

## CHAPTER 26

### SOLID WASTE

#### Authority

N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1E-9, 13:1D-125 et seq., 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

Chapter 26, Solid Waste, expires on May 17, 2007.

#### 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Subchapter 2 was partially repealed and partially recodified to Subchapter 2A and a new Subchapter 2, Disposal, was adopted by R.1987 d.235, effective June 1, 1987.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 Subchapter 3A, Special Medical Waste, was repealed and a new Subchapter 3A, Regulated Medical Waste, was adopted as an emergency repeal and new rule by R.1989 d.396, effective June 26, 1989.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 inter-district 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, Bureau of Solid 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, Bureau of Solid 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, Bureau of Solid 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.

**Research Note**

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

**Law Reviews 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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- 7:26-17.14 Class confidentiality determinations
- 7:26-17.15 Disclosure of confidential information to other public agencies
- 7:26-17.16 Disclosure of confidential information to contractors
- 7:26-17.17 Disclosure to alleviate an imminent and substantial danger
- 7:26-17.18 Notice to claimants of disclosure of confidential information
- 7:26-17.19 Disclosure by consent

7:26-17.20	Incorporation of confidential information into cumulations of data
7:26-17.21	Disclosure of confidential information in rulemaking, permitting and enforcement proceedings
7:26-17.22	Hearing before disclosure of information for which a confidentiality claim has been made
7:26-17.23	Nondisclosure of confidential information
7:26-17.24	Safeguarding of confidential information
7:26-17.25	Confidentiality agreements
7:26-17.26	Wrongful access or disclosure; penalties

## SUBCHAPTER 1. GENERAL PROVISIONS

### 7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection that govern the registration, operation, maintenance, and closure of sanitary landfills and other solid waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for services provided by the Department to solid waste facilities, generators and transporters; and the assessment of civil administrative penalties. These rules shall not apply to the following:

1. The purchase, sale, collection, storage, transport or controlled processing of source separated or commingled source separated recyclable, recycled or secondary non-hazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials (including fuel and reusable energy), or thermal destruction facilities. These rules shall not apply only if the conditions in (a)1i or ii below are met.

i. The use or reuse of material, which would otherwise become solid waste under this chapter, directly as a product or incorporated into any form of raw material to be used in the manufacturing of a product shall meet the generally accepted product specifications and standards for similar manufactured products or raw materials. The used or reused material shall not present a greater risk to human health or the environment than the use of the product or raw material it is replacing.

ii. The use or reuse of materials that would otherwise become solid waste pursuant to this chapter as fill material, aggregate substitute, fuel substitute or landfill cover shall be approved as beneficial use pursuant N.J.A.C. 7:26-1.7.

iii. Specifically not exempt are those used or reuses of materials which, if released to the environment

through transport, storage or other handling will cause pollution of the surface or ground water of this State or which may pose a substantial or material threat to the public health, safety or welfare in the environment.

2. Container-pickup facilities as herein defined;

3. Source separated food waste fed to livestock in the State of New Jersey as approved by the New Jersey Department of Agriculture;

4. Recycling depots as defined at N.J.A.C. 7:26A-1.3 where individuals or organizations deposit separate materials such as newsprint, bottles, cans, and so forth, prior to transport to the secondary materials industry;

5. Convenience centers as defined at N.J.A.C. 7:26-1.4;

6. The intra-plant transport, temporary storage or other handling of plant generated waste materials. Specifically not exempt are those materials to be, or which are, deposited on or in the lands of this State for periods exceeding six months, or which through transport, storage or other handling will cause pollution of the surface or ground waters of this State, or which may pose a substantial or material threat to the public health, safety or welfare;

7. Any discharge of a mixture of domestic sewage and other waste that are discharged into a sewer system to a domestic treatment works, as defined in N.J.A.C. 7:14A, which is authorized in accordance with N.J.A.C. 7:14A and local ordinances.

i. This exemption does not include transport or discharge by waste transporters;

