

CHAPTER 26G
HAZARDOUS 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.2007 d.350, effective October 11, 2007.
See: 39 N.J.R. 1953(a), 39 N.J.R. 4834(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 26G, Hazardous Waste, expires on October 11, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 26G, Hazardous Waste, was adopted as R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Chapter 26G, Hazardous Waste, was readopted as R.2002 d.140, effective April 15, 2002. See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Petition for Rulemaking: Hazardous Waste Rules. See: 36 N.J.R. 221(b), 1128(b), 2561(b).

Subchapter 14, Siting Criteria for New Major Commercial Hazardous Waste Facilities, and Subchapter 15, Hazardous Waste Facilities Siting Commission: Policies and Procedures, expired on April 15, 2007.

Chapter 26G, Hazardous Waste, was readopted as R.2007 d.350, effective October 11, 2007. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

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SUBCHAPTER 1. GENERAL PROVISIONS

7:26G-1.1 Scope of rules

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

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

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

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

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

7:26G-1.2 Construction and severability

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

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

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

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

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

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

(b) Prospective incorporation by reference means the ongoing process, beginning November 5, 2007, whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by USEPA in the Federal Register, shall be paralleled by a similar change to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart. Similarly, to maintain consistency, all new Federal regulations are also adopted into this Chapter by this automatic process.

(c) Provisions of 40 C.F.R. Parts 124, 260-266, 268 and 270 incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the C.F.R. shall be interpreted to include in addition to the Federal citation, any

changes or additions or deletions made to that citation by the corresponding state subchapter. For example, all references within the C.F.R. to 40 C.F.R. Part 261 shall include the changes, additions and deletions which N.J.A.C. 7:26G-5 makes to 40 C.F.R. Part 261.

(d) Provisions of 49 C.F.R. incorporated by reference are prospective and all internal references contained therein are also incorporated by reference for the purposes of that provision, unless otherwise noted. Provisions of 49 C.F.R. shall be interpreted to include, in addition to the Federal citation, any changes or additions or deletions made to that citation by the following State agencies and corresponding State rules:

1. New Jersey Department of Transportation, N.J.A.C. 16:49-2.1; and
2. New Jersey Department of Law and Public Safety, Division of State Police, N.J.A.C. 13:60-1.1.

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

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

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

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

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

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

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

(l) On or after November 5, 2007, new Federal rules, amendments, supplements, and other changes, brought about through administrative or judicial action, automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative 90 days from the publication date or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

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

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

Rewrote the section.

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (b) and (l), substituted "May 6, 2002" for "January 19, 1999".

Amended by R.2007 d.350, effective November 5, 2007.

See: 39 N.J.R. 1953(a), 39 N.J.R. 4834(a).

In (b) and (l), substituted "November 5, 2007" for "May 6, 2002".

7:26G-1.5 Document availability

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

New Jersey Department of Environmental
Protection
Division of Solid and Hazardous Waste
PO Box 414
Trenton, NJ 08625-0414
Telephone: (609) 984-3438

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

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SCOP
Washington, DC 20402-9328

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, NY 10278-0081

U.S. Government Printing Office Bookstore
Robert Morris Building
100 North 17th Street
Philadelphia, PA 19103

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

New Jersey State Library
PO Box 520, 185 West State Street
Trenton, NJ 08625-0520

Newark Public Library
5 Washington Street
Newark, NJ 07101

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

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

SUBCHAPTER 2. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADMINISTRATIVE HEARINGS

7:26G-2.1 Scope and purpose

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

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

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

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

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

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

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

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

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

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

1. If no hearing is timely requested pursuant to N.J.A.C. 7:26G-2.3, the notice of civil administrative pen-

alty assessment becomes a final order on the 21st day following receipt by the violator of the notice of civil administrative penalty assessment;

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

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

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

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

Office of Legal Affairs
ATTENTION: Administrative Hearing Requests
Department of Environmental Protection
PO BOX 402
Trenton, NJ 08625-0402

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXAMPLE:

Base penalty (for violation of N.J.A.C. 7:26-7.4(a)6) = \$1,000

(40 C.F.R. Part 261 Subpart A—General)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
§261.5(f)	Failure of generator of acute hazardous waste to comply with the requirements of 40 C.F.R. §261.5(f).	Matrix	NM	
§261.5(g)	Failure of conditionally exempt small quantity generator of hazardous waste to comply with the requirements of 40 C.F.R. §261.5(g).	Matrix	NM	

