteristics of EP Toxicity

(a)-(b) (No change.)

Table I
Maximum Concentration of Contaminants
for Characteristics of EP Toxicity

| EPA Hazardous Waste Number | Contaminant | Maximum Concentration (milligrams per liter) |
|---|---|---|
| ... | | |
| D012 | Endrin (1,2,3,4,10, 10-hexachloro-6, 7-epoxy-1, 4,4a,5,6,7,8,8a-octahydro-1, 4-endo, endo-5,8 diamethano nephthalene) | 0.02 |
| D013 | Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer) | 0.4 |
| ... | | |

7:26-8.14 Hazardous Waste from Specific Sources

| Industry | EPA Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|---|
| ... | | | |
| Veterinary Pharmaceuticals | K102 | Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds | (T) |
| ... | | | |

7:26-9.4 General facility standards

(a) The owner or operator of a facility shall comply with the notice requirements of this subsection.

1. The owner or operator of a facility which receives a new hazardous waste stream from an off-site source (except where the owner or operator is also the generator) shall inform the generator in writing that, the owner or operator has the appropriate permit(s) for, and will accept, the waste that the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

2.-3. (No change.)

(b)-(o) (No change.)

7:26-9 Appendix A: Wording of Instruments (See 40 Code of Federal Regulations 264.151)

(a)-(j) (No change.)

7:26-12.1 Scope and applicability

(a) (No change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1. (No change.)

2. A farmer who disposes of pesticide wastes generated by the farmer's own use in accordance with N.J.A.C. 7:26-9.1(c)5;

3.-11. (No change.)

(c) (No change.)

7:26-12.3 Existing facilities

(a) Any person owning or operating a hazardous waste facility which conforms to the definition of an "existing hazardous waste facility" (N.J.A.C. 7:26-1.4) may continue to operate the facility prior to final disposition of a permit application pursuant to this subchapter provided the owner or operator:

1. (No change.)

2. Has filed a Part A application for the facility in accordance with 40 CFR 270.10; or

3. In the case of an owner or operator of a hazardous waste facility not required to notify USEPA or file a Part A application pursuant to 40 CFR 270.10 and 270.70-270.73, has submitted a Part A application to the Department and applied for an EPA identification number within 90 days of the effective date of this subchapter; and

4. Operates the facility in accordance with the standards set out at (e) below.

(b) (No change.)

(c) Owners or operators making changes during operation prior to final disposition of a permit application shall comply with the requirements of this section.

1.-3. (No change.)

4. Changes in the ownership or operational control of a facility must be approved in advance by the Department.

i.-ii. (No change.)

iii. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the hazardous waste facility financial requirements of N.J.A.C. 7:26-9.10 through 9.13, until the new owner or operator has demonstrated to the Department that it is complying with those sections. All other duties are transferred effective immediately upon the date of change of ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 through 9.13, the Department shall notify the former owner or operator in writing that it no longer needs to comply with those sections as of the date of demonstration.

5. (No change.)

(d)-(h) (No change.)

7:26-12.5 Transfer of ownership or operational control

(a) (No change.)

(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:

1. A disclosure statement or alternative information statement prepared by the prospective new permittee meeting the requirements of N.J.A.C. 7:26-12.2(h);

2. (No change.)

3. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-9.10 through 9.13 will be met by the proposed new permittee.

(c)-(e) (No change.)

7:26-12.12 Public participation in the permit process

(a) The Department shall give public notice that the following actions have occurred:

1. (No change.)

2. A draft permit has been prepared pursuant to N.J.A.C. 7:26-12.11(a).

3. (No change.)

(b)-(o) (No change.)

(a)

## DIVISION OF SOLID WASTE MANAGEMENT
### Board of Public Utilities
### Interdistrict and Intradistrict Solid Waste Flow for Hunterdon, Morris, Ocean and Warren Counties
### Joint Adopted Amendment: N.J.A.C. 7:26-6.5.

Proposed: July 6, 1987 at 19 N.J.R. 1142(a).

Adopted: July 6, 1988 by Richard T. Dewling, Department of Environmental Protection, and July 6, 1988 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: July 6, 1988 as R.1988 d.357, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions not adopted.**

Authority: N.J.S.A. 13:1E-6, 13:1E-23, and 48:13A-1 et seq.

DEP Docket Number: 024-87-06.

Effective Date: August 1, 1988.

Expiration Date: November 4, 1990.

**Summary** of Public Comments and Agency Responses:

On July 6, 1987, the Department of Environmental Protection ("Department") and the Board of Public Utilities ("BPU") proposed an amendment to the waste flow rules at N.J.A.C. 7:26-6.5 to repeal that portion of the rule allowing solid waste generated within Warren County, Hunterdon County, and one municipality in Morris County, to be disposed of at the Ocean County Landfill. Notice of the proposed rule amendment was published in the July 6, 1987 New Jersey Register at 19 N.J.R. 1142(a). In addition, a Notice of Public Hearing, with a copy of the New Jersey Register notice attached, was issued by the Department of Environmental Protection to a distribution list of affected solid waste collector/haulers and public officials in Hunterdon, Morris, Ocean, and Warren Counties. Both notices invited written comments to be submitted on or before August 5, 1987.

A public hearing was held on July 21, 1987 at 2:00 P.M. at the New Jersey State Museum Auditorium in Trenton, New Jersey and was attended by two persons, one of whom testified. Two written comments were received during the comment period. The Department and the BPU have reviewed the transcript of the hearing and the written comments which were submitted during the comment period which closed on August 5, 1987.

The Department and BPU are adopting the rule amendment with substantive and technical changes not requiring additional public notice and comment. Since publication of the proposal and the close of the comment period, two emergency redirection orders have been issued which effect the direction of the waste streams for the municipalities which are the subject of these rule amendments. Two transfer stations were permitted in Morris County. Through an emergency redirection order, the Morris County Transfer Station, Inc., DEP facility number 1427F, located in the Township of Mt. Olive, is directed to accept type 10, 13, 23, 25, and 27 waste generated from 15 municipalities, including Washington Township. In June, 1988, the Warren County Resource Recovery facility began start-up operations. A certain portion of the Warren and Hunterdon County waste flow is being directed to the Warren County Resource Recovery facility for phase-in operations. Additional waste will be directed to the facility upon commencement of full operations. In addition, the Warren County landfill is being built and is expected to become operational in the near future. For these reasons, on June 1, 1988 the Department and BPU issued an emergency waste flow redirection order pursuant to N.J.A.C. 7:26-6.7, directing certain portions of the Warren and Hunterdon County generated waste stream to the Warren County Resource Recovery facility and to the Warren County landfill.

These changed circumstances and waste flow redirection orders make it necessary that the amendment proposed at 19 N.J.R. 1142(a) be adopted with change in part and not be adopted in part. The result of these changes is that the rules at N.J.A.C. 7:26-6.5 will properly reflect that Hunterdon County waste is being sent to the Hunterdon County transfer station.

The rule amendment at N.J.A.C. 7:26-6.5(k) directing Hunterdon County waste to the Hunterdon County transfer station is being adopted with a minor change. Hunterdon County waste will continue to be directed to the Hunterdon County transfer station; however, not all waste will be directed out-of-State. Pursuant to the June 1, 1988 redirection order and a July 23, 1986 Interdistrict Solid Waste Disposal Agreement between Hunterdon and Warren Counties, 100 tons of waste per day is being directed to the Warren County Resource Recovery facility and in some instances to the Warren County landfill. Therefore, the portion of the amendment directing waste out-of-state is not being adopted. In addition, the agencies are adopting the deletion of N.J.A.C. 7:26-6.5(p)11 which directed Hunterdon County waste to the Ocean County Landfill.

The rule amendment at N.J.A.C. 7:26-6.5(o) and (v) directing Warren County's and one municipality in Morris County's waste out-of-state is not being adopted. The agencies are retaining the language of the existing rule. Therefore, the agencies are not adopting the deletion of the text. This is shown as new text. In addition, the agencies are not adopting the deletion of N.J.A.C. 7:26-6.5(p)9, 10, and 12 (recodified as (p)11). N.J.A.C. 7:26-6.5(p)13 (recodified as (p)12) is also being retained, amended to delete references to deleted (p)11. This is also shown as new text. In Warren County, the waste is being directed to the Warren County Resource Recovery facility pursuant to the June 1, 1988 emergency redirection order. In Morris County, Washington Township's waste is being directed to the Morris County transfer station prior to disposal out-of-state pursuant to an emergency redirection order.

As stated above, the Warren County emergency redirection order will direct Warren County waste and a certain portion of the Hunterdon County waste to the Warren County Resource Recovery facility. The Morris County redirection order directs all municipalities in Morris County, including Washington Township, to the Morris County Transfer Station. The agencies will be amending the rules to reflect these changes.

The following is a summary of the comments received and the agencies' responses:

COMMENT: Why ask for public comments on a proposed amendment to State rules when the policy decision has already been made?

RESPONSE: The Department and the BPU have enumerated the reasons for proposing to repeal the High Point redirection order in the rule proposal notice (See 19 N.J.R. 1142(a)). The Department and the BPU seek public comments on the proposed policy decision pursuant to the requirements of the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.). The public comment period is designed to solicit comments regarding the rule proposal. All relevant comments submitted orally at the hearing or in writing are carefully considered by the Department and the BPU and do impact upon the decision to adopt the rule. No final decision has been or can be made by the Department and the BPU prior to or at the time of the public hearing nor can the decision be made prior to the expiration of the public comment period.

COMMENT: The Ocean County Solid Waste Advisory Council endorses the adoption of the proposed rule amendment.

RESPONSE: The Department and the BPU acknowledge the Ocean County Solid Waste Advisory Council's support of the proposed rule amendment. However, completion of the Warren County Resource Recovery facility and permitting of transfer stations in Morris County necessitate that the Department and BPU withdraw the amendments to N.J.A.C. 7:26-6.5(o), (p)9, 10, 12, and (v) and make minor changes to N.J.A.C. 7:26-6.5(k).

COMMENT: The Department and the BPU should further change the proposed amendment by providing solid waste haulers in Hunterdon County with the option of disposing waste at facilities other than the county owned transfer station.

RESPONSE: The rule as proposed conforms to the current district Solid Waste Management plan. The county needs to plan for the long range disposal of waste including alternative disposal should nearby out-of-state disposal options become unavailable. Therefore, the County needs to ensure the economic viability of the transfer station which can meet the future needs of the county.

COMMENT: The rule to redirect all Hunterdon County generated solid waste to the county owned transfer station, which was effective on October 7, 1985, was intended to supplement and not supplant the applicable existing waste flow rules (N.J.A.C. 7:26-6.5k(1) and (2)).

RESPONSE: The rule in question was in fact intended to supplant the existing waste flow rules as they pertain to Hunterdon County. As was stated in the New Jersey Register of October 7, 1985 (17 N.J.R. 2388(a)), "This rule is being adopted to ensure that collector/haulers will utilize the transfer station . . ."

COMMENT: If the Hunterdon County Municipal Utilities Authority decides to have the transfer station designated as the exclusive disposal facility for Hunterdon County, then application should be made to the BPU for a franchise designation pursuant to N.J.S.A. 48:13A-5.

RESPONSE: Under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), Hunterdon County is charged with developing its own solid waste management plan. As part of this plan, the county has decided to direct all district generated waste to the Hunterdon County Transfer Station. The Department has approved this component of the district plan. Existing BPU rules do not mandate that the county apply to the BPU for a franchise designation in order to operate the transfer station. A waste flow redirection is a temporary assignment of waste whereas a franchise is a long term assignment of waste.

COMMENT: Will the Hunterdon County Municipal Utilities Authority continue to be able to retain $18.00 to $25.00 per ton out of the tipping fee at the transfer station fee for discretionary purposes?

RESPONSE: Since the Hunterdon County Municipal Utilities Authority sets the tariff for the transfer station, BPU approval of this tariff is not required, including the practice of setting aside funds for discretionary purposes.

COMMENT: With adoption of this proposed amendment, waste flow rules within the State will cease to exist.

RESPONSE: The redirection of solid waste to out-of-state disposal facilities does not mean that the Department and the BPU have abandoned waste flow rules. When the Interdistrict and Intradistrict Solid Waste Flow Rules, N.J.A.C. 7:26-6, were promulgated, their purpose was to provide Department and BPU control over intradistrict disposal as well as short-term, in-state interdistrict solutions to solid waste disposal needs. As interdistrict solutions are no longer available, due to diminishing in-state landfill disposal capacity, the logical extension to the waste flow rules is the interim redirecting of waste to out-of-state disposal sites until in-state disposal sites are available. As in-state disposal sites are developed and facilities become available, as in the case of Warren County, the waste flow rules will again be amended to redirect waste to these in-state disposal sites.

COMMENT: With the adoption of this proposed amendment, the counties of Hunterdon, Morris, and Warren are denied access to intrastate disposal facilities.

RESPONSE: The State is presently confronted with a solid waste disposal crisis. As existing facilities close, due to reaching permitted capacity or other environmental reasons, and new facilities are not constructed in a timely manner, out-of-state disposal must be utilized. The High Point Redirection Order was among the last major in-state interdistrict redirection orders issued by the Department and the BPU. Since that time, no redirections have been issued nor are they expected to be issued, to allow for disposal in other districts by districts which have not adequately planned for indistrict disposal capacity. This is to ensure that the available capacity in districts that currently have adequate capacity to manage their disposal needs is not decreased.

Pursuant to a July 23, 1986 Interdistrict Solid Waste Disposal Agreement between Hunterdon and Warren Counties, Hunterdon County will be sending some waste to Warren County.

COMMENT: Will Hunterdon County collector/haulers continue to be denied the option of directly hauling waste out-of-state for disposal?

RESPONSE: The rule amendment under consideration is to deny the option of disposing at the Ocean County Landfill after waste has been transferred to and processed at the Hunterdon County Transfer Station. The existing rule and the amendment prevents haulers from directly hauling out-of-state.

COMMENT: Pursuant to the Browning Ferris Industries-Hunterdon County Municipal Utilities Authority contract, will the utility authority be required to modify or revoke the contract based on serious operational problems at the transfer station and the BPU's failure to regulate?

RESPONSE: The operational procedures at the Hunterdon County transfer station are not the subject of this rule amendment.

COMMENT: The Hunterdon County Transfer Station has ceased to be a low-cost disposal alternative as was originally stated in the rule proposal to redirect waste to that facility.

RESPONSE: The Hunterdon County Municipal Utilities Authority originally estimated that the tipping fee at the transfer station would be $35.16 per ton. An increase in the tipping fee occurred, not due to use of a transfer station, but due to an unanticipated change in out-of-state disposal options. The present tipping fee of $100.00 per ton is still competitive when compared to tipping fees at transfer stations presently operating in Essex County or anticipated tipping fees at transfer stations planned to be operational in Morris, Passaic, Somerset and Union Counties.

COMMENT: Has the BPU conducted an economic analysis comparing disposal costs for direct hauling to Pennsylvania landfills against hauling to the Hunterdon County transfer station?

RESPONSE: When the waste flow rule amendment directing solid waste generated within Hunterdon County municipalities to the Hunterdon County transfer station was proposed, the BPU appropriately assessed the economic impact of the proposed rule change.

COMMENT: The rule amendment which the Department and the BPU are presently considering violates the Interstate Commerce Laws by denying collector/haulers from hauling directly to out-of-state disposal facilities.

RESPONSE: It is the position of the Department and the BPU that this rule amendment does not impermissibly burden interstate commerce and is justified by the State's need to plan for and regulate solid waste disposal into the forseeable future. A Federal district court has upheld the constitutionality of the rule. The issue will be addressed in an appeal to the Third Circuit Court of Appeals. The Department and BPU will follow the guidance provided by the ultimate resolution of the litigation.

COMMENT: The Hunterdon County Municipal Utilities Authority has instituted a requirement of paying cash or providing a letter of credit before a load of solid waste may be disposed of at the Hunterdon County transfer station. This requirement is in violation of both the district Solid Waste Management plan and N.J.S.A. 13:1E-29(b).

RESPONSE: This requirement is not illegal as there are no BPU rules that address this issue. A similar practice is now being instituted at the Essex County transfer stations and the Edgeboro Landfill.

COMMENT: When the Hunterdon County transfer station was not operating for a few days in April 1987 due to the closing of the Keystone Landfill, a collector/hauler signed a contract to dispose of Hunterdon County solid waste directly at a Pennsylvania Landfill. Does a waste flow rule abridge or infringe upon a contractual relationship that was validly entered?

RESPONSE: Pursuant to the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., Hunterdon County is empowered to develop and implement a comprehensive solid waste management plan. As part of that plan, Hunterdon County developed a transfer station in Clinton Township and, on October 7, 1985, a waste flow rule amendment became effective which directed all waste generated within the county to that facility prior to final disposal. When the Hunterdon County transfer station was inoperative for a few days, the county was negotiating for another contract. A contract was signed and operations at the county transfer station resumed. Since Hunterdon County is responsible for addressing and resolving the disposal needs of the county, the collector hauler in question should have awaited further county action and should not have negotiated a disposal contract on his own. In addition, N.J.S.A. 13:1E-29(b) clearly prohibits executing any contract for solid waste disposal which is not in conformance with the approved district solid waste management plan for the district affected. Accordingly, the above referenced contract was and is illegal.

COMMENT: Hunterdon County has not complied with its Department approved district solid waste management plan which provides for an in-county disposal facility.

RESPONSE: The comment does not bear directly on the proposed amendment. However, on October 2, 1981, the Department issued a Certification of Approval with Modification of the Hunterdon County District Solid Waste Management Plan. The approved district plan calls for the development of a county transfer station, a regional resource recovery facility, and the disposal of solid waste at the High Point Landfill or any other landfill designated in the approved Warren County District Solid Waste Management Plan. Subsequent to this approval, Warren County and Hunterdon County signed an interdistrict agreement which provided for a resource recovery facility and a landfill to be developed within Warren County. This agreement was later declared to be invalid and the two counties signed another interdistrict agreement which provides for Hunterdon County to dispose of 100 tons per day of processible solid waste for twelve years at the under Warren County resource recovery facility. Hunterdon County continues to examine in-county landfill sites and to pursue out-of-county disposal arrangements for the balance of Hunterdon County's solid waste.

COMMENT: *A. A. Mastrangelo v. Department of Environmental Protection*, 90 N.J. 666, 449 A2d. 516 (1982), established that the Department and BPU may direct waste flows to facilities under their jurisdictions. However, the Department and the BPU have no jurisdiction over the Hunterdon County Municipal Utilities Authority. Therefore, how can the Department and the BPU direct a public utility (collector/hauler) to a non-public utility.

RESPONSE: Under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), districts (counties) are charged with developing and implementing solid waste management plans which address the disposal needs of their districts. Hunterdon County has developed a plan which relies upon the Clinton Township transfer station as an integral plan component. The county has decided that the needs of the district are best served by the creation of a municipal utilities authority to exercise jurisdictional control of the transfer station. As a result of *A. A. Mastrangelo*, the BPU has the authority to direct waste flows within a district and the Department has the authority to direct waste flows between districts. The Court stated that the BPU had the authority to direct individual solid waste collectors to collect and transport waste streams to specific disposal sites and require or designate specific disposal facilities as the ultimate destination of particular waste streams. Since the BPU can only direct waste within Hunterdon County and the transfer station is the only operating solid waste facility within the district, the BPU has no alternative but to direct waste to the transfer station. Regarding interdistrict waste flows, the Department has decided, at least on an interim basis, to direct Hunterdon's solid waste to out-of-state facilities rather than in-state disposal facilities. Finally, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-27,

> Any solid waste facility constructed, acquired or operated pursuant to the provisions of this amendatory and supplementary act shall be deemed a public utility and shall be subject to such rules and regulations as may be adopted by the Board of Public Utility Commissioners in accordance with the provisions of the "Solid Waste Utility Control Act of 1970" (P.L. 1970, c.40, C. 48:13A-1 et seq.)

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:26-6.5 District waste flow planning requirements and disposal facility designations.

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designated specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, described in this section.

(a)-(j) (No change.)

(k) Waste flows within, into and out of the Hunterdon County District:

1. All solid waste types 10, 13, 23, 25, *[ad]* ***and*** 27 generated from within the Hunterdon County municipalities of Alexandria, Bethlehem, Bloomsbury, Califon, Clinton Town, Clinton Township, Delaware, East Amwell, Flemington, Franklin, Glen Gardner, Hampton, High Bridge, Holland, Kingwood, Lambertville, Lebanon Boro, Lebanon Township, Milford, Raritan, Readington, Tewksbury, Union and West Amwell shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County*[, prior to disposal at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.]*

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Stockton and Frenchtown shall be transported to the Hunterdon County transfer station, facility number 1006B, located in Clinton Township, Hunterdon County*[, prior to disposal at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.]*

(l)-(n) (No change.)

(o) Waste flows within, into and out of the Morris County District:

1.-10. (No change.)

11. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of *[at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state]* ***the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey***.

***i. All solid waste directed to the Ocean County Landfill Corporation landfill may be disposed of out-of-state when such disposal is in compliance with the laws and regulations of the receiving state.***

12. (No change.)

(p) Waste flows within, into and out of the Ocean County District:

1.-8. (No change.)

***9. All waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Borough, and Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.**

**10. All waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.***

***11. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.***

***12. All wastes directed to the Ocean County Landfill Corporation landfill from Warren*** *[, Hunterdon]* ***and Morris County municipalities as set forth in (p)9, 10*** *[, 11]* ***and 12 above may be disposed of at out-of-state facilities when such disposal does not violate any law or regulation of the receiving state.***

(q)-(u) (No change.)

(v) Waste flows within, into and out of the Warren County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Boro, and Washington Township shall be disposed of at *[out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state]* ***Ocean County landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey***.

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Franklin, Greenwich, Harmony, Lopatcong and Pohatcong ***are permitted to utilize disposal facilities out-of-state, so long as these municipalities or collector/haulers which services these municipalities are able to pursuant to law. In the event that any of these municipalities are unable to continue disposal of solid waste out-of-state landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.*** *[shall be disposed of at out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.]*

3. All solid waste types 13 and 23 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at Belvidere-White Landfill, facility number 2123A, located in White Township, Warren County, New Jersey.

i. Upon closure of the Belvidere-White Landfill, waste types 13 and 23 shall be disposed of at the ***Ocean County Landfill Corp. landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.*** *[out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.]*

4. All solid waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at the ***Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.*** *[out-of-state facilities so long as such disposal does not violate any law or regulation of the receiving state.]*

***5. All solid waste types 10, 13, 23, 25, and 27 generated from within Warren County municipalities as set forth in (v)1, 3, and 4 above are permitted to be disposed of out-of-state facilities so long as the municipalities or any collector/hauler which services the municipalities are able pursuant to any law or regulation of the receiving state.***

## (a)

### Public Participation in the Permit Process
### Adopted Amendment: N.J.A.C. 7:26-12.12

Proposed: April 4, 1988 at 20 N.J.R. 715(b).
Adopted: July 6, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: July 11, 1988 as R.1988 d.375, **without change.**
Authority: N.J.S.A. 13:1E-6.
DEP Docket Number: 012-88-03.
Effective Date: August 1, 1988.
Expiration Date: November 4, 1990.

**Summary** of Public Comments and Agency Responses:
The comment period closed on May 4, 1988.
**No comments were received.**

**Full text** of the adoption follows.

7:26-12.12 Public participation in the permit process
(a)-(n) (No change.)

## (b)

### Toxic Catastrophe Prevention Act Confidentiality and Trade Secrets
### Adopted New Rules: N.J.A.C. 7:31-2.12, 2.15 and 7:31-5
### Adopted Amendments: N.J.A.C. 7:31-1.5, 2.16, 2.17 and 6.3

Proposed: February 16, 1988 at 20 N.J.R. 350(a).
Adopted: July 11, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: July 11, 1988 as R.1988 d.378, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and specifically N.J.S.A. 13:1K-29.
DEP Docket Number: 002-88-01.
Effective Date: August 1, 1988.
Expiration Date: June 20, 1993.

**Summary** of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting N.J.A.C. 7:31-5 establishing the principles, guidelines and procedures governing the internal management of confidential information supplied to the Department by registrants as mandated by the Toxic Catastrophe Prevention Act ("TCPA" or "the Act"). The rules also establish procedures for the assertion, substantiation, review and appeal of both confidentiality claims to withhold from public disclosure certain information required to be submitted to the Department, and petitions to withhold from the Department certain privileged trade secret and security information which would otherwise be required to be submitted to the Department pursuant to the Act or the TCPA program. The Department is also adopting N.J.A.C. 7:31-2.12, which sets forth the Department's right to inspect and the registrant's responsibilities and rights during inspections of sites to determine compliance with the Act and this chapter; and N.J.A.C. 7:31-2.15, which establishes the administrative procedures that will be followed to obtain information concerning risks at EHS facilities from insurance carriers which underwrite any part of the environmental liability or worker's compensation insurance for a registrant's site.

These rules, which were proposed on February 16, 1988 at 20 N.J.R. 350(a), withdrew the inspection, N.J.A.C. 7:31-2.12, and insurance, N.J.A.C. 7:31-2.15, sections which were originally proposed on September 21, 1987 at 19 N.J.R. 1687(a) as part of the TCPA program rules, N.J.A.C. 7:31-1, 2, 3 and 4, and included them in the proposal for these rules. Therefore, all comments on inspections and insurance received in response to the 19 N.J.R. 1687(a) proposal or to the proposal for these rules are responded to in this adoption notice, along with all comments concerning confidentiality and trade secrets received in response to either proposal.

The proposed sections concerning definitions, (N.J.A.C. 7:31-5.12), required signatories and certification, (N.J.A.C. 7:31-5.14), and adjudicatory hearings, (N.J.A.C. 7:31-5.15), have been incorporated into the provisions of N.J.A.C. 7:31-1.5, Definitions, N.J.A.C. 7:31-2.17, Required signatures and certifications, and N.J.A.C. 7:31-6.3, Procedures to request an adjudicatory hearing, respectively, in order to provide a better organized, more easily referenced and comprehensive chapter covering the TCPA program. In addition, N.J.A.C. 7:31-5.13(a) and (b), concerning fees for the review of confidentiality claims and petitions to withhold privileged trade secret and security information, have been recodifed as N.J.A.C. 7:31-2.16(n) and (o) to provide one all-inclusive fee section for this chapter. Public hearings were held on March 9 and 10, 1988 to provide interested persons the opportunity to present testimony on the proposed rules and the comment period was held open until April 6, 1988 (see 20 N.J.R. 554(a)). The Department received written comments from eight persons and two people presented comments at the public hearings.

The following is a summary of the comments received and the Department's responses:

COMMENT: The first sentence of the Summary of proposed N.J.A.C. 7:31-5 states that the TCPA requires that industries develop programs for the management of risks. This should be changed to indicate that industries either disclose their programs or develop programs for the management of risks. The proposed change recognizes that programs for the management of risks in fact do exist at many sites.

RESPONSE: The Department does recognize that risk management programs exist at many facilities throughout the State. However, no change is necessary as the Summary statement of the proposal is not part of the rule, which at N.J.S.A. 7:31-2.6, 2.7 and elsewhere, specifically provides for the fact that many registrants do have established risk management programs.

COMMENT: In general, the proposed confidentiality rules are far in excess of any existing governmentally specified submittal or disclosure requirements. The Department's proposal unnecessarily allows or requires essentially all extraordinarily hazardous substance (EHS) facility documents to be submitted which could be publicly disclosed as decided by the Department. Also, the Department should recognize that malicious intent is possible, and that disclosure of the proposed document submittals could directly result in serious accidents by the actions of undesirable elements.

RESPONSE: These rules are generally consistent with the confidentiality provisions in effect for other Department programs such as the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., located at N.J.A.C. 7:26B-8, and the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., located at N.J.A.C. 7:1G-6, programs. Both of these programs also require the submittal of confidential documents to the Department, but do not permit the withholding of certain privileged trade secret information which is possible under the Act, N.J.S.A. 13:1K-29(b), in accordance with the procedures, specified at N.J.A.C. 7:31-5.6 and 5.7. Thus, the rules are not in excess of existing governmental disclosure requirements. Generally, all public information, as defined by the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., collected by or originated by the Department in connection with the Act or the TCPA Program rules will be available to the public. However, information claimed by a registrant as constituting confidential information and determined by the Department to be entitled to such treatment in accordance with these rules will not be released to the public.

In fact, the Department has attempted to streamline the reporting requirements of the TCPA program in order to minimize the submittal of EHS facility documents while ensuring that the Department has access to all the information necessary for a complete and proper review of covered facilities. Such measures include the completion of a checklist reporting system by the facility, a summary risk management program statement, which has been revised to require less information to be submitted to the Department, and the requirement to submit to the Department only a catalog list of the documents held at the facility. The documents on the catalog list need not be supplied to the Department until requested, and, except for those documents needed to support consent agreements, administrative consent orders, and administrative orders, the Department plans to inspect these documents outside of the facility only in special circumstances.

The Department recognizes that serious consequences could result from the unauthorized disclosure of certain EHS facility information to undesirable elements and for this reason protection of document submittals has been provided for in N.J.A.C. 7:31-5.8. This includes provisions for the designation of records custodians, storage of confidential information only in locked cabinets, a 24-hour security system, a system for tracking and recording all confidential information, access on a "need to know" basis only, and the use of limited computer access and password identification procedures. The safeguards provided are considered adequate for the prevention of access by undesirable elements.

Therefore, no change to the rules has been made.

COMMENT: The information generated by the proposed rules should be more accessible to the public. To deny public access to information in the name of confidentiality is wrong when that information concerns possible health effects on the public from chemicals used at a nearby site. There are no provisions for public access to information such as risk assessments, process chemistry, inventory, standard operating procedures and site plans. How can the Department and each town's emergency action program prepare for any emergency if the companies that hold hazardous waste or chemicals do not disclose such information to the Department or to the public? Nothing should be withheld from the Department and the Department should pass this information on to the municipalities.

RESPONSE: Generally, all public information, as defined in the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., collected by or originated by the Department in connection with the Act or these rules will be available to the public. The Act, at N.J.S.A. 13:1K-29a, requires the Department to adopt rules to govern the internal management of confidential information supplied to it pursuant to the Act. N.J.A.C. 7:31-5 represents the Department's attempt to balance the registrants' right to maintain the confidentiality of their information against the public's right of access to the State's decision making records. Information claimed by a registrant as constituting confidential information in accordance with N.J.A.C. 7:31-5.4 and determined to be entitled to confidential treatment pursuant to the criteria established in N.J.A.C. 7:31-5.5 will not be released to the public. However, N.J.A.C. 7:31-5.3(a) provides a list of information which will not be considered as confidential by the Department and includes information relevant to the possible health effects on the public of chemicals used at the EHS facility. This information may be used by local committees in planning a course of action in the event of an emergency. An edited public copy of any other information submitted to the Department pursuant to this Act, with any confidential information deleted, will also be available upon the receipt of a written request to the Department. This includes information such as risk assessments, process chemistry, inventory, standard operating procedures and site plans. In addition to providing protection for confidential information, the Act, at N.J.S.A. 13:1K-29b, also provides that a registrant may petition the Department to withhold certain privileged trade secret and security information from the Department in order not to competitively disadvantage the facility or compromise the security of the facility. N.J.A.C. 7:31-5.6 and 5.7 provide the procedures and criteria for determination of petitions to withhold privileged trade secret or security information. Also, N.J.A.C. 7:31-5.3(b) provides a partial listing of the types of information and records which may not be the subject of a petition to withhold privileged trade secret or security information, because they are necessary for the proper implementation of the Act or are required to be disclosed to other governmental agencies or entities pursuant to Federal or state law or regulation. The Department believes these rules effectively balance the Department's need to have access to the information necessary to carry out the mandate of the Act against the registrant's desire to protect its confidential or its privileged trade secret or security information from unnecessary disclosure.

Finally, the Act also provides, at N.J.S.A. 13:1K-32, that the Department shall make every effort to involve hazardous materials advisory councils, local government officials, and other pertinent entities in explaining actions taken in regard to facilities in their areas.The Department is currently developing plans to incorporate the TCPA program into the other community awareness and emergency response planning programs, such as the Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-1 et seq., and the Federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 et seq.

COMMENT: The proposed confidentiality and trade secret rules exceed the scope and intent of the TCPA, N.J.S.A. 13:1K-19 et seq. Nowhere in the Act is it stated or implied that significant amounts of confidential information would be supplied to the Department and certainly not for the Department's analysis of the potential risk of the use of EHS's as stated in the summary of the proposed rules.

RESPONSE: The act, at N.J.S.A. 13:1K-29a, specifically requires the Department, pursuant to rule, to adopt principles, guidelines, and procedures governing the internal management of information supplied to the Department pursuant to the Act. The Act further requires that information obtained shall be disclosed only to the Department's employees or agents to assist in enforcing the Act, or for use in civil or criminal proceedings, if so ordered by a court, and shall include, but not be limited to requirements: 1. That all confidential information supplied be labeled as such by the facility owner; 2. That the receipt of such information be acknowledged in writing by an authorized employee of the Department; 3. That a review procedure be established by which only specifically designated personnel be authorized access to such information and then only on a "need-to-know" basis; and 4. That the Department establish secure areas for storage of such confidential information. Also, the Act, at N.J.S.A. 13:1K-27b, requires the Department to develop, establish and enforce a system of recordkeeping, which shall require the owner or operator of a registered facility to report to the Department on all risk assessment and risk reduction efforts, all ongoing maintenance measures, all unanticipated and unusual events, and any other information the Department deems appropriate and which shall be designed to prevent the destruction or alteration of information and data contained in the records. In view of the broad requirements and authority provided by the Act, the rules are well within the scope of the Act and no change will be made. Regarding the comment that the Act does not state or imply that confidential information would be used by the Department for its analysis of the potential risk of the use of EHS's, inasmuch as the Act specifically provided for the adoption of rules governing confidental information, N.J.S.A. 13:1K-29, and the establishment of a recordkeeping and reporting system for owners and operators of registered facilities, N.J.S.A. 13:1K-27b, and as the Legislature declared, at N.J.S.A. 13:1K-20, that the single most effective effort to be made toward the prevention of environmental accidents involving extremely hazardous substances is by anticipating the circumstances that could result in their occurrence and taking those precautionary and preemptive actions required, it is clearly the intent of the Act that the Department use any confidential information submitted to it in analyzing and reducing the risk involved in using EHS's. Finally, the Act establishes procedures and requirements for risk management program review and provides for Department determinations as to the acceptability of a registrant's risk management program.

COMMENT: Documents such as engineering diagrams, process chemistry, operating instructions, accident investigation reports, safety procedures and emergency response procedures should remain at the site. The rules should be reworded to allow for review of documents at the Department under unusual circumstances only. There should be strict rules governing confidentiality in this area because the public and the media may construe unlikely scenarios as probable occurrences. In addition, many accident scenarios addressed by a hazard analysis are highly unlikely.

RESPONSE: Engineering drawings, process chemistry, and operating instructions, etc., will generally be permitted to be maintained at the site, except for those documents needed to support consent agreements, administrative consent orders and administrative orders. Additionally, the Department is reserving the right to require that documents be submitted to it when it deems it necessary to review or maintain them at the Department's offices for the effective implementation of the Act and the TCPA program.

The Department agrees that many accident scenarios addressed by hazard analysis may be highly unlikely events and registrants may, in accordance with N.J.A.C. 7:31-5.4, claim that information resulting from a hazard analysis is entitled to be treated as confidential information. Finally, the Department believes that the procedures specified in N.J.A.C. 7:31-5.8 for maintaining the confidentiality and security of confidential information are adequate for this purpose. Therefore, no change has been made.

COMMENT: One commenter submitted a detailed proposal which listed those portions of the rules which required documentation to be provided to the Department and indicated for each such requirement whether it was appropriate for that documentation to be submitted to the Department, to be maintained on site for review by the Department or not to be maintained by the registrant at all. The majority of the information submitted pursuant to the proposed rules is certain to contain confidential business information. Is the State going to be in a position to provide hundreds of file drawers with locks for the monumental quantity of documents they are going to receive? In considering which documents are to be submitted and which documents are to be maintained on site available for review by the Department at any time, one must balance the State's desire for possession of confidential and proprietary information versus the potential severe economic liability to the registrant. The reports of safety reviews, hazard analyses, and risk assessments which are required to be submitted should instead be maintained at the site. Though it is not specifically requested to be submitted to the Department, all information regarding the risk management program should be maintained at the site.

Finally, concern was expressed that hazard analyses and risk assessments in particular are confidential and proprietary information, and that such sensitive information should not be deposited in the Department's files.

RESPONSE: The Department is retaining the right to have confidential information submitted to its office for review. Except for those documents needed to support consent agreements, administrative consent orders and administrative orders, in most cases it is anticipated that the information will not be submitted to the Department but rather will be permitted to be retained on site for review during inspections. It is not the intent of the Department to require burdensome amounts of paperwork to be submitted and stored at its offices. The Department has reviewed the documentation requirements of the rules in view of this comment and has determined that all the required documents are needed by the Department to effectively implement and carry out the Act and the TCPA program.

The Department is aware of the sensitivity of the documents to be submitted and has, in N.J.A.C. 7:31-5.8, established appropriate and adequate procedures to maintain confidentiality, including locked cabinets, secured computer data bases, and the designation of records custodians responsible for acknowledging and recording the receipt of all confidential information received and for tracking and recording all confidential information given to Department-designated employees or agents.

COMMENT: The proposed rules imply that the Department is directly responsible to manage the chemical industry's EHS process safety programs. Hence the Department and its agents and employees would be legally liable for any EHS accidents.

RESPONSE: N.J.A.C. 7:31-5 provides for the assertion, substantiation, review and appeal of confidentiality claims and petitions to withhold privileged trade secret and security information, and establishes the principles, guidelines and procedures for the internal management and disclosure of confidential information provided to the Department pursuant to the TCPA program. However, nowhere do these rules, or the remainder of the TCPA program rules, N.J.A.C. 7:31-1, 2, 3, 4 and 6, or the Act imply that the Department is directly or indirectly responsible for the management of the chemical industry's EHS process safety programs or that it is in anyway legally liable for any EHS accidents.

COMMENT: The Department estimates that two-thirds of the facilities subject to the Act will not have confidential information, privileged trade secret or security information at their facilities. While water or wastewater facilities probably will not have such information, several commenters questioned this estimate as most of the chemical manufacturing facilities are expected to identify substantial privileged trade secret and security information in addition to confidential information. Access to such proprietary information as piping and instrument diagrams (P&ID) and process flow diagrams would enable competitors to duplicate processing and jeopardize the competitive advantage gained through research and development.

One commenter expressd the chemical industry's business need to hold most of its documentation and all equipment construction as privileged trade secret or security information and urged the Department to reassess the scope of the proposed rules.

RESPONSE: As of September 1987, the TCPA registrant population consisted of two main categories: 579 water/wastewater registrants and 225 industrial registrants. Chemical manufacturing registrants numbered 113. The Department estimate that approximately two-thirds of the facilities subject to the Act will not have confidential information or privileged trade secret or security information is based on the assumption that water and wastewater treatment registrants will either not claim or have such information at their facilities.

The Department recognizes the chemical industry's business need and desire to maintain certain information as privileged trade secret or security information. If this information meets the criteria specified in N.J.A.C. 7:31-5.7(g) and is not excluded from consideration as privileged trade secret or security information pursuant to N.J.A.C. 7:31-5.3(b), the Department will grant a registrant's petition and the registrant will not have to disclose that privileged information to the Department.

The Department has reviewed the scope of the rules in view of this comment and has concluded that it has properly balanced its need to have access to certain information in order to effectively carry out the mandate of the Act against the need and desire of the regulated community to protect its confidential or its privileged trade secret or security information from unwarranted and unnecessary disclosure. Therefore, no change has been made.

COMMENT: A major concern expressed by several commentors is that the proposed new rules will drive research and development facilities of manufacturing and service firms out of New Jersey in the long term. Research and development work by pilot plants and other plants in between commercial operations is often highly confidential and consists of many potential trade secrets. These facilities must be exempt from the rule to allow transition to industrial scale facilities. The research and development exception in the definition of "facility" included in Act should be applied to EHS facilities for at least two years to allow for commercial operation to evolve from process and/or market development. Otherwise severe economic dislocation will result from discontinuance of research and development activities in New Jersey.

RESPONSE: Research and development laboratories are exempted from the provisions of the rule pursuant to the Act, at N.J.S.A. 13:1K-21h, in that the definition of "facility" specifically exempts a specially designated area used primarily for research, development and testing activity and not primarily involved in the production of goods for commercial sale, in which an EHS is used by or under the supervision of a technically qualified person.

Research and development work conducted at facilities which do not qualify for the above exemption may also be protected from unnecessary disclosure by a registrant submitting either a confidentiality claim in accordance with N.J.A.C. 7:31-5.4, or a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-5.6.

In view of the significant protection provided by the rules for confidential information and the registrant's right to withhold certain privileged trade secret or security information from the Department, no further exemption for research and development activities is considered necessary and no significant economic dislocation is expected to occur. Therefore, no change has been made to the rules.

COMMENT: The registrant whose security of confidential, privileged trade secret or security information has been violated must be recognized to have the legal authority to criminally prosecute the violator for wrongful disclosure, whether it be the Department and/or Department employees.