8. Recycling operations and recycling centers approved and operated pursuant to N.J.A.C. 7:26A; and

9. A small vehicle transfer area meeting the following requirements:

i. Solid waste is transferred from a collection vehicle not exceeding 16,000 pounds gross vehicle weight directly to a registered solid waste collection vehicle;

ii. Such solid waste is collected in the collection vehicle not exceeding 16,000 pounds gross vehicle weight because the point of generation is not accessible to a registered solid waste collection vehicle (that is, down a narrow lane or private driveway, or on public property such as a park or beach);

iii. All waste collected at the small vehicle transfer area shall be removed by the end of each operating day (or next operating day if collected on a weekend or holiday);

iv. Waste received in the area shall not be processed, segregated, sorted, or handled in any fashion other than direct transfer from the collection vehicle not exceeding 16,000 pounds gross vehicle weight into

the registered collection vehicle or other collection container;

v. Area operations shall not result in the generation of odors, litter, dust, leachate, or any other negative environmental impacts;

vi. Small vehicle transfer areas shall receive approval from the municipality in which they are located prior to commencing transfer operations. In addition, operators of small vehicle transfer areas shall notify the Department in writing and the respective county health department following municipal approval and prior to commencing operations; and

vii. The operator of a small vehicle transfer area is subject to compliance with all other applicable solid waste regulations.

(b) In addition to the rules in this chapter, all solid waste landfill facilities are required to obtain a permit pursuant to the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq., and the regulations promulgated thereunder, "Regulations Concerning the New Jersey Pollutant Discharge Elimination System", N.J.A.C. 7:14A.

(c) The exemptions set out at (a)1 through 9 above are not applicable to activities associated with hazardous waste or regulated medical waste.

As amended, R.1981 d.84, effective March 6, 1981.  
See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

(b) added.

As amended, R.1982 d.433, effective December 6, 1982.  
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

(c) added.

As amended, R.1983 d.610, effective January 3, 1984.  
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

(a)6 added.

Amended by R.1987 d.534, effective December 21, 1987.  
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.

Amended by R.1989 d.54, effective January 17, 1989.  
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substantially amended (a).

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

Added "hazardous" to the description of waste facilities, replaced "collection and haulage" with "solid waste transportation"; specific listing of the fee schedule elements deleted and replaced with general statement.

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), inserted reference to civil administration penalties; in (a)1, inserted text "which would otherwise . . . to this chapter" and added last sentence; added (a)1i to (a)1iii; substantially amended (a)3; in (a)4, substituted "depots" for "centers" and inserted N.J.A.C. reference; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; added (a)8; and, in (c), made conforming changes and inserted reference to regulated medical waste.

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), deleted "and hazardous" preceding "waste facilities" throughout.

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

Added (a)9.

#### Case Notes

New Jersey's waste flow control laws violated commerce clause. Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, D.N.J.1996, 931 F.Supp. 341.

Regulations did not exclude from definition of "sanitary landfill" a sole source facility which ceased operating prior to enactment of modern environmental statutes. Johnson Machinery Co., Inc. v. Manville Sales Corp., 248 N.J.Super. 285, 590 A.2d 1206 (A.D.1991).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

Recycling center operates as solid waste facility where it accepts and buries materials as landfill. New Jersey Department of Environmental Protection v. South Brunswick Asphalt, 96 N.J.A.R.2d (EPE) 289.

Solid waste disposal violations debarred collectors from owing and operating any solid waste or recycling business within state. Department of Environmental Protection v. Chad Lennon, 95 N.J.A.R.2d (EPE) 33.

#### 7:26-1.2 Construction and severability

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

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

As amended, R.1984 d.279, effective July 2, 1984.  
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Formerly the Department and the Bureau of Solid Waste Management.

Amended by R.1992 d.100, effective March 2, 1992.  
See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).

Severability clarified that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

#### 7:26-1.3 (Reserved)

As amended, R.1984 d.279, effective July 2, 1984.  
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Bureau Chief deleted.

Amended by R.1996 d.500, effective October 21, 1996.  
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Repealed by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Section was "Practice where rules do not govern".

#### 7:26-1.4 Definitions

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

“Act” means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., as amended and supplemented.

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. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste 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.

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 with-  
 out 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).

### 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;

(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 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 "haulage" 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.

**7:26-3.6 Intermodal container facility**

(a) This section contains the regulations of the Department governing the authorization and operation of intermodal container facilities. Such facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.4 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 13C, 23, 25, 27, 72, 73, and 74. Such facilities shall not accept or in any manner handle hazardous waste or regulated medical waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6, respectively. This subsection does not prohibit the operator of an authorized intermodal container facility from conducting other solid waste, regulated medical waste, or hazardous waste management activities at the site of the intermodal container facility, provided the operator complies with all applicable permitting and operating requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G.