3. The violations of N.J.A.C. 7:26G-6, Standards Applicable to Generators of Hazardous Waste, whether the violation is minor or non-minor, the length of the grace

Subparagraph (f)3iii applies:
 $0.50 \times 1000 = 500$
 Subparagraph (f)3iv applies:
 $0.25 \times 1000 = +250$
 Civil administrative penalty = \$1,750

(g) The following summary of rules contained in N.J.A.C. 7:26G-2 through 7:26G-12 is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in N.J.A.C. 7:26G-2 through 7:26G-12, then the provision in N.J.A.C. 7:26G-2 through 7:26G-12 shall prevail. The citations beginning with the symbol “§” identify the rule section found in 40 C.F.R. Parts 124, 260-266, 268 and 270. Citations beginning with “7:26G” signify a State requirement not found in 40 C.F.R. Parts 124, 260-266, 268 and 270. The word “matrix” appearing in the “Base Penalty or Matrix” column refers to the penalty calculation matrix in N.J.A.C. 7:26G-2.5, which shall be applied in lieu of a “base penalty.” In the “Type of Violation” column, “M” identifies a violation as minor and “NM” identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the “Grace Period” column.

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

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

period, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

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

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

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

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

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

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

13. Appendix I to Part 260 last paragraph, after “encouraged to write to EPA” add “and the Department”; after “(513) 684-5362” add “and New Jersey Department of Environmental Protection, Solid and Hazardous Waste Regulation Program, PO Box 422, 401 East State Street, Trenton, NJ 08625-0422, (609)984-2014.”

(d) When used in the term “EPA form,” the definition of “Manifest,” “Federal Agency” and “Person” at 40 C.F.R. 260.10, in the Appendix I to 40 C.F.R. Part 260, and 40 C.F.R. 260.11(a), the term “Agency” or “EPA” means the United States Environmental Protection Agency.

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

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

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

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

Amended (c)5.

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

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

Rewrote (a); in (d), added C.F.R. reference; and added (f).

Administrative change.

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

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (a), substituted “May 6, 2002” for “July 31, 1998”.

Amended by R.2007 d.350, effective November 5, 2007.

See: 39 N.J.R. 1953(a), 39 N.J.R. 4834(a).

In (a), substituted “November 5, 2007” for “May 6, 2002”; deleted former (c)4ii; recodified former (c)4iii as (c)4ii; and rewrote (c)13.

7:26G-4.2 State definitions

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

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

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

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

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

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

(b) All information collected by or originated by the Department in connection with hazardous waste regulatory activities under this chapter shall be generally available to the public except as provided otherwise in this subchapter. This requirement shall also include information regarding hazardous waste facilities regulated by N.J.A.C. 7:14A.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for inter-agency or intra-agency memoranda or letters, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. § 552(b)(5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. § 552(b)(7) or N.J.S.A. 47:1A-3.

(f) Any information obtained or used in the administration of the hazardous waste program under this chapter shall be available to EPA upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information to EPA under this subchapter.

(g) When EPA supplies information to the Department which was submitted to EPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 C.F.R. Part 2 and this subchapter. If the Department obtains information from EPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(h) Any confidential information obtained or used in the administration of the State hazardous waste program, as provided in Section 3006 of "The Resource Conservation and Recovery Act of 1976", 42 U.S.C. §§ 3251 et seq., and amendments thereto, shall be treated in accordance with this subchapter.

7:26G-16.2 Definitions

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

"Act" means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Business" means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure, or may lawfully inure, to the benefit of any private shareholder or individual.

"EPA" or USEPA" means the United States Environmental Protection Agency.

"Hazardous waste" means those solid wastes identified as hazardous wastes in accordance with N.J.A.C. 7:26G-5.

"Person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governing bodies and agencies and their employees.

7:26G-16.3 Classes of information

(a) The classes of information to be made available to the public and to EPA shall include, but not be limited to, the following:

1. Permits, permit applications and modifications;
2. Annual and biennial reports;
3. Closure plans;
4. Notification of a facility closure;
5. Contingency plan incident reports;
6. Delisting petitions and other petitions for variances or waivers;
7. Financial responsibility instruments;
8. Environmental monitoring data;
9. International shipment records;
10. Manifests and manifest exception, discrepancy and unmanifested waste reports;
11. Facility EPA identification numbers;
12. General correspondence with the facility;
13. Orders, consent orders, notices of violations, penalty settlement offers, civil and administrative penalty assessments, and other enforcement documents;
14. Inspection reports;
15. Results of corrective action investigations, undertaken pursuant to § 3004 (u) and (v) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and
16. Analytical data submitted to the Department.

7:26G-16.4 Administrative procedures and appeals for requests for information

(a) The scope of records maintained by the Department that are subject to requests for information shall be as broad as the scope of records as provided by the United States Environmental Protection Agency at 40 C.F.R. 2.100(b).

(b) Materials which are routinely available to the general public are not confidential information and shall be supplied within a reasonable time upon written request by interested

parties. Such materials include, but are not limited to, final orders in case adjudications, press releases, copies of speeches, pamphlets and educational materials.

(c) A requester of non-confidential and confidential records including, but not limited to, records defined in (b) above shall not be required to supply any justification for the information request.

(d) All requests for information shall identify with specificity the information requested. The Department, in responding to requests containing incomplete identification of records, shall make reasonable efforts to assist a requester in identifying the records being sought. The Department's designated information officer shall contact the requester by telephone if possible or in writing to assist the requester to formulate his or her request. The Department's designated information officer shall also aid the requester in locating the office maintaining the records he or she seeks.

(e) If a request is formulated in general terms covering a large quantity of records, the Department's designated information officer shall assist the requester in narrowing the scope of the request to minimize the fees payable by the requester. This type of assistance shall not be used as a means to discourage requests, but to help narrow the scope of investigation when possible.

(f) Information concerning the fees in regard to both information requests and confidentiality claims is set forth in N.J.A.C. 7:26G-16.11 and 16.12.

(g) Requests for information shall be answered in writing within 20 working days of receipt by the designated information officer. The written response shall designate which records will be released, which will not be released, and the reasons for denial.

1. If the request for information is incomplete or insufficient, the time span covering the State's request for clarification to the requester's reply shall not be counted in the 20 working days in (g) above.

2. Failure of the Department to issue a determination within the 20-day period shall be considered a denial. This shall authorize the requester to pursue further legal recourse and apply for an order to release the requested information pursuant to (h) below.

(h) If the Department denies a request for information, it shall inform the requester of the reasons for denial and shall advise the requester that he may appeal the denial to the Superior Court of New Jersey as provided in N.J.S.A. 47:1A-1 et seq.

(i) The Department may require prepayment of the fees set forth at N.J.A.C. 7:26G-16.11 and 16.12. When prepayment of a fee is required, the Department will release the information to the requester upon payment of the fee.

(j) The Department may allow the public to inspect and to make copies of any non-confidential information at the per copy fee set forth at N.J.S.A. 47:1A-2, which is as of the effective date of this rule, as follows:

First to tenth page	\$0.75 per page
Eleventh page to 20th page	\$0.50 per page
All pages over 20	\$0.25 per page

(k) Requests for information should be addressed to:

Information Officer
Division of Solid and Hazardous Waste
120 South Stockton Street
CN 414
Trenton, New Jersey 08625-0414

7:26G-16.5 Claims of confidentiality

(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 and N.J.A.C. 7:26G-16.6.

(b) When the Department requires the submission of information which may be confidential, it shall advise the submitter of the information concerning departmental procedures which govern application for a confidentiality claim. If confidentiality is not requested upon submission to the Department, the Department will place the information in the files which are available to the public.

(c) The following procedures apply to confidentiality claims:

1. Claims of confidentiality for permit application information and any other information shall be substantiated in accordance with the criteria set forth in N.J.A.C. 7:26G-16.6 at the time the information is submitted. Any applicable fees shall be enclosed with the submittal. Failure to request confidentiality or failure to pay the confidentiality fee shall be grounds for denial of the confidentiality claim.

2. If a submitter does not provide substantiation which satisfies the criteria of N.J.A.C. 7:26G-16.6, the Department shall notify the submitter by certified mail, return receipt requested of the requirement to do so. If the Department does not receive the substantiation within 10 days after the submitter receives the notice, the confidentiality claim is waived and the Department may make the information available to the public.

3. Within the Department, Division Directors or their appropriate designees shall determine, based on the criteria listed in N.J.A.C. 7:26G-16.6, whether or not information is entitled to confidential treatment.