RESPONSE: The Act itself does not provide that the wrongful disclosure of confidential information held by the Department constitutes a criminal act, and the authority to criminally prosecute a violator for wrongful disclosure of confidential information would be exercised by the appropriate law enforcement agencies, not by the registrant whose confidential information has been wrongfully disclosed. While the Department itself is immune from any criminal liability, its officers and employees may be criminally liable for the wrongful disclosure of confidential information under the provisions of N.J.S.A. 2C:30-2, Official misconduct, or N.J.S.A. 2C:30-3, Speculating or wagering on official action or information, and former officers and employees may be criminally liable under N.J.S.A. 52:13D-17, Representation on matter in which directly involved during State service. In addition, a registrant is free to pursue any of the civil remedies otherwise available to it, including seeking a restraining order or injunction barring further disclosure, as well as monetary damages. Also, N.J.A.C. 7:31-5.10(d) and (e) specify the actions which the Department may take against any person who wrongfully gains access to or discloses any confidential information obtained pursuant to the Act, including dismissal, suspension, fine or other adverse personnel action against a Department employee. Therefore, an employee or former employee of the Department who wrongfully discloses confidential information may face the possibility of criminal prosecution, and a separate $5,000 penalty.

COMMENT: N.J.A.C. 7:31-2.12 goes far beyond the statutory authority of the Act and gives the Department the right of warrantless search. N.J.A.C. 7:31-2.12 is invasive of privacy and in violation of property rights. Secret information might be revealed during an employee inteview and there would be no chance to ask for protection in writing. Interviews should be limited to those employees who might reasonably have information related to the issue of compliance. Such inspections can only be conducted based on probable cause and must be reasonably related to determining compliance status. In some instances, there are contractual terms prohibiting sketches or photographs of proprietary processes or machinery. The inspections should only apply to EHS facilities and not other site facilities; they should be limited to reasonable times and the right to test, sample, photograph or sketch should be limited only to portions of an EHS facility. Also, in some cases, photographs of field equipment are considered trade secret or security information and must not leave the site, if they are allowed at all. As another alternative, all references to photographs, sketches, prints and negatives should be deleted from N.J.A.C. 7:31-2.12.

The Department and its employees should be subject to criminal or civil liabilities if the confidentiality of the registrant's EHS facility or process is breached. Individuals conducting inspections should be fully qualified and the Department and its representatives should be subject to the safety guidelines and safety clothing restrictions made a part of the risk management program.

Disclosure of confidential information should be required only for cause and not at the whim of the individual inspector. In fact, submission of documents should be requested formally and should not be required at the time of inspection. A warrant or subpoena procedure is the least that should be required.

RESPONSE: Pursuant to the Act, at N.J.S.A. 13:1K-27a, the Department has the right to enter any facility at any time to verify compliance with the provisions of this Act. Therefore, the Department does have the legal authority to conduct unannounced inspections and neither a search warrant nor a subpoena is required. The individual inspector may request access to those parts or portions of any materials, equipment, documents or records at the site necessary to verify compliance with the TCPA program. Thus, all EHS related equipment, structures and procedures are subject to inspections in order to determine compliance. However, if the registrant has properly filed a petition to withhold privileged trade secret and security information, which has not been denied by the Department, the registrant may withhold such information from the Department during an inspection. This would, of course, preclude photographs and/or sketches of any equipment which constitutes privileged trade secret or security information. The fact that a registrant has agreed with another party not to permit the photographing or sketching of proprietary processes or machinery is not by itself sufficient to entitle these processes or machinery to privileged trade secret information status nor is the Department bound to the times of contracts to which it is not a party. The registrant must also petition the Department to withhold the information as privileged trade secret or security information and the petition must satisfy the criteria in N.J.A.C. 7:31-5.7. While N.J.A.C. 7:31-2.12(a) provides the Department with the right to interview any employee or representative of the owner, operator or registrant, such interviews will be limited to information related to the issue of compliance with the Act and this chapter. It is the registrant's responsibility to ensure that its employees do not disclose privileged trade secret or security information during such interviews.

Any representatives of the Department conducting an inspection will be fully qualified and will follow the same safety requirements followed by the registrant's personnel that are escorting the Department representatives.

The criminal and civil liability of the Department and its employees for a breach involving a registrant's confidential information was discussed in the proceeding response. In addition, it is noted that the civil liability of the Department will depend on a number of factors, including: the facts of the case; the nature of its employees' actions, that is, were the actions criminal, or did they involve actual fraud, malice or willful misconduct, and were they discretionary acts or ministerial acts; and the application of the New Jersey Tort Claims Act, N.J.S.A. 59:2-1 et seq.

The same section of the Act, N.J.S.A. 13:1K-27, which gives the Department the right to enter any facility at any time to verify compliance with the Act also requires the Department to establish and enforce a system of recordkeeping for registrants. The Department has determined that in most cases it is not necessary that all required documents be submitted to the Department's offices, and that many such documents, including some containing confidential information, can be maintained by the registrant at the site. Therefore, N.J.A.C. 7:31-2.12(b)2 provides that any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or be submitted to the Department during an inspection. This disclosure of confidential information to Department employees during inspections is necessary to verify the registrant's compliance with the Act. Therefore, no change has been made to the rules.

COMMENT: The proposed requirements of N.J.A.C. 7:31-2.12 should reference the language of the Act which states that "facility owners or operators shall be under no obligation to employ any personnel solely to assure access to the facility by the Department when this access would otherwise be impossible". The Department should schedule inspections in advance. Manpower on the off-shifts is generally available to safely operate and maintain the facility, but not to attend to special visits, inspections, etc. The responsibility to comply by a shift supervisor in the absence of a plant manager or safety supervisor would be less than ideal. It may be necessary to call in personnel to safely escort Department personnel through an EHS area.

RESPONSE: Inasmuch as the Act, at N.J.S.A. 13:1K-29a, provides that facility owners or operators are not obligated to employ personnel solely to assure access to the facility by the Department and as the Department is not specifying any staffing requirements, other than the requirement in N.J.A.C. 7:31-3.5(c)15 that an EHS operator be in attendance at the EHS facility, except for three specified exemptions, it is unnecessary to repeat this language in the rule.

While the Department may provide advance notice of inspections to facilities in many cases, not all inspections will be scheduled in advance or be conducted during normal business hours. Although the Department recognizes that staffing during off-shifts may be minimal, the Act, at N.J.S.A. 13:1K-29a, provides the Department with the right to enter any facility at any time to verify compliance with the Act, and Department will undoubtedly conduct some inspections without advance notice during other than normal business hours in order to observe TCPA compliance efforts under various circumstances. Therefore, no change will be made.

COMMENT: In reference to proposed N.J.A.C. 7:31-2.12(b)1, the second and third sentences appear to conflict. The second sentence indicates that any materials disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged thereafter. The third sentence states that, "The fact that such trade secret or security information has been disclosed to or submitted to the Department shall not prohibit the registrant from asserting a confidentiality claim concerning such information." It would be better to say that the information will be considered confidential until there is a ruling to the contrary.

RESPONSE: The second and third sentences of N.J.A.C. 7:31-2.12(b)1 do not conflict. The rule establishes two categories of information; that is, privileged trade secret or security information which is not required to be disclosed to the Department, and confidential information which is required to be disclosed to the Department but which will not be publicly released by the Department. The second sentence provides that privileged trade secret and security information disclosed to the Department can no longer be withheld from the Department as privileged. However, such information can still be claimed as confidential information and not be released as public information, as provided by the third sentence of N.J.A.C. 7:31-2.12(b)1. Therefore, no change has been made.

COMMENT: The frequency of inspection proposed in N.J.A.C. 7:31-2.12(b) should be extended form once per year to once every two years, or it could be based on the results of previous inspections/audits or EHS handling performance. Or, possibly, a one time inspection would suffice with follow up inspections based upon "incident frequency" to better utilize the Department's time for the 741 governed industries in the State.

RESPONSE: The intent of the Department is to inspect each site at least once a year to verify compliance with the rules. In some cases, however, this may vary depending on the complexity of the operation, the potential for a significant EHS release, and the number of releases. This frequency is considered appropriate and adequate as it will allow the Department to monitor the updating of procedures and the implementation of remedial actions, as well as to verify the accuracy of th annual report. The suggestions to reduce the frequency of inspections or to base them on incidents, audits or handling performance would not allow the Department to monitor a facility's implementation of its risk management program on a consistent basis. Thus, where it is practical, facilities will be inspected once per year to verify compliance with requirements of the regulations. Therefore, no changes have been made to the rules.

COMMENT: In N.J.A.C. 7:31-2.12(d), "within a reasonable time" is too vague. The Department should furnish an inspection report in a specified amount of time following the inspection, such as 30 days or 90 days. Reasonable time is undefined and does not appear anywhere in the chemical industry's timing requirements. Accordingly, it should not be applied to the Department.

RESPONSE: While the intent of the Department is to furnish inspection reports within a reasonable period of time following inspection of facilities, to require a specific time frame for responding, such as 30 or 90 days, would place an undue burden on the Department. However, the Department intends to respond promptly after all inspections. The lack of a specified time frame for the Department to issue an inspection report should in no way inhibit the operation of a registrant's facility.

COMMENT: In reference to the proposed N.J.A.C. 7:31-2.12, third party inspection is necessary to ensure total compliance with the audit and reporting requirements. Self-regulation, which is allowed by proposed N.J.A.C. 7:31-3.11(b)2, for example, has been proven ineffective in many cases. In some cases involving self-regulation, oversights can result from ignorance. For example, inspectors are not always aware of current changes in codes. In other cases, "oversights" are deliberately made so that a particular plant would not have to shut down for repairs. Third party inspection will ensure that all rules are applied unbiased across the board, will provide the Department with a fair overall appraisal of the program, and will define state of the art for the entire field.

RESPONSE: The Department does not agree that third party inspections are necessary to ensure compliance with the audit and reporting requirements of the Act. The Department believes that inspections conducted on an annual basis by employees of the Department, who are trained and experienced in inspection procedures and many of whom have experience in industry, will be sufficient to ensure that the TCPA rules are applied consistently across the board, will provide the Department with a fair appraisal of the program, and will provide input as to the current state of the art for the reduction of risks at EHS facilities. Although N.J.A.C. 7:31-3.11(b)2 does provide that the audit team will be either employees of the registrant or an independent consultant, only a minority of the team can be involved in the day-to-day operation or management of the facility being audited. In addition, part of the Department's annual site inspection will be to determine whether the audit requirements are being properly met. The Department does not believe that requiring third party inspections would be either more cost effective or more efficient than inspections conducted by Department personnel. Therefore, no change has been made.

COMMENT: N.J.A.C. 7:31-2.15, regarding the release of information by insurance carriers, will seriously inhibit an insured from disclosing pertinent underwriting information to its insurance carrier for fear that the information released may be obtained by other parties. This may impede loss control efforts. The outstanding concern and reluctance by the insured to disclose its proprietary information cannot be diminished, even though the Act, at N.J.S.A. 13:1K-28, provides immunity from civil liability for any insurance carrier as well as affords confidential treatment to the information released. If an insurer cannot obtain full information needed to evaluate and underwrite a risk, the result is that the risk cannot be accurately assessed and priced. An underpriced risk yields inadequate premiums which results in insufficient funds to pay for any covered losses. When an insurer's reserves are depleted, the insurer's policyholder's surplus is utilized to pay out losses. If an insurer's policyholder's surplus is jeopardized, an insurer runs the risk of statutory insolvency. As the possibility of insolvency heightens, the insurer is forced to take precautionary measures of either raising prices or worse, declining to underwrite risks if the insureds are not releasing pertinent underwriting data. The result is insureds suffer increased costs and loss of coverage for environmental risks. As costs rise, coverage shrinks. Therefore, the rule is not in the best interest of the public.

Also, there is no advantage to be gained from these procedures because in the event of an EHS release, the State could subpoena the offending company's records anyway. Adoption of this section negatively impacts the insurance industry and public, undermining risk management, rather than enhancing it.

RESPONSE: The Department does not agree that the release of information by insurance carriers as provided for by N.J.A.C. 7:31-2.15 will either inhibit an insured from disclosing pertinent underwriting information to its insurer or impede an insurer's loss control efforts. First of all, the Act, at N.J.S.A. 13:1K-28c, provides for the confidential treatment of any such information released by an insurance company to the Department and, at N.J.S.A. 13:1K-28d, for a penalty of up to $5,000 for any person who fails to hold such information in confidence. In addition, the Department has direct access to most, if not all, information relevant to the risks posed by a facility's management of an EHS in accordance with other provisions of the Act and this chapter. Thus, the rule should not inhibit an insured from disclosing pertinent underwriting information to its insurance carrier, and the dire consequences predicted by the commenter should not be realized.

Finally, the Legislature declared, at N.J.S.A. 13:1K-20, that the single most effective effort to be made toward the prevention of EHS accidents is by anticipating the circumstances that could result in their occurrence and taking those precautionary and preemptive actions required. Therefore, subpoenaing records after an EHS release, as suggested by the commenter, is not consistent with the intent of the Act. Adoption of this section will further ensure that the Department has access to the information it needs in order to effectively carry out the intent of the Act, and should thus positively impact the public, the insurance industry and insured registrants through more effective risk management which is designed to reduce the number and severity of EHS releases.

COMMENT: If both the Act and the proposed rules contemplate a proceeding which would be commenced to require an insurer to turn over its files, the insurer should receive notice of the hearing and be named in the proceeding as a party to the action. For this reason, proposed N.J.A.C. 7:31-2.15(a) should be changed to indicate that any insurer required to supply information to the Department pursuant to this section shall be named as a party in any action commenced and shall have all the rights of a party to that action including the right to request that the court issue a protective order with respect to any documents considered privileged, proprietary, confidential, defamatory or to contain the work product, trade secrets or security information of that insurer.

Also, the Act, at N.J.S.A. 13:1K-28b, provides certain immunities to insurers in subsequent civil proceedings for any statements made or for actions taken voluntarily or in response to an authorization or request from the client facility. The rules make no reference to the immunities provided in this section and should be changed to indicate that any insurer or its representative that produces information pursuant to the rules shall be afforded all the immunities from liability set forth in the Act.

RESPONSE: The Act, at N.J.S.A. 13:1K-28a, provides that the Department may institute an administrative procedure to determine whether an owner or a facility should be required to authorize the insurers which underwrite its environmental liability or worker's compensation insurance to release to the Department information relevant to the risks posed by the facility's management of an EHS. The Act in providing for an administrative procedure did not specify that a contested case hearing be held, and the informal procedure described in N.J.A.C. 7:31-2.15(a) and (b) requires only that the Department's determination, that a registrant authorize its insurer to supply certain information to the Department, follow a review of pertinent documents and an EHS facility inspection and be based on a finding that the insurance information is necessary for the Department to effectively evaluate the facility's EHS management practices. This will allow for timely receipt of the necessary information to permit the Department to effectively manage the TCPA program. As a hearing is not a part of the administrative procedure specified by N.J.A.C. 7:31-2.15, the insurer will neither be named as a party nor be given notice of the proceeding. However, as noted by the commenter, the act, at N.J.S.A 13:1K-28b, provides immunity to insurers and their representatives for any loss or injury sustained by any party as a direct or consequential result of the carrier's or its representative's compliance, noncompliance, or attempt to comply with the Act. The Department does not believe that it is necessary to repeat or reference the immunity section of the Act in the rule. It is also noted that, in accordance with N.J.S.A. 13:1K-28c, information obtained from an insurer pursuant to the Act will be treated as confidential information by the Department and can be disclosed only to the Department's employees or agents to assist in enforcing the Act, or for use in civil or criminal proceedings, if so ordered by a court. If an insurer, authorized to release information to the Department by a registrant, believes that the requested information contains privileged, proprietary, confidential, work product, trade secret or security information of the insurer, or defamatory information, and it is not satistifed with the protection afforded this information by the Act and these rules, the insurer is free to seek a protective order from a court with respect to such information. In accordance with N.J.S.A. 13:1K-28d, however, a person who knowingly and willfully refuses to release information required under the Act, is liable for a penalty not to exceed $5,000, to be collected and enforced in a summary manner under the penalty enforcement law (N.J.S.A. 2A:58-1 et seq.) Therefore, no change has been made as a result of this comment.

COMMENT: In the proposed N.J.A.C. 7:31-2.15, regardless of the authority provided in N.J.S.A. 13:1K-28, the requirement that insurance carriers rating reports be submitted should be deleted. The Act provides for the Department to institute an administrative procedure to determine whether an owner or a facility should be required to authorize an insurer to release to the Department certain information. Therefore, this review process should be clarified by adding a reference to the requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Furthermore, the legality of requiring the submission of the underwriter's reports is questionable, particularly if the carrier is located out-of-state. If necessary, this requirement should be subject to subpoena procedures directed to the offending company. Additionally, it introduces inspection standards peculiar to the insurance carrier into the rule, a procedure which circumvents legal rulemaking. At any rate, the wording of the proposed N.J.A.C. 7:31-2.15(c) should be changed to limit disclosure to only information relevant and pertinent to the EHS facility in question and should include a time limit that only reports made after the effective date of the regulation should have to be supplied.

RESPONSE: The Act, at N.J.S.A. 13:1K-28a, is concerned with the release to the Department by an insurer of information relevant to the risks posed by the insured's management of an EHS. While neither the Act nor the rule specifies that insurance carrier rating reports or underwriter's reports be released to the Department, such reports may well contain information useful to the Department in assessing the risks posed by a facility's use of an EHS, and, therefore, they will not be specifically exempted from the rule. As the Act, at N.J.S.A. 13:1K-28a, merely provides that the Department institute an administrative procedure to determine whether to require a facility to authorize the release of information by its insurer, and does not refer to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or specify either a contested case or an administrative hearing requirement, no such hearing procedure is required for the Department to make its determination. The Administrative Procedure Act itself does not create a substantive right to a hearing where no such hearing is otherwise required by statutory law or constitutional mandate. Therefore, no reference to the Administrative Procedure Act is necessary in the rule.

As to the legality of requiring an insurer located out-of-state to submit underwriter's reports or other information relevant to the risks posed by a facility's use of an EHS, the Department believes that any insurance carrier doing business in the State of New Jersey is subject to the provisions of the Act and this rule. Although the Department could resort to subpoena procedures to require an offending company to submit information, the procedure specified by the Act would be much more time and cost effective in getting the necessary information to the Department for its use in enforcing the Act.

The listing of the types of reports in N.J.A.C. 7:31-2.15(c), including various inspection reports, which may be required to be supplied to the Department, is provided for information purposes only, is not all inclusive, and is not meant to establish additional inspection standards or requirements on insurers. The Department is requiring the submission of existing reports only. While the Department agrees that only information relevant to the EHS facility and the risks posed by the facility's management of EHS's is subject to the provisions of the rule, no change in wording is necessary as N.J.A.C. 7:31-2.15(b) covers this by requiring that the Department's determination be based on a finding that the information is necessary to effectively evaluate the facility's EHS management practices.

The Department disagrees with the comment that only those reports prepared after the effective date of the rules should be supplied, and reserves the right to ask for all reports which involve adminstration of the TCPA program. Normally these reports will only be required to be submitted to the Department when there is insufficient data provided by the registrant. Normally such submittals would be required prior to or during the implementation of an extraordinarily hazardous substance accident risk assessment, or the evaluation of a risk management program (RMP) submittal. To limit the information to only those reports prepared after the implementation of the proposed rule would deny the Department access to needed EHS management information which may not be available from any other source.

After RMP's are established throughout the State and facilities are managing EHS's in accordance with the TCPA program, the Department anticipates that there will be less need for supporting information from insurance carriers. No change has been made to the rule.

COMMENT: It is highly unlikely that the insurance coverage required of an agent of the Department as referenced in proposed N.J.A.C. 7:31-5.9(c)lii is obtainable. This is insurance that would provide adequate coverage for chemical industry economic losses incurred by the intentional or inadvertent disclosure of privileged trade secret, security or confidential information.

If it were available, then the amounts of liability insurance must be provided in the public register for comment. These amounts must be set to adequately recompense a registrant's economic loss incurred by an agent's and/or the Department's disclosure of confidential, privileged trade secret or security information.

RESPONSE: The requirement to maintain liability insurance coverage is a standard practice for private contractors or consultants. The State contract form for contractors provides for certain minimum required coverages which are established by the State Treasury Department's risk management experts. Comprehensive general liability policy coverage is required to be as broad as the standard coverage form currrently in use in the State of New Jersey and shall not be circumscribed by any endorsements limiting the breadth of the coverage. While the availability of adequate insurance is not known, the Department is clearly precluded from releasing any confidential information to an agent unless all the requirements of N.J.A.C. 7:31-5.9(c) have been satisfied.

Also, the amount of liability insurance required may well vary from contract to contract, because of the work required by the contract as well as the nature and extent of any confidential information which may be required to be disclosed to an agent to carry out the terms of the contract. Therefore, it was not possible for the Department to include the amount of liability insurance required by all agents in its proposed rule.

COMMENT: The purpose of insurance inspections is to evaluate and help a company correct potential job hazards. Proposed N.J.A.C. 7:31-2.15, in effect, could place the carrier in the position of a regulator. The information insurance carriers obtain is confidential and it would be unethical to share it with anyone else. There is concern that if hazards found during an insurance inspection are not communicated to the State, or if hazards are not found at all, the carrier may be found negligent.

RESPONSE: Neither the Act nor the TCPA program rules intend that an insurance carrier be placed in the position of being a regulator. The intent is merely to provide the Department with access to information relevant to the risks posed by facility's management of EHS's. Pursuant to N.J.A.C. 7:31-2.15(e), any information obtained from an insurance carrier is considered confidential and will be treated as such. The Department is authorized by the Act, at N.J.S.A. 13:1K-28c, to disclose such insurance information only to its own employees or agents to assist in enforcement procedures.

The concern that an insurance carrier may be found liable if hazards found or not found during an insurance inspection are not communicated to the State is not warranted. The Act does not increase or decrease an insurance carrier's liabilities as a result of its inspection of facilities. The insurance carrier cannot be held liable for information provided to the State, unless, as provided by N.J.S.A. 13:1K-28b, actual malice on the part of the insurer or its representative is present. The Act further provides that this immunity extends to protect a carrier from liability to any party who sustains any loss or injury as a result of the carrier's compliance, noncompliance or attempt to comply with the Act. In addition, the insurance carrier is not obligated to inform the Department of its inspection results unless the Department requests this information from the registrant who will then authorize the insurance carrier to release the information requested by the Department in accordance with N.J.A.C. 7:31-2.15(a).

Finally, it is noted that the Act does provide that a person, which includes an insurance carrier, who knowingly and willfully refuses to release information as required by N.J.S.A. 13:1K-28d is liable for a penalty not to exceed $5,000, to be collected and enforced in a summary manner. No change has been made to the rule.

COMMENT: In the revised TCPA registration form (Appendix II of proposed N.J.A.C. 7:31-5), Sections E-2 and E-3 require information on maximum capacity and process description. The chemical industry considers this information confidential and it must be treated as such.

RESPONSE: The Act, at N.J.S.A. 13:1K-22b, specifies in part the contents of the registration form, including an inventory of the EHS's at the facility and a general description of the processes and principal equipment involved in the management of the EHS's. As proposed, N.J.A.C. 7:31-5.3(a)4 provided that information supplied by a registrant in the TCPA registration form would not be considered confidential information, the Department intending that the registrant would submit only a general process description that does not contain confidential information. However, as it may be difficult for a registrant to avoid the disclosure of confidential information in responding to section E of the registration form, the rule has been changed to permit a registrant to assert a claim of confidentiality for information submitted in response to that section of the registration form only. All registrants who have submitted registration forms prior to the effective date of this rule must file confidentiality claims covering any confidential information disclosed in section E of their registration forms prior to September 19, 1988, to ensure continuing confidentiality treatment for such information. Until that date, the Department will continue to hold section E of all registration forms in confidence. N.J.A.C. 7:31-5.3(a)4 has been changed accordingly.

COMMENT: Proposed N.J.A.C. 7:31-5 omitted the forms to claim confidential information and to petition for privileged trade secret or security information. Enacting this regulation prior to providing these forms for examination and comment would be illegal.

RESPONSE: The confidentiality claim form, the claim substantiation form, the petition to withhold privileged trade secret and security information form and the petition substantiation form are not required to be formally proposed in the New Jersey Register for public comment, as all of the information contained on the forms and all information required to be provided by registrants on these forms has been included in or covered by the notice of proposal for these rules.

COMMENT: The Department should be aware that the requirements to claim information as confidential or as a trade secret are far more comprehensive than any requirements stated in the Act. The Department must have the ability to be somewhat selective in the information that they accept as sensitive; however, the high specificity and detailed nature of the submittals required is not the best method to distinguish between the truly sensitive information and that which is not.

RESPONSE: The Act, at N.J.S.A. 13:1K-29a, provides that the Department shall, pursuant to rule, adopt principles, guidelines, and procedures governing the internal management of confidential information supplied to the Department pursuant to the Act, and that the rules shall include among other requirements: 1. That all confidential information supplied pursuant to the Act be labeled as such by the facility owner; and 2. That the receipt of such labeled information be acknowledged in writing by an authorized employee of the Department.

The procedures specified in the rules were developed in part from those currently in effect under the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., at N.J.A.C. 7:26B-8, and the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.A.C. 7:1G-6.

The Department used these procedures as guidelines for developing the requirements for the submission of both confidentiality claims and petitions to withhold privileged trade secret and security information, and for setting the criteria for determining the validity of both claims and petitions. The Department believes that the detailed procedures are necessary to clearly differentiate confidential information from public records which, under the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., are normally required to be made available for public inspection. These procedures, derived in part from the Department's existing rules noted above, provide the protective means needed to safeguard the confidential information which the Department must have access to in order to effectively implement the Act.

Because of the special handling required for confidential information by the Department, its employees and agents, it is important that the Department limit the amount of such information for which it must provide this significant protection. Otherwise, the Department would quickly become inundated with records and documents which contain little or no actual confidential information, and the public's right of access to public records would be unnecessarily delayed while the Department attempted to separate the truly confidential information from that which must be released.

In order to simplify the effort required on the part of registrants to submit and substantiate either confidentiality claims or petitions for privileged trade secret or security information, the Department will provide appropriate forms, reflecting the requirements of the rules.

In accordance with N.J.S.A. 13:1K-29b, the owner of a facility who alleges that certain information required to be disclosed pursuant to the Act contains or relates to trade secret or security information which, notwithstanding the Department's procedures for handling confidential information, must be kept privileged so as not to competitively disadvantage the facility or compromise its security or operations, shall petition for the right to withhold the information. In order to conduct an appropriate review of a registrant's petition to determine whether the petition is valid or should be denied, the Department must have sufficient information on which to base its decision. The Department believes that the information specified by the rules, and included on the Department's petition to withhold privileged trade secret and security information form and the petition substantiation form, is the minimum needed to make a rational decision regarding a registrant's right to withhold such information from the Department. As the rule's requirements are in accord with the Department's confidentiality rules in effect in other programs and with the provisions of the Act, no change has been made.

COMMENT: There is no provision in proposed N.J.A.C. 7:31-5 for protection from public disclosure of confidential information if an inspection occurs prior to the submission of a confidentiality claim. In addition, there is no provision in the proposed rules for protection from disclosure of privileged trade secret or security information if an inspection occurs prior to the submittal to the Department of the petition to withhold the privileged trade secret or security information.

RESPONSE: Pursuant to N.J.A.C. 7:31-5.2(d), a registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted at any time such information is required to be submitted or disclosed to the Department. Therefore, if a registrant files a confidentiality claim at the time of an inspection, any such information will not be disclosed to the public, unless and until the information has been determined by the Department to not be entitled to confidential treatment.

In accordance with N.J.A.C. 7:31-5.2(d), a petition for privileged trade secret or security information must be filed with the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants wiht no risk management program, or within 30 days of the creation of new privileged trade secret or security information, and thus will normally be submitted prior to a facility inspection.

As the Department does not anticipate conducting facility inspections prior to the Department's review of the summary risk management program statement, all such petitions to withhold privileged trade secret or security information generally will be on file with the Department prior to inspections. If a petition to withhold privileged trade secret or security information is not submitted with the summary risk management program statement or within 30 days after the Department's request for site data, or within 30 days of the creation of new privileged trade secret or security information, then such a privilege cannot be claimed at the time of the inspection. It is noted, however, that the failure to submit a timely petition to withhold privileged trade secret or security information does not preclude a registrant from submitting a confidentiality claim for the same information. Therefore no change to the rules is required.

COMMENT: Several commentors expressed concern that the possible disclosure of confidential, trade secret or security information to foreign and domestic competitors can have a negative impact on New Jersey chemical industry's ability to compete on an in-state, out-of-state, and, for multinational corporations, on a global basis. The potential jeopardy to 300,000 jobs, valued at approximately $15 billion, represents only a fraction of the total product value that could be lost. The disadvantage to the regulated community can have an adverse effect on the national economy long term, will cause a loss of existing businesses, business opportunities, and jobs, and is expected to deter future chemical industries from locating in New Jersey. The requirements are not only onerous and illegal, but the public would not benefit.

RESPONSE: It is not contested that the public release of confidential information and privileged trade secret or security information could have an adverse impact on the State's economy and industry. It is because of that possible adverse conomic impact that these rules have been adopted by the Department to protect against the public release of confidential information and against even the disclosure to the Department of certain privileged trade secret or security information. Because of the stringent protection and security against the public release of confidential information and the registrant's right to withhold certain privileged trade secret or security information from the Department provided by these rules, no adverse economic impact is expected upon New Jersey's industries from the release of such information to competitors, either foreign or domestic.

In order to ensure that all confidential information submitted to the Department is adequately protected against inadvertent or unwarranted disclosure, the rules provide rather detailed submission and substantiation requirements. The Department has, however, prepared appropriate forms which should simplify a registrant's efforts in asserting and substantiating either a confidentiality claim or a petition to withhold privileged trade secret or security information. The requirements concerning the submission of such claims and petitions are based on the provisions of the Act, N.J.S.A. 13:1K-29, and are therefore not illegal. Finally, it is anticipated that the public will indeed benefit from the requirements of the rules as they will ensure that the Department has access to the information needed to effectively implement the Act, the goal of which is the prevention of potentially catastrophic discharges of hazardous substances into the environment of the State. Therefore, no change has been made.

COMMENT: Several commenters expressed concern that the impact of the proposed rules has been underestimated and that the rules' requirements concerning claims, petitions and detailed substantiation exceed any requirement in the Act. To meet the specific claim and substantiation requirements in the detailed manner required would necessitate a complete restructuring of existing systems and procedures for the management of confidential and trade secret information. While the cost of compliance with the proposed rules cannot be accurately estimated, it poses a burden which could be many hundreds of thousands of dollars for the chemical industry.

RESPONSE: The requirements concerning confidentiality claims, petitions to withhold privileged trade secret or security information, and substantiation of both claims and petitions are based on the provisions of the Act, N.J.S.A. 13:1K-29, and are not in excess of the Act's authority. While the Department agrees that the cost of compliance with the rules cannot be precisely estimated, it believes that it has not grossly understimated the impact of the rules in the economic impact and regulatory flexibility statements in the Summary to the proposed rules. Those facilities which either possess no confidential or privileged trade secret or security information or decide not to submit claims or petitions to protect such information will be impacted little, if at all, by these rules. As to those registrants which do desire to protect such information, the rules do not require a facility to restructure its existing systems and procedures for the management of confidential and trade secret information. The specific claim and substantiation requirements are consistent with existing Department rules governing confidential information submittals and are necessary for the Department's determination of the validity of such claims. In order to minimize the cost of compliance for those facilities which desire to protect their confidential or privileged trade secret or security information, the Department has included several streamlined steps in the rules. These provisions include the requirements that the claim substantiation form, the public copy of the confidential information and the required fee only be submitted when requested by the Department.

As no restructuring of existing information management systems is required by the proposed rules and as the Department has taken measures to minmize the cost to industry while preserving the right of the public to have access to state decision-making records, the Department does not believe that the economic impact of the cost of compliance will be unduly burdensome to industry.

COMMENT: The Department's need to enforce the TCPA and the chemical industry's continuing need to manage business can best be served by allowing industry to retain responsibility for all sensitive documents. As it is impossible to separate process safety program information from privileged trade secret, security or confidential information, all sensitive documents should be available for visual inspection at the site and only the Registration Form, the Risk Management Program checklist and a catalog listing of documents should be submitted to the Department to comply with N.J.A.C. 7:31. This will eliminate the burden of copying all the documentation and the Department's burden of maintaining all the copies. It is unreasonable to require submission of sensitive documents which may be visually inspected at EHS facilities. Particular concern is voiced regarding making multiple copies of sensitive documents which may be used by agents or field offices. In the past, the Department has sent copies of permit documents to the wrong parties and inadvertently released information regarding plant effluents. There is no need for the Department to store any sensitive documents and the Department should return such documents (and any copies) to the registrant when it is finished with them. The commenter's proposal makes all relevant information available at the site and avoids the trade secret and confidentiality issue while affording better control and recordkeeping. On site disclosure places the burden of security on the site, and substantially reduces the potential for inadvertent release or mishandling of confidential, trade secret or sensitive information. The maintenance of proprietary information at the site supports the conceptual approach to a risk management program as outlined in the Act, whereby the Department establishes the standards of performance for risk management programs and audits the facility for compliance.

RESPONSE: The Department does not believe that it can effectively implement the requirements of the Act by merely reviewing all sensitive documents at the site. The Department, therefore, has reserved the right to review documents either at the Department offices or at the site, except for those documents needed to support consent agreements, administrative consent orders, and administrative orders which will be maintained by the Department. The Department realizes that it may be difficult in some instances to separate the process safety program information it needs access to from either confidential information or privileged trade secret or security information, or that the information it must have access to is itself confidential information or would otherwise be considered privileged trade secret or security information, except for the fact that it is specifically exempted from such category by N.J.A.C. 7:31-5.3(b). However, as the Department must have reasonable access to this potentially sensitive information in order to effectively carry out the intent of the Act, it is not sufficient that such documentation be retained at the site in all instances.

Regarding the concern over multiple copies of sensitive documents, N.J.A.C. 7:31-5.8(f) requries that any records made which contain confidential information, including copies of any confidential documents, must be treated as confidential.

Although in the past the Department may have sent copies of permit documents to the wrong parties and inadvertently released information regarding plant effluents, the Department does not anticipate any problems of that nature with the TCPA program. One of the purposes of N.J.A.C. 7:31-5 is to establish procedures for the internal management of confidential information supplied to the Department by registrants and the Department believes that the strict security and accountability procedures provided in the rules will ensure the proper management of confidential information. Also, pursuant to N.J.A.C. 7:31-5.8(n), the Department will return any and all confidential information previously submitted which either becomes obsolete or is no longer needed by the Department for the implementation of the Act.

As the Department has determined that it must maintain certain documents at its offices and that it also must retain the right to review any required document either at its offices or at the site, the issues of confidentiality and trade secrets cannot be avoided. However, in accordance with the provisions of the rules, the Department will protect from public disclosure all information determined to be entitled to confidential treatment and registrants will be permitted to petition and to withhold from the Department all information which qualifies as privileged trade secret and security information. No changes will be made as a result of this comment.

COMMENT: Department officials as part of their job duties could always review, on site, even confidential or trade secret information. Such a solution best protects the registrants, limits the Department's expense of maintaining confidential records (including legal liability and confidentiality "approvals"), and protects the public. Instead, an elaborate process has been proposed that attempts to differentiate between trade secrets and confidential information and establishes a system that discourages an affected facility from applying for confidential status. The latter was definitely not the intent of the legislation.

RESPONSE: The Department does not consider the maintenance and review of all required documents, including confidential and trade secret information, only at the registrant's site to be a viable alternative to the provision in N.J.A.C. 7:31-2.6(e) that any documents be reviewed either at the site or at the Department at the discretion of the Department. However, except for those documents needed to support consent agreements, administrative consent orders and administrative orders, in most cases it is anticipated that the information, including confidential information, will not be submitted to the Department but rather will be permitted to be retained on site for review during inspections. It is not the intent of the Department to require burdensome amounts of paperwork, including confidential information, to be submitted and stored at its offices. However, the Department has determined that in order to effectively implement and carry out the Act and the TCPA program, it must retain the flexibility of being able to review all of the required documentation either at the site or at its offices.

The rules are not intended to discourage facilities from applying for confidential status for their proprietary and non-privileged trade secret and security information. In fact, several provisions in the rules are designed to facilitate the assertion of confidentiality claims, including the provisions to submit the public copy, the confidentiality claim substantiation form and the required fee only upon written request of the Department. It is also noted that the completion of confidentiality claim forms is required only when submitting or revealing such information to the Department. Finally, the rules' requirements which differentiate between confidential information and privileged trade secret and security information are based directly on the provision of the Act, N.J.S.A. 13:1K-29a and b, which clearly distinguishes confidential information, which must be disclosed to the Department, from privileged trade secret or security information, which may be withheld from the Department. Therefore, no change will be made.

COMMENT: In reference to N.J.A.C. 7:31-5.2(d), claims for privileged trade secret and security information should be allowed after acceptance of the summary risk management program statement. The rules stipulate that the registrant must undergo a workplan if the summary risk management program statement is not accepted for further review. If an exclusion is claimed at the time of the submittal of the summary risk management program statement, it could jeopardize approval for further review. This poses the potential for arbitrary and capricious decision-making on the part of the Department.

RESPONSE: In accordance with N.J.A.C. 7:31-2.7, the Department will review the risk management program description, and the reports of safety reviews, hazard analysis and risk assessments included in the summary risk management program statement. A registrant who has satisfactorily completed a safety review and hazard analysis and, where required, a risk assessment, which meet the requirements of N.J.A.C. 7:31-3.4 and 3.9, respectively, shall be notified in accordance with N.J.A.C. 7:31-2.7(b) that it has an established risk management program and that it is accepted for further review. Inasmuch as safety review, hazard analysis and risk assessment records are specifically excluded from being considered as privileged trade secret or security information by N.J.A.C. 7:31-5.3(b), satisfying the requirements of an established risk management program should not be affected by the non-availability of privileged trade secret information. The initial evaluation, the determination that a registrant has an established risk management program, and its acceptance for further review will thus normally be conducted independently of any petitions to withhold privileged trade secret or security information. Of course, claims for confidential information can be submitted at any time such information is required to be made available to the Department as provided in N.J.A.C. 7:31-5.2(d). Therefore, no change has been made.

COMMENT: Pursuant to N.J.A.C. 7:31-5.2(e) and (f), 5.4(e), and 5.5(f), the Department requires that the claimant designate by highlighting or underlining those portions of a document which the claimant considers confidential. If those designated portions were blacked out instead, the document would then be the public copy. Why does the Department need a "highlighted" copy when the public copy conveys the same information and results in duplication of effort? What is the logic behind maintaining a public copy? Will the registrant's technology and expertise be available to the competitors just for the asking or will trade secrets and confidential information be deleted?

RESPONSE: While the public copy is identical to the highlighted or confidential copy, any confidential information on the public copy is required to be blacked out so that the public, or the Department, would not be able to view the sensitive information. Therefore, the Department needs the confidential copy which contains the information the claimant alleges to be entitled to confidential treatment with all claimed confidential information underscored or highlighted in a clearly identifiable manner, for its use in the review of the registrant's risk management program. This copy is necessary so that the Department has access to all the information it needs to effectively implement the Act. The public copy, of course, is the only copy that will be available for the public release. As the public copy is only required to be submitted upon the written request of the Department, it will not normally be maintained by the Department as part of the registrant's submittals. Thus, if a registrant submits a proper confidentiality claim for any such information it is required to submit to the Department, and the Department determines that such information is entitled to confidential treatment, the only copy which the public or a competitor could gain access to would be the public copy, which has all the confidential information deleted.

COMMENT: Pursuant to N.J.A.C. 7:31-5.2(h), neither the Department nor an employee or agent can enter into a confidentiality agreement with the registrant. However, the acceptance of a confidentiality claim is, in effect, an agreement.

RESPONSE: N.J.A.C. 7:31-5.2(h) provides that no employees or agents of the Department are authorized to sign a confidentiality agreement or other nondisclosure agreement, and that any such agreement so executed will be of no force or effect as to the Department. The effect of this provision is to prohibit and render void any such confidentiality agreements as to the Department and to put all registrants on notice that their civil remedies for the wrongful disclosure of their confidential information by the Department or its employees or agents are limited to those provided by the Act or otherwise available to them at common law.

Neither the receipt by the Department of a confidentiality claim nor a determination by the Department that the information covered by such claim is entitled to confidential treatment constitutes an agreement between the Department and a registrant. The rights and responsibilities of both registrants and the Department are set forth in the rules and are not changed by the Department's receipt or upholding of a confidentiality claim.

COMMENT: The Department has exceeded the statutory intent of the TCPA by requiring registrants to submit sensitive information to protect sensitive information, pursuant to proposed N.J.A.C. 7:31-5.3.

RESPONSE: The Act, at N.J.S.A. 13:1K-29a, provides that the Department shall, pursuant to rules, adopt principles, guidelines, and procedures governing the internal management of confidential information supplied to the Department pursuant to this Act. The Department has adopted these rules in order to protect from public disclosure any confidential information obtained from registrants. Therefore, all submissions to the Department, including either confidentiality claim forms or petitions to withhold privileged trade secret or security information forms or substantiation forms, which contain confidential information must be stamped "Confidential" and the confidential information included on the forms must be underscored or highlighted in accordance with N.J.A.C. 7:31-5.4(d) and (e). As the Act, at N.J.S.A. 13:1K-29b, requires the Department to review any registrant's petition to withhold privileged trade secret or security information from the Department to determine whether to grant or deny the petition, it may well be necessary for a registrant to include some sensitive or confidential information in its petition, substantiation or supplemental information in order to show that its petition is valid. N.J.A.C. 7:31-5.6(a) in part provides that any registrant of a facility submitting a petition shall provide complete responses on all required submissions to the Department except for those items which require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold.