(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3.16 and 16A to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified in (c) below, and at the same time one copy each to the host municipality and district solid waste plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed facility;
2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3, 16 and 16A;
3. Photocopies of documents as evidence of all authorizations for siting, construction and operation, and conformance with all local, regional, State or Federal requirements of any governmental agency, or other body with jurisdiction over any aspect of the proposed facility;
4. A description of the geographical location of the facility, identifying the name of the municipality in which the facility is located and the address of the facility;
5. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;
6. A description of the current use of the facility site and of all adjoining properties;
7. An administrative action issued by the district solid waste management plan implementing agency, established pursuant to N.J.S.A. 13:1E-21b(1), of the district where the facility is proposed to be located, which shall include any applicable comments from the host municipality. The Department may issue an authorization in the absence of a district administrative action should the Department determine, at its discretion, that the intermodal container

facility is needed to help fulfill the objectives of the adopted and approved Statewide Solid Waste Management Plan or individual district solid waste management plans. In the event of such a determination, the Department shall notify the host district and municipality of its determination and reasons justifying facility authorization in writing prior to any approval of operations;

8. A list of all solid wastes by waste type as defined at N.J.A.C. 7:26-2.13, to be received and transferred at the facility;
9. A description of the maximum amount of each type of solid waste to be received and transferred at the facility each day, expressed in tons per day and cubic yards per day, or gallons where applicable;
10. A description of the sources of the containerized solid waste and the anticipated disposal locations of the waste, both in-State and out-of-State;
11. A description of the type(s) and number of containers that will be used at the facility and the type and means of storage and staging of the containers;
12. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer or surveyor. The site plan must:
  - i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading, unloading and temporary storage of containerized solid waste;
  - ii. Be drawn to a scale no greater than one inch equals 100 feet;
  - iii. Indicate the routing of vehicles between the facility and all nearby roadways serving the site, as well as the traffic flow within the site. Such routing must ensure safe and efficient vehicular and pedestrian circulation, parking, and loading and unloading of containers;
  - iv. Delineate floodplains as defined at N.J.A.C. 7:13-1.2;
  - v. Delineate the location of State-designated wetlands, New Jersey Pinelands, existing or suitable agricultural lands, Federal or New Jersey-registered historic sites and other environmentally sensitive areas such as State parks, wildlife management areas and National Wildlife Refuges;
  - vi. Identify the direction of water runoff both on-site and off-site and the screening and landscaping on the site;
  - vii. Indicate topographic contours, drawn at two-foot intervals; and
  - viii. Indicate all site access controls to be employed at the facility;

13. An original current 7.5 minute USGS Quadrangle map with the boundary of the facility plotted thereon. The map shall delineate any public access roads to the site and any streams, ponds or other potential sensitive receptors such as, but not limited to, hospitals, schools, and shopping areas within a one-half mile radius of the site;

14. A copy of the deed of record establishing ownership of the facility property or, if the applicant is a person other than the landowner, a legal agreement (for example, a lease) to use the real property for the purpose of operating the facility;

15. A description of the design capacity of the facility, setting forth the number and types of all vehicles arriving at the facility and the number and types of all vehicles leaving the facility on a daily basis, stating the maximum number of vehicles per hour that will arrive at and leave the facility;

16. A copy of any New Jersey air pollution control permit application as applicable, in accordance with N.J.A.C. 7:27;

17. A narrative describing the facility operations from the receipt of containerized waste through the point of transfer to destination. The narrative must clearly demonstrate 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; and

18. Where applicable, additional information in support of a request for a variance from the 72-hour storage time limit, pursuant to (o) below.

(c) The application described in (b) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-4.7, to:

Bureau of Resource Recovery and Transfer Facilities  
 Division of Solid and Hazardous Waste  
 New Jersey Department of Environmental Protection  
 PO Box 414  
 Trenton, New Jersey 08625-0414

(d) Within 45 days after the Department receives the application submitted pursuant to (b) above, the Department will take one of the following actions:

1. Issue either a letter of authorization to operate the intermodal container facility that shall specify that any other waste management activities conducted at the site where the intermodal container facility is operated shall be conducted in compliance with all applicable permitting and operational requirements under this chapter, or a denial of the application, to the applicant, with a copy to the host municipality and district solid waste plan implementation agency. A letter of authorization shall not be transferred to any other person;

2. Notify the applicant in writing of missing information, with a copy of the notice sent to the host municipality and district solid waste plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (b) above, with a copy of the notice sent to the host municipality and district solid waste plan implementation agency.

