

CHAPTER 26

SOLID WASTE

Authority

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

Source and Effective Date

R.2002 d.181, effective May 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26, Solid Waste, expires on November 7, 2009. See: 41 N.J.R. 2186(a).

Chapter Historical Note

Chapter 26, Bureau of Solid Waste Management, was filed and became effective prior to September 1, 1969, pursuant to authority delegated at N.J.S.A. 26:2C-1, et seq. and N.J.S.A. 26:2D-1 et seq. Amendments to Chapter 26 became effective July 1, 1974 as R.1974 d.172. See: 5 N.J.R. 369(b), 6 N.J.R. 305(c).

Subchapter 2 was partially repealed and partially recodified to Subchapter 2A and a new Subchapter 2, Disposal, was adopted by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2A, Additional Specific Disposal Regulations for Sanitary Landfills, was partially recodified from Subchapter 2 and the remainder was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2B, Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Composting Facilities, was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 2B, was renamed Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Solid Waste Composting Facilities by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 3, was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Subchapter 3 expired on June 9, 1985 and a new Subchapter 3, Transportation, was adopted as R.1985 d.558, effective November 4, 1985. See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Subchapter 3A, Special Medical Waste, was adopted as an emergency new rule by R.1988 d.429, effective August 10, 1988 (to expire October 9, 1988). See: 20 N.J.R. 2321(a). The concurrent proposal was adopted as R.1988 d.523, effective October 7, 1988. See: 20 N.J.R. 2321(a), 20 N.J.R. 2760(a). Subchapter 3A, Special Medical Waste, was repealed and a new Subchapter 3A, Regulated Medical Waste, was adopted as an emergency repeal and new rule by R.1989 d.396, effective June 26, 1989. See: 21 N.J.R. 2109(a). The concurrent proposal was adopted as R.1989 d.506, effective August 25, 1989. See: 21 N.J.R. 2109(a), 21 N.J.R. 2967(a).

Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was amended by R.1975 d.110, effective April 29, 1975. See: 7 N.J.R. 101(a), 7 N.J.R. 259(a). Subchapter 4 was further amended by R.1976 d.327, effective November 1, 1976. See: 8 N.J.R. 374(d), 8 N.J.R. 510(d); and R.1978 d.205, effective July 1, 1978. See: 10 N.J.R. 327(c). Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was renamed Fees for Solid Waste by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 4A, Hazardous Waste Fees, was adopted as R.1989 d.54, effective January 17, 1989. See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Subchapter 4A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 5, Rules of Practice and Procedure, was adopted, pursuant to authority of N.J.S.A. 13:1E-1 et seq., by R.1973 d.300, effective October 23, 1973. See: 5 N.J.R. 370(c). Subchapter 5 was further amended by R.1982 d.433, effective December 6, 1982. See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a); and R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Pursuant to Executive Order No. 66(1978), Subchapter 5, Rules of Practice and Procedure, expired on October 7, 1985 and the Department does not intend to readopt its provisions. Subchapter 5, Rules of Practice and Procedure, was repealed by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 5, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted as R.1990 d.50, effective January 16, 1990. See: 21 N.J.R. 2734(a), 22 N.J.R. 187(a).

Subchapter 6, was adopted as R.1979 d.502, effective December 31, 1979. See: 11 N.J.R. 616(b), 12 N.J.R. 71(b). Subchapter 6 was repealed and a new Subchapter 6, Interdistrict and Intradistrict Solid Waste Flow, was adopted by R.1982 d.434, effective December 6, 1982, in accordance with a New Jersey Supreme Court decision modifying Department of Environmental Protection authority to direct the interdistrict flow of waste (A.A. Mastrangelo, Inc., et al. v. Commr. Env. Prot., August 11, 1982). See: 14 N.J.R. 1027(b), 14 N.J.R. 1368(a).

Subchapter 7, Labeling, Records and Transportation Requirements, was adopted as R.1978 d.72, effective February 27, 1978. See: 9 N.J.R. 459(d), 10 N.J.R. 146(a). Subchapter 7 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was adopted as R.1981 d.281, effective August 6, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 484(b). Public Notice: Petition for Rulemaking. See: 22 N.J.R. 994(a). Public Notice: Action on Petition for Rulemaking. See: 22 N.J.R. 994(d). Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 9, Requirements for Hazardous Waste Facilities, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 9 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 10, Additional Operational and Design Standards for Hazardous Waste Facilities, was adopted as R.1982 d.324, effective October 4, 1982. See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d). Subchapter 10 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 11, Additional Requirements for Hazardous Waste Facilities Operating Under Existing Facility Status, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 11 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 12, Hazardous Waste Facility Permit Requirements, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 12 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13, Siting Criteria for New Major Commercial Hazardous Waste Facilities, was adopted as R.1983 d.276, effective July 5, 1983. See: 15 N.J.R. 113(a), 15 N.J.R. 1096(a). Subchapter 13 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13A, Hazardous Waste Facilities Siting Commission: Policies and Procedures, was adopted as R.1984 d.304, effective July 16, 1984. See: 16 N.J.R. 408(b), 16 N.J.R. 1989(a). Subchapter 13A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 14, Resource Recovery Grants or Loans, was adopted as R.1981 d.184, effective June 4, 1981. See: 13 N.J.R. 9(a), 13 N.J.R. 340(d). Subchapter 14 was repealed by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 14A, Resource Recovery and Solid Waste Disposal Facility Loans, was adopted as R.1988 d.268, effective June 20, 1988. See: 19 N.J.R. 828(a), 20 N.J.R. 1346(a).

Subchapter 15, Recycling Grants and Loans Program, was adopted as R.1982 d.32, effective February 16, 1982. See: 13 N.J.R. 865(a), 14 N.J.R. 206(b).

Subchapter 16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a).

Subchapter 16A, Special Rules for Submission of Disclosure Statements by Existing Licensees and Applicants Whose Applications Were Pending Before the Department Prior to July 2, 1984, was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Subchapter 17, Availability of Information; Confidential Business Information, was adopted as R.1988 d.57, effective February 1, 1988. See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a). Subchapter 17, Availability of Information; Confidential Business Information, was repealed and a new Subchapter 17, Confidentiality Determinations, was adopted by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter 26, Bureau of Solid Waste Management, was renamed Division of Waste Management and amended by R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a). Amendments to Chapter 26 became effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Pursuant to Executive Order No. 66(1978), Chapter 26, Division of Waste Management, was readopted as R.1990 d.578, effective October 25, 1990. See: 22 N.J.R. 2882(a), 22 N.J.R. 3514(a). The expiration date of Chapter 26, Division of Waste Management, was extended by gubernatorial directive from October 25, 1995 to October 25, 1996. See: 27 N.J.R. 4700(a). The expiration date of Chapter 26, Division of Waste Management, was further extended by gubernatorial directive from October 25, 1996 to November 25, 1996. See: 28 N.J.R. 4959(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Division of Waste Management, was readopted as Chapter 26, Solid Waste, by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter 26 was extensively amended by Emergency Adoption R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997). New rule N.J.A.C. 7:26-1.9 and the amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10, and 6.11 became operative on September 2, 1997. All other amendments and repeals were to become operative upon final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. See: 29 N.J.R. 4170(a). The provisions of R.1997 d.404 were readopted by R.1997 d.510, effective October 31, 1997, with changes upon adoption effective December 1, 1997. Concurrent new rule N.J.A.C. 7:26-1.9 and the concurrent amendments to N.J.A.C. 7:26-1.9, 1.11, 6.10 and 6.11 became operative on October 31, 1997. All other concurrent amendments and repeals became operative on November 10, 1997, the date of final disposition (denial of certiorari by the United States Supreme Court) of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County. All changes upon adoption became operative on December 1, 1997. See: 29 N.J.R. 5084(a).

Chapter 26, Solid Waste, was readopted as R.2002 d.181, effective May 17, 2002. See: Source and Effective Date. See, also, section annotations.

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

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26, Solid Waste, was extended by gubernatorial directive from November 18, 2007 to May 16, 2008. See: 39 N.J.R. 5081(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26, Solid Waste, was extended by gubernatorial directive from May 16, 2008 to November 12, 2008. See: 40 N.J.R. 3718(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26, Solid Waste, was extended by gubernatorial directive from November 12, 2008 to May 11, 2009. See: 40 N.J.R. 6965(a).

Research Note

The Water Quality Regulations of the Interstate Environmental Commission appear as Appendix A to Title 7.

Law Review and Journal Commentaries

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

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SUBCHAPTER 16A. SPECIAL RULES FOR SUBMISSION OF DISCLOSURE STATEMENTS BY EXISTING LICENSEES AND APPLICANTS WHOSE APPLICATIONS WERE PENDING BEFORE THE DEPARTMENT PRIOR TO JULY 2, 1984

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SUBCHAPTER 17. CONFIDENTIALITY DETERMINATIONS

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2. Notwithstanding any other provision of this chapter, the facility permittee shall submit the following in an application for a temporary permit modification approval:

i. Amendments to the approved environmental and health impact statement (if applicable) or a complete and detailed description of changes in environmental impacts that will result from the proposed modification(s) in facility engineering design and/or operation and additional mitigation measures being or proposed to address such impacts. Traffic impacts shall be re-evaluated if the proposed modification results in an increase in waste acceptance;

ii. Amendments to the approved Operations and Maintenance Manual for the facility, that reflect changes made necessary due to the proposed modification(s) in facility engineering design and/or operation; and

iii. Amended engineering design(s) for the facility, reflecting changes proposed that are the result of the proposed modification(s) subject to review.

(c) The owner or operator of any solid waste facility exempted pursuant to this section shall comply with all conditions set forth in its temporary permit modification approval. Noncompliance with a temporary permit modification approval shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to implement engineering design and/or operational modification(s).

1. The owner or operator of a facility for which temporary approval has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., subsequent to the revocation or suspension. The request for a hearing shall be submitted to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, NJ 08625-0402.

2. The granting of a temporary permit modification approval shall not be interpreted as entitling the holder to a solid waste facility permit modification.

Emergency New Rule, R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Former section "Public access to information and requirements for Department determination of confidentiality" recodified as N.J.A.C. 7:26-1.12.

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.10 Transfer station facility master performance permits

By June 16, 1997, every facility holding a transfer station master performance permit shall submit an application for a solid waste facility permit in accordance with the procedures set forth in N.J.A.C. 7:26-2.4 and 7:26-2B.

Repeal and New Rule, R.1996 d.578, effective December 16, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Case Notes

No public hearing required prior to issuance of master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Department of Environmental Protection not estopped from denying public hearing before issuing master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Performance permit was properly issued although though permit differed from district solid waste management plan. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Master performance permit was properly issued to solid waste transfer station. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

7:26-1.11 (Reserved)

Emergency recodification to N.J.A.C. 7:26-1.13 by R.1997 d.404, effective September 2, 1997 (to expire November 1, 1997).

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

Section was "Burden of Proof".

Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997. See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

7:26-1.12 Public access to information and requirements for Department determination of confidentiality

(a) Any confidential information obtained or used in the administration of the State solid waste program shall be treated in accordance with N.J.A.C. 7:26-17.

(b) Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the reports submitted to the Department by transporters of regulated medical wastes pursuant to N.J.A.C. 7:26-3A.35(a) shall not be deemed to be public records and the public shall not have the right to inspect, copy, or obtain a copy of the same. Upon receipt of these reports, the Department shall keep these reports in a secure storage facility and take the appropriate measures to maintain these reports in confidence. Access to such reports shall be limited to agents, employees and attorneys of the Department, and, in the discretion of the Department, other governmental enforcement agencies with a legitimate need to know, to local health agencies certified by the Department pursuant to N.J.S.A. 26:3A-2, or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste.

1. In order to obtain access to these reports, a certified local health agency or local board of health shall submit a written request to the Department setting forth the information requested and the reasons for the request.

2. The Department in its discretion may deny a request for a release of a report if the Department determines for any reason that granting the request would not be in the public interest.

R.1982 d.97, effective April 5, 1982.

See: 13 N.J.R. 724(a), 14 N.J.R. 338(a).

Recodified by R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Recodified from 7:26-1.8.
 Amended by R.1988 d.57, effective February 1, 1988.
 See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).
 Changed reference from 7:14A-11 to 7:26-17.
 Administrative Correction.
 See: 25 N.J.R. 4595(b).
 Amended by R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Substituted "solid waste program" for "hazardous waste program".
 Emergency recodification from N.J.A.C. 7:26-1.9 by R.1997 d.404,
 effective September 2, 1997 (to expire November 1, 1997).
 See: 29 N.J.R. 4170(a).
 Former N.J.A.C. 7:26-1.12, "Exemption from SWF permitting—leaf
 composting facility—(leaf mulching only operations)", was repealed by
 R.1996 d.578, effective December 16, 1996.
 Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.
 See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
 Previous paragraph recodified as (a); added new (b).

7:26-1.13 Burden of proof

(a) In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.

(b) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste.

(c) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law that renders the material conditionally exempt from N.J.A.C. 7:26.