Therefore, confidential information, including that contained in any confidentiality claim forms, petition to withhold privileged trade secret or security information forms or substantiation forms, submitted to the Department must be labeled "Confidential" in order be treated as such by the Department. Where privileged trade secret or security information is omitted from the documentation submitted to the Department, the petitioner must indicate that a petition to withhold such information has been submitted in accordance with N.J.A.C. 7:31-5.6(a). As the rules' requirements are within the scope of the Act, no change has been made.

COMMENT: Proposed N.J.A.C. 7:31-5.3(a)10 should be changed to "Information which is contained in the . . ." as the current wording is very misleading and implies that information which is required to be submitted to the Department (by rule) and which is contained (referenced) in the checklist shall not be considered as confidential. This is not true; much of such information is confidential or trade secret.

RESPONSE: As the intent of N.J.A.C. 7:31-5.3(a)10 is that only the information actually included on a properly completed risk management program checklist form itself will be excluded from confidentiality treatment, the rule has been clarified in response to the comment.

COMMENT: Submittal of certain information pursuant to proposed N.J.A.C. 7:31-5.3(b) may be in conflict with existing contractual agreements which enjoin persons/registrants from disclosing purchased technology.

RESPONSE: N.J.A.C. 7:31-5.3(b) specifically excludes from privileged trade secret or security information treatment the 11 items listed, as the Department has determined that it must have access to this information in order to effectively implement the Act and the TCPA program. These items may also be required to be disclosed pursuant to other state or Federal laws or regulations. Also, in accordance with N.J.A.C. 7:31-5.7(d)2, if any such information sought to be withheld has been disclosed to any other person other than the petitioner's employees involved in its use, then the information will not be deemed privileged and must be disclosed to the Department. Therefore, all the listed items must be disclosed to the Department in spite of any existing agreements between a registrant and a third party. Of course, a registrant may assert a confidentiality claim to withhold from public disclosure any of this information the release of which would competitively disadvantage the facility or compromise the security of the facility or its operations. Therefore, no change has been made.

COMMENT: Among the information required to be submitted to the Department by proposed N.J.A.C. 7:31-5.3(a)10 and 11 are the summary risk management program and the emergency response plan which are no less sensitive than other information which the claimant may have. Both items require the inclusion of process flow diagrams. A process flow diagram as defined in the rules requires that material balance and operating parameters be included in the drawing. This information in total outlines the process to make the product. By including the emergency response plan and the summary risk management program statement in proposed N.J.A.C. 7:31-5.3(a), the Department is prohibiting claiming this sensitive information as confidential. If the Department continues to require this information as part of the summary risk management program statement and the emergency response plan, provisions should be provided to submit this portion of the emergency plan as confidential.

RESPONSE: In order to avoid any confusion, the word "Summary" has been deleted from N.J.A.C. 7:31-5.3(a)10 which refers to the Risk Management Program checklist, rather than the summary risk management program statement as indicated by this comment. As the Risk Management Program checklist does not require the submission of process flow diagrams or other confidential information, there is no need to change the rule to permit confidentiality claims for this document.

In addition, the requirement that a process flow diagram be included in the emergency response program was deleted from N.J.A.C. 7:31-3.10(a)3 upon its adoption. As this requirement has been deleted, no change to the rule is necessary.

COMMENT: The Department is wrong in proposed N.J.A.C. 7:31-5.3(a)6 to include information which is "patented or has a patent pending" as information which cannot be considered as confidential information under TCPA. Patent pending means that a patent has been applied for, but neither granted nor issued, and that information is thus not protected by a patent. Much of the information included in a patent application is confidential, trade secret or security information. Such "patent pending" information is not available to anyone, not even to trained practitioners of patent law, and such information should be considered to be in the strongest "trade secret" category. Release of this information would result in a definite competitive disadvantage in the marketplace. Accordingly, the phrase "or has a patent pending" should be deleted from proposed N.J.A.C. 7:31-5.3(a)6. We have no quarrel with the exclusion of patented information from confidential treatment.

RESPONSE: Inasmuch as patent applications are maintained in the strictest secrecy by the United States Patent and Trademark Office until the patent is issued, the Department agrees with the commenter's suggestion and has deleted the phrase "or has a patent pending" from N.J.A.C. 7:31-5.3(a)6. Therefore, a registrant can assert a confidentiality claim to withhold from public disclosure patent pending information, although information which is patented is not considered confidential. Also, the phrase "or whether a patent has been applied for", has been deleted from N.J.A.C. 7:31-5.5(d)7, for the same reason. It is noted, however, that a petition to withhold privileged trade secret or security information regarding either patented information or patent pending information could not satisfy the criteria established by N.J.A.C. 7:31-5.7(g), and would thus be denied by the Department.

COMMENT: Pursuant to proposed N.J.A.C. 7:31-5.3(a)6, no information for which a patent exists or has been filed will be considered confidential. Prohibiting patented information from being classified as confidential is an indiscriminate determination and contrary to the definition of confidential information as proposed in the rules. Patents can be filed in such a way that the details of proprietary information are disguised or are not disclosed as not necessary to the application itself. This is done to protect confidential, trade secret or security information and to avoid competitive disadvantage to the facility. For example, a process may be patented in a way which lists many chemicals which may be used, but generally are not, or the operating parameters such as temperature or pressure are deleted. This type of information would appear on the process flow diagram and in the standard operating procedure. Moreover, the Department must recognize that a considerable amount of confidential information may be patented, and as such must accept the information for review for confidential status. To place excessive restrictions invites litigation.

RESPONSE: N.J.A.C. 7:31-5.3(a)6 has been changed to delete the reference to patent pending information; however, information included in the patent itself is not considered to be confidential information. While patent applications are maintained in the strictest secrecy until the patent is issued, after the patent is issued the United States Patent and Trademark Office file containing the application and all correspondence leading up to the issuance of the patent is made available for inspection by anyone, and copies of the files may be purchased from the Patent and Trademark Office. Therefore, the exclusion of the patented information itself from consideration as confidential information is not inconsistent with the definition of confidential information as it is readily available to the public.

However, the Department agrees that patents can be filed in a manner to protect certain information from public disclosure, and N.J.A.C. 7:31-5.5(d)7 and (j)7 permit the Department to grant a confidentiality claim if the patent does not connect the claimant with the confidential information and does not protect the claimant from competitive harm. Therefore, information which is merely the subject of a patent, but not included in the patent itself, may be granted confidential treatment if it meets the above requirements.

COMMENT: In proposed N.J.A.C. 7:31-5.3(a)6, the Department has claimed that patented information will not be considered confidential. This statement is in contradiction to proposed N.J.A.C. 7:31-5.5(d)7 which permits the claimant to justify why patented information should be considered confidential. If the Department plans on rejecting such applications across the board, why is it also addressed as a viable parameter in the application? At any rate, the Department should recognize patented information as confidential.

RESPONSE: N.J.A.C. 7:31-5.3(a)6 provides that information which is patented shall not be considered as confidential. Publicly available information, as appears directly on the patent or in the patent literature, cannot be claimed as confidential. Due to the fact that patents are commonly written and filed in such a manner as to protect certain details or specifications from public release, information for which a registrant is claiming confidentiality may differ from that on a patent or in the patent literature. Consequently, the substantiation required pursuant to N.J.A.C. 7:31-5.7(d) does not contradict N.J.A.C. 7:31-5.3(a)6 which excludes only the patented information itself from consideration as confidential information. Therefore, no change to the rules is being made.

COMMENT: Several comments related to the potential of a severe penalty, that is, the immediate disclosure of the information, for a mistake made in following the specific, detailed procedures required for confidential treatment:

Proposed N.J.A.C. 7:31-5.3(a)12 requires that every page of a confidential document be marked confidential. This is a good rule in theory; however, some documents may be many pages in length. If one page was missed by mistake in a many paged document, the Department would be permitted to publicly disclose that page.

Proposed N.J.A.C. 7:31-5.4(e) permits the Department to release whatever information it possesses which has not been marked properly (underscoring or highlighting in a reproducible manner).

Proposed N.J.A.C. 7:31-5.4(f) through (i) outline very specific instructions which must be followed in order to be granted confidential status. If any of these instructions are not met exactly as specified, the Department retains the right to deny the claimant confidentiality protection.

Proposed N.J.A.C. 7:31-5.5(e) and (f) also permit disclosure of confidential information contained in the substantiation form submitted to the Department if the substantiation is not filed on time, if the fee is not paid, or if the information is not properly marked.

Also, there are no provisions allowing a registrant to assert a privilege regarding information on the substantiation form. If such privileged information is not provided, the registrant faces the risk of having its petition denied.

Therefore, the following is proposed: the Department should notify the claimant of any deficiency and offer 30 days to correct the deficiency. If the claimant does not respond within the time limit, then, and only then, should the Department be permitted to release this information. The Department should also be required to notify the claimant that the information will be released.

RESPONSE: The purpose of the detailed procedures established by N.J.A.C. 7:31-5 for the submission of confidential information to the Department is to enable the Department to readily identify the information claimed as confidential, and thus ensure the maintenance of the confidentiality and physical security of such information, and to focus its review more sharply during its determination of confidentiality claims, as well as to deter unreasonable or blanket claims of confidentiality by registrants. As it is impossible for the Department to initially check and verify the contents of each page of each submission by every registrant to determine if a claimant has neglected to properly identify a specific item or section as confidential, and as the individual claimant is in the best position to properly identify and mark its confidential information which it desires to protect from public disclosure, it is appropriate that this task be performed by the claimant. At any rate, the requirement that all confidential information supplied to the Department be labelled as such by the facility owner is provided in the Act, at N.J.S.A. 13:1K-29b. If a claimant inadvertently fails to properly mark or stamp a page in a multi-page document or to properly highlight or underscore confidential information, or to submit the required substantiation form, the public copy, or the required fee in a timely manner after being notified in writing by the Department, the claimant must bear the consequences of its own actions and should not be allowed to frustrate the purpose of the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., which provides for ready access to public records by the citizens of this State. However, if the Department has not received the public copy, the claim substantiation form or the required fee within the 30 day time limit specified by N.J.A.C. 7:31-5.4(c), it will notify the claimant by certified mail, return receipt requested, that its claim will be considered abandoned and the confidential copy will be treated as public information, unless it receives the public copy, substantiation form and required fee within 10 days of receipt of the Department's notice N.J.A.C. 7:31-5.4(c) and 5.5(e) have been changed accordingly.

Also, if the Department upon receipt of the public copy becomes aware of an apparent error or omission on the part of a claimant in failing to delete from the public copy information which it identified as being confidential on the confidential copy by underscoring or highlighting, the Department will notify the claimant by certified mail, return receipt requested. This notice shall point out the apparent error or omission and advise the claimant that the public copy will be treated as public information unless it receives a corrected public copy within 10 days of receipt of the Department's notice. A new subsection, N.J.A.C. 7:31-5.4(j), has been added to the rule to reflect this change. No other changes will be made to the rule.

The requirements specified by N.J.A.C. 7:31-5.4(f) and (g) are designed to ensure the proper delivery of confidential information to the Department and provide that the Department will not assume responsibility for such documents until they are actually received at the address provided. N.J.A.C. 7:31-5.4(h) merely provides a signature and certification requirement for both the confidentiality claim form and substantiation form which is signed by the highest ranking corporate, partnership, or governmental officer or official at the site or the responsible manager. This procedure involves high ranking management officials in the process and provides another opportunity to the claimant to review the submittal to correct any mistakes in marking each page or any information as confidential before its submission to the Department. N.J.A.C. 7:31-5.4(i) discusses the procedure for handling confidential informaton during inspections, and provides that any information disclosed to the Department during an inspection which is not properly marked and identified as confidential will not be treated as such by the Department.

The comment incorrectly stated that there is no provision allowing a registrant to assert a privilege regarding information on the substantiation form for a petition to withhold privileged trade secret or security information. While the general provision permitting a registrant to petition the Department to withhold privileged trade secret or security information found in N.J.A.C. 7:31-5.6(a) also applies to information on a substantiation form for another petition, the registrant must have submitted all its petitions within the time frames specified in N.J.A.C. 7:31-5.6(b). Ultimately, of course, the petitioner must provide enough information to satisfy the criteria established in N.J.A.C. 7:31-5.7(g) or its petition will be denied and the Department will require the registrant to submit or disclose the information sought to be withheld within 30 days. As the Department believes these procedures are reasonable, clearly written and easy to follow, no change will be made.

COMMENT: The Act, at N.J.S.A. 13:1K-29a indicates that the information supplied to the Department was intended to be kept confidential. There was no mention in the Act of the need for industry to be burdened with the trouble of having to prove to the Department the need to maintain the confidentiality of such information as required in proposed N.J.A.C. 7:31-5.4 and 5.5(j).

RESPONSE: Although the Act, at N.J.S.A. 13:1K-29a, does state that the rules shall provide that information obtained pursuant to the Act shall be disclosed only to its employees or agents to assist in enforcing the provisions of the Act, or for use in civil or criminal proceedings if so ordered by a court, the intent of the Act is clearly that not all information submitted to the Department under the Act was to be treated as confidential information. The first sentence of N.J.S.A. 13:1K-29a provides that the Department shall adopt principles, guidelines, and procedures governing the internal management of confidential information, and the sentence noted in the comment goes on to provide that the rules to be adopted shall include, but not be limited to, requirements: 1. That all confidential information supplied pursuant to the Act be labelled as such by the facility owner; 2. The receipt of such labelled information be acknowledged by an authorized employee of the Department; 3. The Department establish a review procedure by which only specifically designated personnel be authorized access to such information; and 4. That the Department establish secure areas for the express purpose of storage of such confidential information. From a reading of N.J.S.A. 13:1K-29a as a whole, it is clear that not all information submitted to the Department pursuant to the Act was to be considered confidential information.

Because the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., provides that it is public policy that the public records be readily accessible to the citizens of the State, it is necessary that the Department be able to distinguish such public records from the confidential information which is exempt from public disclosure under the Act. It is clearly appropriate that the burden of establishing which records are entitled to confidential treatment be placed on the provider of the information rather than upon the person requesting access to the record. Therefore, no change has been made.

COMMENT: The provisions of proposed N.J.A.C. 7:31-5.3 exceed the statutory intent of the TCPA by excluding elements of the risk management program documentation from privileged trade secret or security information protection. The Act clearly states that "the owner of a facility who alleges that certain information required to be disclosed . . . contains or relates to trade secret or constitutes security information . . . must be kept privileged so as not to competitively disadvantage the facility or its operations shall petition the commissioner for the right to withhold the information."

Proposed N.J.A.C. 7:31-5.3(b) prohibits the claiming of records of hazard analysis, safety reviews and risk analysis as privileged trade secret or security information, as well as process flow diagrams, piping and instrument diagrams, criteria for design and operation and standard operating procedures. The Department needs to understand that advantages in cost are contained in the documents referenced including technology and subtle differences in operating procedures, along with detailed, step-by-step procedures on how production equipment is designed, arranged, operated and maintained and the detailed sequence of procedures by which the products are produced. Therefore, these documents must be eligible for trade secret status, as off-site exposure of such documents unnecessarily jeopardizes the viability of all New Jersey's chemical industry. While certain detailed information regarding processes and equipment is needed by the Department, much of this information is not essential to the Department's review of a risk management program and may, at most, require a peripheral inspection to assure that it exists, is up-to-date, is written in a clear, understandable and concise manner, and is sufficiently detailed. Submission of this type of information should not be required or should, at most, be limited to on-site inspection. The section is too broad and needs to be cut back to a reasonable position.

The Department should not prohibit the claiming of the documents referenced in proposed N.J.A.C. 7:31-5.3(b) as trade secret indiscriminately, but should instead develop methods for claiming portions of the documents as trade secret or security information, while permitting other portions to be treated as confidential. In the alternative, N.J.A.C. 7:31-5.3(b) should be deleted and all items listed should be treated as privileged trade secret or security information in accordance with a registrant's petition to withhold this information.

RESPONSE: The Act, at N.J.S.A. 13:1K-29b, does provide that the owner of a facility who alleges certain information required to be disclosed contains or relates to a trade secret or security information which, notwithstanding the management procedures for such information adopted by the Department, must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, shall petition the Department for the right to withhold the information. However, the Act continues on to provide that the Department, upon receipt of a petition, shall review the matter and, if it denies the petition, that the petitioner may request an adjudicatory hearing at which the petitioner will have the burden to show that the trade secret or security risk claim is valid. Therefore, it is clear that the Legislature did not intend that all such petitions to withhold trade secret or security information would automatically be granted.

In addition, the Department has determined that the 11 items listed in N.J.A.C. 7:31-5.3(b) constitute essential information which the Department must have access to in order to effectively review a registrant's risk management program to determine whether it satisfies the requirements of the Act and the TCPA program. The Legislature found and declared, at N.J.S.A. 13:1K-20, that the single most effective effort to be made toward the prevention of environmental accidents involving extraordinarily hazardous substances is by anticipating the circumstances that could result in their occurrence and taking those precautionary and preemptive actions required. The items listed in N.J.A.C. 7:31-5.3(b) are needed by the Department to adequately review the registrant's hazard analysis and risk assessment portions of its risk management program, which are clearly two of the Act's key tools in the prevention of EHS releases. Besides constituting the key elements of the Act which are vital to the successful implementation of the TCPA program, these 11 items are, and have in the past, been susceptible to disclosure to other government agencies or entities pursuant to Federal or state law or regulation including the Occupational Safety and Health Act, 29 U.S.C. §§651 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq., and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq. As the Department believes that the security procedures specified in the rules to maintain the confidentiality of information supplied to it by registrants are at least as stringent as those provided by either the Federal government or other state governments, it would not be appropriate to permit a registrant to withhold from the Department the 11 items specified which have been disclosed or are susceptible to disclosure to either the Federal government or other state governments.

Any information which does not fall into the above categories can be petitioned as privileged trade secret or security information. The Department has thus perserved the right of the registrant to assert a petition for privileged trade secret or security information and also preserves the right of the registrant to have its information, which is deemed not to be privileged trade secret or security information, protected from public disclosure as confidential information.

These provisions do not unnecessarily jeopardize the viability of New Jersey's chemical industry as the Department is assuring that all information determined to be confidential will be maintained as such by the Department. Disclosure of the information specified by N.J.A.C. 7:31-5.3(b) to the Department is thus necessary to meet the legislative intent of the Act and to protect the public health and welfare.

It should be noted that the Department is not indiscriminately prohibiting documents from privileged trade secret or security protection, as only those documents and records needed for a proper, accurate and complete review of the hazard analysis and risk assessment portions of the risk management program are exempted from consideration as privileged trade secret or security information. All or portions of any document can be petitioned to be withheld from the Department as privileged trade secret or security information as long as it is not exempted by N.J.A.C. 7:31-5.3(b) or otherwise denied in accordance with N.J.A.C. 7:31-5.7(g).

Normally, documents such as piping and instrument diagrams, the criteria for design and operation, process flow diagrams and standard operating procedures will be reviewed at the site. However, the Department reserves the right to require that such documentation be submitted to and maintained at the Department offices if necessary to evaluate and assure compliance with the TCPA. Therefore, no change to the rules has been made.

COMMENT: In order to better meet the requirements of the Act, the Department should make determinations of confidentiality claims (proposed N.J.A.C. 7:31-5.5) on a case-by-case basis. Making determinations across the board, such as prohibiting patented information from the confidentiality protection provided by the Act, is contrary to the intent of the legislation. The controversy which may arise from this method will only serve to slow the review process rather than expedite it.

RESPONSE: The Department will make its determination on each confidentiality claim on a case-by-case basis as provided in N.J.A.C. 7:31-5.5(b). The intent of N.J.A.C. 7:31-5.3(a), which provides a listing of information exempt from consideration as confidential information, is to prevent unnecessary and burdensome confidentiality claims from being submitted for information which is plainly not confidential. The exemption of information from confidentiality claims will thus expedite the review process as certain categories of clearly public information, such as patented information, will be barred from being the subject of such claims. The Act, at N.J.S.A. 13:1K-29a, merely provides that the Department shall, pursuant to rule, adopt principles, guidelines, and procedures governing the internal management of confidential information supplied to the Department pursuant to the Act, and did not specify in any manner that the Department was prohibited from exempting certain categories of information from consideration for confidential treatment. Therefore, no change has been made.

COMMENT: Clarification is requested on the difference between proposed N.J.A.C. 7:31-5.5(b)2 and 3 regarding the initiation of action by the Department upon a confidentiality claim to determine whether the information is or is not entitled to confidential treatment.

RESPONSE: N.J.A.C. 7:31-5.5(b)2 refers to those cases in which the Department needs or desires to determine if information is entitled to confidential treatment for any reason. For example, if a facility claims confidentiality for information which the Department knows to be in the public domain, the Department may act on the claim to ease the administrative workload of storing or handling public information as confidential information.

N.J.A.C. 7:31-5.5(b)3 refers to the specific case of disclosing the information to persons not authorized to have access to confidential information, when it is in the public interest to do so. For example, if a facility claimed that the location of cylinders at its site containing large quantities of phosgene was confidential information and the information would be beneficial to the local emergency planning committee, the Department would act upon the claim. If the registrant's claim was not upheld, the Department could disclose the information to such local authorities in the public interest.

COMMENT: Delete proposed N.J.A.C. 7:31-5.5(a) through (d). These subsections allow the Department to disclose confidential information to the public "for any reason in the public interest." The Department demonstrates complete ignorance of industry's economic vulnerability to public disclosure of privileged trade secret, security and confidential information. Therefore, to allow the Department to judge arbitrarily to disclose such information would be a gross injustice. The Department should be required to consider the registrant's confidentiality claim and notify the registrant of the intent to release information.

RESPONSE: N.J.A.C. 7:31-5.5(a) through (d) do not allow the Department to disclose confidential information to the public for any reason in the public interest. N.J.A.C. 7:31-5.8(g) specifically prohibits this. Only non-confidential information, that is, information which the Department determines is not entitled to confidential treatment, can be released. The basis upon which confidentiality claims and petitions to withhold privileged trade secret or security information are evaluated is not arbitrary, but rather is based on the objective criteria stated in N.J.A.C. 7:31-5.5(j) and N.J.A.C. 7:31-5.7(g), respectively. The Department is thus required to determine the validity of a registrant's confidentiality claim, and the registrant will be notified by certified mail if the Department decides that a claim is invalid pursuant to N.J.A.C. 7:31-5.5(i). N.J.A.C. 7:31-5.9(d) further requires that the Department notify the registrant in writing of the disclosure of confidential information to another agency or an agent of the Department. In addition, the registrant has the right to request an adjudicatory hearing to contest the Department's determination to release the information to the public. If the hearing request is granted, the information will be maintained as confidential until the agency action becomes final and the time for an appeal has expired. Therefore, no change will be made to the rule.

COMMENT: In reference to proposed N.J.A.C. 7:31-5.4(c) and 7:31-5.5(d), the 30-day time limit for submitting the substantiation form, the public copy of the information and the fee should be extended to 90 days. Some of the documents which may be claimed as confidential may be quite extensive, and as such would require more time to prepare a public copy and to gather and submit the required information and substantiation to support the claim. If not provided within this time limit, the claim for confidentiality would be waived and the information can be disclosed. This is too severe a penalty if a deadline with such a short time period is missed. In most instances, multiple confidentiality claims would be required to protect the proprietary information for a single EHS facility. Either the Department should allow more time for the claimant to prepare the public copy or the Department should be required to issue a warning that the deadline has been missed and that if the public copy has not been submitted within 60 days that the information will be made public.

RESPONSE: N.J.A.C. 7:31-5.5(h) provides for an extension of the time limit for submittal of substantiation information upon a written request for good cause shown by the claimant. The Department believes that the 30 day time period is adequate in most cases for the submission of the substantiation information and preparation of the public copy, and that the possible extension of up to 60 days is sufficient to cover any extensive claims requiring the gathering and submission of information required to substantiate any such claims. However N.J.A.C. 7:31-5.4(c) and 5.5(e) have been changed to provide that if the public copy, the required fee or the confidentiality claim substantiation form is not received within the specified time limit, the Department will notify the claimant by certified mail that it has 10 days to provide the public copy, required fee, and substantiation form or its claim will be considered abandoned and the confidential copy shall be treated as public information. In addition to this new notice requirement that the time period for submission has been missed, it is also noted that if a confidentiality claim is denied by the Department, the registrant is entitled to request an adjudicatory hearing in accordance with N.J.A.C. 7:31-5.5(i)1 before the Department may make the information available to the public.

In accordance with N.J.A.C. 7:31-5.2(d), a registrant may file a claim with the Department to withhold from public disclosure any confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. Therefore, it is entirely possible that a registrant of a facility which possesses confidential information and desires to protect it from public disclosure, would indeed be required to file multiple confidentiality claims. However, it should also be noted that a claimant is only required to submit the public copy, the substantiation form and the required fee if the Department receives a request under the New Jersey Right to Know Act, N.J.S.A. 47:1A-1 et seq., to inspect or copy such information, or if the Department otherwise decides to determine whether the information is entitled to confidential treatment as specified at N.J.A.C. 7:31-5.5(b).

Finally, as the Department will notify a claimant by certified mail, return receipt requested, that it must submit the public copy, the substantiation, and the required fee to the Department within 30 days or its claim will be considered abandoned and the confidential copy will be treated as public information, as the rule provides for an extension of up to a total of 60 days for good cause shown, and as a notice requirement that the submission deadline has been missed has been added to the rule, no additional time period for compliance is considered either appropriate or necessary.

COMMENT: The Department should provide a set of guidelines in proposed N.J.A.C. 7:31-5.5(d)4, 5 and 8, and in N.J.A.C. 7:31-5.5(j) indicating to registrants the level of security that would have to be demonstrated.

RESPONSE: As each registrant may adequately safeguard its confidential information from public disclosure using different but equally effective methods, no mandated guidelines were provided by the rule. However, N.J.A.C. 7:31-5.8, which prescribes the requirements for maintaining the security of confidential information held by the Department, could be used as a guideline by registrants at affected facilities.

With regard to the process of reverse engineering referred to in N.J.A.C. 7:31-5.5(d)8 and N.J.A.C. 7:31-5.5(j)8, if the information claimed as confidential could be easily and accurately discovered through a simple and inexpensive reverse engineering process, the Department would determine that the information is not entitled to confidential treatment. Obviously, each claim will have to be determined on an individual basis, and therefore no change has been made.

COMMENT: The phrase "including employees" should be deleted from proposed N.J.A.C. 7:31-5.5(d)5. Employees sign secrecy agreements as part of routine employment procedures.

RESPONSE: While some registrants may have all of their employees who have access to or knowledge of confidential information sign confidentiality or non-disclosure agreements, this may not be true of all registrants. The purpose of N.J.A.C. 7:31-5.5(d)5 is to give a claimant an opportunity to substantiate its claim that the information it seeks to withhold from public disclosure is indeed confidential information, in spite of the fact that it may have been published or disclosed to others, including its own employees. Thus, the phrase "including employees" will not be deleted from N.J.A.C. 7:31-5.5(d)5. Information which has been made available or otherwise disclosed to persons other than employees, except under a confidentiality or non-disclosure agreement, will be determined by the Department to not be entitled to confidential treatment, in accordance with N.J.A.C. 7:31-5.5(j)5. The Department, however, is not requiring that all employees who have access to confidential information necessarily be covered by such agreements. While the Department strongly encourages registrants to enter into confidentiality or non-disclosure agreements with its employees who have access to or knowledge of confidential information, it recognizes that registrants may have other means of ensuring that their employees maintain the confidentiality of information disclosed to them as part of their job assignments. Therefore, no change has been made.

COMMENT: In reference to proposed N.J.A.C. 7:31-5.5(d)8 and 5.6(c)7, reverse engineering is a factor dealing with the validity of patents. The Department has neither the authority nor the expertise to require patent holders to substantiate the merits of their patents.

RESPONSE: The Department is not requiring patent holders to substantiate the merits of their patents. N.J.A.C. 7:31-5.5(d)8 and 5.6(c)7 are not limited in application to patented information, but extend to any information for which the claimant is either claiming confidentiality or petitioning for privileged trade secret or security information status. Reverse engineering is thus being used by the Department as a measure of the ease or difficulty by which the information can be discovered from information already in the public domain. If a claimant cannot demonstrate that it would be relatively difficult or costly to obtain this information through reverse engineering, that is grounds for rejecting the claim or petition. Therefore, no change has been made as a result of this comment.

COMMENT: Under proposed N.J.A.C. 7:31-5.5(i), the Department will consider the claim abandoned and immediately release all information which it judges as non-confidential if a hearing is not requested within the time limit. Why does the Department wish to release all information whether it has been requested or not?

RESPONSE: N.J.A.C. 7:31-5.5(i) does not indicate that all information determined to be non-confidential will be immediately released to the public. In fact, N.J.A.C. 7:31-5.5(i)1 requires that the Department notify the claimant by certified mail, return receipt requested, that the Department will make the information available to the public on the 30th day following receipt by the claimant of the notice, unless the Department has received a timely written request for an adjudicatory hearing to contest such decision. Thus, the information will be released only to the individual who requested the information under the Right to Know Act, N.J.S.A. 47:1A-1 et seq.; or only to the person or persons to whom release is judged to be in the public interest by the Department; or it will be retained at the Department and made available to the public, that is, moved into the public access file.

The comment that if no hearing is requested within the 20 day period specified at N.J.A.C. 7:31-6.3(b) the claim will be considered abandoned, is essentially correct in that the Department's decision will become final and the information will be made available to the public as provided by N.J.A.C. 7:31-5.5(i)1.

COMMENT: The confidentiality determination by the Department, proposed in N.J.A.C. 7:31-5.5(i) and (j), and the determination of petitions to withhold privileged trade secret or security information proposed in N.J.A.C. 7:31-5.7, set dubious standards which allow for arbitrary and capricious decisions; for example, subjective judgments as to how much data is sufficient and what is the criteria for determining acceptable harm for data disclosure.

The requirement proposed in N.J.A.C. 7:31-5.5(d) and 5.6(c) for the substantiation of confidentiality claims and petitions to withhold privileged trade secret or security information, including that for reverse engineering and the assessment of net economic impact, is too complex, open-ended and counter-productive. Specifically, N.J.A.C. 7:31-5.5(d)8 which calls for an evaluation of reverse engineering and an estimate of the cost is both an exercise in speculation and frustration and allows arbitrary and capricious decisions by the Department. The substantiation requirements for both confidential and privileged trade secret information should be deleted.

RESPONSE: N.J.A.C. 7:31-5.5(i) and (j), concerning confidentiality determinations and the criteria for making such determinations, and N.J.A.C. 7:31-5.7, concerning the determinations of petitions to withhold privileged trade secret or security information, set forth appropriate standards which will permit the Department to make objective determinations to either grant or deny such claims and petitions on a consistent and fair basis. The criteria established by these rules were derived, in part, from the standards established pursuant to the New Jersey Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., at N.J.A.C. 7:26B-8.3 and 8.4, and the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.A.C. 7:1G-6.9, for the determination of similar claims. The criteria and substantiation requirements also provide claimants and petitioners with standards which must be complied with or met if their claims or petitions are to be granted. Therefore, these standards and substantiation requirements will not be deleted from the rules.

Regarding the statement that the provisions of the rules concerning determinations by the Department will result in subjective judgments as to how much data is sufficient, it is noted that the claimant or petitioner has the burden of proof in establishing that its claim or petition is valid, and thus it must provide sufficient data or information to the Department to satisfy each criterion. By providing substantiation requirements and the criteria for the Department's determinations, the rules are designed to be as objective as possible.

While the criteria for determining what is acceptable harm resulting from the disclosure of confidential information is not specified in either the criteria or substantiation provisions of the rules, it is included in the definition of "confidential information" by the term "competitive disadvantage." Therefore, any competitive disadvantage to a facility or its operations resulting from the public disclosure of confidential information would be considered unacceptable harm by the Department.

The requirements in N.J.A.C. 7:31-5.5(d) and 5.6(c) regarding the substantiation of claims and petitions are clearly written and straight-forward in that they address specific issues concerning the information which a registrant desires to protect. Although some of the criteria are somewhat open-ended, this was necessitated by the wide diversity of potentially confidential and privileged trade secret or security information which may be the subject of claims or petitions, and by the need to afford registrants an opportunity to provide substantiation which may be peculiar to their particular situations. These substantiation requirements are not counter-productive in that the Department has to establish standards by which to differentiate confidential and privileged trade secret and security information from the public records which it is required to make available to the citizens of this State for examination pursuant to the New Jeresey Right to Know Act, N.J.S.A. 47:1A-1.

N.J.A.C. 7:31-5.5(d)8, concerning the ease or difficulty with which the information sought to be withheld from public disclosure could be discovered through reverse engineering and an estimate of the cost, applies only to that non-privileged trade secret information which a claimant desires to withhold from public disclosure. If the information sought to be protected can be readily determined or duplicated by others it may well not qualify as a legitimate trade secret; whereas, if the information is complex and extensive analysis and significant cost would be required by others to acquire the same information, it is more likely that the information would qualify for trade secret status, and thus be considered confidential. Although estimating the difficulty and cost of reverse engineering is somewhat speculative, the holder of the trade secret is in the best position to make such an evaluation and this information will provide valuable input to the Department's overall determination to grant or deny a claim. Therefore, no changes have been made.

COMMENT: The requirements of proposed N.J.A.C. 7:31-5.6 should permit petitions to be filed at more than one point in time and should provide flexibility by allowing responses within reasonable time frames. This section should parallel the requirements for confidentiality claims.

RESPONSE: The requirement to submit petitions to withhold privileged trade secret or security information along with the summary risk management program statement or the site data is necessary so that the validity of such petitions can be determined prior to the detailed review of the risk management program and subsequent facility inspection by Department personnel, or prior to the development of the required work plan and the performance of the extraordinarily hazardous substance accident risk assessment. This will clearly establish up-front which information a petitioner has the right to withhold from the Department and which cannot be inspected by Department personnel, and will thus facilitate the efficient and effective management of the TCPA program. With regard to newly created privileged trade or security information, a petition must be submitted within 30 days of the creation of such information in accordance with N.J.A.C. 7:31-5.6(b). The timeframes for submitting substantiation and supplemental information are considered fair and reasonable and are similar to response times in other confidentiality rules, such as the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.A.C. 7:1G-6.6(d), and the Environmental Cleanup Responsibility Act, at N.J.A.C. 7:26B-8.3(c)3. The timeframes are considered adequate to complete the required substantiation form or to submit supplemental information and also provide for the effective implementation of the Act.

The sections of the rule concerning confidential information and privileged trade secret information do parallel each other in many respects; however, due to the different ways these two types of information are treated, they can not be completely parallel. Privileged trade secret information does not have to be disclosed to the Department, whereas confidential information must be disclosed to the Department but is not available to the public. Therefore, differences were unavoidable. No change has been made.

COMMENT: The framework for asserting confidentiality claims and petitions to withhold privileged trade secret or security information proposed in N.J.A.C. 7:31-5.5 and 5.6(c) places an excessive and unnecessary burden of proof on the claimant or petitioner. The information required for the substantiation submittal may itself require a detailed discussion of confidential, privileged trade secret or security information. In addition, proposed N.J.A.C. 7:31-5.6(c)1iii should be deleted in its entirety as it requires the petitioner to know the capabilities and sophistication of all possible competitors.

RESPONSE: As the Right to Know Act, N.J.S.A. 47:1A-1 et seq., requires that public records be available for examination by the citizens of this State, the Department must be able to differentiate between public information and information which is considered confidential pursuant to the Act and which must not be disclosed to the public. And, because the Act, at N.J.S.A. 13:1K-29b, provides that certain information may be withheld from the Department as privileged trade secret or security information, the Department must be able to distinguish between that information and information which is required to be disclosed to the Department pursuant to the Act and which is needed by the Department in order to effectively implement the Act. Therefore, N.J.A.C. 7:31-5.5(d) and 5.6(c), which list the information required for the substantiation of confidentiality claims and petitions to withhold privileged trade secret or security information, respectively, are designed to provide the facts necessary for the Department to determine whether such claims and petitions are valid or should be denied. The substantiation requirements for claims and petitions are neither excessive nor unduly burdensome as all of the information required is necessary for the Department to make an informed and fair determination. As noted in an earlier response, the criteria for the substantiation of claims and petitions are based at least in part on the substantiation requirements in effect for the Worker and Community Right to Know Act and the Environmental Cleanup Responsibility Act programs. The Department has reviewed the substantiation requirements and has determined that they are necessary for the effective implementation of the Act.

The Department recognizes that some of the information required to substantiate a claim or petition may itself be confidential or privileged trade secret or security information. Therefore, N.J.A.C. 7:31-5.4(f) permits a registrant asserting a confidentiality claim to also claim confidentiality for any such information contained in its substantiation form, and N.J.A.C. 7:31-5.6(e) and (g) permit a registrant petitioning to withhold privileged trade secret or security information to claim as confidential any such information contained in the substantiation form or supplemental information, respectively. Also, N.J.A.C. 7:31-5.6(a) permits a registrant required to submit or disclose trade secret or security information pursuant to the Act or the TCPA program which the registrant believes must be kept privileged so as not to competitively disadvantage the facility or compromise the security of the facility or its operations, to petition the Department for the right to withhold such information. Thus, a registrant which has asserted such a petition in accordance with the procedures set forth in N.J.A.C. 7:31-5.6(b) may note on its claim or petition substantiation form that a petition to withhold privileged trade secret or security information has been submitted which covers the information required to respond to a particular substantiation or supplemental information question. It should be noted, of course, that the registrant still bears the burden of providing sufficient information for the Department to determine that its claim or petition is valid.

N.J.A.C. 7:31-5.6(c)1iii does not require a petitioner to know the capabilities and sophistication of all its possible competitors. This subparagraph merely requires a brief explanation of how the petitioner's competitors could possibly deduce the information sought to be withheld from the Department from any disclosure required under the Act or the TCPA program rules, if the trade secret is unknown outside of the petitioner's company. If the petitioner's competitors would be unable to deduce the trade secret from any such required disclosures, then in accordance with the Act, at N.J.S.A. 13:1K-29b, there would be no competitive disadvantage to the facility, and the Department would deny the petition. As this subparagraph is not requiring mere speculation on the part of the petitioner and as it may yield valuable information regarding the validity of the petition, it has not been deleted.

COMMENT: Delete N.J.A.C. 7:31-5.6(c)1ii in its entirety. "Linked" can be broadly construed and is subject to arbitrary and capricious determinations.

RESPONSE: N.J.A.C. 7:31-5.6(c)1ii refers to the petitioner's company or facility being linked to the trade secret in publications or other information available to the public, and requires an explanation why this knowledge does not eliminate the justification for trade secrecy. The term "linked" is intended to have its ordinary meaning, that is, connected or united with. Thus, this subparagraph provides a petitioner with an opportunity to explain why the fact that its company or facility has been connected with the trade secret in public does not invalidate its petition to withhold the trade secret from the Department. As the Department does not believe the use of the term "linked" will in any way lead to arbitrary and capricious determinations, no change to the rule has been made.

COMMENT: The Department has neither the authority nor the expertise to determine what is confidential information or privileged trade secret or security information pursuant to proposed N.J.A.C. 7:31-5.5 and 5.7. The submission requirements bring the owner's most sensitive formulations into the hands of a staff member who probably has no knowledge of the industry or the daily competitive forces in the market for chemicals. As the definition of trade secret and confidentiality varies widely and offers greater protection to the regulated community because of this flexibility, the Department should confer with the owner of the trade secret or confidential information who has the flexibility to determine the level of protection needed. The lessons learned during the early years of the implementation of the Environmental Cleanup Responsibility Act program, N.J.S.A. 13:1K-6 et seq., were not taken into consideration by the TCPA program as it appears the Department lacks the management, staff and budgetary resources necessary to adequately implement the program on the scale proposed.

RESPONSE: The Act, at N.J.S.A. 13:1K-29a, provides that the Department shall adopt principles, guidelines, and procedures governing the internal management of confidential information supplied to the Department pursuant to the Act. Thus, N.J.A.C. 7:31-5.5(i), which provides that the Department shall make a final determination on confidentiality claims after receiving the substantiation, was adopted pursuant to the Act. Also, the Act, at N.J.S.A. 13:1K-29b, provides that a registrant who alleges that certain information relates to a privileged trade secret or security information and desires to withhold such information from the Department so as not to competitively disadvantage or compromise the security of the facility, shall petition the Commissioner for the right to do so, and that upon receipt of the petition, the Commissioner shall review the matter. In accordance with N.J.S.A. 13:1B-4, Delegation of powers by commissioner, the Commissioner may delegate to subordinate officers of employees in the Department such of his powers as may be desirable, to be exercised under his supervision and direction. Thus, the Department also has the authority to determine the validity of petitions to withhold privileged trade secret or security information pursuant to N.J.A.C. 7:31-5.7.

Furthermore, the Department's Bureau of Release Prevention has sufficient employees with extensive experience in all areas of the chemical industry and thus has the necessary expertise to determine the validity of confidentiality claims based on the criteria set forth in N.J.A.C. 7:31-5.5, and petitions to withhold privileged trade secret or security information based on the criteria set forth in N.J.A.C. 7:31-5.7. Because of their extensive experience, the Department's employees who will have access to the sensitive information of registrants do indeed understand and appreciate the competitive forces operating in the chemical industry.