(e) An applicant shall submit to the Department and to the host municipality and district solid waste plan implementation agency any additional or corrected information required pursuant to (d)2 or 3 above within 30 days of receipt of the notification from the Department of missing and/or insufficient information.

(f) The Department will deny without prejudice the application of any applicant that fails to submit the additional or corrected information required pursuant to (d)2 or 3 above or that otherwise fails to meet the application criteria of these regulations. The applicant may thereafter submit a new application for authorization to operate an intermodal container facility at the same location pursuant to the requirements of this section.

(g) All intermodal container facilities authorized by the Department pursuant to this section shall operate in accordance with the following standards:

1. Solid waste shall not remain at any intermodal container facility for more than 72 hours, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers and ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below may be stored for up to 10 days. An intermodal container facility at which solid waste is staged or stored for more than 72 hours, or at which ID 72 liquid solid waste is stored for more than 180 days, or at which ID 10 (non-putrescible), ID 13, ID 13C or ID 27 solid wastes for which a variance from the 72-hour storage time limit has been approved by the Department pursuant to (o) below is stored for more than 10 days shall be deemed to be an unpermitted solid waste facility, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

2. Solid waste received, stored or transferred at any intermodal container facility shall at all times be contained in sealed containers registered as solid waste containers with the Department in accordance with N.J.A.C. 7:26-3 that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that an ID 72 liquid solid waste container may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed.

3. Solid waste contained in solid waste containers at any intermodal container facility shall not emit odors that are detectable at the facility or in the vicinity of the facility.

4. Access to any intermodal container facility shall be restricted to facility operators, solid waste vehicle operators and authorized visitors only. Effective security procedures shall be implemented to control entry and exit at all times. 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.

5. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of any intermodal container 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 non-compliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and
- v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

6. Intermodal container facilities shall comply with the requirements of the Federal Occupational Safety and Health Administration and all other applicable standards of any agency for the operation of the facility and the maintenance of the health and safety of the employees or other persons.

7. Routine housekeeping and maintenance procedures shall be implemented at the facility to prevent the accumulation of dust, debris and to maintain general cleanliness throughout the facility and in the working environment.

8. Any release or discharge of any solid waste at the intermodal container facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP. The report shall specify the type of substance discharged in 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.

9. The intermodal container 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.

10. Unless exempted under N.J.A.C. 7:26-6.3, all containerized solid waste accepted at the intermodal container facility from New Jersey sources shall be disposed of in accordance with applicable District Solid Waste Management Plans. Any out-of-State solid waste accepted at an intermodal container facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or, where applicable, at permitted out-of-State disposal facilities authorized by the receiving state.

11. The intermodal container facility operator shall develop and maintain at the site an operations and maintenance (O&M) manual that shall describe all operating conditions and procedures of the facility. The O&M manual shall be made available to all facility personnel. The O&M manual shall be prepared in accordance with N.J.A.C. 7:26-2.10(b)9.

(h) An intermodal container facility operator shall maintain the following records at the facility site at all times and shall file reports as follows:

1. Daily records shall be maintained on forms supplied by the Department, in accordance with N.J.A.C. 7:26-2.13. These reports shall note the name of the registered transporter, transporter's DEP registration number, vehicle plate number, waste type, waste quantity, solid waste container DEP registration number, source, destination facility name and State registration number and quantity, by vehicle, of all solid waste received, transferred and shipped at the facility. The records shall specify the source and date of every shipment of waste received and the destination and date of every shipment of waste out of the facility. Quantities of solid waste shall be listed in tons and cubic yards. Quantities of liquid solid wastes shall be listed in gallons.

2. The daily records shall be compiled into standard quarterly reports, which shall be submitted to the following address within 20 days of the end of each calendar quarter:

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

3. Records that document all violations of any local, State or Federal requirements including violations of the intermodal container facility authorization issued by the Department.

4. Records that document all incidents in which a transporter not registered and licensed pursuant to

N.J.A.C. 7:26-3, 16 and 16A, or container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the type of solid waste in the container. These incidents shall also be reported within 24 hours to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP.

(i) Any person that conducts any of the activities of an intermodal container facility as defined in this section without authorization from the Department, or without a solid waste transfer station permit issued pursuant to N.J.A.C. 7:26-2A, shall be deemed to be operating an unpermitted solid waste facility and 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.

(j) Any authorized intermodal container facility that accepts unauthorized waste, or fails to operate in compliance with the requirements of this section, shall be deemed an unpermitted solid waste facility and 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.