New Rule, R.1990 d.65, effective February 5, 1990.
 See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).
 Amended by R.1996 d.500, effective October 21, 1996.
 See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).
 Recodified from 7:26-1.13 and amended by R.1996 d.578, effective
 December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Added references to specific request of the Department throughout;
 and in (c), substituted "an approved alternative use" for "a legal
 disposition". Section was "Exemption from SWF permitting—leaf com-
 posting facilities (leaves only)".
 Emergency recodification from N.J.A.C. 7:26-1.11 by R.1997 d.404,
 effective September 2, 1997 (to expire November 1, 1997).
 See: 29 N.J.R. 4170(a).
 Adopted concurrent proposal, R.1997 d.510, effective October 31, 1997.
 See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

SUBCHAPTER 2. DISPOSAL

7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26A, 2B, 2C and 2D shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid wastes unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26G. However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to the Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.

(c) This subsection sets forth the specific criteria for exempting rail carriers:

1. This subchapter does not apply to a rail carrier that transfers containerized or noncontainerized solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its behalf as part of its rail transportation services. However, a rail carrier that transfers containerized or noncontainerized solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.

2. Rail carriers engaged in the business of solid waste disposal or transportation by rail, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16.3.

3. The exemptions set forth at (c)1 and 2 above shall not apply to a solid waste transporter that transports waste to a rail carrier via truck, barge or other nonrail modes. Such a transporter shall remain subject to all applicable solid waste regulations, including, but not limited to, registration and district plan solid waste flow control provisions.

New Rule, R.1987 d.235, effective June 1, 1987.
 See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
 Original rule was "Dumps prohibited".
 Amended by R.1987 d.534, effective December 21, 1987.
 See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
 Added text in (b) "However hazardous waste ..."
 Emergency Amendment, R.1988 d.547, effective October 26, 1988
 (expires December 25, 1988).
 See: 20 N.J.R. 2817(a).
 Added sections 1.11 or 1.12 to (a).

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted without change.

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

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

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), amended N.J.A.C. references; and deleted (c).

Amended by R.2004 d.408, effective November 15, 2004.

See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

In (a), substituted "N.J.A.C. 7:26A, 2B, 2C and 2D" for "N.J.A.C. 7:26A and 2B" preceding "shall constitute"; added (c).

Case Notes

Disposing of solid waste in landfills other than those designated by state waste flow was warranted revocation of operating certificate. Matter of Allegations of Violations by Fiore and Sons, 95 N.J.A.R.2d (EPE) 88.

Receiving and storing construction and demolition debris; operating solid waste facility without a permit. DEPE v. Zanetich, 94 N.J.A.R.2d (EPE) 138.

7:26-2.2 Construction

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

As amended, R.1984 d.279, effective July 2, 1984.

See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

New (c) added, former (c)-(g) made (d)-(h). In (g), "the information supplied on its" was "status as listed on his". In (h), "June" was "July" and "or to declare it expired" added. (i) added.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Rule was "Registration".

7:26-2.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To establish the procedure for obtaining and maintaining a solid waste facility permit;
2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;
3. To establish the general engineering design requirements for solid waste facilities; and
4. To establish the general operational requirements for solid waste facilities.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Rule was "Domestic refuse".

7:26-2.4 Application procedures for a solid waste facility permit

(a) Prior to preparing and submitting the application for a solid waste facility (SWF) permit, other than for facilities specified in (c) below, the applicant may schedule a pre-application conference with the Department to discuss the registration, environmental and health impact statement and engineering submission requirements and the review proce-

dures. At least two weeks prior to the scheduled pre-application conference, the applicant should submit information in the form of reports, maps, studies and other relevant project documentation providing a sufficient basis for review by the Department. The material submitted prior to the pre-application conference may include the following:

1. A site location map plotted on a USGS topographic map;
2. A written description of the type of facility;
3. A written estimate of the proposed design capacity of the facility;
4. A written description of the type of waste to be handled;
5. A written plan establishing the tentative construction schedules;
6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;
7. Written documentation that the facility is included in the applicable district solid waste management plan pursuant to N.J.S.A. 13:1E-23 or that an application has been submitted to the appropriate public authority seeking inclusion in the solid waste management plan.

(b) A complete application for a SWF permit, except for applications for small-scale facilities identified in (c)1 and 2 below, shall include the following:

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.;
2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;
3. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d);
4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;
5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;
6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;
7. For sanitary landfills, a closure plan prepared and submitted in accordance with N.J.A.C. 7:26-2A.9; and
8. All applications for a SWF permit shall be submitted to:

Assistant Director for Permitting and
Technical Programs
Division of Solid and Hazardous Waste
Department of Environmental Protection
PO Box 414
Trenton, N.J. 08625-0414

(c) A complete application for a SWF permit for a small scale solid waste facility identified in (c)1 or 2 below shall include the following:

1. For a small-scale thermal destruction facility:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for thermal destruction is nonhazardous;

(2) The waste is generated at the site of the thermal destruction operation, at other associated intra-company plants; or is regulated medical waste, or home self-care waste managed as regulated medical waste, that is received and managed by the operator of the small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;

(3) The small-scale thermal destruction unit is not a major facility as defined at N.J.A.C. 7:27-8.1;

(4) The facility has been included in the applicable district solid waste management plan; and

(5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;

v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d);

vi. This exemption from full application requirements is limited to one small-scale thermal destruction unit for each company site; and

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

2. For a small scale materials recovery facility or transfer station:

i. Documentation sufficient to demonstrate, to the satisfaction of the Department, that the capacity of the facility is less than 100 tons per day;

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)2;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;

v. Documentation that the facility has been included in the applicable district solid waste management plan;

vi. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted as set forth at N.J.A.C. 7:26-16.3(d); and

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

(d) Upon receipt of the initial application materials, the Department shall assign an application number to the application. All correspondence on written comments relating to the application shall thereafter refer to the assigned application number.

(e) All applications shall be signed by the applicant as follows:

1. The completed registration statement shall be signed as follows:

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

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

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

2. All engineering designs and reports and the environmental and health impact statement required by this subchapter and other information requested as "Addendums" by the Department pursuant to (f) and (g)4 below, in addition to the documents required to be submitted pursuant to N.J.A.C. 7:26-2.9 and 2.10, shall be signed by a person described in (e)1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. The authorization is made in writing by a person described in (e)1 above;

ii. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, or positions of equivalent responsibility (a duly authorized representative may be either a named individual or any individual occupying the named position); and

iii. The written authorization is submitted to the Department.

(c) The Department's decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

(d) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(e) Written requests for a stay of the effective date of the Department's decision shall be made to the Department at the address provided at N.J.A.C. 7:26-2C.13 within 20 days of the date upon which the notice of decision was received.

(f) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

New Rule, R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

7:26-2C.15 Deferral track

(a) An applicant for Silver Track II which, after an eligibility review by the Department pursuant to N.J.A.C. 7:26-2C.4, is determined by the Department to be ineligible for participation in Silver Track II as a result of having a disqualifying violation(s) as set forth at N.J.A.C. 7:26-2C.4, may be eligible for participation in Silver Track II pursuant to the requirements of this section after a deferral period.

(b) In order to be eligible for Silver Track II under the requirements of this section, an applicant shall fall within either of the following categories:

1. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period but for which the applicant has fully achieved compliance and/or has paid to the Department any civil administrative penalties owed in connection with a disqualifying violation(s); or

2. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period and which has entered into an Administrative Consent Order with the Department to achieve compliance; is in compliance with the Administrative Consent Order, including all milestones and corrective action requirements of the Administrative Consent Order, and which has paid any civil administrative penalties due to the Department in connection with the disqualifying violation(s).

(c) An applicant for Silver Track II, who has any criminal violations, is not eligible for deferral.

(d) An applicant who falls within any of the categories set forth in (b) above, may be eligible for participation in Silver Track II one year subsequent to the Department notifying

the applicant, in writing, of its deferral, if the following criteria are met:

1. The applicant agrees, in writing, to perform all of the requirements applicable to an approved Silver Track II participant pursuant to N.J.A.C. 7:26-2C.5 through 2C.8 during the one year deferral period;

2. The applicant agrees, in writing, within the one year deferral period:

- i. To perform a facility-level accounting of the inputs and outputs of materials at the facility. This accounting must include reasonable estimates of the amount of hazardous substances: contained in the products at the facility; consumed (molecularly altered) at the facility; used by or put into each process at the facility; generated as an air, water or waste release, prior to treatment or control; and sent for recycling either on-site or off-site, to incorporate maximum achievable levels of pollution prevention and to identify opportunities for materials reuse, product substitution and energy efficiency. Toward performing the necessary accounting, the applicant may choose to utilize a process for evaluating pollution prevention, materials reuse, product substitution and energy efficiency opportunities that has obtained certification by the New Jersey Corporation for Advanced Technology (NJCAT); and

- ii. To develop an implementation plan to maximize achievable levels pollution prevention and to identify opportunities for material reuse, product substitution and energy efficiency at the facility. This implementation plan shall contain (the specific elements identified in N.J.A.C. 7:26-2C.6) milestones for implementation of pollution prevention, material reuse, product substitution, or energy efficiency; and

- iii. The facility's accounting results and implementation plan shall be submitted to the address given in N.J.A.C. 7:26-2C.3 prior to the end of the one-year deferral period for the Department's approval. The accounting results and implementation plan prepared pursuant to (d)2i and iii above will be used by the Department as a criterion for determining full eligibility in the Silver Track Program at the conclusion of the one-year deferral period pursuant to (f) below;

3. The applicant agrees, in writing, that it shall not be eligible for the flexibilities and incentives, pursuant to N.J.A.C. 7:26-2C.9, during the one-year deferral period; and

4. The applicant shall enter into a Memorandum of Agreement (MOA) with the Department memorializing its obligations pursuant to (d)1 through 3 above, and a compliance schedule setting forth milestones for complying with all applicable requirements of the Silver Track II program.

(e) At the end of the one-year deferral period, the Department shall determine whether the deferred applicant may participate in Silver Track II and shall so notify the applicant, in writing, of its decision. The applicant shall not be eligible for the flexibilities and incentives of the Silver Track II program, pursuant to N.J.A.C. 7:26-2C.9, until it receives written confirmation from the Department that it has been accepted into the Silver Track II program. If accepted into Silver Track II, the applicant shall comply with all requirements of Silver Track II set forth in this subchapter.

(f) No deferred applicant shall be eligible for approval as a Silver Track II participant at the end of the one-year deferral period if the Department determines that the applicant has:

1. Committed a disqualifying violation(s) set forth at N.J.A.C. 7:26-2C.4, during the one-year deferral period;
2. Has not complied with the terms of an executed Administrative Consent Order;
3. Has not entered into an Administrative Consent Order with the Department if required under (b) above;
4. Has failed to submit the accounting or implementation plan required pursuant to (d)2i or ii, respectively, above; or
5. Has not obtained the Department's approval of the facility's implementation plan.

New Rule. R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

SUBCHAPTER 2D. REQUIREMENTS ON RAIL CARRIERS THAT TRANSFER CONTAINERIZED OR NONCONTAINERIZED SOLID WASTE TO OR FROM RAIL CARS

Authority

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

Source and Effective Date

R.2004 d.408, effective November 15, 2004.
See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

7:26-2D.1 Requirements on rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars

(a) For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services.

(b) A rail carrier that transfers containerized or noncontainerized solid waste to or from rail cars shall provide the Division of Solid and Hazardous Waste with the following information prior to commencing solid waste transportation operations within the State of New Jersey: a description of the geographical location of the rail carrier's facility, identifying the name of the municipality in which the facility is located and the address of the facility. This information shall be sent to:

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

(c) A rail carrier that engages in the transportation of solid waste at a facility owned by such rail carrier within the State of New Jersey exclusively in the form of sealed containers of solid waste, and that does not engage in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. The rail carrier shall provide the Division of Solid and Hazardous Waste with the following information, in addition to the information required by (b) above, prior to commencing solid waste transportation operations: a narrative from an officer of the rail carrier describing the facility operations and certifying that containers will not be opened and that employees, the public or the environment will not be exposed to solid waste except as allowed in accordance with this section. This information shall be sent to the same address as in (b) above.
2. The rail carrier shall operate in accordance with the following standards:
 - i. Nonputrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at the rail facility for greater than 72 hours;

ii. Solid waste received, stored or transferred at the rail facility shall at all times be contained in sealed containers that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that a container holding ID 72 liquid solid waste may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed;

iii. The operation shall not result in the migration of odors outside the confines of the rail carrier's property or the emission, except by locomotive or locomotive engine, of air contaminants in violation of N.J.A.C. 7:27-5.2(a);

iv. All solid waste containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the containers and their contents;

v. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

vi. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

vii. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the facility;

viii. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while on-site, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control rules, N.J.A.C. 7:29, and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 C.F.R. Part 210, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

ix. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted at the facility;

x. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of the rail facility, at any time. This right to enter and inspect includes, but is not limited to:

(1) Observing and sampling any materials on-site;

(2) Photographing any portion of the facility, solid waste vehicles, containers, and container contents;

(3) Investigating an actual or suspected source of pollution of the environment;

(4) Ascertaining compliance or noncompliance with the statutes, rules, or regulations of the Department; and

(5) Reviewing and copying all records required by Federal or State statutes or regulations, which shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection;

xi. Any release or discharge of any solid waste that would harm human health and the environment at the facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification;

xii. The facility operator shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations, such as, but not limited to, spills, discharges or releases of solid wastes at the facility;

xiii. The facility shall maintain daily records of waste received in accordance with N.J.A.C. 7:26-3.6(h)1, and shall submit quarterly reports within 20 days of the end of each calendar quarter summarizing waste receipts in accordance with N.J.A.C. 7:26-3.6(h)2; and

xiv. Any rail carrier that fails to operate in compliance with the requirements of this section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5.

(d) A rail carrier that engages in the transportation of solid waste at a facility owned by such rail carrier within the State of New Jersey, and that engages in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. All facility processing, tipping, sorting, loading, storage and compaction of materials (that is, solid waste and mixtures of solid waste and recyclable materials) shall occur within the confines of an enclosed building that complies with all requirements of the Uniform Construction Code;

2. Facility shall have concrete or equivalent tipping floors or ramps to ensure proper containment and chan-

neling of wastewater to sanitary sewer connections or holding tanks and constructed to withstand heavy vehicle usage, in compliance with applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14B;

3. Facilities shall have a system that collects, stores, and properly disposes of wastewater generated during normal operations, including wash-out and cleaning of equipment, trucks, and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A;

4. Within each 24-hour period, the operator shall clean each area where waste has been deposited or stored;

5. No waste shall be stored overnight without effective treatment to prevent odors associated with putrefaction;

6. Facility property surrounding the actual waste management area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residuals and effluents. Methods (such as fencing) of effectively controlling windblown papers and other lightweight materials shall be implemented;

7. Methods of effectively controlling dust shall be implemented in order to prevent migration outside the enclosed building and off-site;

8. The operation shall not result in the migration of odors outside the confines of the enclosed building or the emission of air contaminants, except by locomotive or locomotive engine, in violation of N.J.A.C. 7:27-5.2(a);

9. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

10. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

11. The facility shall operate certified scales for the reporting requirements of N.J.A.C. 7:26-2.13 for waste transported by trucks;

12. Facilities' on-site roadways and storage areas shall have concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

13. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

14. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the facility;

15. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while on-site, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control rules, N.J.A.C. 7:29, and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 C.F.R., Part 210, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

16. Only solid waste vehicles properly registered pursuant to N.J.A.C. 7:26-3 with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility;

17. The facility shall designate a secure area under the facility's control, located at a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles that are either exempt from registration requirements of N.J.A.C. 7:26-3.3 or which must be manually unloaded. Bulky items and recyclable materials may be provided for in this manner;

18. The facility may establish a separate secure area for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM). The facility shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer;

19. Rail carrier transfer stations and materials recovery facilities who receive, store or transfer only ID 72 liquid wastes are not required to comply with (d)1 and 2, 4 through 7, 10, 17 and 18 above; however, these rail carriers shall operate in accordance with the following standards:

i. Rail carriers may pump ID 72 liquid waste directly from or to rail cars and other transportation vehicles provided all loading and unloading areas employed are equipped with a means of secondary containment or diversion designed to prevent leaked waste from being discharged to the environment. The secondary containment or diversion system shall block all probable routes by which leaked waste could reasonably be expected to become discharge and have a capacity to contain the volume of the largest compartment in any tank car or tank truck utilizing the area;

ii. A rail carrier shall not store ID 72 wastes other than in containers and/or aboveground tanks;

iii. Containers and aboveground tanks used to store ID 72 liquid wastes shall be in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking (no visible leaks);

iv. Containers and aboveground tanks shall be equipped with a secondary containment system consisting of dikes, berms, or retaining walls, and a floor that shall cover the entire area within the secondary containment system and be sufficiently impervious to waste materials to prevent any waste materials released into the contaminant system from migrating out of the system to the soil, groundwater or surface water;

v. Before a facility receives, stores, or transfers ID 72 liquid waste, the facility shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, the analysis shall contain all of the information that must be known to receive, store or transfer the waste. This analysis may include published or documented data on the waste, or on wastes generated in similar processes. The analysis shall be repeated as necessary to ensure it is accurate and up to date;

vi. Rail carriers that receive, store or transfer incompatible wastes or mixtures of incompatible wastes and other materials shall take precautions to prevent reactions that generate extreme heat or pressure, fire or explosions, or violent reactions; produce uncontrolled toxic mists, fumes or gases in sufficient quantities to threaten human health or the environment; produce uncontrolled flammable fumes or gases in sufficient quantities to pose risk of fires or explosions; damage the structural integrity of the equipment or the facility; or through other like means threaten human health or the environment. The facility shall document compliance with precautions upon request by the Department of Environmental Protection. This documentation may be based on references to published scientific literature, data from trial tests (for example, bench scale or pilot scale tests), waste analysis, or the results of treatment of similar wastes by similar treatment processes and under similar operating conditions; and

vii. Upon detection of a release of ID 72 liquid waste to the environment, the facility shall stop the release; contain the released material; clean up and properly manage the released wastes and other materials; and if necessary, repair and replace any leaking storage or treatment containers or tanks prior to returning them to service;

20. A rail facility shall not accept or in any manner handle hazardous waste as defined at N.J.S.A. 13:1E-38 or regulated medical waste as defined at N.J.S.A. 13:1E-48.3 except in compliance with all applicable requirements for such activities pursuant to this chapter and

N.J.A.C. 7:26G. If the facility inadvertently accepts an unauthorized waste type, the facility shall immediately report the event to the Department's Hotline at 1-877-WARNDEP, and place the waste in a secure area under the facility's control, located a safe distance away from active waste areas, until the operator receives instruction from the Department as to the proper disposal of the waste;

21. Nonputrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at any rail facility for greater than 72 hours;

22. Effective security procedures shall be implemented to control entry and exit at all times;

23. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or other portion of a rail facility, at any time. This right to enter and inspect includes, but is not limited to:

i. Observing and sampling any materials on-site;

ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or noncompliance with the statutes and regulations of the Department; and

v. Reviewing and copying all records that are required to be maintained by Federal or State law, which shall be made available on request to the Department representatives and inspectors at all reasonable times for review and inspection;

24. Any release or discharge of any solid waste at the rail facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification;

25. The rail carrier shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges, or releases of solid wastes at the facility;

26. Any rail facility that fails to operate in compliance with the requirements of this section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5; and

27. The rail carrier shall comply with the following recordkeeping and reporting requirements at each and every facility owned or operated by it within the State of New Jersey that is engaged in the transportation of solid waste pursuant to (d) above:

- i. The facility shall maintain a daily record of wastes received. The record shall include the information specified in N.J.A.C. 7:26-2.13(a);
- ii. The daily record shall be maintained, shall be kept, and shall be available for inspection in accordance with N.J.A.C. 7:26-2.13(b);
- iii. The facility shall verify, retain, and make available for inspection a waste origin/disposal (O and D) form for each load of solid waste received in accordance with N.J.A.C. 7:26-2.13(c); and
- iv. The facility shall submit monthly summaries of wastes received to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the solid waste coordinator for the county in which the facility is located on forms provided by the Department (or duplicates of same), no later than 20 days after the last day of each month. The monthly summaries shall include the information specified in N.J.A.C. 7:26-2.13(e).

SUBCHAPTER 3. TRANSPORTATION

7:26-3.1 Improper transportation prohibited

(a) Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and 7:26A-6.6(a), the transportation of organic and/or combustible matter, including off-specification used oil as defined at N.J.A.C. 7:26A-1.3, or other forms of solid waste, on the roadways and highways in this State shall be made only through the use of:

1. Transportation systems established, operated and maintained in accordance with the rules set forth in this subchapter;
2. Other methods of transportation as may be approved by the Department.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

"Collection" and "hauling" replaced by "transportation" throughout.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted reference to used oil.
Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a), substituted "Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and 7:26A-6.6(a), the" for "The".
Amended by R.2002 d.181, effective June 17, 2002.
See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (a), inserted "off-specification" preceding "used oil" in the introductory paragraph.

Case Notes

Township ordinances were not preempted, with exception of section of township ordinance permitting township to ban persons deviating from access routes from further access to solid waste facility. *Clyde v. Mansfield Tp.*, 263 N.J.Super. 140, 622 A.2d 270 (A.D.1993).

Claim of broker status; unregistered transporter of solid waste was subject to fine. In the Matter of Penn Foundry, Inc., 94 N.J.A.R.2d (EPE) 36.

7:26-3.2 Registration

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. The registration period shall be biennial, unless otherwise established by the Department, and shall run from July 1 through June 30 of each odd numbered year. Annual registration shall continue through the registration period of calendar year 2002. Therefore, in accordance with this subsection, the odd numbered year for biennial registration shall begin the year 2003. For solid waste collection and disposal vehicles operated by a public entity, the registration period shall be five years commencing July 1, 2001. An approved registration statement shall expire at the end of the registration period unless renewed pursuant to (d) below.

1. No person shall act as a prime contractor or subcontractor for the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

i. For the purposes of this subchapter, a "prime contractor" means any person who enters into an oral or written agreement with a generator to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any solid waste transport unit.

ii. For the purposes of this subchapter, a "subcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste vehicle, pursuant to an oral or written agreement entered into with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to this subchapter, of solid waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter, shall not, for purposes of this subchapter, be considered a subcontract.

2. Any device used for transportation of solid waste shall be registered with the Department as either a solid waste cab, trailer, container, or single-unit vehicle.