The Department does not agree with the comment that the definitions of trade secret and confidentiality are flexible and vary widely. These terms are clearly defined in N.J.A.C. 7:31-1.5 and the Department must apply these definitions consistently in reviewing and determining the validity of both claims and petitions to avoid being charged with arbitrary and capricious conduct. Thus, the Department will not confer with registrants regarding the level of protection to be afforded to sensitive information, as the level of protection is clearly specified by the rule. A detailed workload analysis has been conducted by the Department to determine the staffing requirements for TCPA program implementation and based on this the Department anticipates that implementation will proceed without unreasonable delays. The Department has not had any problem finding well qualified and talented personnel to implement the TCPA program and thus does not anticipate delays on its part. The Department does not expect a backlog similar to that which occurred in the early years of the Environmental Cleanup Responsibility Act program implementation, because the Department has determined through its workload analysis that it has sufficient management and staff to implement the TCPA program, including the timely review and determination of claims and petitions. Also, inasmuch as the Department is required by the Act, at N.J.S.A. 13:1K-31, to administer the program on a self-supporting basis, the Department believes it will have the budgetary resources to adequately implement the program as adopted.

COMMENT: Several commenters expressed concern that the provisions specified in proposed N.J.A.C. 7:31-5.8 and 5.10 to protect those documents that are required to be in the Department's jurisdiction are inadequate. The procedures and practices for handling trade secret, sensitive and confidential data need to be significantly improved to afford industry proper protection for information which is required to be submitted. All such information should be stored in a fire-proof, posted, locked area with 24-hour surveillance, limited access, alarms and an audited entry log. Those individuals given access to such information should have a clearly defined need-to-know and should have signed a secrecy agreement which includes: 1. Personal and Departmental liability for breach of contract or wrongful disclosure; 2. Need to know criteria and requirements, including written approval by the registrant before disclosure or copying of confidential documents; and 3. Audit trail requirements, including any copies made.

Furthermore, the liability for disclosure of such information should include clearly defined penalties, a post employment provision and liability for damages incurred by breach of contract. Agents of the Department should have a security plan approved by both the registrant and the Department prior to disclosure of any confidential information. Also, who and what are agents of the Department?

The security system must be a written program which specifies a records manager for each Departmental site which includes external auditing procedures. As accountability is essential, the records manager and the Department should be held liable for any breach of security. All agents and field offices must have an equivalent security plan. Disclosure by the Department to an agent must be approved by the registrant, and the Department should provide audit trail information to registrants on request.

In addition, the Department does not specify the level of security which will be required, particularly with the computer system it uses. There are many different passwords or security systems available for computers, and some are more easily bypassed then others. A written policy must be developed, which will be available to industry for comment, outlining acceptable levels of security.

Finally, one commenter attached a copy of 18 U.S.C. §1905, Disclosure of Confidential Information generally, as an example of U.S. government provisions designed to protect trade secret and confidential information.

RESPONSE: The Department believes that the provisions for maintaining the confidentiality and security of confidential information submitted to the Department by registrants as specified in N.J.A.C. 7:31-5.8, and the provisions regarding the wrongful access or disclosure of confidential information set forth in N.J.A.C. 7:31-5.10 are comprehensive, and afford adequate protection for this sensitive information. The Department's headquarters building in Trenton, where all confidential information submitted to the Department will normally be stored, has a 24 hour security system, which includes limited access with employee badge identification and visitor sign-in procedures, and closed circuit TV camera surveillance.

In accordance with N.J.A.C. 7:31-5.8(e), all confidential information will be stored only in locked cabinets. The Commissioner, in accordance with N.J.A.C. 7:31-5.8(l), shall designate records custodians who shall be responsible for tracking and recording all confidential information given to Department designated employees or agents, for maintaining and upkeeping the confidential file and storage area, and for establishing other appropriate methods to protect the confidentiality of information through internal procedures or guidelines. The internal guidelines adopted will be consistent with the procedures in use by other programs in the Department for the safe-guarding of similarly sensitive information. Pursuant to N.J.A.C. 7:31-5.8(k), only the Commissioner and those employees and agents of the Department designated in writing by the Commissioner shall have access to confidential information and such access shall be on a need-to-know basis only.

While Department employees with access to confidential information will not be required to sign secrecy agreements, all such employees shall be designated in writing by the Commissioner in accordance with N.J.A.C. 7:31-5.8(k), and if any such employee violates the provisions of N.J.A.C. 7:31-5, the Department may seek a restraining order and an injunction barring that person from further disclosure of confidential information, pursue any other legal remedy and take adverse personnel action against such employee, including dismissal, suspension, and/or fine, pursuant to N.J.A.C. 7:31-5.10(d). Whether an individual employee is liable for the wrongful disclosure of confidential information will depend on several factors, including employment status at the time of the wrongful disclosure and whether the employee was acting within the scope of his or her employment at the time the wrongful disclosure occurred. The liability of the Department for wrongful dislosure may also depend on a number of factors, including the liability of the employee involved, whether the employee's acts were criminal or involved actual malice or willful misconduct, whether the employee's acts were discretionary or ministerial acts, the facts of the case, and the application of the New Jersey Tort Claims Act, N.J.S.A. 49:1-1 et seq., which generally provides for immunity from liability for an act or omission to act on the part of a public entity or a public employee.

Although access to confidential information is strictly limited in accordance with N.J.A.C. 7:31-5.8(a) to only those Department employees whose activities necessitate such access, the Department does not believe it is necessary or efficient for such employees to be required to have the written approval of a registrant before being given access to or copying confidential information. In accordance with N.J.A.C. 7:31-5.8(f), any record made by the Department which contains confidential information, including any copies of such information, shall be treated as confidential. And, as noted previously, the designated records custodians are responsible pursuant to N.J.A.C. 7:31-5.8(l), for tracking and recording all confidential information. This includes copies of such information given to any Department designated employees or agents.

In addition, N.J.S.A. 52:13D-17 provides that no State officer or employee, subsequent to the termination of his or her office or employment, shall provide information not generally available to members of the public to any person or party other than the State in connection with any matter with respect to which such officer or employee shall have been substantially and directly involved at any time during the course of his or her office or employment. A willful violation of N.J.S.A. 52:13D-17 is considered a disorderly persons offense, and will be subject to a fine of up to $500.00 and imprisonment not to exceed six months, or both.

In accordance with N.J.A.C. 7:31-5.9(c) the Department may disclose confidential information to an agent of the Department or to an agent's employees only when: 1. The agent is assisting in implementing the Act; 2. Its activities necessitate such access; 3. The Department has approved the agent's plan for protecting confidential information from unauthorized disclosure; 4. The Agent has provided written documentation demonstrating to the Department's satisfaction that it maintains sufficient professional liability insurance and comprehensive general liability insurance; and 5. The agent has signed an agreement developed by the Department, protecting confidential information from unauthorized disclosure which includes a provision whereby the agent assumes liability for any damages to a registrant resulting from the intentional or negligent release of confidential information by the agent and its employees. The Department believes that the registrant's approval of an agent's plan to protect confidential information which has the approval of the Department is unnecessary and would only serve to delay implementation of the Act. "Agent of the Department" is defined at N.J.A.C. 7:31-1.5 (proposed as N.J.A.C. 7:31-5.12) as a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and the TCPA program.

The Department does not believe that an external auditing procedure is either appropriate or necessary to ensure the maintenance of confidential information in its possession, as this would only expose the confidential information to needless disclosure to persons with no need to have access to it. The Department agrees that accountability is essential and for this reason has required the designation of records custodians who will be held accountable for the tracking and recording of all confidential information given to Department designated employees and for any breaches involving confidential information in their custody.

As the Department intends to maintain all confidential information submitted to it under the Act at its Trenton offices, no confidential information security system is deemed necessary for its field offices. In accordance with N.J.A.C. 7:31-5.9(d), the Department will notify the registrant who supplied the confidential information of its disclosure to an agent of the Department; however, it will not routinely provide audit trail information to registrants as this would impose an unnecessary reporting burden which would not improve the overall security of the confidential information held by the Department.

As to the level of security which the Department will require, including that for the computer system it will use, the Department believes that it is appropriate to withhold such detailed information in order to further enhance the security of the sensitive information it maintains. Therefore, the details of the Department's procedures regarding the security of confidential information will not be made available to industry for its comments. While some computer passwords and security systems for computers are more easily bypassed than others, the Department believes the provisions for computer security provided by N.J.A.C. 7:31-5.8(m) are sufficient to ensure the security of any confidential information added to the Department's computerized data base.

While the State does not have a statute exactly equivalent to 18 U.S.C. §1905, which makes it a criminal offense for an employee of the United States, or one of its agencies, to release trade secrets and certain other forms of confidential information except as authorized by law, N.J.S.A. 2C:30-2 provides that a public servant is guilty of official misconduct when, with the purpose of obtaining a benefit for himself or another or to injure or to deprive another of a benefit, he commits an act relating to his office by constituting an unauthorized exercise of his official functions, knowing such act is unauthorized. Official misconduct is a crime of the second degree punishable by a fine of up to $100,000 and imprisonment of between five and 10 years if the benefit involved exceeds $200.00. In addition, pursuant to N.J.S.A. 13:1K-28, a person who fails to hold information received from an insurance carrier under this Act in confidence, is liable for a penalty not to exceed $5,000, to be collected and enforced in a summary manner. Therefore, the Department believes that there are sufficient statutory penalties to discourage the wrongful disclosure of confidential information. No changes have been made as a result of this comment.

COMMENT: Any information which is amended or updated by the registrant will require the Department to return obsolete documents pursuant to proposed N.J.A.C. 7:31-5.8(n). With the volume of documents proposed to be submitted, the updating requirement will be an onerous burden to the Department and registrants.

RESPONSE: The requirement to submit updated information is necessary to ensure that registrants are complying with the requirements of their risk management programs. N.J.A.C. 7:31-5.8(n), which requires the Department to return to the registrant confidential information which is no longer needed or which has become obsolete, will help reduce the inventory of confidential information held at the Department.

Normally, the Department will only require the submittal of registration forms, Summary Risk Management Program Statements, annual reports, and safety review, hazard analyses and risk assessment reports on new equipment and certain modifications. The Department has determined that review of these documents at the Department and the review of additional risk management program documents at the facility will provide the most efficient and effective method of TCPA implementation.

However, the Department recognizes the concern of registrants for their confidential information maintained at the Department, the volume of which will grow with each additional submittal. Without some plan for periodic disposal or return of this information, storage and security problems could result.

As the Department believes that the burden of updating information is more than offset by the improved control for confidential information and the need for continuing effective monitoring of each registrant's risk management program, no change has been made.

COMMENT: The disclosure of confidential information to other agencies pursuant to proposed N.J.A.C. 7:31-5.9 is beyond the statutory authority legislated to the Department, unless such release is authorized by the claimant. Other agencies should be required to request desired information from the registrant. The use of confidential information for rulemaking, permitting and enforcement procedures or for any purpose other than the prevention of the release of EHS chemicals as proposed by N.J.A.C. 7:31-5.11 is also beyond the statutory authority granted to the Department.

RESPONSE: While the Act does not specifically provide for the disclosure of confidential information to other governmental agencies, N.J.A.C. 7:31-5.9(b) includes strict requirements which must be satisfied, including that the agency requesting such disclosure from the Department have the authority to compel the person who submitted the information to the Department to disclose such information to the requesting agency, before the Department will disclose the confidential information. Thus, the Department is not providing another agency with access to any confidential information which the requesting agency could not have otherwise acquired. In addition to the strict disclosure requirements in N.J.A.C. 7:31-5.9(b), the Department is required by N.J.A.C. 7:31-5.9(d) to notify the registrant who supplied the confidential information of its disclosure, the date of disclosure, the agency to which disclosed, and a description of the information disclosed. Of course, another agency is free to request the information it desires directly from a registrant and must do so if it is unable to meet the strict requirements contained in the rule.

As to the use of confidential information by the Department in developing rules, in permitting and in enforcement proceedings, in order to clarify the use of such information, the term "permitting" has been deleted from the section title of N.J.A.C. 7:31-5.11 and replaced with the phrase "reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs". Although the Act does not specifically provide for such use, in order to effectively implement the Act, the Department must be able to use confidential information in developing and amending the TCPA program rules, or in reviewing the extraordinarily hazardous substance accident risk assessment report and in approving the risk management program of each registrant, and in enforcing the provisions of the Act and the TCPA program against violators. The use of confidential information for these purposes will certainly foward the goal and purpose of the Act, that is, the prevention of the catastrophic release of EHS's. It is noted that in developing rules, in reviewing extraordinarily hazardous substance accident risk assessment reports and in approving risk management programs, as well as in pursuing enforcement actions, the Department will protect the confidentiality of both the provider and the information itself: 1. By compiling it in such a manner that neither the identity of the provider nor the confidential information itself is disclosed; or 2. By limiting disclosure to only those Department employees and agents who need access in order to effectively review the extraordinarily hazardous substance accident risk assessment reports or the risk management programs of registrants; or 3. By the Department's requesting that any contested case hearing be closed and the record be sealed, or appropriate portions thereof be closed and sealed, in accordance with N.J.A.C. 1:1-14.1, to protect against the unwarranted disclosure of confidential information. The rule has been changed accordingly.

COMMENT: The intent of these rules to discourage confidentiality and/or trade secret claims is clear from the $350.00 fee required by N.J.A.C. 7:31-5.13 for each claim. One should not have to pay a fee to protect one's property. Also, the fee is in no way related to the cost of any service which the agency may be required to perform and serves only one purpose, to penalize those who seek to preserve their property rights.

RESPONSE: N.J.A.C. 7:31-5 is designed to balance the Department's need to have access to the information required to effectively implement the TCPA program with the registrant's right to protect confidential information and to withhold privileged trade secret or security information from the Department. The requirements for filing confidentiality claims and petitions to withhold privileged trade secret or security information have been established solely to determine the validity of such claims and petitions and are not intended to discourage filing.

The Act, at N.J.S.A. 13:1K-31, authorizes the Department to administer the TCPA program on a self-supporting basis by charging facility owners fees which reflect the costs to the Department of reviewing individual facilities. The $350.00 fee required by N.J.A.C. 7:31-2.16(h), (originally proposed as N.J.A.C. 7:31-5.13(a) and (b)), is necessary to offset the Department's costs associated with the evaluation of confidentiality claims and petitions to withhold privileged trade secret or security information and to effectively implement the confidentiality and security provisions contained in the rule. Furthermore, the $350.00 fee is the same amount as that charged by the Department for the assertion of confidentiality claims pursuant to the Environmental Cleanup Responsibility Act program, N.J.A.C. 7:26B-1.10(f). Therefore, no change has been made.

COMMENT: Proposed N.J.A.C. 7:31-5.14(a), requiring a corporate vice president's signature, is extremely burdensome for corporations which have no vice president in New Jersey and should be modified or deleted. It is highly unlikely that a person in such a position is familiar with so complex a program. The certification is meaningless, of virtually no value, and not supported by the Act. The legal notion that corporate officers can be responsible for the conduct of far away operations is established and accepted by industry, and a signature by a vice president does not change this law or advance the purposes of the Act. The certification should be modified to either reflect that the signature is based on inquiry of those immediately responsible for obtaining the information or should be signed by an officer's designated representative or by the EHS responsible manager. At any rate, the State already has adequate powers of enforcement without adding this cumbersome burden.

RESPONSE: While the Act does not specifically address the issue of certification of required documentation, the Legislature's intent in requiring the Department to develop, establish and enforce by rule a system of recordkeeping which requires the owner or operator of an EHS facility to report on various activities and events, N.J.S.A. 13:1K-27 indicates concern for accurate and complete reporting. Considering the threat posed by an accidental release of an EHS, the Department believes that the certification requirement at N.J.A.C. 7:31-2.17 is not unduly burdensome and it will not be modified or deleted. It is vital to the success of the TCPA program that high level management officials be involved and committed to the successful implementation and management of their RMP and be aware of the assertion of petitions to withhold privileged trade secret or security information from the Department. The certification required by N.J.A.C. 7:31-2.17(a) (proposed as N.J.A.C. 7:31-5.14(a)) for the petition to withhold privileged trade secret or security information must be signed for a corporation by a principal executive officer of at least the level of vice president. The signature does not necessarily have to be that of a vice president, but it should be an officer of at least that level of authority; and such officer need not be familiar with each specific detail of the program, but based on inquiry of those individuals responsible for obtaining the information, the officer must certify that the information submitted in the petition and substantiation forms, and in any supplemental information in support of such petition, is believed to be true, accurate, and complete.

COMMENT: The certification proposed in N.J.A.C. 7:31-5.14(b) is unrealistic and should be deleted or modified. No official could certify that the information is true, accurate and complete unless all the elements of the RMP were prepared and performed by that official. No one person can know every nut and bolt in the facility and every nuance of the operating procedures, systems, programs, training, emergency response, evaluation, hazard analysis, risk assessment, dispersion analysis, etc. This could be a totally self-incriminating statement. The certification should be modified to reflect that one person can only certify to the best of his knowledge and belief. Further, the certification should be signed by the most knowledgeable and responsible person or by the officially designated appointee, that is, the risk management program manager.

RESPONSE: The certification in N.J.A.C. 7:31-2.17(a)1 (proposed as N.J.A.C. 7:31-5.14(b)) is not unrealistic. While no one individual can personally carry out all the requirements of the Act, these rules and the risk management program, responsibility for overall compliance with these requirements must be placed in some identifiable and responsible corporate, partnership, proprietary or governmental officer or official who has personal knowledge of these activities. The Department cannot be required to sanction the unwillingness on the part of an owner or operator of a site to identify an official willing to take responsibility for the risk management program or for the assertion of confidentiality claims. Therefore, the Department is not willing to include such language as "to the best of his knowledge and belief" in the certifications. The highest ranking individual at the site is clearly in the best position to know what the actual situation is at the facility and to ascertain whether documents required to be submitted with his or her signature including both confidentiality claims and petitions to withhold privileged trade secret or security information are true, accurate and complete. The certification of the highest official at the site assures that responsibility for the program at the highest levels and that upper management involvement and support for the program is secured. Therefore, no change has been made to the rule based on this comment.

COMMENT: The RMP checklist was designed to clearly and concisely show how each element of a registrant's RMP complied with the requirements of N.J.A.C. 7:31-3. Items addressed in the checklist should not require detailed written reports, and items such as hazard analyses, risk assessments, and emergency response plans would be available at the site for the Department's review. This approach would reduce the amount of confidential and proprietary information the Department would have to store and protect. Also, N.J.A.C. 7:31-3.12(a)2 and 3 should be deleted as an overview of these can be found in the RMP checklist, and they contain confidential and proprietary information.

RESPONSE: N.J.A.C. 7:31-3.12(a)1 was amended upon adoption (see 20 N.J.R. 1356(a)) and no longer requires an RMP description which demonstrates how each program element of the risk management program meets the requirements of N.J.A.C. 7:31-3.4 through 3.11. What is now required to be submitted is what the Department believes is only the minimum information needed to determine if a registrant has an established RMP. The Department has, by this change, attempted to minimize the paperwork burden for both the regulated community and itself.

N.J.A.C. 7:31-3.12(a)2 and 3 were also amended upon adoption (see 20 N.J.R. 1356(a)) to require the submission of reports on only the most recent safety reviews, hazard analyses, and risk assessments, rather than all of these reports for the last two or four year periods, respectively. In addition, N.J.A.C. 7:31-3.12(a)4 and 5 were deleted, as the Department believes that the site's emergency response plan and the catalog listing of the documents required by N.J.A.C. 7:31-3.3(c), (d) and (e) are not necessary for the initial review of the summary risk management program statement. However, the Department will review these documents if and when the risk management program has been determined to be an established risk management program and has been accepted for further review. Regarding the suggestion that items such as hazard analyses, risk assessments, and emergency response plans be available only at the site for the Department's review, the Department reserves the right to require that such items be submitted to its offices to allow for a thorough review. With reference to the confidential and proprietary nature of items such as safety reviews, hazard analyses, risk assessments and emergency response plans, the Department believes that the procedures established in N.J.A.C. 7:31-5 provide adequate protection for such information. Also, this subchapter has been adopted and becomes effective only a few days after the operative date of the TCPA program rules, N.J.A.C. 7:31-1, 2, 3, 4 and 6, and well before the deadline for the submission of any confidential information to the Department.

COMMENT: The Act restricts the use of the information supplied to the Department by an insurance carrier only to "its own employees or agents to assist in enforcing the provisions of this act, or for use in a civil or criminal proceeding, if so ordered by a court," and further mandates that the Department adopt by rule principles or guidelines and procedures to govern the internal management of the information supplied to it by insurers pursuant to the Act. These guidelines must be adopted to ensure that the information supplied is not subject to disclosure to the general public. The Act also requires the Department to have these provisions regarding confidential information in place prior to receiving confidential information from registrants. The potential for industrial espionage is enormous given the large amounts of information that would be requested by the State, and the Department gave strong assurances to industry that confidential information supplied to the Department by registrants would be treated as such. Proposed N.J.A.C. 7:31-1, 2, 3, and 4 did not mention how the Department will guarantee confidentiality. New Jersey facilities will be at a competitive disadvantage with out-of-state facilities which do not have to dilvulge this information. Without adequate assurances of protection, registrants would have to choose between the cost of losing trade secrets and the cost of relocating to another state. The proposed rules should not be finalized until the regulated community can assess the impact of the program on their operations as affected by the confidentiality provisions.

RESPONSE: In its proposal for these rules (see 20 N.J.R. 350(a)) the Department withdrew the insurance section initially proposed as part of N.J.A.C. 7:31-1, 2, 3, and 4 (see 19 N.J.R. 1687(a)) and proposed a new insurance section, N.J.A.C. 7:31-2.15. N.J.A.C. 7:31-2.15(e), as adopted, specifically provides that the Department is authorized to disclose information obtained from an insurance carrier only to its own employees or agents to assist in enforcing the Act, or for use in civil or criminal proceedings, if so ordered by a court. And, N.J.A.C. 7:31-5 is designed to carry out the mandate of the Act by providing the principles, guidelines, and procedures governing the internal management of confidential information supplied by both registrants and insurers, and thus ensures that such information is not inadvertently disclosed to the public. As these rules provide for the protection of both confidential information and privileged trade secret and security information, New Jersey facilities will not be competitively disadvantaged as to out of state facilities and should, therefore, not be forced to consider relocating to other states. Although these rules were not adopted at the same time as the TCPA program rules, N.J.A.C. 7:31-1, 2, 3, 4 and 6, the provisions were adopted and became effective within 10 days of the TCPA program rules' operative date and well before the deadline for the submission of any confidential information or petitions to withhold privileged trade secret or security information. Finally, as the comment period for N.J.A.C. 7:31-5 was extended an additional 22 days, industry and the public had a sufficient amount of time to assess the effect of the rule and to comment upon it.

COMMENT: One commenter was confused about the difference between confidential information and privileged trade secret information and asked: 1. Whether registrants could petition to withhold trade secrets from the Department; and 2. Whether it was necessary to go through the procedures of proving that a trade secret should be considered confidential in order for the Department to withhold it from public disclosure.

RESPONSE: Confidential information as defined in N.J.A.C. 7:31-1.5 (proposed as N.J.A.C. 7:31-5.12) is that information required to be submitted or disclosed to the Department which, if disclosed to the public, would competitively disadvantage the facility or compromise the security of the facility or its operation. Confidential information consists of non-privileged trade secret information, proprietary information and non-privileged security information. Privileged trade secret information is defined in the same section as trade secret information which the Department has determined the registrant is entitled to withhold from and not disclose to the Department, consisting of trade secret information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by a Federal or state law or regulation, and which has never been released to any person other than the registrant's employees involved in its use. It is also noted that N.J.A.C. 7:31-5.3(b) provides a listing of 11 types of information which must be submitted or disclosed to the Department and cannot be considered privileged trade secret or security information because they are necessary for the proper implementation of the Act. Thus, in accordance with N.J.A.C. 7:31-5.6, and with the above noted exceptions, registrants may indeed assert a petition to withhold from and not disclose to the Department privileged trade secret information. While information which a registrant is petitioning to withhold from the Department as privileged trade secret information must first qualify as confidential information, by completing the petition to withhold privileged trade secret or security information form, the registrant, in essence, is asserting that the petitioned information does qualify as confidential information. However, if a registrant decides to disclose a trade secret to the Department, it may submit a confidentiality claim in accordance with N.J.A.C. 7:31-5.4, and if the Department determines that the information is entitled to confidential treatment, the information will not be disclosed, except as provided by this subchapter.

The following comments which were received in response to these proposed rules were also received in response to the proposal for the TCPA program rules, N.J.A.C. 7:31-1, 2, 3, and 4, (see 19 N.J.R. 1687(a)). As these comments were appropriately responded to in the comment and response document for the TCPA program rules, N.J.A.C. 7:31-1, 2, 3, 4 and 6, in the June 20, 1988 New Jersey Register at 20 N.J.R. 1356(a), no further response is necessary here.

COMMENT: The proposed rule is inflexible. For example, it does not apparently allow EHS facilities to provide data where judged by the Department insufficient in the Summary Risk Management Program Statement.

COMMENT: Whereas the intent of the Act is to implement a performance oriented rule relevant to risk management, the Department specified a technology based approach in its proposal. This program must be geared to existing chemical processes, requiring an acceptable, high level of risk management which is capable of being incorporated into existing processes. The approach to risk management should be first to establish standards of performance followed by auditing for compliance.

COMMENT: The frequency of Department audits could be based on a number of criteria, for example: (1) results of previous audit, (2) EHS handling performance, etc. This approach allows the Department to truly "manage" the TCPA as opposed to embarking on a "permit/approval/control" approach coupled with extensive submission of confidential and proprietary information.

COMMENT: One commenter stated it was extremely disappointed to find that, contrary to any statutory authority, the proposed rules attempt to turn the Act into another permitting program and yet another hurdle for those New Jersey companies that are attempting by innovation and new investment to adapt to changing times and remain competitive. Preapprovals for sites which already have an approved Risk Management Program are unnecessary impediments to the normal course of business and will most assuredly discourage capital investment and development within the State of New Jersey. This was not the intent of the Legislature and thus exceeds the statutory intent. At no point does the Act refer to pre-approvals for sites with an approved RMP nor does it imply that such should be the case. Sections 7:31-2.4(c), (d) and (e) of the proposed rules would require any registrant that already has an approved risk management program for one or more EHS facilities at its site to receive a further approval from the Department prior to constructing or operating a new EHS facility at the same site, or using a different EHS in a facility at the site already subject to approval. This contrasts with a more workable rule where the owner is allowed to proceed as long as it has updated its risk management program. The Department already has shown the consequences of programs under which permits to proceed are required prior to new construction. The backlog of permits in the air and waste programs is staggering despite the best efforts of the Department. At one plant in New Jersey, there are 73 outstanding air permit requests and 6 for hazardous waste. Of these, 22 have been pending for more than six months and 3 for over a year. Desperate companies have resorted to entreating agency heads, the governor, and their legislators in efforts to move or even find permits, and for air permits the Department has resorted to contractors for help. Another permitting program without establishment of compelling need should not be undertaken. Rather, for those facilities with existing risk management programs, new facilities should be treated the same as modifications. In the event that the Department's analysis of the registrant's risk management program and efforts for the new facility uncovers a discrepancy, the site owner could be compelled to address this discrepancy regardless of any additional costs. The commenter stated that its proposal strikes a balance between the need of industry to be able to predict when facilities can be used, and the need of the Department to implement the Act. The public is protected fully under the Department's authority to terminate operation of an unduly risky facility, and permitees will respond to the potential of being required to reconstruct facilities by incorporating conservative design and operating standards into new facilities.

COMMENT: The economic impact on New Jersey businesses is not adequately addressed under the Economic Impact statement. Rather, the statement talks in general terms about the increased costs of doing business being partially offset by some lower operating and maintenance costs (that is, fewer unexpected breakdowns, few material losses). Several companies which already have risk management programs in place estimated the cost of a typical business modifying its risk management program for submission to the Department and the annual cost of maintaining a risk management program in the format and detail prescribed by the proposed TCPA regulations. The range of costs for the one-time revision of the programs ranged from a low of $250,000 to a high of $500,000 for each EHS at each EHS facility. The annual cost of maintaining a risk management program meeting the TCPA program requirements was estimated at $100,000 to $300,000 for each EHS at each EHS facility. These costs would likely be two to three times greater if a consulting firm were used to prepare and maintain the RMP. The commenter provided an attachment which summarized the initial capital costs as well as the initial and on-going operating costs based upon the Department's and its own estimates. For the State of New Jersey, depending on whose estimates one uses, the initial capital costs are estimated to be $800,000,000 with initial operating cost of approximately $600,000,000 and ongoing operating costs of approximately $200,000,000-$300,000,000. The public will not realize any significant improvement in the reduction of catastrophic release potential commensurate with the TCPA related costs to be incurred. The existing risk management programs are already protective of human health and the environment. The TCPA regulations could be significantly more cost-effective if they embraced a more flexible framework under which industry would submit their existing risk management program plans; this would allow industry the opportunity to demonstrate alternative approaches meeting the intent of the Act. This alternative would entail the Department evaluating existing risk management programs and recommending specific changes, where justifiable, rather than the rigid proposed regulations. This approach would meet the dual objectives of getting all businesses to operate under "equivalent" Risk Management Programs and minimizing conversion costs to a rigid RMP structure. The economic database does not support the costly "permit approval" approach as outlined and proposed by the Department in the September 21, 1987 proposal.

COMMENT: The required submission of these documents outlined in the regulation presents an unnecessary burden and cost on the registrant and is in violation of the State's paperwork reduction act.

COMMENT: Part of the process for evaluating sites with existing risk management programs should be revised to reflect the clearly expressed intent of the legislature. Under the proposed section 2.7(b), certain criteria are established for reviewing the summary risk management program statement submitted by an owner. If these criteria (not found in the Act) are not met, the plan is rejected without any efforts on the part of the Department to suggest corrections. There is no procedure in the proposed rule implementing the clear mandate of the Act that attempts be made to address deficiencies and, failing that, an order be issued after procedural safeguards are provided. The Department should point out material deficiencies and/or omissions in a registrant's risk management program if such exist. No provision is provided for "screening" of a registrant's RMP via an "initial evaluation." The registrant and the Department should work out agreements regarding material deficiencies prior to drafting a consent agreement. The registrant should have an opportunity for a hearing with the Commissioner prior to his issuing an administrative order. And, the Commissioner should take cost effectiveness and technical feasibility into account during the hearing and review process.

Department Initiated Clarifications and Corrections

1. The citation to the section title "Release of information by insurance carriers" has been corrected to read "N.J.A.C. 7:31-2.15."

2. In N.J.A.C. 7:31-2.15(c), the conjunction "and" has been deleted from the end of (c)3 and added to the end of (c)4 for clarity.

3. At N.J.A.C. 7:31-5.3, the term "information" has been deleted from the section title to make the use of the phrase "privileged trade secret or security information" consistent throughout the rule.

4. In N.J.A.C. 7:31-5.3(a)10, the term "Summary" has been deleted to correct the reference to Appendix I, the "Risk Management Program checklist". Also the spelling of the term "Program" has been corrected.

5. In N.J.A.C. 7:31-5.3(a)11, the citation to the referenced subsection has been corrected to read "N.J.A.C. 7:31-3.10(b)."

6. In N.J.A.C. 7:31-5.4(h), the citation to the referenced subsection has been changed to reflect the incorporation of the proposed signature and certification requirement into N.J.A.C. 7:31-2.17(b).

7. In N.J.A.C. 7:31-5.5(d), the citation to the referenced subsection has been changed to reflect the recodification of the proposed fee subsection to N.J.A.C. 7:31-2.16(n).

8. In N.J.A.C. 7:31-5.5(i)1, the citation to the proposed adjudicatory hearings section has been changed to reflect that section's incorporation into N.J.A.C. 7:31-6.3(b).

9. In N.J.A.C. 7:31-5.6(a) and (b), the citations to the referenced subsection concerning the required fee have been changed to reflect the recodification of the proposed fee subsection to N.J.A.C. 7:31-2.16(o).

10. In N.J.A.C. 7:31-5.6(d) and (g), the citations to the referenced subsection concerning the signatures and two part certification requirement have been changed to reflect the incorporation of the proposed requirement into N.J.A.C. 7:31-2.17(a).

11. In N.J.A.C. 7:31-5.7(d), the conjunction "and" has been added to the end of (b)2 for clarity; and in (b)3, the term "or" in the phrase "claim or confidentiality" has been corrected to "of".

12. In N.J.A.C. 7:31-5.7(g)2, the references to N.J.A.C. 7:31-5.15 and 5.15(a) have been changed to reflect the incorporation of these proposed requirements concerning adjudicatory hearings into N.J.A.C. 7:31-6.3(b) and 6.3(c), respectively.

13. In N.J.A.C. 7:31-5.9(b), the conjunction "and" has been deleted from the end of (b)4 for clarity.

14. The section title at N.J.A.C. 7:31-6.3 has been shortened by deleting the phrase "to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings" to more accurately reflect the contents of the section.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:31-1.5 Definitions

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

. . .

***"Agent of the Department" means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.***

. . .

***"Claimant" means any person who submits a confidentiality claim under this chapter.***

. . .

***"Confidential copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.***

***"Confidential information" means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the facility or compromise the security of the facility or its operations; consisting of non-privileged trade secret information, proprietary information and non-privileged security information.***

***Confidentiality claim" or "claim" means a written request made by a registrant pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.***

. . .

***"Employee" means any person allowed or permitted to work by a registrant, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the registrant.***

. . .

***"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.***

***"Petition to withhold privileged trade secret or security information" or "petition" means a written request made by a registrant pursuant to this chapter to withhold from disclosure to the Department**

**certain information which is privileged trade secret or security information.***

***"Petitioner" means any person who submits a petition to withhold privileged trade secret or security information under this chapter.***

. . .

***"Privileged trade secret or security information" means trade secret or security information which the Department has determined the registrant is entitled to withhold from and not disclose to the Department; consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or state law or regulation, and which has never been released to any person other than the registrant's employees involved in its use.***

. . .

***"Public copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.***

. . .

***"Security information" means information the release of which could either compromise the physical security of the facility or its operations, or adversely affect national security.***

. . .

***"Substantiation" means the written submittal on a Department provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.***

***"Trade secret" means a formula, process, device or compilation which a registrant uses in its business and which gives it an opportunity to obtain an advantage over competitors who do not know or use it.***

. . .

7:31-2.12 Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute except for those parts or portions of any materials, equipment, documents and records which contain either privileged trade secret or security information or confidential information for which the registrant has submitted a petition in accordance with N.J.A.C. 7:31-5.6, or a claim in accordance with N.J.A.C. 7:31-5.4, and which petition or claim has not been denied by the Department. Those parts or portions of any materials, equipment, documents and records containing privileged trade secret or security information shall be treated as provided in (b)1 below, and those parts or portions containing confidential information shall be treated as provided in (b)2 below. Such right of inspection shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) At the commencement of an inspection by the Department, a registrant may identify those materials, equipment, documents and records at the site which contain either privileged trade secret or security information or confidential information for which an appropriate petition or claim has been asserted and which has not been denied by the Department.

1. Those parts or portions of any materials, equipment, documents and records at the site which contain privileged trade secret or security information need not be disclosed to or submitted to the Department. Any such materials, areas, documents or records disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged trade secret or security information thereafter. The fact that such trade secret or security information has been disclosed to or submitted to the Department shall not prohibit the registrant from asserting a confidentiality claim concerning such information.

2. Those parts or portions of any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or submitted to the Department during an inspection, including all negatives and prints of photographs, and shall be labelled "confidential". In order to assert a confidentiality claim, a properly completed claim form must be submitted to the Department at the same time any such confidential information is submitted or disclosed to the Department. These materials, equipment, documents and records shall not be disclosed by the Department to other persons except in accordance with the provisions of this chapter.

(c) The Department plans to inspect a site at least annually to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan.

(d) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.

*[7:13-2.15]* ***7:31-2.15*** Release of information by insurance carriers

(a) After a review of documents and an EHS facility inspection, the Department may determine that a registrant shall authorize the facility's environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the facility's EHS management practices;

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;

2. Reports of safety and environmental inspections or audits;

3. Reports of inspections of fire protection equipment; *[and]*

4. Reports of any additional studies conducted which evaluated the adequacy of the registrant's management of EHSs; ***and***

5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the registrant shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the registrant.

(e) The Department is authorized to disclose information obtained from an insurance carrier or its representative pursuant to this section only to its own employees or agents to assist in enforcing the provisions of the Act, or for use in a civil or criminal proceeding, if so ordered by a court.

7:31-2.16 Fees

(a)-(m) (No change.)

***(n) Each registrant submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-5.5(d) shall submit a fee of $350.00 for the review of its claim at the time it submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).**

**(o) Each registrant submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-5.6 shall submit a fee of $350.00 for the review of its petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).***

7:31-2.17 Required signatures and certifications

(a) All registration forms, risk management program descriptions *[and]* *,* risk management program checklists*, **petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information*** shall contain the following signatures and two part certification which provides the following:

1.-2. (No change.)

(b) All other reports required by this chapter, the risk management program***, confidentiality claim forms and substantiation forms in support of confidentiality claims,*** and other information requested by the Department shall be signed by a person described in (a)1i above or the responsible manager, and the person who signs the report shall make the certification set forth in (a)1 above.

SUBCHAPTER 5. CONFIDENTIALITY AND TRADE SECRETS

7:31-5.1 Scope and applicability

(a) This subchapter constitutes the rules for the assertion, substantiation, review, and appeal of confidentiality claims and petitions to withhold privileged trade secret or security information, and establishes the principles, guidelines and procedures governing the internal management and disclosure of confidential information provided to the Department pursuant to this chapter.

(b) All registrants asserting a confidentiality claim or a petition to withhold privileged trade secret or security information shall follow the procedures set forth in this subchapter.

(c) The Department, its employees and its agents shall strictly adhere to the procedures established by this subchapter for maintaining the confidentiality and security of confidential information and for the disclosure of confidential information.

7:31-5.2 General provisions

(a) All information collected by or originated by the Department in connection with the Act, this chapter or the TCPA program shall be made available to the public in accordance with N.J.S.A. 47:1A-1 et seq. except as otherwise provided in this subchapter.

(b) The Department shall protect from disclosure to the public any confidential information obtained pursuant to the Act or this chapter.

(c) Confidential information, supplied to the Department, will be disclosed only to the employees or agents of the Department and only on a need-to-know basis for the purposes of carrying out or enforcing the provisions of the Act or this chapter, or for use in civil or criminal proceedings, if so ordered by a court.

(d) A registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. A registrant may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the summary risk management program statement with the Department pursuant to N.J.A.C. 7:31-2.6(b) and (c) and 2.10, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-5.4 and 5.6, respectively. If the space provided for responses on Department forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All forms can be obtained from:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection
Division of Environmental Quality
CN 027
Trenton, New Jersey 08625

(e) The registrant shall initially submit or disclose only the confidential copy of documents containing confidential information to the Department. The public copy which shall have deleted all confidential information and be available for public disclosure shall be submitted to the Department only upon the Department's receipt of a request for the public disclosure of the information or if the Department otherwise decides to determine whether the information is entitled to confidential treatment. The confidential copy shall be for the Department's record and shall include all necessary information.

(f) Any confidential information supplied to the Department shall be sent by certified mail, return receipt requested, by personal delivery, or by other means that provides verification of delivery, the date of delivery, and the name of the person who receives the document at the Department.

(g) A properly completed and submitted petition to withhold privileged trade secret or security information or any subsequent interim decisions by the Department concerning such petition shall not exempt the registrant from compliance with the requirements of the Act or this chapter, except that the registrant will not be required to provide the Department with the trade secret or security information claimed as privileged, unless the petition is finally denied.

(h) No employees or agents of the Department are authorized to sign a confidentiality agreement or other non-disclosure agreement, and any such agreement so executed will be of no force or effect as to the Department.

7:31-5.3 Exclusions from confidential information and privileged trade secret *[information]* or security information

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1. The name of the registrant, its address, and the name and location of its EHS facilities;

2. The chemical or common name, Chemical Abstract Services number, United States Department of Transportation identification number, extraordinarily hazardous substance name or other identifying name for the substances listed in Table I in N.J.A.C. 7:31-2.3, or any regulation promulgated under the Act;

3. Information required to be publicly disclosed pursuant to any other Federal or state act or regulation;

4. Information supplied to the Department by a registrant contained within the Toxic Catastrophe Prevention Act registration form, ***with the exception of information contained in section E of the registration form,*** as set forth in Appendix II and made a part of this chapter. ***Any registrant which submitted a registration form prior to the effective date of this rule wishing to assert a confidentiality claim covering any confidential information disclosed in section E of its registration form shall submit such claim prior to September 19, 1988 to ensure continued confidentiality treatment for such information;***

5. Information required to be publicly disclosed pursuant to a court order or ruling;

6. Information which is patented *[or has a patent pending]*;

7. Information which is published or available through any public source;

8. Information which is known to persons outside the registrant's business, who are not bound by a confidentiality agreement or other duty to keep the information confidential;

9. Information which is determined not to be confidential information pursuant to this chapter;

10. Information required to be submitted to the Department *[which is contained in]* ***appearing on*** the *[Summary]* Risk Management *[Progrm]* ***Program*** checklist ***form,*** established pursuant to N.J.A.C. 7:31-3.14 and which is set forth in Appendix I*[.]***;*

11. Information required to be included in the registrant's emergency response plan pursuant to N.J.A.C. *[7:31-3.10(c)]* ***7:31-3.10(b)***; and

12. Information submitted or disclosed to the Department by a registrant which is not marked or which does not display in bold type or stamp the word "Confidential" on the top of each page.

(b) At a minimum the following information required to be submitted or disclosed to the Department pursuant to the Act or this chapter shall not be considered privileged trade secret or security information regardless of any petition either pending or approved:

1. Hazard analysis records;
2. Safety review records;
3. Risk analysis records;
4. EHS Accident records;
5. Process flow and piping and instrumentation diagrams;
6. Standard operating procedures;
7. Preventive maintenance procedures;
8. Inspection reports;

9. Safety and emergency procedures;
10. Training records and procedures; and
11. Criteria for design and operation.

7:31-5.4 Confidentiality claims

(a) Any registrant required to submit or disclose to the Department any information pursuant to the Act or this chapter which in the registrant's opinion constitutes confidential information, may assert a confidentiality claim by following the procedures set forth in this section.

(b) Any registrant asserting a confidentiality claim shall do so in writing on a form provided by the Department at the time the registrant provides or discloses confidential information to the Department.

(c) Any registrant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit a confidential copy of the document to the Department along with a properly executed confidentiality claim form. The confidential copy shall contain all the information required by the Act or this chapter including any information which the claimant requests to be treated as confidential. A second copy, the public copy, which shall be identical to the confidential copy except that it shall contain no information which the claimant requests to be treated as confidential, shall be submitted to the Department only if the Department receives a request for public disclosure of the information or if the Department decides to determine whether the information is entitled to confidential treatment. The public copy can be a photocopy of the confidential copy, with the allegedly confidential information blacked out. When a public copy is required, the Department shall notify the claimant by certified mail, return receipt requested, that it must submit the public copy and the required fee, along with the confidentiality claim substantiation form as required by N.J.A.C. 7:31-5.5(d), to the Department within 30 days*.* *[or its claim will be considered abandoned and the confidential copy shall be treated as public information.]* ***If the public copy, required fee or the confidentiality claim substantiation form is not received by the Department within the 30 day time limit, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant that its claim will be considered abandoned and the confidential copy shall be treated as public information, unless the public copy, required fee or substantiation form is received by the Department within 10 days of receipt of the Department's notice.***

(d) The top of each page of the confidential copy containing any information which the claimant desires to be treated as confidential shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(e) All parts of the text of the confidential copy which the claimant requests to be treated as confidential shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the information claimed as confidential and the underscoring or highlighting is reproducible on photocopying machines. Information not so marked will be treated as public and may be disclosed without notice to the claimant.

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection
Division of Environmental Quality
CN 027
Trenton, New Jersey 08625

The outer envelope shall bear no marking indicating the confidential nature of its contents.

(g) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, by personal delivery or by other means which will provide verification of delivery, the date of delivery and the name of the person who receives the document at the Department. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided in (f) above.

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification specified in N.J.A.C. *[7:31-5.14(b)]* ***7:31-2.17(b)***. Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification specified in N.J.A.C. *[7:31-5.14(b)]* ***7:31-2.17(b)***.

(i) For information which in the registrant's opinion constitutes confidential information and which is merely disclosed to the Department during an inspection at the EHS facility, only one copy, the confidential copy, need be revealed to the Department at that time. A properly executed confidentiality claim form for the information disclosed shall be submitted to the Department at the time of such disclosure. The second copy, the public copy, will be submitted to the Department only if it becomes necessary for the Department to make a confidentiality determination concerning the information claimed as confidential which is disclosed during an inspection. Any information disclosed to the Department during an inspection which is not properly marked and identified as confidential information will not be considered confidential or be treated as such by the Department.

***(j) If upon receipt of the public copy, the Department becomes aware of an apparent error or omission on the part of a claimant in failing to delete information from the public copy which it identified as being confidential by underscoring or highlighting on the confidential copy, the Department shall send a letter by certified mail, return receipt requested, notifying the claimant of the apparent error or omission. The letter shall advise the claimant that the claim as to all information not deleted on the public copy will be considered abandoned and the public copy will be treated as public information, unless the Department receives a corrected public copy within 10 days of receipt of the Department's notice.***

7:31-5.5 Determination of confidentiality claims

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;
2. Decides to determine whether information in its possession is entitled to confidential treatment; or
3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Whenever the Department is required to or decides to make a determination whether information is entitled to confidential treatment, the Department shall first make a determination that the information claimed as confidential has not been the subject of a prior confidentiality determination by the Department concerning the same facility, or if it has, that the prior determination upheld the registrant's claim. If such a prior determination held that the confidentiality claim was invalid, the Department shall notify the claimant by registered mail, return receipt requested, that the information claimed as confidential is the subject of a prior determination concerning the confidentiality of the same information in which it was held that such claim was invalid and the Department will treat the information as public information.

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. *[7:31-5.13(a)]*

***7:31-2.16(n)*** for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1. The reasons why the information needs to be treated as confidential;

2. The extent to which disclosure of the information would result in damage to the claimant, including a description of the damage, and an explanation of the relationship between disclosure and the damage;

3. The period of time for which confidential treatment is desired by the claimant (for example, until a certain date, until the occurrence of a specified event, or permanently);

4. The measures taken by the claimant to guard against undesired disclosure of the information to others, and claimant's intention to continue such measures and any new measures the claimant intends to implement in the future to protect the information;

5. The extent to which the information has been published or otherwise disclosed to others, including employees, and the precautions taken in connection therewith;

6. Prior confidentiality determinations concerning the information made by the Department, another agency or a court, and a copy of such determination;

7. Whether the information is patented, *[or whether a patent has been applied for,]* and, if so, identification of the patent and an explanation why the patent:

i. Does not connect the claimant with the confidential information; and

ii. Does not protect the claimant from competitive harm.

8. The ease or difficulty with which the information could be discovered through reverse engineering and an estimate of the cost;

9. Whether any Federal or state statute or regulation requires the public disclosure of the information, and a copy thereof; and

10. For security information, a description of the adverse impact disclosure would have on either the facility's security or its operations.

(e) Failure of a claimant to furnish *[timely substantiation]* ***the public copy, the confidentiality claim substantiation form*** or to pay the required fee ***within 10 days of receipt of the Department's second notice provided in accordance with N.J.A.C. 7:31-5.4(c),*** waives the claimant's confidentiality claim and the information will be treated as public information.

(f) The registrant may assert a confidentiality claim for any confidential information contained in its substantiation form submitted to the Department pursuant to (d) above. To claim this material as confidential, the claimant shall clearly designate those portions of the substantiation form claimed as confidential in accordance with the procedures provided in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the claimant.

1. The claimant shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c). The certification on the substantiation form shall be executed as provided in N.J.A.C. 7:31-5.4(h).

(g) The substantiation form shall be enclosed in envelopes as specified in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein. To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(h) The Department may extend the time limit for submitting substantiation pursuant to (d) above to not more than 60 days upon receipt of a request in writing for good cause shown.

(i) After receiving the substantiation, the Department shall make a final confidentiality determination in accordance with the criteria set forth in (j) below.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, and shall advise the claimant of its right to request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. *[7:31-5.15]* ***7:31-6.3(b)***. The notice shall also advise the claimant that the Department shall make the information available to the public on the 30th day following receipt by the claimant of the written notice, unless the Department has received a timely written request for an adjudicatory hearing to contest such decision.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The claimant shall be notified of the Department's determination by regular mail. The notice shall state the basis for the determination and that it constitutes final agency action.

(j) If the claimant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted shall be treated as confidential:

1. The claimant has established a reasonable basis for treating the information as confidential;

2. Except for security information, the claimant has shown that disclosure of the information would be likely to cause damage to its competitive position;

3. The claimant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

4. The claimant has shown that reasonable measures have been taken to protect the confidentiality of the information and that the claimant intends to continue to take such measures;

5. The information is not, and has not been, available or otherwise disclosed to persons other than employees, except under a confidentiality or non-disclosure agreement, without the claimant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to a person not involved in the proceeding);

6. Any prior confidentiality determinations concerning the information made by the Department, another agency or a court approved or upheld the registrant's confidentiality claim;

7. The information is not the subject of a patent, or if patented, the patent does not connect the claimant with the confidential information and does not protect the claimant from competitive harm;

8. The confidential information is not readily discoverable through reverse engineering;

9. No statute or regulation requires public disclosure of the information; and

10. For security information, the claimant has shown that disclosure of the information would likely have an adverse effect on the security of the facility or its operations.

7:31-5.6 Petitions to withhold privileged trade secret or security information

(a) Any registrant required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the registrant believes must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the procedures set forth in this section and by paying the fee set forth in N.J.A.C. *[7:31-5.13(b)]* ***7:31-2.16(o)***. Any registrant of a facility submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any registrant asserting a petition to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of filing the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information, and pay the fee set forth in N.J.A.C. *[7:31-5.13(b)]* **7:31-2.16(o)*** for review of its petition and substantiation in accordance with the following:

1. A petitioner whose summary risk management program statement is accepted for further review in accordance with N.J.A.C. 7:31-2.6(e) shall submit its substantiation and fee within 30 days of receipt of a written request by the Department.

2. A petitioner whose risk management is determined to be unacceptable shall submit its substantiation and fee at the time it submits the site data as required by N.J.A.C. 7:31-2.9(b)2, that is, within 30 days after receipt of notice that its risk management program is unacceptable.

3. A petitioner who does not have a risk management program shall submit its substantiation and fee at the same time it submits its petition to withhold privileged trade secret or security information, that is, within 30 days after receipt of a request for the site data from the Department in accordance with N.J.A.C. 7:31-2.9(b)1.

4. A petitioner who creates new privileged trade secret or security information shall submit its substantiation and fee within 30 days after receipt of a written request by the Department.

(c) The substantiation shall include, but need not be limited to, the following:

1. Identification of the specific use of the trade secret and an explanation why it is of interest to competitors and should be treated as a privileged trade secret. Such identification shall include, but not be limited to, the following:

i. A description of the specific use of the trade secret, identifying the product, process, or activity in which it is used;

ii. If the petitioner's company or facility has been linked to the trade secret in publications or other information available to the public, an explanation why this knowledge does not eliminate the justification for trade secrecy;

iii. If the trade secret is unknown outside of the petitioner's company, an explanation how competitors could deduce this information from any disclosure required under the Act or this chapter; and

iv. An explanation why the trade secret information sought to be withheld would be valuable to competitors;

2. A description of the specific measures taken to safeguard the confidentiality of the trade secret or security information;

3. Identification of any and all persons, including employees of the facility, to whom the trade secret or security information has been disclosed, including a copy of any signed confidentiality agreement requiring the person to refrain from disclosing the information sought to be withheld, or a description of any other methods used to ensure the confidentiality of the trade secret or security information. Officers or employees of the United States government to whom the information was disclosed for use in national defense purposes are not to be identified;

4. An indication of the number of and location of all documents which contain the allegedly privileged trade secret or security information;

5. A list of all local, state and Federal government entities to which the trade secret or security information has been disclosed. For each entity, whether a confidentiality claim for the information was asserted and whether the government entity granted or denied that claim shall be indicated;

6. A description of the harm to the petitioner's competitive position that would likely result from disclosure of the trade secret, including an estimate of the potential loss in sales or profitability;

7. A description of the extent to which the trade secret information is discoverable through the process of reverse engineering, including a description of the factors which influence the cost of discovering the trade secret by reverse engineering and a rough estimate of the cost of such discovery;

8. Identification of any patent to which the trade secret or petitioner's use of the trade secret is subject and an explanation why the patent:

i. Does not connect the petitioner with the trade secret; and

ii. Does not protect the petitioner from competitive harm;

9. A description of how disclosure of the trade secret or security information would likely affect the security of the facility or national defense; and

10. Any other relevant information to assist the Department in determining the validity of the petition to withhold privileged trade secret or security information.

(d) The certification on the bottom of the petition and substantiation form shall contain the signatures and two part certification specified in N.J.A.C. *[7:31-5.14(a)]* **7:31-2.17(a)***.

(e) The registrant petitioning to withhold privileged trade secret or security information may claim as confidential any confidential information contained in the substantiation form by following the procedures set forth in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the petitioner.

(f) The petitioner shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c).

(g) The Department may request supplemental information from the petitioner in support of its petition and substantiation to withhold trade secret or security information. The Department may specify the kind of information to be submitted, and the petitioner may submit any additional detailed information which further supports the information previously supplied to the Department in the petitioner's initial substantiation within 30 days of receipt of the Department's request. The petitioner may claim as confidential any confidential information included in the supplemental information, and shall clearly designate those portions of the supplemental information claimed as confidential in the manner described in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public information and may be disclosed without notice to the petitioner. A petitioner submitting supplemental information shall include a certification which shall contain the signatures and two part certification specified in N.J.A.C. *[7:31-5.14(a)]* **7:31-2.17(a)***. If supplemental information is submitted by the petitioner and the petitioner claims portions of it as confidential information, then the petitioner shall initially submit to the Department only the confidential copy of the supplemental information as prescribed in N.J.A.C. 7:31-5.4(c).

(h) The confidential copy of any petition to withhold privileged trade secret or security information, and the substantiation form or supplemental information which contains confidential information shall be enclosed in envelopes in accordance with the procedures set forth in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein.

(i) To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(j) A petitioner shall update information submitted to the Department regarding a pending or approved petition within 30 days of the petitioner's knowledge or receipt of new information which could affect the petition to withhold privileged trade secret or security information.

7:31-5.7 Determinations of petitions to withhold privileged trade secret or security information

(a) Upon receipt of a petition to withhold privileged trade secret or security information, the Department shall first make a determination that the information petitioned to be withheld as privileged trade secret or security information has not been the subject of a prior determination by the Department of a petition to withhold the same information concerning the same facility, or if it has, that the prior determination upheld the registrant's petition to withhold the information.

1. If such a prior determination held that the petition to withhold the trade secret or security information was invalid, the Department shall notify the petitioner that the information petitioned to be withheld from the Department is the subject of a prior determination concerning the withholding of the same information in which it was held that such petition was invalid, and the Department shall require the petitioner to submit or disclose the information to the Department.

(b) Failure of a petitioner to furnish timely substantiation or to pay the required fee waives its petition to withhold privileged trade secret or security information and the Department will require the petitioner to submit or disclose the information to the Department. Failure to furnish substantiation or to pay the required fee does not affect the registrant's right to assert a confidentiality claim concerning the same information.

(c) If the Department determines that the petition to withhold privileged trade secret or security information is not the subject of a prior determination, the Department shall determine whether the petitioner has presented sufficient support for its petition to withhold privileged trade secret or security information in its substantiation. A petition to withhold such information as privileged will be considered sufficient if, assuming all the information contained in the substantiation is true, this supporting information meets the criteria set forth in (d) below.

(d) A substantiation submitted under N.J.A.C. 7:31-5.6 will be determined to be sufficient to support a petition to withhold privileged trade secret or security information if the substantiation asserts specific facts to support the following conclusions:

1. The petitioner has established that the information sought to be withheld as privileged trade secret or security information is entitled to protection as confidential information in accordance with the criteria in N.J.A.C. 7:31-5.5(j)1 through 10;

2. The petitioner has not disclosed the information sought to be withheld to any other person other than to the petitioner's employees involved in its use, or, if the information relates to national security, to officers or employees of the United States government; ***and***

3. The petitioner is not required by any state or Federal law or regulation to disclose the information to any governmental entity or agency, regardless of any right of the petitioner to make a claim or confidentiality upon disclosing the information to such governmental entity or agency.

(e) If the petition does not meet the criteria for sufficiency set forth in (d) above, the Department shall notify the petitioner in writing of this fact by certified mail (return receipt requested). The notification shall include the reasons for the Department's initial decision that the petition is insufficient, and shall inform the petitioner of its right to submit in writing supplemental information to the Department within 30 days of receipt of the notice in accordance with N.J.A.C. 7:31-5.6(g) to support the facts asserted in its substantiation. The notification may specifically request supplemental information in particular areas relating to the petition and shall inform the petitioner of its right to claim as confidential, any confidential information contained in any supplemental information it submits, and will include a reference to N.J.A.C. 7:31-5.4(d) and (e) as the source for the proper procedures for making such confidentiality claim.

(f) Upon receipt of supplemental information or after the 30 day period to submit supplemental information has expired, the Department shall determine whether the petition meets the standard of sufficiency set forth in (d) above.

1. If after receipt of supplemental information, the Department determines that the petition is sufficient, the Department will make a final determination concerning the petition to withhold trade secret or security information in accordance with (g) below.

2. If after the expiration of the 30 day period specified in (e) above, no supplemental information has been received by the Department, and the Department makes a final determination that the petition is still insufficient, the Department will notify the petitioner by certified mail (return receipt requested) that its petition is considered abandoned. The notice shall state the basis for the determination and will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's determination. A determination that a petition to withhold privileged trade secret or security information is insufficient does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the determination of insufficiency concluded that the information sought to be withheld is not confidential information.

(g) Once a petition has been determined to be sufficient under (d) or (f)1 above, the Department will determine whether the petition to withhold trade secret or security information will be granted or denied.

1. The petitioner will be notified by regular mail that its petition has been granted if the Department determines that the information submitted in support of the petition is true and that the information sought to be withheld is a trade secret or security information which meets the following criteria:

i. The information is trade secret or security information entitled to be treated as confidential information in accordance with the criteria established in N.J.A.C. 7:31-5.5(j)1 through 10;

ii. The information has never been released to any person other than to the petitioner's employees who are involved in its use, or, if the information relates to national security, to officers or employees of the United States government;

iii. The information is not otherwise required to be disclosed by any Federal or state law or regulation to any governmental entity or agency, regardless of any right by the petitioner to make a claim of confidentiality upon disclosing the information to any such governmental entity or agency; and

iv. The information is not included on the list provided at N.J.A.C. 7:31-5.3(b).

2. If the Department determines that the information submitted in support of the petition is not true or that the information sought to be withheld is not a trade secret or security information which is entitled to be treated as privileged in accordance with the criteria set forth in (g)1 above, the petitioner shall be notified by certified mail (return receipt requested) that its petition has been denied. The notification shall state the basis for the determination, and shall advise the petitioner of its right to request an adjudicatory hearing in accordance with the procedures specified at N.J.A.C. *[7:31-5.15]* ***7:31-6.3(b)***. Unless a request for an adjudicatory hearing is received within the time limit specified by N.J.A.C. *[7:31-5.15(a)]* ***7:31-6.3(c)***, the Department will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's denial of its petition. A denial of a petition to withhold privileged trade secret or security information does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the denial concluded that the information sought to be withheld is not confidential information.

7:31-5.8 Maintaining the confidentiality and security of confidential information

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to only those Department employees and agents whose activities necessitate such access and as provided at N.J.A.C. 7:31-5.9.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the registrant who supplied it to the Department.

(d) Only those Department employees who are designated as records custodians in accordance with (l) below, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:31-5.4(f).

(e) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:31-5.5 shall be stored by the Department or its agents only in locked cabinets.

(f) Any record made or maintained by Department employees or agents which contains confidential information shall be treated as confidential in accordance with the provisions of this section.

(g) Confidential information shall not be publicaly disclosed by the Department and shall not be communicated over telecommunications networks, including but not limited to telephones, computers connected by modems, or electronic mail systems.

(h) Any document, which contains confidential information and is transmitted by the Department to the registrant or to any authorized person, shall be sent by certified mail or by other means that requires a verification of receipt, the date of receipt, and the name of the person who receives the document.

(i) The Department's contact regarding confidential information shall be the registrant's responsible manager.

(j) Any document prepared by the Department for the registrant which contains confidential information shall display the word "CONFIDENTIAL" in bold type or stamp on the top of each page. The envelope containing this document shall be addressed to the registrant's responsible manager and shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(k) No persons other than the Commissioner and his or her designated employees or designated agents or an administrative law judge conducting a hearing on the confidentiality of information pursuant to N.J.S.A. 52:14F-1 et seq., shall have access to confidential information and such access shall be on a need-to-know basis only. Said designated representatives of the Commissioner shall be employees or agents of the Department and such designations shall be made in writing.

(l) The Commissioner shall designate employees to act as records custodians of all confidential information gathered pursuant to the Act or this chapter. These designated employees shall be responsible for acknowledging and recording the receipt of confidential information from a registrant, for tracking and recording all confidential information given to Department-designated employees or agents or an administrative law judge, for maintaining and upkeeping the confidential information file and storage area and for establishing any other methods deemed appropriate to protect the confidentiality of information through internal procedures or guidelines.

(m) Any confidential information added to a computerized data base shall only be added to computers which are:

1. Capable of being locked during periods of non-use by means of a lock and key mechanism, or by the use of passwords or levels of security clearances, or by other means that restrict access only to authorized Department personnel;

2. Are not tied to another computer system by means of a communications network; and

3. Are kept within an office capable of being locked when not being used by an authorized person.

(n) Any confidential information submitted to the Department which becomes obsolete or is no longer needed by the Department for the implementation of the Act or this chapter shall be returned to the registrant.

7:31-5.9 Disclosure of confidential information

(a) The Department may disclose confidential information to a person other than a Department employee, agent or administrative law judge only as provided in this section.

(b) The Department may disclose confidential information to any other governmental agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other governmental agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency; *[and]*

5. The other agency agrees not to disclose the information further unless;

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected registrant to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) The Department may disclose confidential information to an agent of the Department and to an agent's employees when the agent is assisting in implementing the Act, its activities necessitate such access, and the requirements of (c)1 below have been satisifed. Any such disclosure of confidential information shall be restricted to a person approved in writing by the Department.

1. An agent shall not receive any confidential information unless:

i. It has submitted a plan to the Department which describes measures for adequately protecting confidential information from unauthorized disclosure, and such plan has been approved by the Department;

ii. It has provided written documentation demonstrating, to the satisfaction of the Department, that it maintains professional liability insurance and comprehensive general liability insurance in amounts to be set by the Department; and

iii. In addition to the requirement of (c)2 below, it has signed an agreement developed by the Department, protecting confidential information from unauthorized disclosure. The agreement shall include a provision whereby the agent assumes liability for any damages to the registrant resulting from the intentional or negligent release of confidential information by the agent and its employees.

2. Any person granted access to confidential information pursuant to this section shall sign an agreement developed by the Department protecting the confidentiality of the information prior to receipt of the information.

3. Any person who receives confidential information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

i. Keeping the information confidential from unauthorized persons;

ii. Keeping any records containing confidential information in a locked file cabinet or safe, when not in use;

iii. Using the information only for the use approved by the Department;

iv. Not reproducing the confidential information; and

v. Returning all material on which the confidential information has been recorded to the Department within 30 days after finishing using the information.

(d) Except as otherwise provided in (e) below, the Department shall notify in writing the registrant who supplied the confidential information of:

1. Its disclosure to another agency or agent of the Department;

2. The date on which disclosure was made;

3. The name of the agency or agent to which disclosed; and

4. A description of the information disclosed.

(e) The Department may disclose any confidential information to any other person if it has obtained the written consent of the registrant's responsible manager to such disclosure.

1. The giving of consent by a registrant to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

(f) The Department may use confidential information in a civil or criminal proceeding, if permitted by a court.

7:31-5.10 Wrongful access or disclosure

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee or agent who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee or agent shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Disclosure by an agent in violation of this subchapter or the contractual provisions described in N.J.A.C. 7:31-5.9(c) shall constitute grounds for debarment or suspension as provided in "Debarment, Suspension and Disqualification from Department Contracting", N.J.A.C. 7:1-5, in addition to whatever other remedies may be available to the Department at equity or law.

(g) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

7:31-5.11 Use of confidential information in rulemaking, *[petitioning]* ***reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs***, and enforcement proceedings

Notwithstanding any other provisions of this subchapter, the Department may use confidential information in *[rulemaking, permitting, and enforcement proceedings.]* ***the development of the TCPA program rules, in the review and preparation of documents approving or withholding approval of extraordinarily hazardous substance accident risk assessment reports and risk management programs, and in the preparation of enforcement documents and during enforcement proceedings.***

*[7:31-5.12 Definitions

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

"Agent of the Department" means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Confidential copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.

"Confidential information" means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the facility or compromise the security of the facility or its operations, consisting of non-privileged trade secret information, proprietary information and non-privileged security information.

"Confidentiality claim" or "claim" means a written request made by a registrant pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.

"Employee" means any person allowed or permitted to work by a registrant, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the registrant.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.

"Petition to withhold privileged trade secret or security information" or "petition" means a written request made by a registrant pursuant to this chapter to withhold from disclosure to the Department certain information which is privileged trade secret or security information.

"Petitioner" means any person who submits a petition to withhold privileged trade secret or security information under this chapter.

"Privileged trade secret or security information" means trade secret or security information which the Department has determined the registrant is entitled to withhold from and not disclose to the Department, consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or state law or regulation, and which has never been released to any person other than the registrant's employees involved in its use.

"Public copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.

"Security information" means information the release of which could either compromise the physical security of the facility or its operations, or adversely affect national security.

"Substantiation" means the written submittal on a Department-provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.

"Trade secret" means a formula, process, device or compilation which a registrant uses in its business and which gives it an opportunity to obtain an advantage over competitors who do not know or use it.

7:31-5.13 Fees

(a) Each registrant submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-5.5(d) shall submit a fee of $350.00 for the review of its claim at the time it submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

(b) Each registrant submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-5.6 shall submit a fee of $350.00 for the review of its petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

7:31-5.14 Required signatories and certifications

(a) All petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information shall contain the signatures and two-part certification required by N.J.A.C. 7:31-2.17(a).

(b) All confidentiality claim forms and substantiation forms in support of confidentiality claims, shall be signed and certified in accordance with N.J.A.C. 7:31-2.17(b).

7:31-5.15 Adjudicatory hearings

(a) Within 20 calendar days from receipt of a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information, the registrant may submit a written request meeting the requirements of N.J.A.C. 7:31-2.19(a) to the Department for an adjudicatory hearing to contest such action.

(b) Requests received by the Department pursuant to (a) above shall be processed and reviewed in accordance with the requirements of N.J.A.C. 7:31-2.19(b), (c) and (d).]*

7:31-6.3 Procedures to request an adjudicatory hearing *[to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings]*

(a) (No change.)

(b) Within 20 calendar days from receipt of an administrative order issued by the Department pursuant to N.J.A.C. 7:31-2.6(i) or N.J.A.C. 7:31-2.9(k), or of a written notice from the Department withholding approval of a new EHS facility or rejecting a modification, ***or of a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information,*** issued pursuant to the Toxic Catastrophe Prevention Act, the registrant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1.-6. (No change.)

(c) A hearing request not received within 20 days after receipt by the registrant or violator of the notice of *[the]* *a* civil administrative penalty assessment and/or *[the]* *an* administrative order and/or a written notification from the Department withholding approval of a new EHS facility or rejecting a modification ***and/or a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information*** *[being challenged,]* shall be denied by the Department.

(d)-(f) (No change.)

APPENDIX II

DEQ-080
1/88

New Jersey Department of Environmental Protection
Division of Environmental Quality
CN 027, Trenton, NJ 08625

"TOXIC CATASTROPHE PREVENTION ACT"

OFFICIAL USE

**REGISTRATION FORM**

**SECTION A**

1. Legal Name of Registrant ____________________
2. Nature of Business ____________________
3. NJ Employer ID # ____________________ APEDS # (if any) ____________________
   NJPDES # (if any) ____________________ PWS # (if any) ____________________
4. Facility Location ____________________
   No. Street City
5. Registrant's Mailing Address ____________________
   No. Street
   ____________________
   City State Zip
6. Name of Responsible Manager ____________________ Title ____________________ Tele # ( )
7. Name of Plant Contact ____________________ Tele # ( )
8. Title ____________________

**SECTION B**

1. Does this site or water treatment system use, manufacture, store, handle or generate at any time an Extraordinarily Hazardous Substance (EHS) listed in Table I of N.J.A.C. 7:31-2.3 as a raw material, intermediate, final product, by-product or waste product?

   ☐ Yes ☐ No If "No", sign the certification below. If "Yes", proceed to Question 2.

2. Does this site or water treatment system use, manufacture, store, handle or generate within any one hour period an Extraordinarily Hazardous Substance (EHS) as a raw material, intermediate, final product, by-product, or waste product equal to or in excess of the minimum reportable quantities indicated in Table I or N.J.A.C. 7:31-2.3?

   ☐ Yes ☐ No If "No", sign the certification below. If "Yes",complete this registration form and sign the certification below.

**SECTION C — CERTIFICATIONS**

Highest Ranking Official of Site/Water Treatment System

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.

Signature ____________________ Date ____________________

Name (Print) ____________________ Title ____________________

Principal Executive Officer, General Partner or Proprietor, Ranking Elected Offical

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment.

Signature ____________________ Date ____________________

Name (Print) ____________________ Title ____________________

SECTION D

*Make additional copies of this page if necessary.*

INVENTORY — Complete the following table for every EHS used, manufactured, stored, handled, or generated at this site or water treatment system. Use the codes indicated below.

| FACILITY NAME OR DESIGNATION | Extraordinarily Hazardous Substance | | | | Maximum Quantity On Hand* (pounds) A | Maximum Quantity Capable of Being Generated** (lbs. per hr.) B | *Registration* [Reportable] Quantity From Table I (pounds) C | Hazard Units*** D |
|---|---|---|---|---|---|---|---|---|
| | Name | CAS Number | Form | Use | | | | |
| | | | | | | | | |
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*FORM*

*L - Liquid*
*G - Gas*
*S - Solid*

*USE*

*RM - Raw Material*
*I - Intermediate*
*F - Final Product*
*BP - By-Product*
*WP - Waste Product*
*T - Treatment Chemical*
*O - Other*

* *Maximum Quantity on hand includes total of all material in process and in storage at any time.*

** *Maximum Quantity generated is only for those cases in which EHS is capable of being generated and immediately consumed, i.e. No Storage*

****Hazard Units for each EHS equals Maximum Quantity from A or B whichever is greater divided by [Reportable]* ***Registration*** *Quantity.*

*D.= A/C or B/C*

**SECTION E**

*Complete this section for each EHS and facility listed in Section D. Make additional copies of this page if necessary.*

1. Facility Name or Designation ______________________ Facility Location ______________________

Indicate the EHS for which the following process description and equipment list applies: ______________________

2. PROCESS DESCRIPTION — Provide a general description of the process involved in the use, manufacture, storage, handling or generation of the EHS. Indicate typical and maximum operating conditions (i.e. temperatures and pressures) as they relate to the EHS. PROVIDE A SIMPLIFIED FLOW SHEET.

______________________________________________

______________________________________________

______________________________________________

______________________________________________

______________________________________________

______________________________________________

______________________________________________

3. EHS EQUIPMENT — Complete the following table for each major piece of EHS equipment directly involved in the use, manufacture, storage, handling, or generation of the EHS as described in Section E2. Equipment should include all storage and process vessels, as well as the number and size of drums, cylinders and shipping containers.

| Equipment Description | Designation | Maximum Capacity (lbs.) | Distance to Nearest Property Line (ft.) | Age of Equipment (yrs.) | Comments |
|---|---|---|---|---|---|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. | | | | | |

4 Indicate the four-digit SIC Code for the facility ______________

**SECTION F**

*Make additional copies of this page or provide attachments if necessary.*

1. Does the site or water treatment system have an existing Risk Management Program (RMP) as described in N.J.A.C. 7:31?
   ☐ Yes ☐ No

2. Identify any risk reduction efforts and safety measures employed by the registrant to minimize the risks of an accidental release of an EHS from the equipment listed in Section E3.

______________________________

______________________________

______________________________

______________________________

3. Identify the position titles and expertise of the persons involved with the development of the Risk Management Program.

| Position Title | Expertise | Company Affiliation | Relationship to Registrant |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

4. Provide a description of the area surrounding each facility listed in Section E, including location of other companies, residential areas and major highways. Indicate proximity to schools, hospitals, nursing homes and public water supplies if located within a two mile radius.

   Provide a USGS Topographic Map of the area indicating the location of each facility listed in Section E, unless previously submitted to the department.

______________________________

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**SECTION G**

INSURANCE CARRIERS - Identify those insurance carriers underwriting the registrant's environmental liability and worker's compensation insurance policies.

| Name | Address | Type of Policy | Amount of Insurance | Limitations or Exclusions |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

# HEALTH

## (a)

### HEALTH FACILITIES EVALUATION AND LICENSING

### Long Term Care Licensing Standards

### Notice of Correction: N.J.A.C. 8:39-20.1, 29.1, 30.5 and 31.2

**Take notice** that errors appear in the June 20, 1988 issue of the New Jersey Register at 20 N.J.R. 1447, 20 N.J.R. 1450, and 20 N.J.R. 1452 concerning long term care licensing standards. N.J.A.C. 8:39-20.1, 29.1, 30.5 and 31.2 should have appeared in the Register as follows:

8:39-20.1 Advisory policies and procedures for infection control

(a) Each new employee shall receive, upon employment, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative Mantoux skin test results (0-9 mm. of induration) within the previous year, and employees with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test shall be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests shall be performed at the discretion of the facility.

2. If the first or second Mantoux skin test is positive, a chest x-ray shall be performed, and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., follow-up test results and treatments, if any, shall be recorded in the employee's medical record.

4. Each employee who has been tested for tuberculosis should be retested on an annual basis according to the procedures described in this section.

(b)-(d) (No change in text.)

(e) Each patient should receive, upon admission to the facility, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions should be patients with documented negative Mantoux skin test results (0-9 mm. of induration) within the previous year, and patients with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test should be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests should be performed at the discretion of the facility.

2. If the first or second Mantoux tuberculin skin test is positive, a chest x-ray should be performed and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., as well as follow-up tests and treatment, if any, should be recorded in the patient's medical record.

8:39-29.1 Mandatory pharmacy structural organization

(a) (No change in text.)

(b) The facility shall have a multidisciplinary pharmacy and therapeutics committee, appointed by and reporting to the administrator and consisting of, at least: the administrator; a representative of the nursing staff; and the director of pharmaceutical services. If pharmaceutical services are provided by contract, the consultant pharmacist, if one is appointed, and either the provider pharmacist or a registered pharmacist representative of the pharmacy shall serve on the committee.

1. In facilities with more than 60 beds the committee shall include the medical director and shall hold scheduled meetings at least quarterly and shall maintain minutes that include the dates of meetings, attendance, activities, findings, and recommendations.

2. (No change in text.)

(c) (No change in text.)

8:39-30.5 Advisory pharmacy supplies and equipment

(a) (No change in text.)

(b) The facility should have at least one emergency cart with contents approved by the pharmacy and therapeutics committee, that is available for medical emergencies, but inaccessible to patients.

8:39-31.2 Mandatory space and physical environment: facilities with more than 60 beds

(a) Each facility with more than 60 beds shall provide, and facilities with 60 beds or fewer may provide but shall not be required to provide:

1.-5. (No change in text.)

6. A written policy for a procedure to refrigerate biologicals according to manufacturer's guidelines in case of emergency.

# HIGHER EDUCATION

## (b)

### BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

### Financial Eligibility for Undergraduate Grants

### Adopted Amendment: N.J.A.C. 9:11-1.5

Proposed: April 4, 1988 at 20 N.J.R. 722(a).
Adopted: July 1, 1988 by the Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.
Filed: July 1, 1988 as R.1988 d.353, **without change.**
Authority: N.J.S.A. 18A:71-33.
Effective Date: August 1, 1988.
Expiration Date: January 17, 1989.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the E.O.F. Income Eligiblity Scale, and said parent(s) or guardian(s) cannot contribute more than $625.00 toward educational expenses as determined by the College Scholarship Service, Uniform Methodology. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. E.O.F. Dependent Student Eligibility Scale:

| Applicants with a household of: | Gross Income (Not to Exceed): |
|---|---|
| 2 persons | $15,050 |
| 3 | 17,110 |
| 4 | 19,170 |
| 5 | 21,230 |
| 6 | 23,290 |
| 7 | 25,350 |

2. For each additional member of the household, an allowance of $2,060 shall be added to this amount in order to determine eligibility for E.O.F. for the 1988-89 Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

(b)-(c) (No change.)

(d) An independent student is financially eligible for an E.O.F. grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. $9,180 family size (including student) 1;
2. $11,240 family size (including spouse) 2;
3. $13,300 family size (including spouse) 3;
4. $15,360 family size (including spouse) 4;
5. Add $2,060 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.
6. (No change.)

(e)-(g) (No change.)

# HUMAN SERVICES

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

## (a)

### Administration Manual, Manual for Hospital Services, Manual for Special Hospital Services Outpatient Hospital Services for the Medically Needy

### Adopted Amendments: N.J.A.C. 10:49-1.4; 10:52-1.6, 1.8; 10:53-1.5, 1.7

Proposed: August 3, 1987 at 19 N.J.R. 1388(a).
Adopted: June 27, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: June 28, 1988 as R.1988 d.349, **with substative changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 30:4D-6(g)(5)(b); 30:4D-7a,b,c; 30:4D-12.

Effective Date: August 1, 1988.

Expiration Date: Administration Manual—N.J.A.C. 10:49—August 12, 1990. Manual for Hospital Services—N.J.A.C. 10:52—February 19, 1990. Manual for Special Hospital Services—N.J.A.C. 10:53—April 29, 1990.

**Summary** of Public Comments and Agency Responses:

There was one comment on the proposed amendments submitted by Scott Crawford, Director, Health care for the Uninsured Program, New Jersey Department of Health.

COMMENT: The commenter was concerned that the proposed regulatory limitations requiring non-payment for non-emergency services rendered in the emergency room might prevent Medicaid patients from obtaining treatment. In addition, if Medicaid did not pay for emergency room services, the cost might be shifted to the Uncompensated Care Trust Fund, thereby deleting the Trust Fund resources.

RESPONSE: The Division's response is that the limitation pertaining to non-emergency services will not be adopted. The Division has been making reimbursement for outpatient services rendered to Medically Needy patients since the law became operative. This change between the proposal and adoption is being made to facilitate treatment to Medically Needy Medicaid patients and to insure payment to Medicaid providers. This change is not substantive enough to require reproposal.

COMMENT: The commenter was also concerned about the limitation on payment relative to the treatment of injuries and significant acute medical conditions.

RESPONSE: The Division is retaining the language covering this situation, in accordance with statutory requirements.

**Summary** of Changes Between Proposal and Adoption:

In response to the public comment, and on its own initiative, the Division is deleting the text of N.J.A.C. 10:52-1.8(b) and N.J.A.C. 10:53-1.7(b) regarding non-reimbursement for non-emergency serices.

The Division then recodified the provision pertaining to "injuries and significant acute medical conditions" to be N.J.A.C. 10:52-1.8(b) and N.J.A.C. 10:53-1.7(b) upon adoption.

**Full text** of the changes between proposal and adoption follow (additions are indicated in boldface with asterisks ***thus***; deletions are indicated in brackets with asterisks *[thus]*):

10:49-1.4 Services covered by the New Jersey Medicaid Program

(a) (No change.)

(b) Regular Medicaid services are available to Medically Needy individuals except for the following services which are not available or are only available to certain eligible Medically Needy groups (See the service code next to the individual's name on the Medicaid Eligibility Identification Card to ascertain the Medically Needy group under which the individual's eligibility was established; that is, Group A—pregnant women, Group B—needy children, and Group C—aged, blind and disabled.);

1.-3. (No change.)

Renumber existing 5.-9. as 4.-8. (No change in text.)

10:52-1.6 Outpatient hospital services***—Basis of Payment***

(a)-(c) (No change.)

10:52-1.8 Noncovered outpatient hospital services

(a) Approved hospital outpatient departments will not be reimbursed for any of the following:

1.-8. (No change.)

*[(b) Non-emergency (routine) services provided in the hospital emergency room are not reimbursable.]*

*[1.]****(b)*** Emergency room services are reimbursable only if provided for the treatment of injuries and significant acute medical conditions.

10:53-1.5 Outpatient hospital services; general provisions

(a) (No change.)

10:53-1.7 Noncovered outpatient special hospital services

(a) Approved hospital outpatient departments will not be reimbursed for any of the following:

1.-9. (No change.)

*[(b) Non-emergency (routine) services provided in the hospital emergency are not reimbursable.]*

*[1.]****(b)*** Emergency room services are reimbursable only if provided for the treatment of injuries and significant acute medical conditions.

## (b)

### Pharmaceutical Services Manual Appendices B,C,D,E

### Adopted Amendments: N.J.A.C. 10:51-1, Appendices B, C, D and E.

Proposed: April 18, 1988 at 20 N.J.R. 875(a).
Adopted: July 7, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: July 8, 1988 as R.1988 d.363 **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 30:D-6b(6), 7,7 a, b,c; 30:4D-12; 30:4D-22, 24.

Effective Date: August 1, 1988.

Expiration Date: October 28, 1990.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

**Summary** of Changes Between Proposal and Adoption

The Division is making some technical, non-substantive changes upon adoption. Some changes were the result of NDC (National Drug Code) changes. Products affected by the NDC renumbering include, but are not limited to, Beminal Forte w/Vit C Caps, Beminal-500 Tabs; Clusivol Capsules, Syrup Tablets; and Riopan chewable Tabs, Suspension, Swallow Tabs, and Riopan Plus Suspension.

There was one product that was switched by the Federal government from Appendix B (non-legend) to Appendix D (legend devices) which now requires a prescription. This product is Gelfoam Sterile Powder (1 gm).

There were some products that have been, and will continue to be, provided, but were changed on the list due to formula changes by the manufacturer. These products are Cortaid Cream/Ointment with aloe, Maalox Plus E.S. Susp, Riopan Plus 2 Susp, and Wyanoids Relief Factor Supp.

The Division is required to reflect these changes in the NDC number and formula on the approved list of drugs and drug products. The Division believes these changes are necessary to achieve an accurate listing of the drugs and drug products covered by the New Jersey Medicaid and/or PAAD (Pharmaceutical Assistance to the Aged and Disabled Program), and are not in violation of N.J.A.C. 1:30-4.3.

**Full text** of the adoption follows (additions to the proposal are indicated by boldface and asterisks ***thus***; deletions from the proposal are indicated by brackets and asterisks *[thus]*).

LISTING OF ADDITIONS TO N.J.A.C. 10:51-1
APPENDIX B

General Non-Legend Drugs

| PRODUCT | SIZE | R.U. | NDC |
|---|---|---|---|
| Advil Caplets | 100 | TAB | 0000573-0160-40 |
| Alternagel Liquid | 360cc | CC | 0000038-0860-12 |
| Anacin-3 Max Str Caplets | 100 | TAB | 0000573-0285-30 |
| Anacin-3 Max Str Tablets | 100 | TAB | 0000573-0292-30 |
| Apetimar Plain Liquid | 120cc | CC | 0012939-0999-33 |
| Apetimar w/Iron Liquid | 120cc | CC | 0012939-0998-33 |
| Beminal Stress Plus w/Iron Tabs | 60 | TAB | 0000046-0818-60 |
| Beminal Stress Plus w/Zinc Tabs | 60 | TAB | 0000046-0820-60 |
| Calciomar Tablets | 60 | TAB | 0012939-0517-60 |
| Citracal Tablets | 100 | TAB | 0000178-0800-01 |
| Dermaplast Lotion | 90cc | EACH | 0000046-1014-03 |
| Dermaplast Spray | 82.5cc | EACH | 0000046-1008-02 |
| Dristan Advanced Formula Tabs | 48 | TAB | 0000573-1238-27 |
| Dristan Long Lasting Spray | 30cc | EACH | 0000573-1191-30 |
| Fedahist Exp Pediatric Drops | 30cc | EACH | 0000091-0051-30 |
| Fiber Guard Tablets | 100 | TAB | 0000046-0501-81 |
| Glutofac Tablets | 90 | TAB | 0000482-0153-90 |
| Haltran Tablets 200mg | 30 | TAB | 0000009-3402-02 |
| Haltran Tablets 200mg | 50 | TAB | 0000009-3402-03 |
| Hydrocil Instant Powder | 3.7gm | EACH | 0000032-1808-57 |
| Hydrocil Instant Powder | 250gm | EACH | 0000032-1808-66 |
| Isoclor Liquid | 480cc | CC | 0000585-2264-01 |
| Isoclor Tablets | 100 | TAB | 0000585-2265-01 |
| Isoclor Timesules | 100 | CAP | 0000585-2266-01 |
| Mardrops Pediatric Drops | 30cc | EACH | 0012939-0412-30 |
| Medipren Caplets | 100 | CAP | 0000045-0197-70 |
| Medipren Tablets | 100 | TAB | 0000045-0199-70 |
| Os-Cal/500 Chewable Tabs | 60 | TAB | 0000088-1657-41 |
| Os-Cal/500+D Tablets | 60 | TAB | 0000088-1654-41 |
| Pediacare Chewable Tabs | 24 | TAB | 0000045-0196-24 |
| Pediacare Cold Formula | 120cc | CC | 0000045-0193-04 |
| Pediacare Cough-Cold Formula | 120cc | CC | 0000045-0194-04 |
| Peri-Wash Liquid | 120cc | EACH | 0011701-0014-01 |
| Peri-Wash II Liquid | 120cc | EACH | 0011701-0009-01 |
| Posture Tablets 300mg | 100 | TAB | 0000046-0274-81 |
| Posture Tablets 600mg | 60 | TAB | 0000046-0275-60 |
| Posture-D Tablets 300mg | 100 | TAB | 0000046-0276-81 |
| Posture-D Tablets 600mg | 60 | TAB | 0000046-0277-60 |
| Resol R.T.U. Solution | 960cc | *EACH | 0000008-0625-04 |
| Riopan Plus Extra Str Susp | 360cc | CC | 0000046-0779-12 |
| Singlet Tablets | 100 | TAB | 0000068-0102-61 |
| Tylenol Chew Tablets (Grape) | 30 | TAB | 0000045-0477-30 |
| Tylenol Jr Strength Tabs | 30 | TAB | 0000045-0470-15 |
| Xerac-BP 5 Gel | 45gm | EACH | 0000096-0790-45 |
| Xerac-BP 5 Gel | 90gm | EACH | 0000096-0790-90 |
| Xerac-BP 10 Gel | 45gm | EACH | 0000096-0791-45 |
| Xerac-BP 10 Gel | 90gm | EACH | 0000096-0791-90 |

*Exception: Reimbursement will be based on multiple full package units.

Insulin Preparations

| PRODUCT | R.U. | NDC |
|---|---|---|
| Insulin Humulin BR U100 | CC | 0000002-8216-01 |
| Insulin Humulin Ultralente U100 | CC | 0000002-8615-01 |
| Insulin Nordisk/Insulatard Human NPH U100 | CC | 0050445-0222-01 |
| Insulin Nordisk/Velosulin Human REG U100 | CC | 0050445-0111-01 |

LISTING OF ADDITIONS TO N.J.A.C. 10:51-1
APPENDIX B

Diabetic Testing Material

| PRODUCT | SIZE | R.U. | NDC |
|---|---|---|---|
| Ames GlucoSystem Lancets | 100 | EACH | 0000193-5509-21 |
| Bili-Labstix Reagent Strips | 100 | EACH | 0000193-2814-21 |
| Chemstrip BG Strips w/Accu Chek | 100 | EACH | 0050924-0508-10 |
| Chemstrip BG Strips w/Accu Chek | 50 | EACH | 0050924-0502-50 |
| Chemstrip UG Strips | 100 | EACH | 0050924-0511-10 |
| ***Diascan Test Strips** | **50** | **EACH** | **0021292-0505-50*** |
| Glucolet Endcaps (Regular) | 100 | EACH | 0000193-5633-21 |
| Glucolet Endcaps (Super) | 100 | EACH | 0000193-5634-21 |
| Glucolet Lancing Device | | EACH | 0000193-5632-01 |
| Multistix 7 Reagent Strips | 100 | EACH | 0000193-2305-21 |
| Multistix 8 Reagent Strips | 100 | EACH | 0000193-2303-21 |
| Multistix SG Reagent Strips | 100 | EACH | 0000193-2741-21 |

APPENDIX C

Needles, Disposable

| Product | R.U. | NDC |
|---|---|---|
| ***Insulin, U-100, 28G, 3/10cc** | **EACH** | **0000293-8430-01*** |
| PenNeedle (for use with Novopen) | EACH | 0000003-1852-35 |

APPENDIX D

Legend Devices

| PRODUCT | R.U. | NDC |
|---|---|---|
| AeroChamber Device | EACH | 0000456-3154-67 |
| Intal Spinhaler Inhaler | EACH | 0000585-1011-01 |
| NovoPen Insulin Delivery Device | EACH | 0000003-1852-30 |
| ***Gelfoam Sterile Powder 1 gm** | **EACH** | **0000009-0433-01*** |

APPENDIX E

Protein Replacements

| PRODUCT | SIZE | R.U. | NDC |
|---|---|---|---|
| Lofenalac Powder | 1 lb | EACH | 0000087-0340-02 |
| Resource Crystals Packets | 2 oz | PKT | 0000212-3233-25 |

LISTING OF CHANGES TO N.J.A.C. 10:51-1
APPENDIX B

General Non-Legend Drugs

| PRODUCT | *[CURRENT]***FORMERLY** | *[PROPOSED]* CHANGE |
|---|---|---|
| Allbee Caps w/Vit C | 0000031-0674-63 | 0000031-0673-66 |
| Americaine Hemorrhoidal Oint | 0000094-0002-01 | 0000235-0375-16 |
| ***Beminal Forte w/Vit C Caps*** | *[0000046-0817-81]* | ***0000573-0323-20*** |
| ***Beminal-500 Tabs*** | *[0000046-0830-81]* | ***0000573-0320-30*** |
| Calcium Lact Tabs 325mg | 0000071-0533-24 | 0000047-0533-24 |
| Calcium Lact Tabs 650mg | 0000071-0604-24 | 0000047-0604-24 |
| ***Calcium Gluc w/Vit D Pul*** | *[0000002-0656-02]* | ***0000002-3130-02*** |
| ***Calcium Gluc w/Vit D Tabs*** | *[0000002-2044-02]* | ***0000002-4107-02*** |
| Cerose-DM Liquid | 0000082-4128-01 | 0000008-4128-01 |
| ***Clusivol Capsules*** | *[0000046-0293-81]* | ***0000573-0610-30*** |
| ***Clusivol Syrup*** | *[0000046-0920-08]* | ***0000573-0620-20*** |
| ***Clusivol Tablets*** | *[0000046-0270-81]* | ***0000573-0625-30*** |
| D-S-S Capsules 100mg | 0000071-0247-24 | 0000047-0247-24 |
| Dical-D Capsules | 0000074-3594-04 | 0000074-3741-13 |
| Doxidan Capsules | 0000039-0004-10 | 0000039-0036-10 |
| Dramamine Tabs | 0000025-1701-31 | 0037000-7500-30 |
| Emetrol Liquid | 0000067-0240-58 | 0000013-2113-45 |
| Fedahist Expectorant | 0000067-0054-60 | 0000091-0057-04 |
| Fedahist Syrup | 0000067-0052-60 | 0000091-0052-04 |
| Fedahist Tablets | 0000067-0050-68 | 0000091-0050-01 |
| Ferro-Sequels Capsules | 0000005-4612-23 | 0000005-5267-23 |
| Infalyte Powder | 0000018-0837-62 | 0000018-0837-02 |
| Ipsatol Syrup | 0000369-0234-04 | 0000085-0650-04 |

LISTING OF CHANGES TO N.J.A.C. 10:51-1
APPENDIX B

General Non-Legend Drugs

| PRODUCT | *[CURRENT]***FORMERLY** | *[PROPOSED]* CHANGE |
|---|---|---|
| Ircon Tabs 200mg | 0000369-0055-01 | 0000085-0628-01 |
| Konsyl Powder | 0000224-1801-02 | 0000524-0203-31 |
| Konsyl Powder | 0000224-1801-03 | 0000524-0203-45 |
| Metamucil Packets | 0000025-2219-17 | 0037000-7401-60 |
| Metamucil Packets | 0000025-2219-31 | 0037000-7401-70 |
| Metamucil Powder | 0000025-2209-08 | 0037000-7400-70 |
| Metamucil Powder | 0000025-2209-14 | 0037000-7400-80 |
| Metamucil Powder | 0000025-2209-21 | 0037000-7400-90 |
| Modane Liquid | 0000013-5033-51 | 0000013-5143-51 |
| Modane Mild Tablets | 0000013-5021-17 | 0000013-5121-17 |
| Modane Plus Tablets | 0000013-5041-17 | 0000013-5151-17 |
| Modane Tablets | 0000013-5011-17 | 0000013-5131-17 |
| Ornex Capsules | 0049692-0925-20 | 0049692-0927-24 |
| Pedialyte R.S. Liquid | 0000074-6472-08 | *0000074-0162-01 |
| Pedialyte R.T.U. Liquid | 0000074-5759-06 | 0000074-6470-32 |
| Pedialyte R.T.U. Liquid (Fruit) | 0000074-5761-32 | 0000074-6471-32 |
| Penntuss Suspension | 0000018-0818-67 | 0000018-0818-38 |
| Percogesic Tablets | 0000056-0132-70 | 0025866-0049-50 |
| Phazyme Tablets | 0000021-0400-01 | 0000021-1400-01 |
| Phazyme-95 Tablets | 0000021-0420-01 | 0000021-1420-01 |
| ***Riopan Chewable Tabs*** | *[0000046-0928-81]* | ***0000573-3194-35*** |
| ***Riopan Suspension*** | *[0000046-0765-12]* | ***0000573-3200-02*** |
| ***Riopan Swallow Tabs*** | *[0000046-0927-81]* | ***0000573-3197-35*** |
| ***Riopan Plus Suspension*** | *[0000046-0768-12]* | ***0000573-3210-20*** |
| Robitussin D.A.C. | 0000031-8680-25 | 0000031-8680-12 |
| Sinulin Tablets | 0000086-0250-10 | 0000086-0066-10 |
| Sinutab-II Tablets | 0011370-0114-12 | 0012547-3645-40 |
| Sod. Chl. Oph Oint 5% (Muro-128) | 0000451-1280-38 | 0000303-9905-38 |
| Sod. Chl. Oph Sol 5% (Muro-128) | 0000451-0128-30 | 0000303-9928-30 |
| Sod. Chl. Oph Sol 5% (Muro-128) | 0000451-0128-85 | 0000303-9928-15 |
| Stuart Prenatal Tabs | 0000038-0270-10 | 0000038-0071-10 |
| Sudafed Syrup | 0000081-0863-82 | 0000081-0862-82 |
| Tedral Elixir | 0000710-2242-23 | 0000071-2242-23 |
| Tedral Tablets | 0000710-0230-24 | 0000071-0230-24 |
| Teldrin Spansules 12mg | 0049692-0921-15 | 0049692-0924-48 |

*See: Rehydralyte

APPENDIX D

Legend Devices

| PRODUCT | *[CURRENT]***FORMERLY** | *[PROPOSED]* CHANGE |
|---|---|---|
| Inhal-Aid Drug Delivery System | | 0000085-4600-01 |
| Inspirease Drug Delivery System | | 0000085-4602-01 |

APPENDIX E

Protein Replacements

| PRODUCT | *[CURRENT]***FORMERLY** | *[PROPOSED]* CHANGE |
|---|---|---|
| Casec Powder | 0000087-0390-02 | *[0000087-0390-07]* ***0000087-0390-47*** |
| ***Sustacal Powder*** | ***[0000087-0353-44]*** | ***0000087-0353-43*** |

***SUMMARIZED*** LISTING OF DELETIONS

*[FROM]* APPENDIX B

General Non-Legend

| PRODUCT | SIZE | NDC |
|---|---|---|
| *[Gelfoam Sterile Powder 1 gm | 1gm | 0000003-0433-01]* |

## (a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Home Care Services Manual
### Personal Care Assistant Services; Fees
### Adopted Amendment: N.J.A.C. 10:60-2.2

Proposed: June 6, 1988 at 20 N.J.R. 1143(b).
Adopted: July 11, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: July 11, 1988 as R.1988 d.379, **without change.**
Authority: N.J.S.A. 30:4D-6b(16), 7a, b, c; 30:4D-12; 42 CFR 440.170(i).
Effective Date: August 1, 1988.
Expiration Date: August 27, 1990.

**Summary** of Public Comments and Agency Responses:
**No comments were received.**

**Full text** of the adoption follows.

10:60-2.2 Personal care assistant service
(a)-(e) (No change.)
(f) Reimbursement:
1. The following are all inclusive maximum rates for personal care assistant services, the initial nursing assessment visit and the personal care assistant nursing reassessment visit. No direct or indirect cost over and above these established rates will be considered for reimbursement. A provider may not charge the New Jersey Medicaid Program in excess of present charges for other payors. For reimbursement purposes a weekend means a Saturday or Sunday; a holiday means an observed agency holiday which is also recognized as a Federal or State holiday.
i. Personal care assistant services are limited to a maximum of 25 hours per week at a reimbursement rate up to $11.00 per hour weekday for the individual patient. Code No. Z1600; and
ii. Up to $5.50 per half-hour weekday for individual patient. Code No. Z1611; and
iii. Up to $8.00 per hour weekday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1605; and
iv. Up to $4.00 per half-hour weekday for a group rate (two ro more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1612; and
v. Up to $14.00 per hour weekend, holiday for individual patient, Code No. Z1614; and
vi. Up to $7.00 per half-hour weekend, holiday for individual patient, Code No. Z1615; and
vii. Up to $9.00 per hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1616; and
viii. Up to $4.50 per half-hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1617; and
ix. Up to $35.00 may be billed for an initial nursing assessment visit. Code No. Z1610; and
x. Up to $35.00 may be billed for a nursing reassessment visit. Code No. Z1613.

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# LABOR

### DIVISION OF UNEMPLOYMENT AND DISABILITY INSURANCE GROUP ACCOUNT

## (b)

### Payments in Lieu of Contributions
### Adopted Repeal: N.J.A.C. 12:16A-11

Proposed: May 16, 1988 at 20 N.J.R. 1071(b).
Adopted: July 11, 1988 by Charles Serraino, Commissioner, Department of Labor.
Filed: July 11, 1988 as R.1988 d.374, **without change.**
Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-7.2.
Effective Date: August 1, 1988.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the repeal can be found at N.J.A.C. 12:16A-11.

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## (c)

### Refusal to Cooperate with Quality Control Reviews
### Adopted New Rule: N.J.A.C. 12:17-2.6

Proposed: April 18, 1988 at 20 N.J.R. 884(a).
Adopted: July 11, 1988 by Charles Serraino, Commissioner, Department of Labor.
Filed: July 11, 1988 as R.1988 d.373, **without change.**
Authority: N.J.S.A. 43:21-4, 43:21-6, 43:21-11(k) and 43:21-16.
Effective Date: August 1, 1988.
Expiration Date: January 6, 1991.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

12:17-2.6 Refusal to cooperate with quality control reviews
(a) An individual shall be determined to be ineligible for unemployment insurance benefits if the individual:
1. Fails to report as directed for a quality control review interview; or
2. Fails, without good cause, to cooperate in a quality control review of his or her claim.
(b) An individual shall be determined to be ineligible as of the week in which the failure to report for an interview or the refusal to cooperate occurs, and the department shall notify the individual, in writing, of the ineligibility. The individual shall remain ineligible until such time as he or she agrees to cooperate with the review.
(c) Any employer, employing unit or agent of any employer who refuses or fails, without good cause, to cooperate with and provide wage, separation information, dates of employment, work search verification or other information required by the quality control review program will be found to have refused to provide reports deemed necessary for the administration of the unemployment compensation law, and shall be subject to the penalties set forth at N.J.S.A. 43:21-16.

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# LAW AND PUBLIC SAFETY

## (d)

### DIVISION OF CRIMINAL JUSTICE

### Arson Investigators: Training Requirements
### Readoption: N.J.A.C. 13:76

Proposed: May 2, 1988 at 20 N.J.R. 963(a).
Adopted: June 21, 1988 by Donald R. Belsole, Director, Division of Criminal Justice.
Filed: June 27, 1988 as R.1988 d.345, **without change.**
Authority: N.J.S.A. 40A:14-7.1 and 52:17B-97 et seq.
Effective Date: June 27, 1988.
Expiration Date: June 27, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:76.

# TRANSPORTATION

## TRANSPORTATION OPERATIONS

## (a)

### Speed Limits
### Route N.J. 56 in Cumberland and Salem Counties
### Adopted New Rule: N.J.A.C. 16:28-1.31

Proposed: May 2, 1988 at 20 N.J.R. 964(a).
Adopted: June 7, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 5, 1988 as R.1988 d.356, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28-1.31 Route 56
(a) The rate of speed designated for the certain parts of State highway Route 56 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic in Cumberland and Salem Counties:
i. Cumberland County:
(1) Upper Deerfield Township:
(A) Zone 1: 50 miles per hour between Route N.J. 77 and the Upper Deerfield Township—Deerfield Township line (mileposts 0.00 to 2.13); thence
(2) Deerfield Township:
(A) 50 miles per hour within the corporate limits (mileposts 2.13 to 4.82); thence
(3) Vineland City:
(A) 50 miles per hour between the Pittsgrove Township—Vineland City line and 1600 feet east of the Pittsgrove Township—Vineland City line (mileposts 7.51 to 7.84); thence
(B) Zone 2: 45 miles per hour between 1600 feet east of the Pittsgrove Township—Vineland City line and Route N.J. 47 (mileposts 7.84 to 9.23).
ii. Salem County:
(1) Pittsgrove Township:
(A) 50 miles per hour within the corporate limits (mileposts 4.82 to 7.51).

## (b)

### Speed Limits
### Route U.S. 9 in Cape May County
### Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: May 16, 1988 at 20 N.J.R. 1113(a).
Adopted: June 24, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 5, 1988 as R.1988 d.354, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28-1.41 Route U.S. 9 including Parts of Route 35 and 444
(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic in Cape May County:
i. Lower Township:
(1) Zone 1: 50 miles per hour between Route 109 and Creece Lane (mileposts 3.06 to 5.83); thence
(2) Zone 2: 40 miles per hour between Creece Lane and the Lower Township-Middle Township line (mileposts 5.83 to 6.53); thence
ii. Middle Township:
(1) 40 miles per hour between Lower Township-Middle Township line and 100 feet south of the exit from the Garden State Parkway (mileposts 6.53 to 10.90); thence
(2) Zone 3: 35 miles per hour between 100 feet south of the exit from the Garden State Parkway and Locust Lane (mileposts 10.90 to 11.90); thence
(3) Zone 4: 30 miles per hour between Locust Lane and 1000 feet north of Orbit Drive except with a 25 miles per hour School Speed Zone in Middle Township Elementary School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours. (mileposts 11.90 to 13.34); thence
(4) Zone 5: 40 miles per hour between 1000 feet north of Orbit Drive and 1000 feet north of County Road 609 (mileposts 13.34 to 14.34); thence
(5) Zone 6: 50 miles per hour between 1000 feet north of County Road 609 and Middle Township-Dennis Township line (mileposts 14.34 to 17.96); thence
iii. Dennis Township:
(1) 50 miles per hour between the Middle Township-Dennis Township line and the Dennis Township-Upper Township line (mileposts 17.96 to 22.30); thence
iv. Upper Township:
(1) 50 miles per hour between the Dennis Township-Upper Township line and 700 feet south of Route N.J. 50 (mileposts 22.30 to 23.46); thence
(2) Zone 7: 40 miles per hour between 700 feet south of Route N.J. 50 and 1350 feet north of Route N.J. 50 (mileposts 23.46 to 23.86); thence
(3) Zone 8: 50 miles per hour between 1350 feet north of Route N.J. 50 and Milepost #28 (mileposts 23.86 to 28.00); thence
(4) Zone 9: 45 miles per hour between Milepost #28 and 800 feet south of County Road 631 (mileposts 28.00 to 28.35); thence
(5) Zone 10: 40 miles per hour between 800 feet south of County Road 631 and 100 feet north of Lenape Lane (mileposts 28.35 to 29.40); thence
(6) Zone 11: 45 miles per hour between 100 feet north of Lenape Lane and 200 feet south of Harbor Road (mileposts 29.40 to 30.50); thence
(7) Zone 12: 40 miles per hour between 200 feet south of Harbor Road and the southernmost end of the Beesley's Point Bridge (mileposts 30.50 to 30.70).
Renumber xiii. through xxiv. as v. through xiv. (No change in text.)
(b) (No change.)

## (c)

### Restricted Parking and Stopping
### Routes U.S. 1 and 9 in Hudson County, U.S. 9 in Monmouth County, and N.J. 23 in Passaic County
### Adopted Amendments: N.J.A.C. 16:28A-1.2, 1.7, and 1.15

Proposed: May 2, 1988 at 20 N.J.R. 965(b).
Adopted: June 7, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 5, 1988 as R.1988 d.355, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28A-1.2 Routes U.S. 1 and 9

(a)-(b) (No change.)

(c) The certain parts of State highway Routes U.S. 1 and 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along (Tonnelle Avenue) the northbound (easterly) side in North Bergen Township, Hudson County:

i. Far side bus stops:

(1) 43rd Street—Beginning at the northerly curb line of 43rd Street and extending 100 feet northerly therefrom.

(2) 49th Street—Beginning at the northerly curb line of 49th Street and extending 100 feet northerly therefrom.

(3) 51st Street—Beginning at the northerly curb line of 51st Street and extending 132 feet northerly therefrom.

(4) 54th Street—Beginning at the northerly curb line of 54th Street and extending 100 feet northerly therefrom.

(5) 83rd Street—Beginning at the northerly curb line of 83rd Street and extending 100 feet northerly therefrom.

(6) 91st Street—Beginning at the northerly curb line of 91st Street and extending 100 feet northerly therefrom.

ii. Near side bus stops:

(1) Granton Avenue—Beginning at the southerly curb line of Granton Avenue and extending 105 feet southerly therefrom.

(2) 73rd Street—Beginning at the southerly curb line of 73rd Street and extending 105 feet southerly therefrom.

(3) 76th Street—Beginning at the southerly curb line of 76th Street and extending 105 feet southerly therefrom.

(4) 79th Street—Beginning at the northerly curb line of 79th Street and extending 105 feet northerly therefrom.

(5) 86th Street—Beginning at the southerly curb line of 86th Street and extending 105 feet southerly therefrom.

9. Along (Tonnelle Avenue) the southbound (westerly) side in North Bergen Township, Hudson County:

i. Near side bus stops:

(1) 91st Street—Beginning at the northerly curb line of 91st Street and extending 105 feet northerly therefrom.

(2) 86th Street—Beginning at the northerly curb line of 86th Street and extending 105 feet northerly therefrom.

(3) 83rd Street—Beginning at the northerly curb line of 83rd Street and extending 105 feet northerly therefrom.

(4) 79th Street—Beginning at the northerly curb line of 79th Street and extending 105 feet northerly therefrom.

(5) 76th Street—Beginning at the prolongation of the northerly curb line of 76th Street and extending 105 feet northerly therefrom.

(6) 74th Street—Beginning at the northerly curb line of 74th Street and extending 105 feet northerly therefrom.

(7) 69th Street—Beginning at the northerly curb line of 69th Street and extending 105 feet northerly therefrom.

(8) 51st Street—Beginning at the prolongation of the northerly curb line of 51st Street and extending 105 feet northerly therefrom.

(9) 49th Street—Beginning at the northerly curb line of 49th Street and extending 130 feet northerly therefrom.

(10) 43rd Street—Beginning at the northerly curb line of 43rd Street and extending 105 feet northerly therefrom.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-34. (No change.)

35. Along the northbound (easterly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1)-(4) (No change.)

(5) Aldrich Road—Beginning at the southerly curb line of Aldrich Road and extending 105 feet southerly therefrom.

ii. (No change.)

iii. Far side bus stops:

(1)-(3) (No change.)

Renumber (5) as (4) (No change in text.)

36. Along the southbound (westerly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1)-(2) (No change.)

(3) Aldrich Road—Beginning at the northerly curb line of Aldrich Road and extending 105 feet northerly therefrom.

ii.-iii. (No change.)

37.-38. (No change.)

16:28A-1.15 Route 23 and Route 23 (Temporary)

(a)-(b) (No change.)

(c) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southbound (westerly) side in Wayne Township, Passaic County:

i. Mid-block bus stop:

(1) Black Oak Ridge Road—Beginning at a point 150 feet south of the southerly curb line of Black Oak Ridge Road and extending 135 feet southerly therefrom.

ii. Near side bus stops:

(1) Packanack Lake Road—Beginning at the northerly curb line of Packanack Lake Road and extending 125 feet northerly therefrom.

(2) Meadow Road—Beginning at the northerly curb line of Meadow Road and extending 115 feet northerly therefrom.

(3) Willow Place—Beginning at the northerly curb line of Willow Place and extending 105 feet northerly therefrom.

iii. Far side bus stops:

(1) Fairfield Road—Beginning at the southerly curb line of Fairfield Road and extending 100 feet southerly therefrom.

(2)-(3) (No change.)

2. Along the northbound (easterly) side in Wayne Township, Passaic County:

i. Mid-block bus stop:

(1) Packanack Lake Road—Beginning at a point 250 feet north of the northerly curb line of Packanack Lake Road and extending 135 feet northerly therefrom.

3.-8. (No change.)

## (a)

## Speed Limits
## Route 35 in Ocean County
## Adopted Amendment: N.J.A.C. 16:28-1.49

Proposed: May 2, 1988 at 20 N.J.R. 965(a).

Adopted: June 9, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: June 27, 1988 as R.1988 d.346, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: August 1, 1988.

Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35 and Route 35 and 71

(a) The rate of speed designated for State highway Route 35 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:
i. (No change.)
ii. Zone 6: 40 mph within corporate limits of Mantoloking Borough, Ocean County (mileposts 9.1 to 11.3); thence
iii. Zone 7: In Bay Head Borough, Ocean County:
(1) 35 mph between the Mantoloking Borough-Bay Head Borough line and Johnson Street (mileposts 11.25 to 11.62); thence
(2) 30 mph between Johnson Street and Harris Street (mileposts 11.62 to 12.20); thence
(3) 35 mph between Harris Street and the Bay Head Borough-Point Pleasant Borough line (mileposts 12.20 to 12.50).
iv. (No change.)
2.-3. (No change.)
(b)-(d) (No change.)

## (a)

### Speed Limits
### Route N.J. 179 in Hunterdon County
### Adopted Amendment: N.J.A.C. 16:28-1.158

Proposed: June 6, 1988 at 20 N.J.R. 1176(a).
Adopted: July 7, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 8, 1988 as R.1988 d.364, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28-1.158 Route 179
(a) The rate of speed designated for the certain parts of State highway Route 179 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i. (No change.)
ii. In the Township of West Amwell, Hunterdon County:
(1) Zone four: 50 mph between the West Amwell Township-City of Lambertville corporate line and 375 feet north of Melborne Lane (milepost 0.90 to 6.24).
iii. In the Township of East Amwell, Hunterdon County:
(1) Zone five: 35 mph between 375 feet north of Melborne Lane and Route N.J. 31—County Road 579 connection (milepost 6.24 to 6.34);
(2) Zone six: 30 mph between Route N.J. 31—County Road 579 connection and 400 feet north of Wertsville Road (County Road 602) (milepost 6.34 to 6.53);
(3) Zone seven: 35 mph between 400 feet north of Wertsville Road (County Road 602) and 325 feet south of Larison Lane (milepost 6.53 to 6.77);
(4) Zone eight: 45 mph between 325 feet south of Larison Lane and Route U.S. 202 and N.J. 31 (milepost 6.77 to 7.46).

## (b)

### Restricted Parking and Stopping
### Routes N.J. 17 and U.S. 46 in Bergen County
### Adopted Amendments: N.J.A.C. 16:28A-1.9 and 1.32

Proposed: June 6, 1988 at 20 N.J.R. 1177(a).
Adopted: July 7, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 8, 1988 as R.1988 d.365, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28A-1.9 Route 17
(a) (No change.)
(b) The certain parts of State highway Route 17 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
1.-5. (No change.)
6. Along (Rutherford Avenue) eastbound on the southerly side in Lyndhurst Township, Bergen County:
i. (No change.)
7. Along (Rutherford Avenue) southbound on the westerly side in Lyndhurst Township, Bergen County:
i. Near side bus stop:
(1) Polito Avenue—Beginning at the prolongation of the easterly curb line of Polito Avenue and extending 105 feet easterly therefrom.
Renumber existing 7.-10. as 8.-11. (No change in text.)
(c)-(d) (No change.)

16:28A-1.32 Route U.S. 46
(a) (No change.)
(b) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1.-7. (No change.)
8. In Elmwood Park Borough, Bergen County:
i. Along the eastbound (southerly) side:
(1) Far side bus stop:
(A) Boulevard—Beginning at the easterly curb line of Boulevard and extending 105 feet easterly therefrom.
9.-14. (No change.)

## (c)

### Restricted Parking and Stopping
### Routes U.S. 130 in Salem and Burlington Counties and N.J. 56 in Cumberland County
### Adopted Amendments: N.J.A.C. 16:28A-1.46 and 1.98

Proposed: May 16, 1988 at 20 N.J.R. 1064(a).
Adopted: June 16, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: June 27, 1988 as R.1988 d.348, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.
Effective Date: August 1, 1988.
Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28A-1.46 Route U.S. 130
(a) (No change.)
(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
1.-5. (No change.)
6. (See proposal at 20 N.J.R. 634(a).)
7. Along the southbound (westerly) side in Pennsville Township, Salem County:
i. Near side bus stop:

(1) Plant Street—Beginning at the prolongation of the northerly curb line of Plant Street and extending 105 feet northerly therefrom.

8. Along the northbound (easterly) side in Cinnaminson Township, Burlington County:

i. Near side bus stops:

(1) Cinnaminson Avenue—Beginning at the southerly curb line of Cinnaminson Avenue and extending 105 feet southerly therefrom.

(2) New Albany Road—Beginning at the southerly curb line of New Albany Road and extending 115 feet southerly therefrom.

(3) Highland Avenue—Beginning at the southerly curb line of Highland Avenue and extending 105 feet southerly therefrom.

9. Along the southbound (westerly) side in Cinnaminson Township, Burlington County:

i. Near side bus stops:

(1) Cinnaminson Avenue—Beginning at the northerly curb line of Cinnaminson Avenue and extending 120 feet northerly therefrom.

(2) Wynwood Drive—Beginning at the northerly curb line of Wynwood Drive and extending 105 feet northerly therefrom.

(3) Taylors Lane—Beginning at the northerly curb line of Taylors Lane and extending 105 feet northerly therefrom.

(4) Riverton Road—Beginning at the northerly curb line of Riverton Road and extending 105 feet northerly therefrom.

(5) Highland Avenue—Beginning at the northerly curb line of Highland Avenue and extending 105 feet northerly therefrom.

(c) (No change.)

16:28A-1.98 Route N.J. 56

(a) The certain parts of State highway Route 56 described in this subsection shall be designated and established as "no stopping or standing" zones.

1.-2. (No change.)

3. No stopping or standing in Vineland City, Cumberland County:

i. Along both sides for the entire length within the corporate limits of the City of Vineland including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.

## (a)

### Restricted Parking and Stopping Route N.J. 168 in Camden County

### Adopted Amendment: N.J.A.C. 16:28A-1.51

Proposed: May 16, 1988 at 20 N.J.R. 1065(a).

Adopted: June 16, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: June 27, 1988 as R.1988 d.347, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-138(g) and 39:4-199.

Effective Date: August 1, 1988.

Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:28A-1.51 Route 168

(a) The certain parts of State highway Route 168 described in this subsection are designated and established as "no stopping or standing" zones.

1.-5. (No change.)

6. No stopping or standing in Gloucester Township, Camden County:

i. Along both sides:

(1) (No change.)

(2) From Asyla Road-Lakeland Avenue to Marshall Road.

ii. Along the westerly (southbound) side:

(1) From a point 150 feet north of the northerly curb line of Station Avenue to a point 110 feet south of the southerly curb line of Station Avenue.

iii. Along the easterly (northbound) side:

(1) From a point 100 feet south of the southerly curb line of Fifth Avenue to a point 130 feet north of the northerly curb line of Fifth Avenue.

(b) (No change.)

(c) The certain parts of State highway Route 168 described in this subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs in the following established Time Limit Parking zones:

1. Along both sides (Black Horse Pike) in Gloucester Township, Camden County:

i. Two hours time limit parking from the northerly curb line of Garfield Avenue to the southerly curb line of East Lake Avenue, Monday through Thursday 8:00 A.M. to 8:00 P.M.; Friday and Saturday ONLY 8:00 A.M. to 10:00 P.M., except Sunday and holidays.

## (b)

### Mid-Block Crosswalk Route N.J. 88 in Ocean County

### Adopted New Rule: N.J.A.C. 16:30-10.8

Proposed: June 6, 1988 at 20 N.J.R. 1177(b).

Adopted: July 7, 1988, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: July 8, 1988 as R.1988 d.366, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34.

Effective Date: August 1, 1988.

Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

16:30-10.8 Route 88

(a) Under the provisions of N.J.S.A. 39:4-34, the certain parts of State highway Route 88 described in this section shall be designated as a mid-block crosswalk.

1. In Point Pleasant Borough, Ocean County:

i. From a point 64 feet east of the easterly curb line of the northerly approach of Benedict Street to a point 10 feet easterly therefrom.

# TREASURY-GENERAL

## (c)

### DIVISION OF PENSIONS

### Public Employees' Retirement System Multiple Enrollments

### Adopted Amendment: N.J.A.C. 17:2-2.2

Proposed: May 2, 1988 at 20 N.J.R. 969(b).

Adopted: June 23, 1988 by the Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: June 30, 1988 as R.1988 d.351, **without change.**

Authority: N.J.S.A. 43:15A-17.

Effective Date: August 1, 1988.

Expiration Date: December 17, 1989.

**Full text** of the adoption follows.

17:2-2.2 Multiple enrollments

(a) Any employee who has enrolled in a covered position must also enroll in any other position regardless of his or her employment status in such other position if he or she meets the salary and Social Security qualifications for enrollment. However, if an employee who is ineligible for membership later accepts an additional position which makes him or her eligible for membership in that second position, his or her ineligibility for membership in the earlier position is not altered by his or her enrollment in the Public Employees' Retirement System.

(b) An elected official must also enroll on the basis of such office if he or she is enrolled or is enrolling on the basis of other public employment.

(c) A LEO member who is also enrolled on the basis of non-LEO position will contribute at the LEO rate of pension contribution on the base wages he or she receives from all positions.

# OTHER AGENCIES

## (a)

## HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

### Notice of Correction
### District Zoning Rules
### N.J.A.C. 19:4-2.2, 4.31 and 6.18

**Take notice** that, due to publication errors, corrections must be made to the adopted text of N.J.A.C. 19:4-2.2 and 6.18 appearing in the June 20, 1988 New Jersey Register at 20 N.J.R. 1467(b).

**Take further notice** that, in accordance with N.J.A.C. 1:30-2.7(a)3, an administrative correction is being made to the adopted text of N.J.A.C. 19:4-4.31 to correct an inaccurate citation.

**Full text** of the corrections follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

19:4-2.2 Definitions

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

...

***"Dwelling—high-rise" means a building containing multi-family units of eight or more stories.**

**"Dwelling—low-rise" means dwelling units attached or detached of three stories or less having a maximum height of 35 feet.**

**"Dwelling—mid-rise" means a building containing multi-family units from three to seven stories.***

...

"Minor truck repair" means repair of trucks not normally involving overnight storage or long-term repair. The following are not considered minor truck repairs*[;]* ***: fender*** and body work, suspension and chassis repair, transmission and motor rebuilding or trailer repairs.

...

***"Neighborhood retail center" means a group of commercial establishments, planned and operated as a unit for the sale of convenience goods and personal services designed to serve the needs of a specific residential area. Such centers shall include appropriate off-street parking and loading facilities.***

19:4-4.31 Low density residential zone; design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6. No land which is located in the low density residential zone shall be used for a driveway, walkway or access purpose to any land which is located in any zone created by N.J.A.C. 19:4-*[4.45]* ***4.43*** through 4.156.

19:4-6.18 Design of structures; provision and design of other improvements, including parking and loading facilities, landscaping, lighting, fencing and signs

(a)-(l) (No change.)

(m) Fences or walls in excess of 18 inches in height shall be permitted in accordance with the following standards:

1. Fences or walls are not permitted in required front yards except that in the low density residential zone fences or walls with a maximum height of four feet are permitted provided that they are not chain link fences. In all other zones, fences or walls are permitted to be erected at the front building line of a principal structure extending to the side or rear lot lines provided that they do not exceed a maximum height of eight feet *[including barbed wire, etc.]* ***.***

2.-4. (No change.)

5. No fence or wall shall be constructed with *[barbed wire,]* metal spikes, or topped with concertina or razor wire, broken bottles or similar materials, or constructed in such manner as to be dangerous to animals or humans.

## CASINO CONTROL COMMISSION

## (b)

### Rules of the Games: Craps
### Continuation of Shooter as Such: Selection of New Shooter
### Adopted Amendment: N.J.A.C. 19:47-1.11.

Proposed: August 18, 1987 at 19 N.J.R. 1542(a).

Adopted: July 6, 1988 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: July 7, 1988 as R.1988 d.360, **with substantive change** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c) and 5:12-100(e).

Effective Date: August 1, 1988.

Expiration Date: April 28, 1993.

**Summary** of Public Comments and Agency Responses:

COMMENT: Matthew T. Janis, a private citizen, objects to the proposed amendment and contends that all undecided wagers should be returned to the patron. Mr. Janis feels that to do otherwise is against a player's better judgement and is a violation of the Rules of the Games.

RESPONSE: The Commission disagrees. In accordance with N.J.A.C. 19:47-1.3(c), a Come Bet cannot be removed after a Come Point has been established with respect to such bet. Furthermore, to require that a Don't Pass Bet be removed would be a disadvantage to the patron at this point within the game.

COMMENT: The Division of Gaming Enforcement generally supports the amendment but recommends two technical modifications that would clarify that the rule is intended to address all remaining wagers until a loser seven is thrown. The Division believes that these changes are necessary in order to avoid confusion which may result during the actual play of the game.

RESPONSE: The Commission disagrees, and rejects the recommendations. The proposed amendment is not intended to address "all remaining wagers". It is intended to address only remaining Come Bets and Don't Come Bets. With respect to Come Bets, they may not be removed as per rule and as such are the primary reason for this amendment. As far as Don't Come Bets are concerned, while they may be removed by the patron per rule, to do so would be to the patron's disadvantage. Accordingly, the two aforementioned bets are the only two intended to be affected by this amendment. Any other remaining wagers should be removed and returned to the patron. Furthermore, the rules already address the outcome of throwing a seven at the game of Craps.

The Commission has added clarifying language to the rule to provide that, while the previous shooter is shooting the dice without a Pass or Don't Pass Bet to effect a decision on the remaining Come and/or Don't Come Wagers, a player wishing to place a Pass or Don't Pass Bet will be allowed to shoot the dice for a decision on his or her wager.

**Full text** of the adoption follows (additions to the proposal are shown in boldface with asterisks ***thus***).

19:47-1.11 Continuation of shooter as such: selection of new shooter

(a) (No change.)

(b) If a shooter, after making the Come Out Point elects not to place a Pass or Don't Pass Bet, and other wagers remain on the table with respect to Come and/or Don't Come numbers, the stickperson shall offer the dice to the player immediately to the left of the previous shooter, as provided for in (c) below. If there are no other players at the table, or if no other players at the table elect to make a Pass or Don't Pass Bet in order to shoot the dice and continue the game, the previous shooter shall be allowed to shoot the dice without a Pass or Don't Pass Bet only for the purpose of effecting a decision on the remaining Come and/or Don't Come Wagers. The On/Off marker shall be placed on the Don't Pass Line in the Off position in front of the shooter in order to indicate that the shooter is rolling the dice only to effectuate a decision for those wagers remaining on the layout. Once the remaining Come and/or Don't Come Wagers have been decided, ***or a player wishes to place a Pass or Don't Pass Bet*** the game shall proceed in accordance with N.J.A.C. 19:47-1.8.

(c) No change in text.

(d) No change in text.

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

### DIVISION OF PUBLIC WELFARE

### (a)

### Assistance Standards Handbook Emergency Assistance

### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:82-5.10

Emergency Amendment Adopted: June 30, 1988 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): July 6, 1988.
Emergency Amendment Filed: July 7, 1988 as R.1988 d.358.
Authority: N.J.S.A. 44:7-6 and 44:10-3, and 45 CFR 233.120.
Emergency Amendment Effective Date: July 7, 1988.
Emergency Amendment Expiration Date: September 5, 1988.
The concurrent proposal number is PRN 1988-392.

Submit comments by August 31, 1988 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency emergency adoption and concurrent proposal follows:

**Summary**

The Department of Human Services, in its continued efforts to address the problems of homeless families receiving Emergency Assistance (EA) benefits, will provide for a one month extension of Aid to Families with Dependent Children (AFDC) EA benefits for those families whose benefits expire on June 30, 1988.

On March 10, 1988 the Department of Human Services submitted a report to the Legislature documenting the effects experienced by families as a result of the November 16, 1987 revised rules governing emergency assistance to homeless persons. Those rules followed a period of time during which the Department's previous rules were suspended by *Maticka v. City of Atlantic City,* a New Jersey Appellate Division decision that required a reassessment of the Department's emergency assistance policy. The Department's new rules, adopted on November 16, 1987 (at 19 N.J.R. 2190(a)), while dramatically broadening coverge under emergency assistance (EA), also permitted county welfare agencies to extend EA for up to two additional months in situations where all reasonable efforts to secure permanent shelter by both the county welfare agency and the client proved unsuccessful. This additional two months of extended EA benefits was to end March 31, 1988.

Inasmuch as approximately 940 families were housed in hotels, motels, or congregate shelters and were faced with the March 31, 1988 expiration of their EA benefits, the Department, as one of a series of steps to address the problems of homeless families receiving EA, decided to provide a one-time, one month, extension of EA benefits for those families. That was done through an Emergency Rule which was published in the April 18, 1988 issue of the New Jersey Register at 20 N.J.R. 933(a) and provided EA benefits to those families from April 1, 1988 through April 30, 1988.

The Public Advocate on April 21, 1988 brought suit (*Johnny Franklin, et al. v. Department of Human Services,* and *Janet McCurdy et al v. Department of Human Services*) in Superior Court, Appellate Division, challenging the five-month Emergency Assistance limitation in the rule. On April 27, 1988, that court denied a motion for a stay of the implementation of the rule; however, the Supreme Court on May 3, 1988 granted a stay and remanded the case to the Appellate Division for a decision. The Appellate Division on May 31, 1988 affirmed the rule.

The Supreme Court, on appeal, granted an additional stay until it acted on June 24, 1988 to uphold the five-month maximum time limit for Emergency Assistance set forth in the Department's EA rule. Even though EA benefits can now be immediately discontinued to those families, EA will be continued in order to provide for an orderly implementation of the court's decision and to provide county welfare agencies with the additional time and funding necessary to deal with families who have been in a state of uncertainty for several months, pending the outcome of several court challenges to the program.

**Social Impact**

The emergency amendment and concurrent proposal will have a positive social impact in that it will provide an extension of EA benefits for a targeted group, approximately 656 families. While providing needed short term assistance to those families, this amendment will provide an added opportunity to enhance the partnership efforts of counties, localities and community based organizations in assisting homeless families to secure permanent shelter.

**Economic Impact**

The emergency rule will result in an estimated expenditure of $598,000 in State funds for emergency assistance and will affect approximately 656 families.

**Regulatory Flexibility Statement**

This emergency adopted amendment and concurrent proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This action imposes no compliance requirements on small business; therefore, a regulatory flexibility analysis is not required.

**Full text** of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**).

10:82-5.10 Emergency assistance

(a)-(c) (No change.)

(d) Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:

1. Emergency shelter: The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the client and the agency (see 6 below), permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of (d)1vii below.

i.-vii. (No change.)

**viii. Time Limited Extension for EA Benefit: An extension shall be granted to eligible families who have been in receipt of EA since immediately prior to March 1988 in accordance with (a)1viii(1) below. This extension of EA benefits granted under this provision is unconditional and not subject to the requirements set forth in (d)1vii above.**

**(1) For families whose maximum period of eligibility for temporary shelter benefits ended:**

**(A) March 31, or will end on June 30, the last day of entitlement will be July 31, 1988.**

**(B) April 30, 1988, the last day of entitlement will be August 31, 1988.**

**(C) May 31, 1988, the last day of entitlement will be September 30, 1988.**

2.-6. (No change.)

(e)-(f) (No change.)

## (a)

### General Assistance Manual
### Emergency Assistance
### Adopted Emergency Amendment: N.J.A.C. 10:85-4.6

Emergency Amendment Adopted: June 30, 1988 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): July 6, 1988.
Emergency Amendment Filed: July 7, 1988 as R.1988 d.359.
Authority: N.J.S.A. 44:8-111(d).
Emergency Amendment Effective Date: July 7, 1988.
Emergency Amendment Expiration Date: July 31, 1988.

The agency emergency adoption follows:

**Summary**

The Department adopted new rules on January 4, 1988 (at 20 N.J.R. 96(a)) which dramatically broadened coverage under Emergency Assistance (EA), and also permitted municipal welfare departments to extend EA for up to two additional months in situations where all reasonable efforts to secure permanent shelter by both the municipal welfare agency and the client proved unsuccessful.

That extension of EA benefits was to end May 31, 1988. Approximately 100 individuals were housed in hotels, motels, or congregate shelters and were faced with the May 31, 1988 deadline for the expiration of their EA benefits. The Department, in its continued efforts to help those homeless individuals, and pending the outcome of an appellate court challenge to the time limit on the existing rule published an Emergency Rule in the June 20, 1988 issue of the New Jersey Register at 20 N.J.R. 1484(a) which expanded the provisions of EA to provide an additional one month extension of benefits from June 1, 1988 through June 30, 1988. This provided an added opportunity to place such individuals in permanent housing pending the court decision.

Inasmuch as this one month extension of EA benefits is to expire June 30, and the court has not yet ruled but has been requested to hear the merits of the case on an expedited basis, the Department has decided to provide an additional one month extension of EA benefits which will be from July 1, 1988 through July 31, 1988.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Supreme Court ruled, on June 24, 1988, upholding N.J.A.C. 10:85-4.6, which allows a five-month maximum time limit for emergency assistance benefits. However, this emergency adoption is being processed to allow for a one-time extension to assist approximately 100 homeless individuals.

**Social Impact**

The emergency amendment will have a positive social impact in that it will provide an additional month of EA benefits to a targeted group of approximately 100 individuals. While providing needed short term assistance to those individuals, this emergency amendment provides an added opportunity to enhance the partnership efforts of localities and community based organizations in assisting homeless individuals to secure permanent shelter.

**Economic Impact**

The maximum anticipated cost of this one month extension for these 100 individuals is $110,000.

**Regulatory Flexibility Statement**

This emergency amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

**Full text** of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**, deletions indicated in brackets [thus]).

10:85-4.6 Emergency grants

(a) (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i.-v. (No change.)

**vi. Time Limited Extension for EA Benefit: A one month extension shall be granted for those individuals exhausting their maximum entitlement to EA either prior to or on June 30, 1988. Such one month extension of benefits is time limited and shall commence on July 1, 1988 and end July 31, 1988. This extension of EA benefits granted under this provision is unconditional and not subject to the requirements set forth in (b)1v above.**

[vi.]**vii.** (No change in text.)

2.-4. (No change.)

(c)-(f) No change.

# MISCELLANEOUS NOTICES

## AGRICULTURE

### (a)

### DIVISION OF ANIMAL HEALTH

### Petition for Repeal of Biologics for Diagnostic or Therapeutic Purposes: N.J.A.C. 2:6

Petitioners: The Animal Health Institute; Eugene I. Lambert, Esq., of Covington and Burling, attorney for the Animal Health Institute.

Authority: N.J.S.A. 4:5-109 and N.J.S.A. 52:14B-4(f).

**Take notice** that on June 10, 1988 the petitioners filed a petition with the New Jersey Department of Agriculture for the repeal of N.J.A.C. 2:6, dealing with Biologics.

The petitioner is a National Trade Association of Veterinary Biological Licensees. The petitioner alleges the New Jersey rules are invalid under the Supremacy and Interstate Commerce Clauses of the United States Constitution, conflict with safety determination of the USDA, and upset the balance of interests struck by the USDA in marketing of these products under the Virus, Serums and Toxins Act.

The Department of Agriculture acknowledges the petitioner's concerns and had considered in a prior review of its rules many of the same comments from the petitioner.

Independently of the petition, but within the areas of concern raised by this petition, was a United States Supreme Court case decided on June 13, 1988. The case of *Berkovitz v. FDA,* 48 C.C.H. S.Ct. Bull. p. 2543, dealing with the nature of governmental liability for the licensure and distribution of vaccines. While the USDA and NJDA are not named parties to the action, the nature of the products are similar and, thus raises issues requiring consideration by this Department.

The Department of Agriculture has therefore contacted the USDA seeking clarification of its understanding of their licensing and statutory authority for the purpose of further deliberations on the subject.

**Interested persons** may submit written comments on the petition for rulemaking until August 31, 1988. Address comments and inquiries to:

Dr. Sidney R. Nusbaum, Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-3965

The Department of Agriculture is not prepared to initiate rulemaking on this issue at this time. Further study and discussion by the Department is necessary prior to such formal regulatory action. After consideration of comments received, the Department of Agriculture shall address this issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

## ENVIRONMENTAL PROTECTION

### (b)

### DIVISION OF WASTE MANAGEMENT

### Solid Waste Facilities; Records

### Notice of Correction: N.J.A.C. 7:26-2.13

**Take notice** that an error appears in the New Jersey Administrative Code at N.J.A.C. 7:26-2.13(g)1vi concerning waste identification and definition of solids. N.J.A.C. 7:26-2.13(g)1vi should appear in the Code as follows:

7:26-2.13 Solid waste facilities; records

(a)-(f) (No change.)

(g) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID number and definition:

i.-v. (No change.)

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and asbestos and asbestos-containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2A.8(l).

(h)-(i) (No change.)

### (c)

### DIVISION OF WATER RESOURCES

### Amendment to the Tri-County Water Quality Management Plan

### Public Notice

**Take notice** than an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of the Burlington Township sewer service area to include the proposed Society Hill at Burlington (Ox-Meade Farms) Block 131, Lot 1, Burlington Township, Burlington County. This amendment would also allow the filling of 0.693 acres of isolated wetlands.

**This notice** is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

## HUMAN SERVICES

### (d)

### OFFICE OF THE COMMISSIONER

### Institutional, Residential and Support Services Unit

### Public Notice of Available Grant Funds

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, which supplements Title 52 of the Revised Statutes, the Department of Human Services announces the following availability of funds:

A. **Monies are available to fund personal care services** within a Specialized Residential Health Care Facility under a grant through the Robert Wood Johnson Foundation.

B. **The purpose of the grant program** is to develop a program, within an existing Residential Health Care Facility, providing expanded on-site services to young adults with serious mental health problems. Funds are available to contract with a Medicaid approved agency to provide personal care services.

C. **The total amount of funds** made available to the Department to operate the program is $326,151 for the period of February 1, 1988 through July 31, 1990. The personal care component is funded at a level of $43,920 annually.

D. **Eligible entities** are agencies approved by Medicaid to provide personal care services whose service area includes Jamesburg, Middlesex County.

E. **Applicants must be approved by Medicaid** to provide Personal Care Services whose service area includes Jamesburg, Middlesex County.

F. **In order to apply for funds,** eligible agencies must submit a proposal. A request for proposals has been sent to all eligible agencies.

G. **Submit applications, questions, or other requests to:**

Barbara DeLorenzo, Project Director
Specialized Residential Health Care
Facility Demonstration Program
State Department of Human Services
CN 700
Trenton, NJ 08625
(609) 984-9332

H. **Deadline:** Applications must be postmarked on or before August 10, 1988. Hand delivered applications must be received no later than 4:30 P.M. on August 10, 1988.

I. **Applicants will be notified** of the selected agency on or about September 1, 1988.

# LAW AND PUBLIC SAFETY

## (a)

### BOARD OF DENTISTRY

### Professional Advertising

### Notice of Correction: N.J.A.C. 13:30-8.6

**Take notice** that an error appears in the New Jersey Administrative Code at N.J.A.C. 13:30-8.6(f) concerning professional advertising. A notice of proposed rule appeared in the June 15, 1987 issue of the New Jersey Register at 19 N.J.R. 1053(a). A notice of adoption appeared in the October 19, 1987 Register at 19 N.J.R. 1910(a). N.J.A.C. 13:30-8.6 should appear in the Code as follows:

13:30-8.6 Professional advertising

(a)-(e) (No change.)

(f) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described professional service.

1. (No change.)

(g)-(l) (No change.)

## (b)

### DIVISION OF MOTOR VEHICLES

### Notice of Application for Certificate of Public Convenience Permit

**Take notice** that Glenn Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the names and addresses of applicants who have filed applications for a common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)

Rogers Cartage Co.
10735 S. Cicero Avenue
Oak Lawn, IL 60453

Peerless Bulk Transport Corp.
P.O. Box 387
Lafayette Street
Carteret, NJ 07008

Paul A. Nemeth
238 No. Church Road
Sparta, NJ 07871

Industrial Trucking Service Corp.
Route 232 & Swamp Road
P.O. Box 196
Penns Park, PA 18943

Edward J. Meyers Company
7665 West Lawndale
Summit, IL 60501

**Protests** in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, N.J. 08666, within 20 days (August 21, 1988) following the publication of applications.

# TREASURY-GENERAL

## (c)

### DIVISION OF BUILDING AND CONSTRUCTION

### Architect-Engineer Selection

### Notice of Assignments—Month of June 1988

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated May 31, 1988.

The following assignments have been made:

| DBC No. | PROJECT | A/E | CCE |
|---|---|---|---|
| H861 | Testing/Inspection Services Site Improvements-Recreation Center Parking Lot, Stairs, Baseball Field Expansion William Paterson College Wayne, NJ | United States Testing Co. | $2,800 Services |
| M792 | Air Conditioning Stratton Building Trenton Psychiatric Hospital Trenton, NJ | Roy Larry Schlein & Associates | $170,000 |
| P515 | Testing/Inspection Services Renovations to Ocean Bathing Unit No. #2 Island Beach State Park Ocean County, NJ | Certified Testing Labs | $5,000 Services |
| E186 | Auditorium Renovations Newark Skills Center Newark, NJ | Brown & Hale Architects | $52,000 |
| H821 | Inspection & Monitoring Services Reroofing Stockton State College Pomona, NJ | Tremco Services Corp. | $35,000 Services |
| J033 | Facility Consultant-FY 88 Div. of Property & Facilities Mgt. | Omdex, Inc. | $10,000 Services |
| A555 | Electrical Improvements OTIS Hub Facility W. Trenton, NJ | Frank R. Holtaway & Son, Inc. | $950,000 |
| T199 Re-assignment | Sanitary Sewer Line DOT Maintenance Facility Totowa, NJ | Berson-Ackermann Associates | $250,000 |
| M779 | New Staff Apartment Addition Freehold Group Home Freehold, NJ | Matthew L. Rue, AIA | $125,000 |
| M780 | New Staff Apartment Addition Morristown Group Home Morristown, NJ | L. J. Mineo, Jr., AIA | $125,000 |
| T203 | Reroofing DOT Maintenance Garage Mays Landing, NJ | Herbert J. Cannon | $35,000 |
| T205 | Reroofing DOT Garage Wayne, NJ | Leslie M. Dennis & Son | $30,000 |
| H788 | Testing Services Montclair State College Upper Montclair, NJ | Shimel & Sor Testing Labs, Inc. | $215 Services |

| DBC No. | PROJECT | A E | CCE |
|---|---|---|---|
| M795 | Reroofing<br>Poplar Hall<br>Ancora Psychiatric Hospital<br>Hammonton, NJ | Harry A. Di Fazio, RA | $50,000 |
| A549 | Adaptive Reuse of<br>Historic Rowhouses<br>& Exterior Restoration of<br>Thomas Edison College<br>Trenton, NJ | Lindemonn, Winckelman, Martin & Associates | $1,750,000 |
| | COMPETITIVE PROPOSALS | | |
| | Lindemon, Winckelmann, Martin & Associates | 10.348% | |
| | Mylan Valk Partnership | 10.44% | |
| | Nadaskay Kopelson Architects | 11.88% | |
| M764 | Re-roof Main Building<br>Ancora Psychiatric Hospital<br>Hammonton, NJ | H. J. Cannon Assoc. | $400,000 |
| | COMPETITIVE PROPOSALS | | |
| | Cannon Associates | 6.00% | |
| | Kitchen & Associates | 8.49% | |
| | Lisiewski Group | 12.00% | |

# TREASURY-TAXATION

## (a)

### DIVISION OF TAXATION

### Average Wholesale Price of Cigarettes Cigarette Surtax Rate

### Public Notice

**Take notice,** for the purpose of complying with the requirements of Chapter 40, P.L. 1982, sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing July 1, 1988, is $0.5673 for each 10 cigarettes or fraction thereof.

**Therefore,** the cigarette surtax due for such six months, pursuant to Sec. 302, P.L. 1948, c.65 (N.J.S.A. 54:40A-8), as amended, shall be $.04 for each 10 cigarettes or fraction thereof.

# OTHER AGENCIES

## (b)

### CASINO CONTROL COMMISSION

### Petition for Rulemaking Junket Reporting Requirements

### N.J.A.C. 19:49-3.1, 3.2 and 3.3

Petitioners: Boardwalk Regency Corporation and Resorts International Hotel, Inc.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

**Take notice** that on June 15, 1988, Boardwalk Regency Corporation and Resorts International Hotel, Inc. filed a rulemaking petition with the Casino Control Commission requesting the repeal of N.J.A.C. 19:49-3.1 and 3.3 and proposing an amendment to N.J.A.C. 19:49-3.2.

The petitioners contend that the creation and filing of junket prearrival reports required by N.J.A.C. 19:49-3.1 is not only an administrative burden but also unnecessary since the Division of Gaming Enforcement has not reviewed these reports for the past several months. The petitioners also propose the repeal of N.J.A.C. 19:49-3.3 on the basis that the only new information provided by the junket final reports required by this rule is currently furnished in various daily, monthly and quarterly complimentary distribution reports filed by casino licensees. In addition, the proposed amendments would delete the requirement that patrons of a junket involving complimentary guest room accommodations acknowledge in writing the terms of the particular junket. This requirement, they assert, serves no useful regulatory function and results in an inconvenience to those patrons who receive these accommodations.

While eliminating the junket prearrival reports and junket final reports required by N.J.A.C. 19:49-3.1 and 3.3 respectively, the petitioners wish to amend N.J.A.C. 19:49-3.2 in order to establish one junket report. As proposed, this amended rule would incorporate the prearrival report information of N.J.A.C. 19:49-3.1(c) and that information currently required by N.J.A.C. 19:49-3.2 except that the value threshold for reporting complimentary services or items provided to a junket participant would be increased from $200.00 to $1,000. Finally, this one junket report would be maintained in the casino licensee's files rather than filed with the Division of Gaming Enforcement.

**After due notice,** this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 52:14B-4.

# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard *all* expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

## OFFICE OF ADMINISTRATIVE LAW—TITLE 1

| N.J.A.C. | Expiration Date |
|---|---|
| 1:1 | 5/4/92 |
| 1:5 | 10/20/91 |
| 1:6 | 5/4/92 |
| 1:6A | 5/4/92 |
| 1:7 | 5/4/92 |
| 1:10 | 5/4/92 |
| 1:10A | 5/4/92 |
| 1:10B | 10/6/91 |
| 1:11 | 5/4/92 |
| 1:13 | 5/4/92 |
| 1:20 | 5/4/92 |
| 1:21 | 5/4/92 |
| 1:30 | 2/14/91 |
| 1:31 | 6/17/92 |

## AGRICULTURE—TITLE 2

| N.J.A.C. | Expiration Date |
|---|---|
| 2:1 | 9/3/90 |
| 2:2 | 10/3/88 |
| 2:3 | 6/18/89 |
| 2:5 | 6/18/89 |
| 2:6 | 9/3/90 |
| 2:7 | 9/29/88 |
| 2:9 | 7/7/91 |
| 2:16 | 5/7/90 |
| 2:22 | 7/6/92 |
| 2:23 | 7/18/93 |
| 2:24 | 2/11/90 |
| 2:32 | 6/1/92 |
| 2:48 | 11/27/90 |
| 2:50 | 5/1/92 |
| 2:52 | 6/7/90 |
| 2:53 | 3/3/91 |
| 2:54 | Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004) |
| 2:68 | 8/1/88 |
| 2:69 | 10/3/88 |
| 2:70 | 5/7/90 |
| 2:71 | 7/8/93 |
| 2:72 | 7/8/93 |
| 2:73-2 | 7/8/93 |
| 2:74 | 7/8/93 |
| 2:76 | 8/29/89 |
| 2:90 | 6/24/90 |

## BANKING—TITLE 3

| N.J.A.C. | Expiration Date |
|---|---|
| 3:1 | 1/6/91 |
| 3:2 | 4/15/90 |
| 3:6 | 3/3/91 |
| 3:7 | 9/16/90 |
| 3:11 | 3/19/89 |
| 3:13 | 11/17/91 |
| 3:17 | 6/18/91 |
| 3:18 | 1/19/93 |
| 3:19 | 3/17/91 |
| 3:21 | 2/2/92 |
| 3:22 | 5/21/89 |
| 3:23 | 7/6/92 |
| 3:24 | 8/20/89 |
| 3:25 | 8/17/92 |
| 3:26 | 12/31/90 |
| 3:27 | 9/16/90 |
| 3:28 | 12/17/89 |
| 3:30 | 10/17/88 |
| 3:38 | 10/5/92 |
| 3:41 | 10/16/90 |
| 3:42 | 4/4/93 |

## PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

| N.J.A.C. | Expiration Date |
|---|---|
| 4:1 | 1/28/90 |
| 4:2 | 1/28/90 |
| 4:3 | 6/4/89 |
| 4:4 | 12/5/91 |
| 4:6 | 5/5/91 |
| 4A:1 | 10/5/92 |
| 4A:2 | 10/5/92 |
| 4A:4 | 6/6/93 |
| 4A:5 | 10/5/92 |
| 4A:6 | 1/4/93 |
| 4A:7 | 10/5/92 |
| 4A:9 | 10/5/92 |
| 4A:10 | 11/2/92 |

## COMMUNITY AFFAIRS—TITLE 5

| N.J.A.C. | Expiration Date |
|---|---|
| 5:3 | 9/1/88 |
| 5:4 | 10/5/92 |
| 5:10 | 12/1/88 |
| 5:11 | 3/1/89 |
| 5:12 | 1/1/90 |
| 5:13 | 12/24/92 |
| 5:14 | 12/1/90 |
| 5:17 | 6/1/89 |
| 5:18 | 2/1/90 |
| 5:18A | 2/1/90 |
| 5:18B | 2/1/90 |
| 5:19 | 2/1/93 |
| 5:22 | 12/1/90 |
| 5:23 | 3/1/93 |
| 5:24 | 9/1/90 |
| 5:25 | 3/1/91 |
| 5:26 | 3/1/91 |
| 5:27 | 6/1/90 |
| 5:28 | 12/20/90 |
| 5:29 | 6/18/91 |
| 5:30 | 6/29/93 |
| 5:31 | 12/1/89 |
| 5:37 | 11/18/90 |
| 5:38 | 11/7/88 |
| 5:51 | 9/1/88 |
| 5:70 | 7/9/92 |
| 5:71 | 3/1/90 |
| 5:80 | 5/20/90 |
| 5:91 | 6/16/91 |

| N.J.A.C. | Expiration Date |
|---|---|
| 5:92 | 6/16/91 |
| 5:100 | 5/7/89 |

## DEPARTMENT OF DEFENSE—TITLE 5A

| N.J.A.C. | Expiration Date |
|---|---|
| 5A:2 | 5/20/90 |

## EDUCATION—TITLE 6

| N.J.A.C. | Expiration Date |
|---|---|
| 6:2 | 3/1/89 |
| 6:3 | 7/8/93 |
| 6:8 | 1/5/92 |
| 6:11 | 12/12/90 |
| 6:12 | 4/2/91 |
| 6:20 | 8/9/90 |
| 6:21 | 8/9/90 |
| 6:22 | 9/3/90 |
| 6:24 | 4/2/91 |
| 6:26 | 1/24/90 |
| 6:27 | 1/24/90 |
| 6:28 | 6/1/89 |
| 6:29 | 3/25/90 |
| 6:30 | 7/5/93 |
| 6:31 | 1/24/90 |
| 6:39 | 10/18/89 |
| 6:43 | 4/7/91 |
| 6:46 | 10/5/92 |
| 6:53 | 7/7/92 |
| 6:64 | 5/1/88 |
| 6:68 | 4/12/90 |
| 6:69 | 6/4/91 |
| 6:70 | 1/25/90 |
| 6:79 | 11/25/92 |

## ENVIRONMENTAL PROTECTION—TITLE 7

| N.J.A.C. | Expiration Date |
|---|---|
| 7:1 | 9/16/90 |
| 7:1A | 6/5/92 |
| 7:1C | 6/17/90 |
| 7:1D | 12/1/88 |
| 7:1E | 7/15/90 |
| 7:1F | 4/20/92 |
| 7:1G | 10/1/89 |
| 7:1H | 7/24/90 |
| 7:1I | 7/18/93 |
| 7:2 | 6/24/93 |
| 7:3 | 3/21/93 |
| 7:6 | 12/19/88 |
| 7:7 | 5/7/89 |
| 7:7A | 6/6/93 |
| 7:7E | 7/24/90 |
| 7:7F | 1/19/93 |
| 7:8 | 2/5/93 |
| 7:9 | 1/21/91 |
| 7:10 | 9/4/89 |
| 7:11 | 5/13/93 |
| 7:12 | 4/11/93 |
| 7:13 | 5/4/89 |
| 7:14 | 4/27/89 |
| 7:14A | 6/4/89 |
| 7:14B | 12/21/92 |
| 7:15 | 4/2/89 |
| 7:17 | 4/7/91 |
| 7:18 | 8/6/91 |
| 7:19 | 4/15/90 |
| 7:19A | 2/19/90 |
| 7:19B | 2/19/90 |
| 7:20 | 5/6/90 |
| 7:20A | 12/19/88 |
| 7:22 | 1/5/92 |
| 7:23 | 6/18/89 |
| 7:24 | 5/19/91 |
| 7:25 (Except for 7:25-1 which expired 9/17/85) | 2/18/91 |
| 7:25A | 5/6/90 |
| 7:26 | 11/4/90 |
| 7:27 | Exempt |
| 7:27B-3 | Exempt |
| 7:28 | 10/7/90 |
| 7:29 | 3/18/90 |
| 7:29B | 2/1/93 |
| 7:30 | 12/4/92 |
| 7:31 | 6/20/93 |
| 7:36-1 | 8/5/90 |
| 7:36-2 | Expired 1/9/86 |
| 7:36-3 | Expired 1/9/86 |
| 7:36-4 | 8/5/90 |
| 7:36-5 | Expired 1/9/86 |
| 7:36-6 | Expired 1/9/86 |
| 7:36-7 | 8/5/90 |
| 7:37 | Exempt |
| 7:38 | 9/18/90 |
| 7:45 | Expired 1/11/85 |

## HEALTH—TITLE 8

| N.J.A.C. | Expiration Date |
|---|---|
| 8:7 | 9/16/90 |
| 8:8 | 5/21/89 |
| 8:9 | 2/18/91 |
| 8:13 | 9/8/92 |
| 8:19 | 6/28/90 |
| 8:20 | 3/4/90 |
| 8:21 | 11/18/90 |
| 8:21A | 4/1/90 |
| 8:22 | 8/4/91 |
| 8:23 | 12/17/89 |
| 8:24 | 5/2/93 |
| 8:25 | 5/19/93 |
| 8:26 | 8/4/91 |
| 8:31 | 11/5/89 |
| 8:31A | 3/18/90 |
| 8:31B | 10/15/90 |
| 8:33 | 10/7/90 |
| 8:33A | 4/15/90 |
| 8:33B | 10/7/90 |
| 8:33C | 8/20/89 |
| 8:33D | 2/1/87 |
| 8:33E | 6/23/92 |
| 8:33F | 1/14/90 |
| 8:33G | 7/20/89 |
| 8:33H | 7/19/90 |
| 8:33I | 9/15/91 |
| 8:33J | 5/17/89 |
| 8:33K | 4/16/89 |
| 8:34 | 11/18/88 |
| 8:39 | 6/20/93 |
| 8:40 | 4/15/90 |
| 8:41 | 2/17/92 |
| 8:42 | 8/17/92 |
| 8:42A | 6/12/91 |
| 8:42B | 7/18/93 |
| 8:43 | 1/21/91 |
| 8:43A | 9/3/90 |
| 8:43B | 1/21/91 |
| 8:43E | 12/11/92 |
| 8:43F | 3/18/90 |
| 8:43G | 9/8/91 |
| 8:43I | 3/21/93 |
| 8:44 | 11/7/88 |
| 8:45 | 5/20/90 |
| 8:48 | 8/20/89 |
| 8:51 | 9/16/90 |
| 8:52 | 12/15/91 |
| 8:53 | 8/4/91 |
| 8:57 | 6/18/90 |
| 8:59 | 10/1/89 |

| N.J.A.C. | Expiration Date |
|---|---|
| 8:60 | 5/3/90 |
| 8:61 | 10/6/91 |
| 8:65 | 12/2/90 |
| 8:70 | 9/17/88 |
| 8:71 | 4/2/89 |

## HIGHER EDUCATION—TITLE 9

| N.J.A.C. | Expiration Date |
|---|---|
| 9:1 | 1/17/89 |
| 9:2 | 6/17/90 |
| 9:3 | 10/17/88 |
| 9:4 | 10/30/91 |
| 9:5 | 1/21/91 |
| 9:6 | 5/20/90 |
| 9:6A | 1/4/93 |
| 9:7 | 2/28/93 |
| 9:8 | 11/4/90 |
| 9:9 | 10/3/88 |
| 9:11 | 1/17/89 |
| 9:12 | 1/17/89 |
| 9:14 | 5/20/90 |
| 9:15 | 10/25/88 |

## HUMAN SERVICES—TITLE 10

| N.J.A.C. | Expiration Date |
|---|---|
| 10:1 | 5/6/88 |
| 10:2 | 1/5/92 |
| 10:3 | 9/19/88 |
| 10:4 | 1/3/88 |
| 10:5 | 12/19/88 |
| 10:6 | 2/21/89 |
| 10:12 | 1/5/92 |
| 10:13 | 7/18/93 |
| 10:14 | 5/16/93 |
| 10:36 | 8/18/91 |
| 10:37 | 11/4/90 |
| 10:38 | 5/28/91 |
| 10:40 | 3/15/89 |
| 10:42 | 8/18/91 |
| 10:43 | 9/1/88 |
| 10:44 | 10/3/88 |
| 10:44A | 2/7/88 |
| 10:44B | 4/15/90 |
| 10:45 | 9/19/88 |
| 10:47 | 11/4/90 |
| 10:48 | 1/21/91 |
| 10:49 | 8/12/90 |
| 10:50 | 3/3/91 |
| 10:51 | 10/28/90 |
| 10:52 | 2/19/90 |
| 10:53 | 4/29/90 |
| 10:54 | 3/3/91 |
| 10:55 | 3/11/90 |
| 10:56 | 8/26/91 |
| 10:57 | 3/3/91 |
| 10:58 | 3/3/91 |
| 10:59 | 3/3/91 |
| 10:60 | 8/27/90 |
| 10:61 | 3/3/91 |
| 10:62 | 3/3/91 |
| 10:63 | 11/29/89 |
| 10:64 | 3/3/91 |
| 10:65 | 11/5/89 |
| 10:66 | 12/15/88 |
| 10:67 | 3/3/91 |
| 10:68 | 7/7/91 |
| 10:69 | 6/6/93 |
| 10:69A | 4/20/93 |
| 10:69B | 11/21/88 |
| 10:70 | 6/16/91 |
| 10:71 | 1/6/91 |
| 10:72 | 8/27/92 |
| 10:80 | 8/23/89 |
| 10:81 | 10/15/89 |
| 10:82 | 10/29/89 |
| 10:85 | 1/30/90 |
| 10:87 | 3/1/89 |
| 10:89 | 9/11/90 |
| 10:90 | 10/14/92 |
| 10:94 | 1/6/91 |
| 10:95 | 8/23/89 |
| 10:97 | 4/16/89 |
| 10:99 | 2/19/90 |
| 10:100 | 2/6/89 |
| 10:109 | 3/17/91 |
| 10:112 | 2/17/89 |
| 10:120 | 9/26/88 |
| 10:121 | 3/13/89 |
| 10:121A | 12/7/92 |
| 10:122 | 8/6/89 |
| 10:122A | Exempt |
| 10:122B | 9/10/89 |
| 10:123 | 7/20/90 |
| 10:124 | 12/7/92 |
| 10:125 | 7/16/89 |
| 10:127 | 9/19/88 |
| 10:129 | 10/11/89 |
| 10:130 | 9/19/88 |
| 10:131 | 12/7/92 |
| 10:132 | 1/5/92 |
| 10:141 | 2/21/89 |

## CORRECTIONS—TITLE 10A

| N.J.A.C. | Expiration Date |
|---|---|
| 10A:1 | 7/6/92 |
| 10A:3 | 10/6/91 |
| 10A:4 | 7/21/91 |
| 10A:5 | 10/6/91 |
| 10A:6 | 11/2/92 |
| 10A:8 | 11/16/92 |
| 10A:9 | 1/20/92 |
| 10A:10-6 | 8/17/92 |
| 10A:16 | 4/6/92 |
| 10A:17 | 12/15/91 |
| 10A:18 | 7/6/92 |
| 10A:22 | 7/5/93 |
| 10A:31 | 2/4/90 |
| 10A:32 | 3/4/90 |
| 10A:33 | 7/16/89 |
| 10A:34 | 4/6/92 |
| 10A:70 | Exempt |
| 10A:71 | 4/15/90 |

## INSURANCE—TITLE 11

| N.J.A.C. | Expiration Date |
|---|---|
| 11:1 | 2/3/91 |
| 11:1-20 | 6/24/90 |
| 11:1-22 | 6/24/90 |
| 11:2 | 12/2/90 |
| 11:3 | 1/6/91 |
| 11:4 | 12/2/90 |
| 11:5 | 11/7/88 |
| 11:7 | 10/19/92 |
| 11:10 | 7/15/90 |
| 11:12 | 10/27/91 |
| 11:13 | 11/12/92 |
| 11:14 | 7/2/89 |
| 11:15 | 12/3/89 |
| 11:16 | 2/3/91 |
| 11:17 | 4/18/93 |

## LABOR—TITLE 12

| N.J.A.C. | Expiration Date |
|---|---|
| 12:15 | 8/19/90 |
| 12:16 | 4/1/90 |
| 12:17 | 1/6/91 |

| N.J.A.C. | Expiration Date |
|---|---|
| 12:18 | 3/7/93 |
| 12:20 | 11/5/89 |
| 12:35 | 8/5/90 |
| 12:45 | 5/2/93 |
| 12:46 | 5/2/93 |
| 12:47 | 5/2/93 |
| 12:48 | 5/2/93 |
| 12:49 | 5/2/93 |
| 12:51 | 6/30/91 |
| 12:56 | 9/26/90 |
| 12:57 | 9/26/90 |
| 12:58 | 9/26/90 |
| 12:60 | 3/21/93 |
| 12:90 | 12/17/89 |
| 12:100 | 11/5/89 |
| 12:105 | 1/21/91 |
| 12:110 | 1/19/93 |
| 12:120 | 5/3/90 |
| 12:175 | 12/9/88 |
| 12:190 | 1/4/93 |
| 12:195 | 6/24/93 |
| 12:200 | 8/5/90 |
| 12:235 | 5/5/91 |

## COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

| N.J.A.C. | Expiration Date |
|---|---|
| 12A:9 | 3/7/93 |
| 12A:10-1 | 8/15/89 |
| 12A:11 | 9/21/92 |
| 12A:12 | 9/21/92 |
| 12A:100-1 | 9/8/91 |

## LAW AND PUBLIC SAFETY—TITLE 13

| N.J.A.C. | Expiration Date |
|---|---|
| 13:1 | 7/5/93 |
| 13:1C | Expired 12/1/83 |
| 13:2 | 8/5/90 |
| 13:3 | 4/25/93 |
| 13:4 | 1/21/91 |
| 13:10 | 5/27/89 |
| 13:13 | 6/17/90 |
| 13:18 | 4/1/90 |
| 13:19 | 8/23/89 |
| 13:20 | 12/18/90 |
| 13:21 | 12/16/90 |
| 13:22 | 1/7/90 |
| 13:23 | 6/4/89 |
| 13:24 | 11/5/89 |
| 13:25 | 3/18/90 |
| 13:26 | 10/17/88 |
| 13:27 | 4/1/90 |
| 13:28 | 5/16/93 |
| 13:29 | 6/3/90 |
| 13:30 | 4/15/90 |
| 13:31 | 12/12/91 |
| 13:32 | 10/23/92 |
| 13:33 | 3/18/90 |
| 13:34 | 11/21/88 |
| 13:35 | 11/19/89 |
| 13:36 | 11/19/89 |
| 13:37 | 2/11/90 |
| 13:38 | 10/7/90 |
| 13:39 | 1/6/91 |
| 13:39A | 7/7/91 |
| 13:40 | 9/3/90 |
| 13:41 | 9/3/90 |
| 13:42 | 11/3/88 |
| 13:43 | 9/8/88 |
| 13:44 | 8/20/89 |
| 13:44B | 11/2/92 |
| 13:44C | 7/18/93 |
| 13:45A | 12/16/90 |

| N.J.A.C. | Expiration Date |
|---|---|
| 13:46 | 6/3/90 |
| 13:47 | 2/2/92 |
| 13:47A | 10/5/92 |
| 13:47B | 1/4/89 |
| 13:47C | 8/20/89 |
| 13:48 | 1/21/91 |
| 13:49 | 12/19/88 |
| 13:51 | 4/27/92 |
| 13:54 | 10/5/91 |
| 13:58 | 9/7/89 |
| 13:59 | 9/16/90 |
| 13:60 | 1/20/92 |
| 13:70 | 2/25/90 |
| 13:71 | 2/25/90 |
| 13:75 | 8/20/89 |
| 13:76 | 6/27/93 |
| 13:77 | 2/1/93 |

## PUBLIC UTILITIES—TITLE 14

| N.J.A.C. | Expiration Date |
|---|---|
| 14:1 | 12/16/90 |
| 14:3 | 5/6/90 |
| 14:5 | 12/16/90 |
| 14:6 | 3/3/91 |
| 14:9 | 4/15/90 |
| 14:10 | 9/8/91 |
| 14:11 | 1/27/92 |
| 14:17 | 5/7/89 |
| 14:18 | 7/29/90 |

## ENERGY—TITLE 14A

| N.J.A.C. | Expiration Date |
|---|---|
| 14A:2 | 4/17/89 |
| 14A:3 | 10/7/90 |
| 14A:5 | 10/19/88 |
| 14A:6 | 8/6/89 |
| 14A:7 | 9/16/90 |
| 14A:8 | 9/20/89 |
| 14A:11 | 9/20/89 |
| 14A:12 | 2/7/88 |
| 14A:13 | 2/2/92 |
| 14A:14 | 2/6/89 |
| 14A:20 | 2/3/91 |
| 14A:21 | 11/21/90 |
| 14A:22 | 6/4/89 |

## STATE—TITLE 15

| N.J.A.C. | Expiration Date |
|---|---|
| 15:2 | 5/2/93 |
| 15:3 | 7/7/91 |
| 15:5 | 2/17/92 |
| 15:10 | 2/18/91 |

## TRANSPORTATION—TITLE 16

| N.J.A.C. | Expiration Date |
|---|---|
| 16:1 | 8/5/90 |
| 16:2 | 10/3/88 |
| 16:6 | 9/3/90 |
| 16:13 | 5/7/89 |
| 16:16 | 11/7/88 |
| 16:17 | 11/7/88 |
| 16:20A | 12/17/89 |
| 16:20B | 12/17/89 |
| 16:21 | 9/3/90 |
| 16:21A | 8/20/89 |
| 16:22 | 2/3/91 |
| 16:25A | 7/18/93 |
| 16:26 | 8/6/89 |
| 16:27 | 9/8/91 |
| 16:28 | 6/1/93 |

| N.J.A.C. | Expiration Date |
|---|---|
| 16:28A | 6/1/93 |
| 16:29 | 6/1/93 |
| 16:30 | 6/1/93 |
| 16:31 | 6/1/93 |
| 16:31A | 6/1/93 |
| 16:32 | 4/15/90 |
| 16:33 | 9/3/90 |
| 16:41 | 7/28/92 |
| 16:41A | 2/19/90 |
| 16:41B | 3/4/90 |
| 16:43 | 9/3/90 |
| 16:44 | 5/25/93 |
| 16:49 | 3/18/90 |
| 16:51 | 4/6/92 |
| 16:53 | 3/19/89 |
| 16:53A | 4/15/90 |
| 16:53C | 7/18/93 |
| 16:53D | 5/7/89 |
| 16:54 | 4/7/91 |
| 16:55 | 6/14/93 |
| 16:56 | 6/4/89 |
| 16:60 | 6/14/93 |
| 16:61 | 6/14/93 |
| 16:62 | 4/15/90 |
| 16:72 | 3/31/91 |
| 16:73 | 1/30/92 |
| 16:75 | 5/13/93 |
| 16:76 | 12/19/88 |
| 16:77 | 1/21/90 |
| 16:78 | 10/7/90 |
| 16:79 | 10/20/91 |

## TREASURY-GENERAL—TITLE 17

| N.J.A.C. | Expiration Date |
|---|---|
| 17:1 | 5/6/93 |
| 17:2 | 12/17/89 |
| 17:3 | 6/6/88 |
| 17:4 | 7/1/90 |
| 17:5 | 12/2/90 |
| 17:6 | 2/19/89 |
| 17:7 | 6/6/88 |
| 17:8 | 6/27/90 |
| 17:9 | 6/6/88 |
| 17:10 | 5/6/93 |
| 17:12 | 8/15/89 |
| 17:16 | 12/2/90 |
| 17:19 | 3/18/90 |
| 17:20 | 11/7/88 |
| 17:25 | 6/18/89 |
| 17:27 | 11/7/88 |
| 17:28 | 9/13/90 |
| 17:29 | 10/18/90 |
| 17:30 | 5/4/92 |
| 17:32 | 3/21/93 |

## TREASURY-TAXATION—TITLE 18

| N.J.A.C. | Expiration Date |
|---|---|
| 18:3 | 4/23/89 |
| 18:5 | 4/16/89 |
| 18:6 | 4/2/89 |
| 18:7 | 4/2/89 |
| 18:8 | 4/2/89 |
| 18:9 | 6/7/93 |
| 18:12 | 8/12/88 |
| 18:12A | 8/12/88 |
| 18:14 | 8/12/88 |
| 18:15 | 8/12/88 |
| 18:16 | 8/12/88 |
| 18:17 | 8/12/88 |
| 18:18 | 4/2/89 |
| 18:19 | 4/6/89 |
| 18:22 | 4/2/89 |
| 18:23 | 4/2/89 |
| 18:23A | 8/5/90 |
| 18:24 | 6/7/93 |
| 18:25 | 1/6/91 |
| 18:26 | 6/7/93 |
| 18:30 | 4/2/89 |
| 18:35 | 6/7/93 |
| 18:36 | 2/4/90 |
| 18:37 | 8/5/90 |
| 18:38 | 2/16/93 |
| 18:39 | 9/8/92 |

## OTHER AGENCIES—TITLE 19

| N.J.A.C. | Expiration Date |
|---|---|
| 19:3 | 5/26/93 |
| 19:3B | Exempt (N.J.S.A. 13:17-1) |
| 19:4 | 5/26/93 |
| 19:4A | 6/20/93 |
| 19:8 | 7/5/93 |
| 19:9 | 7/13/88 |
| 19:12 | 8/7/91 |
| 19:16 | 8/7/91 |
| 19:17 | 6/8/93 |
| 19:25 | 1/9/91 |
| 19:30 | 10/7/90 |
| 19:40 | 9/26/89 |
| 19:41 | 5/12/93 |
| 19:42 | 5/12/93 |
| 19:43 | 4/27/89 |
| 19:44 | 10/13/88 |
| 19:45 | 3/24/93 |
| 19:46 | 4/28/93 |
| 19:47 | 4/28/93 |
| 19:48 | 10/13/88 |
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# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

## The research supplement to the New Jersey Administrative Code

# A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the June 6, 1988 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

**Terms and abbreviations used in this Index:**

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 16, 1988**

**NEXT UPDATE: SUPPLEMENT JUNE 20, 1988**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

| If the N.J.R. citation is between: | Then the rule proposal or adoption appears in this issue of the Register | If the N.J.R. citation is between: | Then the rule proposal or adoption appears in this issue of the Register |
|---|---|---|---|
| 19 N.J.R. 1353 and 1474 | August 3, 1987 | 20 N.J.R. 321 and 434 | February 16, 1988 |
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| 19 N.J.R. 1859 and 1926 | October 19, 1987 | 20 N.J.R. 951 and 1018 | May 2, 1988 |
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| 19 N.J.R. 2087 and 2224 | November 16, 1987 | 20 N.J.R. 1127 and 1316 | June 6, 1988 |
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| 19 N.J.R. 2325 and 2510 | December 21, 1987 | 20 N.J.R. 1501 and 1594 | July 5, 1988 |
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| 20 N.J.R. 125 and 220 | January 19, 1988 | 20 N.J.R. 1759 and 1976 | August 1, 1988 |
| 20 N.J.R. 221 and 320 | February 1, 1988 | | |

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| 1:30-3.1 | Regulatory flexibility analysis and proposed rulemaking | 20 N.J.R. 573(a) | | |
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| 2:23 | Gypsy moth control: voluntary suppression program | 20 N.J.R. 845(a) | R.1988 d.323 | 20 N.J.R. 1688(a) |
| 2:48-3 | Sale of milk in new container sizes | 20 N.J.R. 1129(a) | | |
| 2:68-1 | Association standards for commercial feeds | 20 N.J.R. 1671(c) | | |
| 2:69 | Commercial fertilizers and soil conditioners | 20 N.J.R. 1673(a) | | |
| 2:69-1.11 | Commercial values of primary plant nutrients | 20 N.J.R. 696(a) | R.1988 d.284 | 20 N.J.R. 1343(a) |
| 2:71 | Grades and standards | 20 N.J.R. 953(a) | R.1988 d.370 | 20 N.J.R. 1871(a) |
| 2:71-2.4, 2.5 | Jersey Fresh Logo program | 20 N.J.R. 1129(b) | | |
| 2:72 | Licensing and bonding of buyers of perishable commodities | 20 N.J.R. 955(a) | R.1988 d.371 | 20 N.J.R. 1872(a) |
| 2:73-2 | Eggs: Seal of Quality program | 20 N.J.R. 956(a) | R.1988 d.372 | 20 N.J.R. 1872(b) |
| 2:74-1 | Controlled atmosphere storage for apples | 20 N.J.R. 956(b) | R.1988 d.368 | 20 N.J.R. 1873(a) |
| 2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16 | Farmland preservation: acquisition of development easements | 20 N.J.R. 1503(a) | | |
| 2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16 | Farmland development easements: residual dwelling sites | 20 N.J.R. 324(a) | | |
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| 3:1-2.17 | Repeal (see 3:32-1) | 20 N.J.R. 697(a) | | |
| 3:1-14 | Revolving credit equity loans | 19 N.J.R. 1594(a) | | |
| 3:1-16 | Mortgage loan practices | 20 N.J.R. 1021(b) | | |
| 3:2-1.1, 1.2, 1.3, 1.4 | Advertising by financial institutions | 20 N.J.R. 1025(a) | | |
| 3:6-9 | Capital stock savings bank: change in control | 19 N.J.R. 1762(a) | | |
| 3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11 | Conversion of savings and loan associations from mutual to capital stock | 20 N.J.R. 697(a) | | |
| 3:38-5 | Repeal (see 3:1-16) | 20 N.J.R. 1021(b) | | |
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| 4:1-8, 9, 10.2–10.5, 11, 12, 13, 14, 15, 16.13 | Repeal (see 4A:4) | 20 N.J.R. 327(a) | R.1988 d.259 | 20 N.J.R. 1183(b) |
| 4:1-16.1–16.6, 24.2 | Repeal (see 4A:8) | 19 N.J.R. 1363(a) | | |
| 4:2-6.3, 11, 13, 14.1, 15.1 | Repeal (see 4A:4) | 20 N.J.R. 327(a) | R.1988 d.259 | 20 N.J.R. 1183(b) |
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| 4:3-2 | Repeal (see 4A:3) | 20 N.J.R. 846(a) | | |
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| 4A:6-1.3, 1.10 | Sick leave: leave without pay | 20 N.J.R. 133(a) | | |
| 4A:6-1.3, 1.10 | Sick leave, leave without pay: extension of comment period | 20 N.J.R. 341(a) | | |
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| 5:15 | Emergency shelters for the homeless | 20 N.J.R. 341(b) | | |
| 5:22-2.1 | Definition of multiple dwelling: correction | ——— | ——— | 20 N.J.R. 1574(b) |
| 5:23-2.5 | Uniform Construction Code: increase in structure size | 20 N.J.R. 1026(a) | | |
| 5:23-2.38, 3.11, 7.2, 7.3, 7.100–7.116 | Barrier free subcode: recreation standards | 19 N.J.R. 1270(a) | R.1988 d.352 | 20 N.J.R. 1872(b) |
| 5:23-3.2 | Commercial farm building subcode: public hearings | 19 N.J.R. 1862(a) | | |
| 5:23-3.6 | Uniform Construction Code: manufacturer's recommendations | 20 N.J.R. 699(a) | R.1988 d.283 | 20 N.J.R. 1343(c) |
| 5:23-3.14, 3.20 | Uniform Construction Code: 1988 building and mechanical subcodes | 20 N.J.R. 575(a) | R.1988 d.270 | 20 N.J.R. 1344(a) |
| 5:23-3.18 | Energy Subcode | 20 N.J.R. 699(b) | | |
| 5:24-2.5 | Senior citizen and disabled protected tenancy: review of determination documents | 20 N.J.R. 1026(b) | R.1988 d.362 | 20 N.J.R. 1877(a) |
| 5:24-2.7 | Senior citizen and disabled protected tenancy: appeal procedure | 20 N.J.R. 437(a) | R.1988 d.361 | 20 N.J.R. 1878(a) |
| 5:23-3.21 | Uniform Construction Code: one and two-family dwelling subcode | 20 N.J.R. 1130(a) | | |
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| 5:29-2.1, 2.2 | Termination of lease by tenant because of disabling illness or accident | 20 N.J.R. 1139(a) | | |
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| 5:80-26.1, 26.2, 26.3, 26.11, 26.16, 26.21 | Housing affordability controls | 20 N.J.R. 862(a) | R.1988 d.331 | 20 N.J.R. 1688(b) |
| 5:91-13.4 | Council on Affordable Housing: motion procedure | 20 N.J.R. 864(a) | R.1988 d.296 | 20 N.J.R. 1539(a) |
| 5:92-1.3, 17 | Council on Affordable Housing: rehabilitation of indigenous need | 20 N.J.R. 864(b) | R.1988 d.295 | 20 N.J.R. 1539(b) |
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| 5:92-11.2 | Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units | 20 N.J.R. 1140(a) | | |
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| 6:3-1.23, 1.24 | Principal certification | 20 N.J.R. 1320(c) | | |
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| 6:30 | Adult education programs | 20 N.J.R. 700(a) | R.1988 d.311 | 20 N.J.R. 1540(a) |
| 6:31-1.10 | Bilingual education and English as a second language programs: exit testing and reentry process | 20 N.J.R. 1034(a) | | |
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| 7:1I | Sanitary Landfill Facility Contingency Fund | 20 N.J.R. 443(a) | R.1988 d.337 | 20 N.J.R. 1732(b) |
| 7:2 | State Park Service | 20 N.J.R. 714(a) | R.1988 d.340 | 20 N.J.R. 1743(b) |
| 7:2 | State Park Service: extenstion of comment period | 20 N.J.R. 1035(a) | | |
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| 7:7A-9.2, 9.4 | Freshwater wetlands protection: Statewide general permits for certain activities | 20 N.J.R. 1327(a) | | |
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| 7:7E-3.41, 3.46, 7.41, 8.11 | Hudson River waterfront development: extension of comment period | 20 N.J.R. 552(a) | | |
| 7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G | Surface water quality standards | 20 N.J.R. 1597(a) | | |
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| 7:11 | New Jersey Water Supply Authority: policies and procedures | 20 N.J.R. 448(a) | R.1988 d.264 | 20 N.J.R. 1285(a) |
| 7:11-2.2, 2.3, 2.9, 2.13 | New Jersey Water Supply Authority rates and charges | 20 N.J.R. 144(a) | R.1988 d.265 | 20 N.J.R. 1286(a) |
| 7:14-8 | Penalties and hearings concerning violations of Water Pollution Control Act | 20 N.J.R. 455(a) | R.1988 d.380 | 20 N.J.R. 1884(a) |
| 7:14A-3.1 | NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters | 20 N.J.R. 1328(a) | | |
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| 7:14A-6.4 | Groundwater monitoring parameters for hazardous waste facilities | 19 N.J.R. 1863(b) | | |
| 7:19-6.14 | Penalties and hearings concerning violations of Water Pollution Control Act | 20 N.J.R. 455(a) | R.1988 d.380 | 20 N.J.R. 1884(a) |
| 7:22-9 | Wastewater treatment: contract awards to small, female, and minority-owned businesses | 19 N.J.R. 1604(a) | R.1988 d.263 | 20 N.J.R. 1287(a) |
| 7:25-1 | Shellfishing license program | 19 N.J.R. 2358(a) | R.1988 d.339 | 20 N.J.R. 1743(b) |
| 7:25-2.20 | Higbee Beach Wildlife Management Area | 20 N.J.R. 460(a) | R.1988 d.266 | 20 N.J.R. 1292(a) |
| 7:25-5 | 1988-89 Game Code | 20 N.J.R. 1035(b) | R.1988 d.376 | 20 N.J.R. 1895(a) |
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| 7:25-18.5 | Gill net seasons; staked gill net fishery: extension of comment period | 20 N.J.R. 715(a) | | |
| 7:25-18.5 | Marine fisheries: bait net license and conditions | 20 N.J.R. 866(a) | R.1988 d.286 | 20 N.J.R. 1345(a) |
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| 7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12 | Hazardous waste management | 19 N.J.R. 1936(a) | R.1988 d.377 | 20 N.J.R. 1908(a) |
| 7:26-1.4, 9.8–9.11, 9.13, App. A, 12.3 | Hazardous waste management: closure and post-closure financial assurance | 19 N.J.R. 2349(a) | | |
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| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties | 19 N.J.R. 1142(a) | R.1988 d.357 | 20 N.J.R. 1910(a) |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties | 19 N.J.R. 1481(a) | | |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Essex County | 20 N.J.R. 1048(a) | | |

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| 7:26-7.3, 7.4, 7.5, 7.6 | Hazardous waste management | 20 N.J.R. 867(a) | | |
| 7:26-7.4, 9.1, 12.1 | Hazardous waste stored for reuse | 20 N.J.R. 1329(a) | | |
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| 7:26-12.12 | Hazardous waste facilities and public participation in permit process | 20 N.J.R. 715(b) | R.1988 d.375 | 20 N.J.R. 1913(a) |
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| 7:27-25 | Control and prohibition of air pollution by vehicular fuels | 20 N.J.R 1631(a) | | |
| 7:30 | Pesticide Control Code | 20 N.J.R. 579(a) | | |
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| 7:31-1, 2, 3, 4, 6 | Toxic Catastrophe Prevention Act program | 19 N.J.R. 1687(a) | R.1988 d.272 | 20 N.J.R. 1356(a) |
| 7:31-1, 2, 3, 4 | Toxic Catastrophe Prevention Act program: extension of comment period | 19 N.J.R. 2092(b) | | |
| 7:31-2.12, 2.15, 5 | Toxic Catastrophe Prevention Act program: confidentiality and trade secrets | 20 N.J.R. 350(a) | R.1988 d.378 | 20 N.J.R. 1913(b) |
| 7:31-2.12, 2.15, 5 | Confidentiality and trade secrets: correction and extension of comment period | 20 N.J.R. 554(a) | | |
| 7:36 | Green Acres Program | 19 N.J.R. 2358(b) | | |
| 7:36 | Green Acres Program: extension of comment period | 20 N.J.R. 552(b) | | |
| 7:36 | Green Acres Program: extension of comment period | 20 N.J.R. 869(a) | | |
| 7:45 | Delaware and Raritan Canal: State Park review zone | 20 N.J.R. 23(a) | | |
| 7:45 | Delaware and Raritan Canal review zone: extension of comment period | 20 N.J.R. 552(c) | | |
| 7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22–5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133 | Pinelands Comprehensive Management Plan | 20 N.J.R. 716(a) | | |

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**HEALTH—TITLE 8**

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|---|---|---|---|---|
| 8:7-1.2 | Public Health Licensing and Examination Board | 20 N.J.R. 364(a) | R.1988 d.236 | 20 N.J.R. 1204(a) |
| 8:25 | Youth Camp Safety Act standards | 20 N.J.R. 463(a) | R.1988 d.269 | 20 N.J.R. 1428(a) |
| 8:31A-7.2, 7.4, 7.5, 7.11 | Reimbursement for new SHARE facilities | 20 N.J.R. 1633(a) | | |
| 8:31B-3.22, 3.31, 3.51 | Hospital reimbursement: graduate medical residents | 20 N.J.R. 594(a) | R.1988 d.277 | 20 N.J.R. 1428(b) |
| 8:31B-3.38 | Apportionment of full financial elements | 19 N.J.R. 1279(a) | Expired | |
| 8:31B-3.45 | Hospital reimbursement: submission of uniform bill-patient summaries | 20 N.J.R. 1143(a) | | |
| 8:31B-4.37, 4.39 | Uncompensated Care Trust Fund: charity care eligibility | 20 N.J.R. 595(a) | | |
| 8:31B-4.38 | Hospital reimbursement: uncompensated care coverage for outpatient dialysis | 19 N.J.R. 2092(c) | R.1988 d.276 | 20 N.J.R. 1430(a) |
| 8:33B-1.3 | Demonstration of extracorporeal shock wave lithotripsey services | 20 N.J.R. 869(b) | R.1988 d.322 | 20 N.J.R. 1690(a) |
| 8:33E-1.1, 1.2 | Cardiac diagnostic facilities: complex electrophysiology studies | 20 N.J.R. 467(a) | R.1988 d.321 | 20 N.J.R. 1690(b) |
| 8:33E-2.2, 2.3, 2.4 | Cardiac surgery centers: complex electrophysiology studies | 20 N.J.R. 468(a) | R.1988 d.320 | 20 N.J.R. 1690(b) |
| 8:39 | Long-term care licensing standards | 20 N.J.R. 469(a) | R.1988 d.280 | 20 N.J.R. 1432(a) |
| 8:39-20.1, 29.1, 30.5, 31.2 | Long-term care licensing standards: corrections to text | ——— | ——— | 20 N.J.R. 1944(a) |
| 8:42B | Drug treatment facilities: standards for licensure | 20 N.J.R. 598(a) | R.1988 d.319 | 20 N.J.R. 1692(a) |
| 8:43E-2.4, 2.5, 2.19, 2.20 | Adult open acute psychiatric beds: need review | 20 N.J.R. 617(a) | R.1988 d.278 | 20 N.J.R. 1458(a) |
| 8:43E-3.19, 3.20 | Inpatient screening psychiatric beds: need review | 20 N.J.R. 618(a) | R.1988 d.278 | 20 N.J.R. 1458(a) |
| 8:43E-5.20 | Intermediate adult and special psychiatric beds: need review | 20 N.J.R. 619(a) | R.1988 d.278 | 20 N.J.R. 1458(a) |
| 8:60-2.1 (12:120-2.1) | Asbestos removal defined | 20 N.J.R. 1049(a) | | |
| 8:60-2.1 (12:120-2.1) | Asbestos removal defined: extension of comment period | 20 N.J.R. 1507(b) | | |
| 8:60-5 (12:120-5) | Asbestos worker and supervisor permits | 20 N.J.R. 728(a) | R.1988 d.261 | 20 N.J.R. 1232(b) |
| 8:60-5.3 (12:120-5.3) | Asbestos worker and supervisor permits: correction | ——— | ——— | 20 N.J.R. 1562(a) |
| 8:65-1.3, 6.6, 8.13 | Handling of sodium pentobarbital in animal humane facilities | 20 N.J.R. 366(a) | | |
| 8:65-10.5 | Schedule V, Controlled Dangerous Substances | 20 N.J.R. 1506(a) | | |
| 8:70 | Evaluation criteria for interchangeable drug products | 20 N.J.R. 1507(a) | | |
| 8:70-1.4 | Drug Utilization Review Council: notice of action on a drug product | 20 N.J.R. 870(a) | R.1988 d.328 | 20 N.J.R. 1710(a) |
| 8:71 | Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a), 899(b), 1462(a)) | 19 N.J.R. 1488(a) | R.1988 d.325 | 20 N.J.R. 1711(a) |
| 8:71 | Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a), 1462(b)) | 19 N.J.R. 1878(a) | R.1988 d.327 | 20 N.J.R. 1711(c) |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|---|---|---|---|---|
| 8:71 | Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a)) | 20 N.J.R. 146(a) | R.1988 d.326 | 20 N.J.R. 1711(b) |
| 8:71 | Interchangeable drug products | 20 N.J.R. 871(a) | R.1988 d.329 | 20 N.J.R. 1710(b) |

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**HIGHER EDUCATION—TITLE 9**

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| 9:4-1.5 | Chargeback for disability-specific programs at county colleges | 20 N.J.R. 1330(a) | | |
| 9:7-3.1 | Correction to text | ________ | ________ | 20 N.J.R. 1576(b) |
| 9:7-4 | Garden State Scholarship Program | 20 N.J.R. 720(a) | R.1988 d.303 | 20 N.J.R. 1558(a) |
| 9:7-4.2, 4.3, 4.4 | Garden State Scholarships | 20 N.J.R. 1635(a) | | |
| 9:9 | Student loan programs: policies and procedures | 20 N.J.R. 1636(a) | | |
| 9:9-11 | Guaranteed Student Loan Program: compliance evaluation of participating institutions | 20 N.J.R. 872(a) | R.1988 d.334 | 20 N.J.R. 1712(a) |
| 9:9-11.2 | Guaranteed Student Loan Program: institution compliance | 20 N.J.R. 1641(a) | | |
| 9:11-1.5 | Educational Opportunity Fund: maximum income levels for undergraduate eligibility | 20 N.J.R. 722(a) | R.1988 d.353 | 20 N.J.R. 1944(b) |

**Most recent update to Title 9: TRANSMITTAL 1988-3 (supplement April 18, 1988)**

**HUMAN SERVICES—TITLE 10**

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| 10:4 | Communication with communities regarding development of group homes | 19 N.J.R. 1976(a) | | |
| 10:4 | Communication with communities regarding development of group homes: extension of comment period | 20 N.J.R. 149(a) | | |
| 10:13 | Legal Assistance for Medicare Patients (LAMP) | 20 N.J.R. 873(a) | R.1988 d.330 | 20 N.J.R. 1713(a) |
| 10:14-1.4, 4.1, 6.3 | Statewide Respite Care Program | 20 N.J.R. 1051(a) | | |
| 10:44A | Licensed community residences for developmentally disabled | 20 N.J.R. 149(b) | | |
| 10:49-1.4 | Outpatient hospital services for Medically Needy | 19 N.J.R. 1388(a) | R.1988 d.349 | 20 N.J.R. 1945(a) |
| 10:49-1.12 | Timely claim submittal—pharmaceutical services | 20 N.J.R. 1642(a) | | |
| 10:49-6.9 | Medicaid providers and administrative charges and service fees | 20 N.J.R. 518(a) | | |
| 10:50-1.1–1.5, 2.3–2.8, 3.1, 3.2 | Livery service for ambulatory Medicaid patients | 19 N.J.R. 2103(a) | R.1988 d.262 | 20 N.J.R. 1214(a) |
| 10:51-1, App. B, C, D, E | Pharmaceutical Services Manual: covered products | 20 N.J.R. 875(a) | R.1988 d.363 | 20 N.J.R. 1945(b) |
| 10:52-1.6, 1.8 | Outpatient hospital services for Medically Needy | 19 N.J.R. 1388(a) | R.1988 d.349 | 20 N.J.R. 1945(a) |
| 10:53-1.5, 1.7 | Outpatient hospital services for Medically Needy | 19 N.J.R. 1388(a) | R.1988 d.349 | 20 N.J.R. 1945(a) |
| 10:54-4 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:58-1.2, 3 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:60-2.2 | Personal care assistant services: provider reimbursement | 20 N.J.R. 1143(b) | R.1988 d.379 | 20 N.J.R. 1949(a) |
| 10:62-1, 2, 3 | Vision Care Manual | 20 N.J.R. 956(c) | | |
| 10:63-1.11, 1.19 | Use of personal needs allowance in long-term care facilities | 20 N.J.R. 1144(a) | | |
| 10:66-1.3, 3 | Mental health services: partial care | 20 N.J.R. 1054(a) | | |
| 10:66-1.6, 3 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:69 | Hearing Aid Assistance for Aged and Disabled (HAAAD) | 20 N.J.R. 519(a) | R.1988 d.250 | 20 N.J.R. 1220(a) |
| 10:81-3.38–3.42, 3.46 | PAM: client resources in AFDC program | 20 N.J.R. 1056(a) | | |
| 10:81-4.5 | AFDC program: transportation costs incident to education or training | 20 N.J.R. 620(a) | R.1988 d.253 | 20 N.J.R. 1221(a) |
| 10:81-7.40 | AFDC program: fraudulent receipt of assistance | 20 N.J.R. 722(b) | R.1988 d.310 | 20 N.J.R. 1559(a) |
| 10:81-11.7 | Child support enforcement program | 19 N.J.R. 1879(b) | | |
| 10:81-11.18 | Child support guidelines: spousal support obligation | 20 N.J.R. 1058(a) | | |
| 10:82-3.2, 3.6, 3.7 | ASH: client resources in AFDC program | 20 N.J.R. 1059(a) | | |
| 10:82-5.10 | Emergency Assistance in AFDC: temporary shelter allowances | 20 N.J.R. 1147(a) | | |
| 10:82-5.10 | AFDC: extension of Emergency Assistance benefits | Emergency (expires 9-5-88) | R.1988 d.358 | 20 N.J.R. 1956(a) |
| 10:85-3.2, 3.3 | GAM: travel costs for job seeking or training | 20 N.J.R. 879(a) | | |
| 10:85-4.6 | General Assistance: extension of EA benefits | Emergency (expires 7-31-88) | R.1988 d.359 | 20 N.J.R. 1957(a) |
| 10:85-5.2 | General Assistance: payment of inpatient hospital bills | 20 N.J.R. 521(a) | R.1988 d.251 | 20 N.J.R. 1222(a) |
| 10:85-8.4 | GAM: Pharmaceutical Assistance (PAAD) program information | 20 N.J.R. 522(a) | R.1988 d.252 | 20 N.J.R. 1222(b) |
| 10:87-5.9 | Food Stamps eligibility: income exclusion and utility allowance payments | 19 N.J.R. 1986(a) | | |
| 10:89-2.1, 2.3, 3.4, 4.1 | Home energy assistance | 20 N.J.R. 1643(a) | | |
| 10:89-3.5, 3.6, 5.3 | Home Energy Assistance program | 20 N.J.R. 1060(a) | | |
| 10:126 | Registration of family day care providers | 20 N.J.R. 1508(a) | | |
| 10:127 | Residential child care facilities | 20 N.J.R. 1149(a) | | |

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| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| 10A:1-11 | Personal property of inmates | 20 N.J.R. 494(a) | R.1988 d.306 | 20 N.J.R. 1559(b) |
| 10A:3-5.6, 5.7 | Pat and strip searches | 20 N.J.R. 1331(a) | | |
| 10A:4-1.2, 13 | Inmate discipline: Boy's Unit at Skillman | 20 N.J.R. 496(a) | R.1988 d.239 | 20 N.J.R. 1224(a) |
| 10A:4-11.9, 12 | Inmate discipline: appeal to Office of Administrative Law | 20 N.J.R. 496(b) | | |
| 10A:4-11.9, 12 | Inmate appeals to Office of Administrative Law: public hearing | 20 N.J.R. 880(b) | | |
| 10A:9-1.3, 5.6 | Work credits for I.S.P. violators housed in county facilities | 20 N.J.R. 879(b) | R.1988 d.332 | 20 N.J.R. 1716(a) |
| 10A:9-4.6 | Open charges and reduced custody status | 20 N.J.R. 880(a) | | |
| 10A:9-11.4 | Classification process | 20 N.J.R. 1645(a) | | |
| 10A:17-2, 5, 6 | Social services: Volunteer Service Program; religion; institutional chaplaincy | 20 N.J.R. 167(a) | R.1988 d.241 | 20 N.J.R. 1224(b) |
| 10A:17-5.3, 5.8 | Religious services | 20 N.J.R. 1332(a) | | |
| 10A:18-7 | Bedside and funeral visits | 20 N.J.R. 1332(a) | | |
| 10A:18-8.7 | Use of telephone by inmates | 20 N.J.R. 496(c) | R.1988 d.238 | 20 N.J.R. 1229(a) |
| 10A:22-2 | Inmate and parolee records | 20 N.J.R. 723(a) | R.1988 d.305 | 20 N.J.R. 1561(a) |
| 10A:71-3.2, 3.4, 3.18–3.23, 3.25–3.28, 3.30, 3.43, 6.9 | Parole Board rules | 19 N.J.R. 1396(b) | R.1988 d.336 | 20 N.J.R. 1716(b) |

**Most recent update to Title 10A: TRANSMITTAL 1988-4 (supplement April 18, 1988)**

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| 11:2-1, 19 | Repeal (see 11:17-3, 5.7) | 20 N.J.R. 1152(a) | | |
| 11:2-17.3, 17.10 | Replacement parts for damanged automobiles | 20 N.J.R. 1159(a) | | |
| 11:4-2 | Replacement of life insurance policy | 19 N.J.R. 1286(a) | Expired | |
| 11:4-16.6 | Basic hospital expense coverage | 20 N.J.R. 172(a) | | |
| 11:4-18.3, 18.5, 18.10 | Individual health policies: loss ratio standards | 19 N.J.R. 1620(b) | | |
| 11:4-19 | Optional coverage for pregnancy and childbirth benefits | 20 N.J.R. 43(a) | | |
| 11:4-30 | Hospital preadmission certification programs (HPCPs) | 20 N.J.R. 880(c) | | |
| 11:5-1.13 | Control of real estate brokerage files | 20 N.J.R. 883(a) | | |
| 11:5-1.15 | Real estate advertising practices | 20 N.J.R. 497(a) | R.1988 d.237 | 20 N.J.R. 1205(a) |
| 11:5-1.18 | Supervision of real estate offices | 20 N.J.R. 1160(a) | | |
| 11:5-1.23 | Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal | 19 N.J.R. 2238(a) | | |
| 11:5-1.23 | Real estate services to handicapped | 20 N.J.R. 725(a) | | |
| 11:5-1.25 | Sale of interstate real properties: advertisements | 19 N.J.R. 1718(a) | | |
| 11:5-1.27 | Real estate brokers pre-licensure course | 19 N.J.R. 1051(a) | R.1988 d.254 | 20 N.J.R. 1205(b) |
| 11:5-1.27 | Educational requirements for real estate licensure | 20 N.J.R. 725(b) | | |
| 11:5-1.28 | Certification as real estate instructor: classroom procedure | 20 N.J.R. 1161(a) | | |
| 11:5-1.34 | Discriminatory commission—split policies | 20 N.J.R. 1163(a) | | |
| 11:16-1 | Fraud prevention: verification and claim form statements | 20 N.J.R. 1062(a) | R.1988 d.342 | 20 N.J.R. 1720(b) |
| 11:17-3, 5.7 | Insurance producer licensing: professional qualifications | 20 N.J.R. 1152(a) | | |
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**Most recent update to Title 11: TRANSMITTAL 1988-3 (supplement April 18, 1988)**

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| 12:5-1 | Audit resolution procedures concerning awards of Federal money | 20 N.J.R. 1520(a) | | |
| 12:16-7 | Use of surplus unemployment funds by contributing local govermments | 20 N.J.R. 1521(a) | | |
| 12:16A-11 | Unemployment and Disability Insurance group accounts | 20 N.J.R. 1071(b) | R.1988 d.374 | 20 N.J.R. 1949(b) |
| 12:17-1.6 | Unemployment insurance benefits: temporary separation from work | 20 N.J.R. 1333(a) | | |
| 12:17-2.4, 2.5 | Requalification for unemployment insurance benefits | 20 N.J.R. 1522(a) | | |
| 12:17-2.6 | Noncompliance with quality control reviews of unemployment insurance claims | 20 N.J.R. 884(a) | R.1988 d.373 | 20 N.J.R. 1949(c) |
| 12:45-49 | Vocational rehabilitation | 20 N.J.R. 620(a) | R.1988 d.235 | 20 N.J.R. 1230(a) |
| 12:60-6.1 | Recordkeeping by public work project employers | 20 N.J.R. 1164(a) | | |
| 12:60-7 | Apprentice to journeymen ratios for public work projects | 20 N.J.R. 1164(b) | | |
| 12:100-4.2 | Public employee safety and health: exposure to ethylene oxide | 20 N.J.R. 1334(a) | | |

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| 12:100-4.2, 5.2, 6.2 | Public employee safety and health | 20 N.J.R. 726(a) | R.1988 d.260 | 20 N.J.R. 1232(a) |
| 12:100-9 | Public employee safety and health: work in confined spaces | 20 N.J.R. 1523(a) | | |
| 12:112 | Public Employees' Occupational Safety and Health Review Commission | 20 N.J.R. 1165(a) | | |
| 12:120-2.1 (8:60-2.1) | Asbestos removal defined | 20 N.J.R. 1049(a) | | |
| 12:120-2.1 (8:60-2.1) | Asbestos removal defined: extension of comment period | 20 N.J.R. 1507(b) | | |
| 12:120-5 (8:60-5) | Asbestos worker and supervisor permits | 20 N.J.R. 728(a) | R.1988 d.261 | 20 N.J.R. 1232(b) |
| 12:120-5.3 (8:60-5.3) | Asbestos worker and supervisor permits: correction | ——— | ——— | 20 N.J.R. 1562(a) |
| 12:195 | Carnival-amusement rides | 20 N.J.R. 1072(a) | R.1988 d.333 | 20 N.J.R. 1721(a) |
| 12:210-1 | Apparel industry registration system | 20 N.J.R. 1334(b) | | |

**Most recent update to Title 12: TRANSMITTAL 1988-3 (supplement March 21, 1988)**

## COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

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| 12A:50-1 | Cogeneration: reporting by non-utility generators | 19 N.J.R. 2383(a) | | |
| 12A:54 | Cogeneration equipment and use tax exemption: technical sufficiency standards | 20 N.J.R. 1073(a) | | |
| 12A:120-1 | Urban Enterprise Zone Program | 20 N.J.R. 1336(a) | | |

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## LAW AND PUBLIC SAFETY—TITLE 13

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| 13:3-3.4, 3.5, 3.6 | Amusement games: preproposal concerning player fees and value of prizes | 20 N.J.R. 44(a) | | |
| 13:4-3.4, 3.5, 8.2 | Discrimination complaints: confidentiality of parties' identities | 20 N.J.R. 499(a) | | |
| 13:21-11.13 | Temporary registration of motor vehicles | 20 N.J.R. 176(a) | | |
| 13:21-21 | Auto body repair facilities | 19 N.J.R. 1624(c) | | |
| 13:27-3, 4 | Architectural practice: definitions | 19 N.J.R. 1783(b) | | |
| 13:27-5.4 | Licensure of out-of-state architects | 20 N.J.R. 884(b) | R.1988 d.308 | 20 N.J.R. 1567(a) |
| 13:27-5.8, 8.7, 8.8, 8.15 | Certification of landscape architects | 20 N.J.R. 885(a) | | |
| 13:28-5.1 | Board of Cosmetology and Hairstyling: fee schedule | 20 N.J.R. 886(a) | R.1988 d.343 | 20 N.J.R. 1723(a) |
| 13:29-5 | Board of Accountancy: Quality Enhancement Program | 19 N.J.R. 2240(a) | R.1988 d.294 | 20 N.J.R. 1567(b) |
| 13:30-8.6 | Advertising of dental services: correction to text | ——— | ——— | 20 N.J.R. 1959(a) |
| 13:35-6.7 | Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs | 19 N.J.R. 1786(a) | | |
| 13:37-1.1, 1.2 | Accreditation of nursing programs | 20 N.J.R. 1645(b) | | |
| 13:39 | Board of Pharmacy rules | 19 N.J.R. 1952(a) | | |
| 13:39 | Board of Pharmacy rules: extension of comment period | 20 N.J.R. 244(a) | | |
| 13:39 | Board of Pharmacy rules | 20 N.J.R. 1648(a) | | |
| 13:40-3.1 | Professional engineers and land surveyors: conflict of interest; approval of work | 20 N.J.R. 736(a) | | |
| 13:43 | Shorthand reporters rules | 20 N.J.R. 1666(a) | | |
| 13:44-1.2, 2.1 | Licensure and practice of veterinary medicine | 20 N.J.R. 1171(b) | | |
| 13:44C | Practice of audiology and speech-language pathology | 20 N.J.R. 244(b) | R.1988 d.344 | 20 N.J.R. 1723(b) |
| 13:45A-12.1, 12.2, 12.3 | Sale of animals | 20 N.J.R. 501(b) | R.1988 d.271 | 20 N.J.R. 1463(a) |
| 13:46-1A.3 | Athletic Control Board: weighing of boxers | 20 N.J.R. 380(a) | | |
| 13:70-1.30 | Thoroughbred racing: horsemen associations | 20 N.J.R. 1172(a) | | |
| 13:70-6.55 | Thoroughbred racing: respiratory bleeders | 20 N.J.R. 506(a) | R.1988 d.245 | 20 N.J.R. 1207(a) |
| 13:70-14A.9 | Thoroughbred racing: competition by bleeders | 20 N.J.R. 506(b) | R.1988 d.244 | 20 N.J.R. 1207(b) |
| 13:70-29.50 | Thoroughbred racing: Daily Triple wagering | 20 N.J.R. 1173(a) | | |
| 13:71-1.25 | Harness racing: horsemen associations | 20 N.J.R. 1174(a) | | |
| 13:71-6.14 | Harness racing: trainers leaving the paddock | 20 N.J.R. 1175(a) | | |
| 13:71-11.9 | Harness racing: respiratory bleeders | 20 N.J.R. 507(a) | R.1988 d.246 | 20 N.J.R. 1207(c) |
| 13:71-27.54 | Harness racing: Daily Triple wagering | 20 N.J.R. 1175(b) | | |
| 13:75-1.7 | Violent crimes compensation: prosecution of offender | 20 N.J.R. 736(b) | | |
| 13:76 | Training requirements for arson investigators | 20 N.J.R. 963(a) | R.1988 d.345 | 20 N.J.R. 1949(d) |
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**Most recent update to Title 13: TRANSMITTAL 1988-5 (supplement May 16, 1988)**

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| 14:3-10.20 | Solid waste: itemized billing (preproposal) | 20 N.J.R. 1670(a) | | |
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| 14:18-3 | Cable TV: pre-proposal for telephone service standards | 19 N.J.R. 2125(b) | | |
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**Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)**

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**Most recent update to Title 15: TRANSMITTAL 1988-1 (supplement May 16, 1988)**

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| 16:28 | Speed limits on State highway system | 20 N.J.R. 887(a) | R.1988 d.290 | 20 N.J.R. 1569(a) |
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| 16:28A-1.9, 1.32 | Bus stop zones along Route 17 in Lyndhurst and U.S. 46 in Elmwood Park | 20 N.J.R. 1177(a) | R.1988 d.365 | 20 N.J.R. 1952(b) |
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**Most recent update to Title 16: TRANSMITTAL 1988-5 (supplement May 16, 1988)**

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**Most recent update to Title 18: TRANSMITTAL 1988-2 (supplement March 21, 1988)**

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**Most recent update to Title 19: TRANSMITTAL 1988-1 (supplement April 18, 1988)**

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| 19:41 | Applications | 20 N.J.R. 763(a) | R.1988 d.255 | 20 N.J.R. 1209(a) |
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**Most recent update to Title 19K: TRANSMITTAL 1988-3 (supplement May 16, 1988)**

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