(k) Any authorized intermodal container facility that accepts containerized solid waste from a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A shall be subject to penalties for violation New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter, registration, certification and licensing, and revocation of intermodal container facility authorization.

(l) The Department may revoke the authorization of an intermodal container facility if that facility fails to comply with the requirements for such facilities or any law in any way related to the operation of an intermodal container facility pursuant to New Jersey statute or the Department determines that any of the causes for modification in (m) below are sufficient cause for revocation in order to protect human health, safety and the environment.

(m) The Department may modify an intermodal container facility authorization for the following reasons. The operator shall pay a fee as specified in N.J.A.C. 7:26-4.7(e) on issuance of any intermodal facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized facility or operation that occurred after the Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

2. The Department receives information that was not available at the time it issued the letter of authorization that would have warranted the issuance of conditions in the authorization different from those imposed in the existing authorization. This information may include, but not be limited to, information concerning the effects of the facility on the properties surrounding the facility or the effects of the facility on the environment;

3. A change in Federal or State laws, regulations or policies governing solid waste management;

4. The regulatory compliance record of the intermodal container facility operator;

5. A relevant judicial decision after the authorization was issued; or

6. An operator of an intermodal container facility shall request a modification of its authorization whenever the operator proposes to change any aspect of the operation as originally described in the application. Such changes include, but are not limited to, changes in the amount and type of solid waste managed at the facility.

- i. A request for modification of the intermodal container facility authorization pursuant to this paragraph need not be submitted for a change in the origin or disposal location for containerized waste transported to or from the facility, provided:

- (1) The waste is transported only to disposal facilities that possess all required permits and authorizations pursuant to Federal and state law where such facility is located; and

- (2) The intermodal container facility notifies the Department and the district from which the waste originated of the change in origin or disposal location within 24 hours of any shipment of waste.

(n) The Department shall provide 30-day prior notice of a modification to an authorization to operate an intermodal container facility pursuant to (m) above and its reasons for determining a modification is warranted. This notice shall be sent to the operator of the facility and the host municipality and district solid waste plan implementation agency.

(o) The owner/operator of an intermodal container facility may obtain a variance from the 72-hour storage time limit in (g)1 above for ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes if the Department finds, as a result of a demonstration by the owner/operator, that no additional hazard or potential hazard will be posed to human health or the environment.

1. The owner/operator shall apply to the Department for the variance. The application shall address the relevant criteria contained in (o)2 below.

2. In deciding whether to grant a variance based on no additional hazard or potential hazard, the Department will consider:

- i. The types and amounts of solid wastes stored;
- ii. The method of storage;
- iii. Whether any contaminants are likely to be released into the environment; and
- iv. Other relevant factors.

3. If a variance is granted under this paragraph, the owner/operator will be allowed to store ID 10 (non-putrescible), ID 13, ID 13C and ID 27 solid wastes at the intermodal container facility for up to 10 days. The Department shall require the owner/operator to construct and operate the facility in the manner that was demonstrated to meet the requirements for the variance. If the facility is not constructed and operated in the manner that was demonstrated to meet the requirements for the variance, the facility shall be deemed an unpermitted solid waste facility and 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.

New Rule, R.1996 d.169, effective April 1, 1996.

See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

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

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

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

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

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

In (b)7, substituted "An administrative action issued by" for "A letter of consistency with the district solid waste management plan from"; substituted "administrative action" for "letter of plan consistency". 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 "13c" in the second sentence and added a N.J.A.C. reference in the fourth sentence; added (b)18; in (g), rewrote 1 and 8; in (h)1 and 4, rewrote the third sentence; in (i) and (j), substituted "unpermitted" for "illegal" and amended the N.J.S.A. reference; added (o).

#### 7:26-3.7 Smoking, smoldering or burning solid waste in solid waste vehicles

(a) No transporter shall provide service where waste materials to be collected and transported show evidence of smoking, smoldering or burning.

(b) All wastes in transit that must be dumped in an emergency due to smoking, smoldering or burning shall be the responsibility of the transporter. The operator of the solid waste vehicle shall immediately notify the police and fire departments having jurisdiction. The transporter shall be responsible for cleanup of all materials dumped in an emergency.

(c) In the event of an incident involving smoking, smoldering or burning solid waste in any solid waste vehicle, the registrant shall notify the Department at 1-877-WARNDEP within 24 hours of the incident.

Amended by R.1989 d.216, effective April 17, 1989.

See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

References to "collector-haulers" changed to "transporter", "solid waste vehicle" added in title line.

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

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

Added (c).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

In (c), updated the Department's 24-hour emergency response hotline.

#### 7:26-3.8 Applicability

See N.J.A.C. 7:26G to find additional hazardous waste rules.

R.1982 d.433, effective December 6, 1982.

See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

Amended by R.1985 d.558, effective November 4, 1985.

See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Deleted text "The regulations in ... with hazardous waste." and added "additional".

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

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

### SUBCHAPTER 3A. REGULATED MEDICAL WASTE

#### 7:26-3A.1 Purpose, scope and applicability

(a) The purpose of this subchapter is to establish a program for regulated medical waste pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

(b) The rules in this subchapter apply to regulated medical waste as defined at N.J.A.C. 7:26-3A.6. that is generated, stored, transported, collected, transferred, treated, destroyed, disposed of or otherwise managed in New Jersey.

(c) Generators, transporters, collection facilities and owners or operators of intermediate handling facilities (for example, treatment and destruction facilities, incineration facilities, and disposal facilities) that generate, store, transport, collect, transfer, treat, destroy, dispose of or otherwise manage regulated medical waste in New Jersey shall comply with this subchapter.

(d) In addition to the requirements of this subchapter, all applicable requirements of the Department of Health shall be met.

(e) In addition to the requirements of this subchapter, generators, transporters, collection facilities and owners and operators of intermediate handling facilities and destination facilities shall comply with all applicable Federal, State, county and local statutes, rules and ordinances.

(f) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

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

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

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

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

Inserted references to collected medical waste and collection facilities throughout; deleted former (f); and recodified (g) as (f).

**7:26-3A.2 Construction**

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

**7:26-3A.3 Severability**

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

**7:26-3A.4 Record retention**

(a) The length of time that parties shall keep records required under this subchapter is automatically extended in the case where EPA, the Departments or another State agency initiates an enforcement action, for which those records are relevant, until the conclusion of the enforcement action.

(b) All records, reports, logs and tracking forms required to be made and/or kept in accordance with this subchapter shall be made available for inspection by the Department.

**7:26-3A.5 Definitions**

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. In addition, the following terms, when used in this subchapter, shall have the following meanings:

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“Alternative or innovative technology” means any technology, including proprietary or patented methods, that permanently alters the composition, volume, weight, or other relevant waste or material characteristics of regulated medical waste, through chemical, biological, or physical means so as to have a beneficial and long-term effect on the environment by reducing the quantity (volume or weight), infectiousness, toxicity, or constituent mobility of waste or materials generated, recovered, recycled, treated, transported, disposed of or otherwise managed. The term also includes products or production processes that promote or enhance material recovery, recycling or marketing of secondary materials, or that reduce or eliminate waste or emissions at the source of generation.

“Biologicals” means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

“Blood products” means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

“Body art” means the practice of physical body adornment in permitted establishments by operators utilizing, but not limited to, the following techniques: body piercing, tattooing, and permanent cosmetics.

“Body art establishment” means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.

“Body fluids” means liquid emanating or derived from humans and limited to blood; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

“Central collection point” means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (for example, incineration).

“Collection facility” means a facility where individual shipments of packaged, tracked regulated medical waste are assembled and/or consolidated, or transferred between vehicles, but are not opened or unpackaged prior to transport off-site for disposal.

“Commercial facility” means a facility or on-site generator, accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal, for a fee in excess of the costs actually incurred by the facility or on-site generator for managing the regulated medical waste.

“Consolidated tracking form” means the tracking form on which a transporter consolidates or transfers other tracking forms representing shipments of regulated medical waste.

“Container” means any portable device in which a regulated medical waste is stored, transported, disposed of or otherwise handled. The term “container” does not include items listed in the table at N.J.A.C. 7:26-3A.6(a).

“Decontamination” means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

“Departments” means the New Jersey Department of Environmental Protection and the New Jersey Department of Health.

“Destination facility” means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form. The term “destination facility” also means any generator or facility that treats and destroys its own regulated medical waste.

“Destroyed regulated medical waste” means regulated medical waste that is no longer generally recognizable as regulated medical waste because all components of the waste have been ruined, torn apart, or mutilated to produce unrecognizable and unusable pieces smaller than three-quarters of an inch, except that all sharps must be smaller than one-half inch. It does not mean compaction or encapsulation except through: