(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used or reused to monitor material produced in the future for use or reuse;

(5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and

(6) A determination of the waste classification of the material and the rationale used for that classification;

v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;

vi. A description of any treatment undertaken prior to the use of the material;

vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts; and

viii. The schedule for initiation and completion of the beneficial use project.

6. The Department may require additional information in order to ensure that the proposed beneficial use project will meet the requirements of (g)1 and 2 above.

7. The Department shall issue a certificate of authority to operate for a beneficial use project or deny the application for a certificate of authority to operate for a beneficial use project, in writing to the applicant, within 90 days of receipt of a complete application.

8. The owner and/or operator of a beneficial use project shall submit, on an annual basis, a report to the Department detailing the amount of material used, the date(s) of such use, the location(s) of the use, and any other information as required by the Department in the certificate of authority to operate.

9. The Department shall order an immediate termination of all operations at a beneficial use project if it determines that termination is necessary to protect human health and the environment. The owner and/or operator of the beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

Amended by R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).
Amended by R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).
"Variance" not readopted.
R.1984 d.174, effective April 25, 1984.
See: 16 N.J.R. 1100(a).
Filed as an emergency rule to expire June 24, 1984. Also proposed concurrently.
R.1984 d.399, effective August 17, 1984.
See: 16 N.J.R. 1100(a), 16 N.J.R. 1627(a), 16 N.J.R. 2367(a).
Readopted without change, Emergency R.1984 d.174.
Amended by R.1985 d.666, effective January 6, 1986.
See: 17 N.J.R. 1040(a), 18 N.J.R. 99(a).
(e) added.
Emergency Amendment and Concurrent Proposal, R.1987 d.231, effective April 30, 1987 (expires June 29, 1987).
See: 19 N.J.R. 886(a).
Subsection (f) added.
Readoption of Concurrent Proposal, R.1987 d.311, effective June 29, 1987.
See: 19 N.J.R. 1452(a).
Correction: "May" substituted for "shall" in (a) and (d)1; added text to (d) "This subsection sets forth the".
See: 20 N.J.R. 2817(a).
Emergency Amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(a).
Added (g).
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 a change in (g)4iv: added "emergency".
Administrative change in (b)1.
See: 23 N.J.R. 3325(b).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
In (c)2, added reference to class of facilities; in (d)1, deleted one year limitation period reference relating to certificates; in (d)1i, substituted "Department" for "Commissioner"; deleted (e) and (g); recodified former (f) as (e); substantially amended (e); added new (f) and (g).

Case Notes

Sludge Management Plan exempted sludge-only thermal reduction facilities from permitting requirement of the Solid Waste Management Act. Terminal Const. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J.Super. 537, 582 A.2d 1288 (A.D.1990), certification denied 126 N.J. 323, 598 A.2d 883.

7:26–1.8 Exemption from registration—land application and sewage sludge operations

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E–4 and N.J.A.C. 7:26.

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludge) and storage facilities for such non-hazardous solid waste which receive:

i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (NJPDES) permit issued pursuant to N.J.A.C. 7:14A; and

ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDES permit.

(b) All sewage sludge management equipment and operations for which permits are obtained pursuant to N.J.A.C. 7:14A and/or 7:27, except operations involving the transportation of sewage sludge or the commingling of sewage sludge with municipal solid waste, are exempt from the registration requirements of N.J.S.A. 13:1E–4 and N.J.A.C. 7:26.

(c) Transporters of marketable residual product are exempt from the registration requirements of N.J.S.A. 13:1E–4 and N.J.A.C. 7:26.

New Rule, R.1986 d.162, effective May 5, 1986.
See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).
Old rule recodified to 7:26–1.9.
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. reference; and added (b) and (c).

Case Notes

There is implied duty on part of Department of Environmental Protection, when deciding whether facility using sludge-derived products is exempt from permitting requirements, to give notice to affected municipalities and to consider their public health and safety concerns and zoning and land-use regulations, but there is no requirement of plenary or general public hearing. Holgate Property Associates v. Township of Howell, 145 N.J. 590, 679 A.2d 613 (1996).

7:26–1.9 Public access to information and requirements for Department determination of confidentiality

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.

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".

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.

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 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 composting facilities (leaves only)".

7:26–1.12 (Reserved)

Emergency New Rule, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).
See: 20 N.J.R. 2817(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 a change in (e)1: added "or approvals".
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 "Exemption from SWF permitting leaf composting facility (leaf mulching only operations)".

vii. With the approval of the Department, the owner and/or operator of the landfill may establish a secured drop-off and/or transfer area for the acceptance of asbestos and asbestos containing waste materials (ACWM) separate and apart from the disposal areas described in (*l*)2i and ii above. The owner and/or operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or asbestos-containing waste materials into the container used for drop-off and/or transfer.

3. Either there shall be no visible air emissions during or after acceptance and disposal to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of (*l*)3i or ii below shall be met.

i. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill shall ensure that the asbestos or asbestos-containing waste material that has been deposited at the site shall:

(1) Be covered with at least six inches of compacted non-asbestos-containing material; or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Department. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

ii. Rather than meet the no visible emission requirement of this paragraph, the owner and/or operator of the sanitary landfill may use an alternative emissions control method that has received prior written approval by the Department.

4. The requirements in this subsection do not apply to asbestos and asbestos containing waste materials generated in a renovation or demolition project wherein the total project involves less than 260 feet of asbestos-coated pipe or less than 160 square feet of asbestos-coated surface, such as ducts, boilers, tanks, structural members and the like.

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
CFR cites updated.
Administrative Correction, effective February 5, 1990: Deleted incorrectly-cited text.
See: 22 N.J.R. 382(b).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Substantially amended section.

Case Notes

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. VA Associates v. Department of Environmental Protection and Energy, 95 N.J.A.R.2d (EPE) 120.

7:26–2A.9 Closure and post-closure care of sanitary landfills

(a) This section shall govern the closure and post-closure care of all sanitary landfills. This section includes requirements for the preparation of a Closure and Post-Closure Plan, as defined in (d)1 below, for all new sanitary landfills and every sanitary landfill operating on or after January 1, 1982. It also establishes requirements concerning establishment and use of both the BPU and the DEP escrow accounts required pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E–100 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., for every sanitary landfill operating on or after January 1, 1982.

(b) The following words and terms, when used in this section shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the Department rules, N.J.A.C. 7:26–1.4:

"Accredited financial institution" means any commercial bank, savings bank or savings and loan association with its principal office located in the State of New Jersey, and insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

"Closure" means the construction and implementation of all environmental safeguards required by law or by the sanitary landfill's approved Closure and Post-Closure Plan and the facility's approved engineering design subsequent to the termination of operations at any portion of that facility. Closure may include but is not limited to all activities and costs associated with the design, purchase, construction and maintenance of all items in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfills subsequent to the termination of operations at any portion thereof, including but not necessarily limited to, the costs of placement of acceptable cover, the installation of methane gas monitoring, venting, or evacuation systems, the installation and monitoring of wells or leachate collection and control systems at the site or in the vicinity of any sanitary landfill.

"Closure period" means, unless otherwise specified, the period beginning after the landfill or a portion thereof has ceased to accept waste or the period as determined by the Department.

"Escrow account" means an interest-bearing account with an accredited financial institution as escrow agent, wherein funds shall be deposited by the owner or operator of every

sanitary landfill pursuant to N.J.S.A. 13:1E–100 et seq., and this section. This account shall be based upon the standard escrow agreement provided by the Department for execution by and between the escrow agent and the owner or operator of the sanitary landfill. There shall be only one escrow account for each sanitary landfill, unless otherwise authorized by the Department.

"Liquidity" means that availability of funds for drawdowns consistent with a landfill's approved closure plan, or, if there is no approved closure plan, consistent with the Department's closure strategy for the landfill facility.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land where on a sanitary landfill facility is or has been located, and any person, partnership or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill.

"Post-closure care" means those activities necessary to maintain and monitor a sanitary landfill in accordance with an approved engineering design and applicable laws and regulations after the landfill has been properly closed.

(c) General closure and post-closure care requirements are as follows:

1. Every owner or operator of a sanitary landfill shall be jointly and severally liable for the proper operation and closure of the sanitary landfill, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operations and closure.

2. The owner or operator of a sanitary landfill shall notify the Department in writing of his intention to suspend or terminate operations at that landfill. The Department shall receive notice at least 10 days prior to the date of suspension of operations, which notice shall include the duration of the suspension, and shall receive notice at least 180 days prior to the date of termination of operations.

3. No person shall contract to sell any land which has been utilized as a sanitary landfill facility at any time unless the contract of sale for the land describes such use and the period of time that the land was so utilized, as required in (c)4 below. Upon written request, any prospective purchaser of such land may obtain from the Department a history of the compliance by the landfill with all applicable statutes, rules and regulations administered by the Department.

4. Upon closure of the sanitary landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate county recording office. The description shall include the general types, locations, and depths of wastes on the site, the depth and type of cover material, the dates the landfills were in use and all such other information as may be of interest to potential landowners, and shall remain in the record in perpetuity.

5. The post-closure care period shall continue for 30 years after the date of completing closure of the sanitary landfill or as the following conditions apply:

i. The Department may reduce the post-closure care period to less than 30 years when it has been adequately demonstrated that the reduced period is sufficient to protect human health and the environment;

ii. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period upon a finding that such extended period is necessary to protect human health and/or the environment; and

iii. Any aggrieved person may petition the Department for an extension or reduction of the post-closure care period, based on good cause.

6. If the Department intends to reduce or extend the post-closure care period to less than or more than 30 years, public notice of that intention shall be provided.

(d) General requirements for a Closure and Post-Closure Plan are as follows:

1. No person shall construct or operate a sanitary landfill without an approval from the Department of a Closure and Post-Closure Plan. Such Plan shall consist of both a Closure and Post-Closure Care Plan and a Closure and Post-Closure Financial Plan in accordance with the provisions of (e) and (f) below, except as otherwise authorized by the Department.

2. The submission for approval by the Department of the Closure and Post-Closure Plan shall be made upon application for new sanitary landfill permit.

3. Existing sanitary landfills in operation after January 1, 1982 shall submit the Closure and Post-Closure Plan for approval by the Department in accordance with the following schedule:

i. Those sanitary landfills which ceased accepting waste during calendar year 1982 or which shall cease accepting waste during calendar year 1983 shall submit a Plan no later than three months from the effective date of this section;

ii. Those sanitary landfills not included in (d)3i above and which accept in excess of 100,000 cubic yards of waste per year, as delivered, shall submit a Plan no later than six months from the effective date of this section; and

iii. All remaining sanitary landfills not provided for in (d)3i and ii above shall submit a Plan no later than 12 months from the effective date of this section.

4. No owner or operator shall submit a Closure and Post-Closure Care Plan for approval which includes any unauthorized expansion of the proposed or actual sanitary landfill operation.

5. Any owner or operator who fails to submit the Closure and Post-Closure Plan, as required by this subsection, shall be subject to denial, revocation or suspension of the registration of the sanitary landfill and other regulatory or legal actions which the Department is allowed to institute by law.

6. The owner or operator may apply for Departmental approval to amend the Closure and Post-Closure Plan at any time during the sanitary landfill's operation, closure or post-closure care period.

7. The Department may require the amendment of an engineering design and a Closure and Post-Closure Plan at any time it is deemed necessary during the sanitary landfill's operation, closure or post-closure care period.

8. Any sanitary landfill that is closed under the provisions of this section shall be maintained in accordance with the approved Closure and Post-Closure Plan and must remain in compliance with all regulations of this subchapter.

9. A copy of the approved Closure and Post-Closure Plan shall be kept on file at the sanitary landfill during the course of the sanitary landfill's operation and, after closure, shall be filed with the municipal clerk.

10. Within six months of closure of the sanitary landfill, the owner and/or operator of the sanitary landfill shall obtain and submit to the Department an "as-built" certification by a New Jersey licensed professional engineer, certifying that each provision of the Closure and Post-Closure Plan has been implemented as designed and approved, subject to the following requirements:

i. A New Jersey licensed professional engineer shall certify, in writing, to the Department that he or she has supervised the inspection of the construction of each major phase of the sanitary landfill's closure. He or she shall further certify that each phase has been prepared and constructed in accordance with the closure design approved by the Department. The certification shall include as-built drawings.

ii. A New Jersey licensed professional engineer shall certify that the materials utilized in the closure of the sanitary landfill are in conformance with and meet the specifications of the approved closure design.

iii. There shall be no deviation from the approved closure design without the prior written approval of the design engineer and, at a minimum, prior verbal approval by the Department.

iv. All certifications shall bear the raised seal of the New Jersey licensed professional engineer, his or her signature, and the date of certification.

v. The certification shall include the following statement: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals under my supervision, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for civil administrative penalty pursuant to N.J.A.C. 7:26–5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(e) The Closure and Post-Closure Care Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit to the Department a Closure and Post-Closure Care Plan prepared, signed and sealed by a New Jersey licensed professional engineer to provide for closure and post-closure care of the sanitary landfill;

2. The Closure and Post-Closure Care Plan shall provide for the design and implementation of the following:

i. A Soil Erosion and Sediment Control Plan certified by the local soil conservation district in accordance with the Soil Erosion and Sediment Control Act of 1975, as amended (N.J.S.A. 4:24–39 et seq.);

ii. Final cover;

iii. Final cover vegetation;

iv. A program for the maintenance of final cover and final cover vegetation;

v. A program for the maintenance of side slopes;

vi. Institution of run-on and run-off control programs;

vii. A program for the maintenance of run-on and run-off control programs;

viii. Groundwater monitoring wells;

ix. A program for the maintenance of groundwater monitoring wells;

x. A program for the monitoring of groundwater in accordance with NJPDES rules, N.J.A.C. 7:14A, and any permit for that sanitary landfill issued pursuant thereto;

xi. A methane gas venting or evacuation system;

xii. A program for the maintenance of methane gas venting or evacuation system;

xiii. A leachate collection and/or control system;

xiv. A program for the operation and maintenance of a leachate collection and/or control system;

xv. A program for the installation of a facility access control system;

xvi. A program for the maintenance of the facility access control system;

xvii. Measures to conform the site to the surrounding area;

xviii. A program for the maintenance of measures to conform the site to the surrounding areas;

3. The Department may require additional closure and post-closure care measures or waive any of the above requirements, should specific health and/or environmental circumstances justify such action; and

4. The Closure and Post-Closure Care Plan shall include a schedule for the implementation of all the provisions of this section.

(f) The Closure and Post-Closure Care Financial Plan shall meet the following specific requirements:

1. The owner or operator of every sanitary landfill shall submit a Closure and Post-Closure Financial Plan to the Department which shall set forth the costs and expenses, and establish the means for meeting those costs and expenses, associated with full implementation of the approved Closure and Post-Closure Plan.

2. The Closure and Post-Closure Financial Plan shall include an estimate which details the cost of each provision of the Closure and Post-Closure Care Plan and a projection of funds that will be available from the escrow account. Where the total expenses projected for the Closure and Post-Closure Care Plan exceed the amount of funds projected in the escrow account, the owner or operator must identify specific alternative funds which are to be dedicated to ensure payment of all costs identified in the Closure and Post-Closure Plan. The Plan shall provide:

i. That no withdrawals may be made from the escrow account until such time as the funds projected in the escrow account are sufficient to pay for all closure costs identified in the Closure and Post-Closure Financial Plan; or

ii. That withdrawals may be made from the escrow account concurrent with the use of the alternative funds described above, provided that such alternative funds are established in a manner similar to the escrow account and the expenditures from such alternative funds are made subject to the approval of the Department.

3. The Closure and Post-Closure Financial Plan shall include an estimate which details the general and administrative costs, including but not limited to, fees for engineering, legal, accounting, auditing and banking services, property and sales taxes, environmental impairment and general liability insurance, Department permits and review fees, and utility costs.

i. The costs in (f)3 above for non-construction and/or maintenance services are allowable for reimbursement from the escrow accounts provided that:

(1) The costs are necessary and attendant to further the closure and post-closure requirements of the sanitary landfill;

(2) The Closure and Post-Closure Plan includes provisions for these costs and they are fully funded; and

(3) The projected costs are the same as or comparable to the costs for similar services.

ii. If there are insufficient funds available to complete the sanitary landfill's closure and post-closure requirements, as set forth in the Closure and Post-Closure Plan, reimbursement of costs for environmentally necessary construction and/or maintenance activities will take priority over general and administrative costs, unless otherwise approved in advance by the Department.

iii. The Department shall not disburse money from the escrow account for the expenses incurred by the owner and/or operator of the sanitary landfill in an effort to challenge, contest or defy the Department's rules and regulations, and any permits or orders issued pursuant thereto.

4. The Closure and Post-Closure Financial Plan shall include the intervals at which each closure provision is to be implemented as well as a projection of when each escrow account withdrawal is anticipated.

5. The Financial Plan shall take into consideration the effect of inflation on closure and post-closure expenses. Unless otherwise approved, the owner or operator shall calculate the latest closure cost estimate using a calculated adjusted inflation factor derived from the annual Implicit Price Deflator for the Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business." The adjusted inflation factor shall be the 10–year moving average inflation rate (average annual percentage) for the most current 10–year period of Gross National Product Implicit Price Deflators, for example, 1974 compared with 1984 or 116.50 compared with 223.43 which yields a 6.73 percent average annual percentage change. The adjusted annual closure cost estimate shall equal the latest closure cost estimate times the adjusted average inflation factor.

6. The owner or operator shall review the cost estimate every two years and, if necessary, revise the Closure and Post-Closure Financial Plan. The updated Financial Plan shall be submitted on the second anniversary of the date of the Financial Plan was last approved.

(g) Pursuant to N.J.S.A. 13:1E–100, et seq. the requirements for the escrow account are as follows:

1. The owner and/or operator of every sanitary landfill shall deposit in an escrow account as defined in (a) above, on or before the 20th of each month, an amount equal to $1.00 per ton of solids and $0.004 per gallon of liquids of all solid waste accepted for disposal during the preceding month. It is noted that disposal of liquid waste in sanitary landfills is limited to only those few facilities permitted to accept such waste;

2. In the event that a measure other than the "ton" or "gallon" is used by the owner and/or operator of a sanitary landfill, the amount to be deposited shall be calculated by using equivalents established by the Division of Taxation;

3. Upon approval of the Department, those sanitary landfills which by the nature of their operation do not have the ability to measure the waste received in the manner provided for in this section may compute quantities of waste received by using an alternative, acceptable method;

4. The escrow account shall be for the closure and post-closure care of a particular sanitary landfill and all funds therein shall be used exclusively for the closure and post-closure care of that landfill in accordance with the approved Closure and Post-Closure Plan.

5. The owner or operator of a sanitary landfill who shall fail to deposit funds into an escrow account, as provided herein, or uses those funds for any purpose other than closure and post-closure care costs, as approved by the Department, shall be guilty of a crime of the third degree.

6. Where an owner or operator has ownership or control over more than one sanitary landfill, a separate escrow account must be established for each facility;

7. The escrow account shall be kept separate and apart from all other accounts maintained by the owner or operator. The fact that the owner or operator has previously established an escrow account pursuant to another law, rule or regulation, does not relieve them of their responsibility to establish an escrow account under these rules;

8. Every escrow account established pursuant to this section shall be based upon and governed by the standard escrow agreement provided for such purpose by the Department. Any revision to an escrow agreement shall first be approved by the Department and filed by the Department with the accredited financial institution as escrow agent. A copy of the standard escrow agreement provided by the Department may be obtained from the Office of Special Funds Administration, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, N.J. 08625.

9. The escrow agreement and any other document(s) evidencing the existence of the escrow account must contain a reference to the purpose of the account that will put the personal creditors of the owner or operator on notice as to the nature of the account.

10. The escrow account shall be established and maintained so as to maximize yield, minimize risk and maintain liquidity, and shall be subject to the approval of the Department.

11. All funds deposited in the escrow account must be readily available in the event that circumstances necessitate the closure or post-closure care of the sanitary landfill prior to the date originally contemplated.

12. All interest or other income that results from investment of funds in the escrow account shall be deposited into the escrow account and subjected to the same restrictions as the principal;

13. Withdrawals from the escrow account shall be authorized by the Department upon submission and approval of a written request therefor which identifies the specific provision(s) of the Closure and Post-Closure Plan for which funding is sought. Authorization for such withdrawal will be granted only in accordance with the approved Closure and Post-Closure Care Plan, and after compliance with the following conditions:

i. The owner or operator has complied with all requests to amend the Closure and Post-Closure Plan;

ii. Except as otherwise authorized by the Department, the owner and/or operator submits to the Department, pursuant to (e)5 above, "as built" certifications by a New Jersey licensed professional engineer that the applicable provision(s) of the Closure and Post-Closure Plan for which the preceding withdrawal was obtained has been, or is being, implemented as set forth in the Closure and Post-Closure Plan; and

iii. Where the Department has approved a Closure and Post-Closure Financial Plan providing for the use of alternative funds pursuant to (f)2ii above, withdrawals from the escrow account will only be authorized to the extent that the cost exceeds the balance of the alternative fund. Where the alternative fund is an account, the Department shall allow the maintenance of the minimum balance necessary to keep such account open.

14. No withdrawals from an escrow account may be made without written approval of the Department, except as otherwise authorized by the Department;

15. The Department may withhold disbursements for closure or post-closure work performed if the amount to be expended in any calendar year exceeds or is projected to exceed the amount budgeted for any line item provision in the closure plan, by more than five percent of the line item, as updated biennially in accordance with (f)5 above. The owner and/or operator shall seek and obtain Department approval prior to expending funds which exceed or are projected to exceed budgeted costs, by letter, including revised financial schedules, identifying

the overage or projected overage, the reasons for the overage and the source of the funds to cover the overage. The Department shall approve or deny disbursements based on the rationale provided by the owner and/or operator and the longterm impact on closure or post-closure.

16. The Department, although acknowledging the need for fund expenditure totalling a specific sum may, at its discretion, grant approval for the withdrawal of only a portion thereof, conditioning subsequent approvals upon the owner or operator's verification that the sum(s) authorized have been used solely for closure or post-closure care costs;

17. The Department may, at its discretion, determine that there is a need for closure or post-closure care expenditures and may require the owner or operator to withdraw such funds from the escrow account at any time to meet such expenses;

18. Funds remaining in the escrow account after complete and proper closure and post-closure care operations shall be paid into the Sanitary Landfill Facility Contingency Fund. A sanitary landfill will be deemed to be properly and completely closed where the Department determines that no further post-closure care maintenance or monitoring is necessary at the facility. When the Department makes such a determination, it shall notify the escrow agent and the owner or operator of the determination and shall supply the owner or operator with written approval for the transfer of the excess funds. Upon receipt of this written approval, all funds in said account shall be transferred to the Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E–100 et seq. and the account will be closed;

19. The escrow account shall not constitute an asset of the owner or operator and shall be established in such a manner as to ensure that the funds in the account will not be available to any creditor other than the Department in the event of bankruptcy or reorganization of the owner or operator.

20. The owner and/or operator of every sanitary landfill must arrange, with the financial institution wherein the funds are to be deposited, for a monthly statement of the escrow account to be sent to Landfill Closure Escrow Account, Bureau of Solid Waste Regulation, Department of Environmental Protection, CN 414, Trenton, New Jersey 08625; provided, however, the Department may at its discretion upon written petition from the owner and/or operator relieve the owner and/or operator from the requirement for the monthly statement of the escrow account and substitute a quarterly (that is, once every three months) statement requirement therefor if it determines that monthly reporting on an account of less than $25,000 would impose an unnecessary burden on the financial institution;

21. The owner or operator of every sanitary landfill shall file with the Department, in duplicate, an annual audit of the escrow account established for the closure of the sanitary landfill. The annual audit of the escrow account shall be conducted by a New Jersey certified public accountant and shall be filed with the Department no later than October 31 of each year, including each of the post-closure care period years. For the purposes of the escrow account only, the fiscal year shall begin on October 1 and terminate on September 30 of the following year, except that fiscal year 1982 shall begin on January 1, 1982 and terminate on September 30, 1982;

22. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Office of Special Funds Administration, Landfill Closure Escrow Account, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, New Jersey 08625, a statement showing the exact amounts of all solid waste accepted for disposal during the preceding month, the total amounts of solid waste received calendar year-to-date, the funds deposited in and withdrawn from the escrow account for the particular sanitary landfill during the current month, interest accrued, escrow account balance, and the total calendar year-to-date funds deposited in and withdrawn from the escrow account. These statements shall be filed on forms provided by the Department; provided, however, the Department may at its discretion upon written petition from the owner or operator relieve the owner or operator from the requirement for monthly reports and substitute a quarterly (that is, once every three months) reporting requirement therefor, if it determines that the monthly reporting on an account of less than $25,000 would impose an unnecessary burden on the owner or operator.

Correction: (g)20 and 21 were inadvertently omitted from code.
See: 19 N.J.R. 1341(b).
Notice of action on petition for rulemaking; disbursement of escrow funds.
See: 28 N.J.R. 1076(c).
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Substantially amended section.

Case Notes

Regulations adopted applied only to operating and not to closed landfills. Vi-Concrete Co. v. State, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

State Department of Environmental Protection may install and maintain monitoring wells on closed landfill. Vi-Concrete Co. v. State, Dept. of Environmental Protection, 115 N.J. 1, 556 A.2d 761 (1989).

Amounts taxpayers spent to cleanup pollutant spill were not considered in determining "true value" for tax assessment. Inmar Associates, Inc. v. Borough of Carlstadt, 214 N.J.Super. 256, 518 A.2d 110 (App. Div.1986) affirmed in part, reversed in part 112 N.J. 593, 549 A.2d 38 (1988).

Operator of sanitary landfill was liable for certain taxes and escrow accounts on solid waste disposed in its facilities and accepted pursuant to joint order issued by Department of Environmental Protection and Board of Public Utilities that required landfill to remain open beyond its intended closing date. Edgeboro Disposal, Inc. v. Division of Taxation, Dept. of Treasury, 15 N.J.Tax 139 (A.D.1993).

Rules and regulations for sound operation and closure of landfills were violated and warranted imposition of civil administrative penalty. VA Associates v. Department of Environmental Protection and Energy, 95 N.J.A.R.2d (EPE) 120.

APPENDIX A

GUIDELINES FOR A GROUND WATER MODELING EFFORT

1. The model of use must have a history that documents its ability to represent real world situations. In addition it should also be demonstrated that the model of choice has the ability for proposed management of ground water resources.

2. The set of equations, that govern ground water flow and pollutant, and the derivations of these equations must be presented.

3. The numerical methods used to solve the set of ground water flow and pollutant transport equations must be presented.

4. The Boundary Conditions and Initial Conditions used in solving the ground water flow and pollutant transport equation sets should be presented both mathematically and in narrative form.

5. A technical narrative describing the model to be used and a justification for the application of this to the specific problem should be presented. This should include whether the model is finite element, finite difference or some other scheme. The objective of the model should be stated up front.

6. The unknown quantities that the model is solving for should be described and explained. In addition those parameters derived from the initial unknown quantities should also be described and explained.

7. Appropriate analytical methods should be used to verify the validity of the numerical technique used to solve the flow equations in the model.

8. A sensitivity study of the error tolerance used and modal spacing needs to be conducted. The results should be presented and explained.

9. Perform mass balance calculations on selected elements in the model to verify physical validity.

10. The model must be calibrated against field data. It is important to note that if there is insufficient field data available for calibration then the model will extrapolate values of unknown accuracies. This is particularly important since there is no one unique solution to a model and the most accurate solution (that closest to the real world situation) is a result of sufficient field data collection and model calibration with that data. It often takes more than 25 runs with the same data to properly calibrate a model to the real world situation. The level of field data considered to be sufficient should be agreed to before the modeling effort is initiated.

11. Limits and confidence on model predictions should be established and stated in the beginning of the modeling report.

12. All inputs and outputs to the computer program should be listed and explained in technical narrative.

SUBCHAPTER 2B. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR THERMAL DESTRUCTION FACILITIES, TRANSFER STATIONS, MATERIALS RECOVERY FACILITIES, CO–COMPOSTING AND SOLID WASTE COMPOSTING FACILITIES

7:26–2B.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the design, construction, operation and maintenance of the following types of disposal facilities:

1. Thermal destruction facilities which dispose of non-hazardous solid waste;

2. Thermal destruction facilities which dispose of non-hazardous solid waste and which incorporate energy recovery;

3. Solid waste transfer station facilities; and

4. Solid waste materials recovery facilities; and

5. Solid waste co-composting and composting facilities.

(b) The requirements of this subchapter are in addition to the general requirements found at N.J.A.C. 7:26–2.10 and 2.11.

(c) This subchapter shall apply to the following facilities:

1. All proposed solid waste facilities of the types identified in (a) above shall be designed, constructed, operated and maintained in accordance with the requirements of this subchapter; and

2. Any existing solid waste facilities of the types identified in (a) above determined to be operating in an environmentally unsound manner.

(d) This subchapter does not apply to hazardous waste facilities. See N.J.A.C. 7:26G.

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

7:26–2B.2 Construction

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

7:26–2B.3 Purpose

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

1. To establish additional engineering design submission requirements for thermal destruction facilities, transfer stations, materials recovery facilities, and solid waste composting and co-composting facilities to ensure that adverse impacts are minimized and pollution of the environment is prevented; and

2. To establish operational requirements to ensure the proper operation of thermal destruction facilities to minimize adverse impacts and prevent pollution of the environment.

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)1, inserted text "solid waste" preceding "composting".

7:26–2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26–2.10:

1. The rated capacity of the facility, in both tons per day and tons per hour, and the maximum gross heat release rating for each incinerator/boiler;

2. The protocol to be established that will allow for the measurement of the rate of waste charging to the individual combustion unit(s), averaged for each over a discrete 24–hour period. In the case where the thermal destruction facility recovers energy for use by means of steam production, the boiler system and its auxiliaries shall be used as a calorimeter, and the following shall be factored into the method of determination:

i. Direct measurement of salient variables shall be employed where such means are available;

ii. Adjustments shall be made to account for variability in unit thermal efficiency as equipment is cycled for maintenance and as a result of equipment aging; and

iii. Seasonal variability of the higher heating value (HHV) of the waste subject to combustion shall be derived analytically using standard laboratory methods. At a minimum, the method chosen shall provide for quarterly reassessments of the HHV of the waste subject to combustion. Waste samples collected for HHV determination shall be representative of the nature and type of waste to be received at the facility for processing. The protocol shall also provide for a means of cross referencing the accuracy of the method of determination chosen by employing the use of the facility waste delivery weight scale records in a comparative analysis;

3. Projected average and peak daily deliveries of waste to the facility and charging rates to the combustion unit(s) (given in tons and estimated volumes). Quantify seasonal trends when anticipated;

4. The designation of normal loading, unloading and storage areas to be employed in the facility's handling of incoming wastes to be processed and residual materials generated by facility operations, including capacities in cubic yards and tons. Describe the time such areas can be practically used, based on average and peak facility operating conditions. At no time shall waste be delivered to the facility at a rate exceeding the facility's capacity to sort and process such waste. Under no circumstances shall waste be deposited beyond the confines of the refuse pit, except for the purpose of conducting incoming waste load inspections and holding unauthorized materials, or storing unprocessible materials such as oversize bulky waste;

5. The designation of emergency unloading, loading, staging, storage or other disposal capabilities to be used for the removal of previously stored waste should the facility be unable to process waste by means of combustion. Identify the plans for waste transfer from the facility, and identify the alternative disposal facility to be used under such conditions;

6. The expected daily quantity of bottom ash, fly ash (air pollution control train residues), post combustion recovered metals and other waste residue generated by facility operations, referenced by weight and projected volumes;

7. The proposed ultimate disposal location for all facility generated waste residues including, but not limited to, ash residues and by-pass materials, by-products resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

8. A descriptive statement of any materials recycling or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the outgoing residue;

9. A descriptive statement and detailed specification of all process equipment, pollution control systems, instrumentation and monitoring mechanisms. Schematic diagrams shall be provided, where applicable. Equipment specifications, including information pertaining to the make, model and manufacturer, if available, and to the related processing equipment capacity, reliability and efficiency shall be submitted. Information on individual unit synchronization with upstream and downstream equipment shall also be submitted;

"DOH" or "NJDOH" means the New Jersey Department of Health.

"EPA" means the United States Environmental Protection Agency.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of regulated medical waste. A facility may consist of several treatment, destruction, storage, or disposal operational units.

"Generator" means any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26–3A.6, or whose act first causes a regulated medical waste to become subject to regulation. Noncontiguous properties owned or operated by the same person are separate sites and in the case where more than one person (for example, doctors with separate medical practices) are located in the same building and office, each individual business entity is a separate generator for the purposes of this subchapter. However, households utilizing home self-care are not generators.

"Home self-care" means the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services. Excluded from this definition are direct patient care services provided in the home by home health agencies as described in N.J.A.C. 8:42–1, durable medical equipment companies, home infusion companies, hospice care companies, and any other services or companies as determined by the State Department of Health that generate regulated medical waste in the home setting.

"Infectious agent" means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

"Intermediate handler" is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term does not include transporters.

"Laboratory" means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

"Medical waste" means any solid waste that is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, in the production or testing of biologicals, or in home self-care. The term does not include any hazardous waste identified or listed under 40 C.F.R. Part 261.

"New Jersey medical waste tracking form" means the New Jersey medical waste tracking form available from the Department that must accompany all applicable shipments of regulated medical wastes.

"Noncommercial facility" means a facility or on-site generator accepting regulated medical waste from other generators for on-site collection, storage, shipment or disposal operating in accordance with section 501(c)(3) of the Federal Internal Revenue Service tax code, receiving only a cost-based rate or fee not in excess of the fixed and variable capital and operating costs actually incurred.

"Original generation point" means the location where regulated medical waste is generated. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

"Oversized regulated medical waste" means medical waste that is too large to be placed in a plastic bag or standard container.

"Package" means packaging and/or a container and its contents.

"Packaging" means the assembly of one or more containers and any other components necessary to ensure compliance with N.J.A.C. 7:26–3A.11.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

"Regulated medical waste" or "RMW" means those medical wastes that have been listed or meet the waste characteristic classification criteria described at N.J.A.C. 7:26–3A.6 and that must be managed in accordance with the requirements of this subchapter.

"Storage" means the temporary holding of regulated medical wastes before treatment, disposal, or transport to another location.

"Tracking form" means a medical waste tracking form, including the New Jersey medical waste tracking form, the Federal tracking form, and the tracking form from other states that must accompany all applicable shipments of regulated medical waste.

"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a "transporter". A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered

a collection facility if it meets the requirements of N.J.A.C. 7:26–3A.39; if such location does not meet the requirements of N.J.A.C. 7:26–3A.39, the facility must hold a permit as a transfer station pursuant to N.J.A.C. 7:26–2.4.

"Transportation" means the shipment or conveyance of regulated medical waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water, and, for the purposes of N.J.A.C. 7:26–3A.9(h), means a supplier of radioactive medical supplies.

"Treated regulated medical waste" means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

"Treatment", "treated", or "treats" when used in any section of this subchapter except for N.J.A.C. 7:26–3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. If antimicrobial chemicals are used in regulated medical waste treatment the chemicals must be registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) program specifically for this purpose. When used in the context of N.J.A.C. 7:26–3A.6(a), treatment means either the provision of medical services or the preparation of human or animal remains for internment or cremation.

"Treatment facility" means a facility which treats regulated medical waste.

"Universal biohazard symbol" means the symbol design that conforms to the design shown in 29 C.F.R. § 1910.145(f)(8)(ii).

"Untreated regulated medical waste" that has not been treated to substantially reduce or eliminate its potential for causing disease.

"Waste category" means either untreated regulated medical waste or treated regulated medical waste.

"Waste Class" means the description of Waste Class found at N.J.A.C. 7:26–3A.6(a).

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Section formerly divided into two subsections which were combined into single definition list; added "collection facilities", "commercial facility", "consolidated tracking form", "container", "DOH", "noncommercial facility", "package", and "packing"; deleted "federal demonstration project"; and amended "generator", "transfer facility", "transporter", and "treatment".

7:26–3A.6 Definition of regulated medical waste

(a) A regulated medical waste is any solid waste, generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under (b) below, and that is listed or meets any waste characteristic classification criteria described in the following table:

TABLE
REGULATED MEDICAL WASTE

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
3. Human Blood and Blood Products	Liquid waste human blood; blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags, soft plastic pipettes and plastic blood vials are also included in this category.
4. Sharps	Sharps that were used in animal or human patient care or treatment or in medical research, or industrial laboratories, including sharp, or potentially sharp if broken, items such as, but not limited to, hypodermic needles, all syringes to which a needle can be attached (with or without the attached needle) and their components, including those from manufacturing research, manufacturing and marketing, pasteur pipettes, scalpel blades, blood vials, carpules, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

Waste Class	Description
7. Unused Sharps	The following unused, discarded sharps, that were intended to be used: hypodermic needles, suture needles, syringes, and scalpel blades.

(b) The following are excluded from the definition of regulated medical waste:

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;

2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26–3A.5(b);

3. Ash from incineration of regulated medical waste once the incineration process has been completed;

4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed;

5. Human corpses, remains and anatomical parts that are intended for interment or cremation;

6. Biological materials, including, but not limited to, those blood or blood products and pathological waste listed at (a)2 and 3 above, intended for use, reuse or recycling as raw materials or products, except materials classified as Class–6, Isolation Waste pursuant to (a)6 above if the following conditions are met:

i. The materials are used, reused or recycled in accordance with all applicable Federal, State and local statutes and regulations for handling and managing the materials;

ii. The materials and their by-products are managed as regulated medical waste when discarded after use, reuse or recycling if not treated and destroyed as those terms are defined at N.J.A.C. 7:26–3A.5; and

iii. The generator of the materials reports the type, destination, and method of use, reuse or recycling of the materials to the Bureau of Medical Waste and Technical Assistance in the Department at the address given at N.J.A.C. 7:26–3A.8(e)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency; and

7. Nonbiological materials intended for use, reuse or recycling, except materials classified as Class–6, Isolation Waste pursuant to (a)6 above, if the following conditions are met:

i. The generator treats all used materials, or any unused materials, that have come into contact with a regulated body fluid or blood, or pathological waste as defined at (a) above at the site of generation before shipping the materials off site;

ii. The generator destroys all sharps at the site of generation before shipping the destroyed sharps off site for recycling of the devices' component raw materials; and

iii. The generator of the materials reports the type, quantity, destination, and method of use, reuse or recycling of the materials to the Bureau of Medical Waste and Technical Assistance in the Department at the address given at N.J.A.C. 7:26–3A.8(e)4 and the district solid waste coordinator of the district where the material originated at least once per year, or on request of the Department or any other agency.

(c) The following are exempted from the definition of regulated medical waste:

1. Etiologic agents being transported interstate pursuant to the requirements of the U.S. Department of Transportation, U.S. Department of Health and Human Services, and all other applicable shipping requirements are exempt from the requirements of this subchapter; and

2. Samples of regulated medical waste transported off-site by the EPA, the Department, the Department of Health or the New Jersey Department of Law and Public Safety for enforcement purposes are exempt from the requirements of this subchapter during the enforcement proceeding.

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 text "or meets ... criteria described" and amended descriptions in medical waste table; and added (b)6 and (b)7.

7:26–3A.7 Mixtures

(a) Except as provided in (b) below, mixtures of solid waste and regulated medical waste listed in N.J.A.C. 7:26–3A.6(a) are a regulated medical waste.

(b) Mixtures of hazardous waste identified or listed in 40 C.F.R. Part 261 and regulated medical waste listed in N.J.A.C. 7:26–3A.6(a) are subject to the requirements in this subchapter, unless the mixture is subject to the hazardous waste manifest requirements in 40 C.F.R. Part 262 or 40 C.F.R. Part 266. In addition, the applicable hazardous waste requirements of N.J.A.C. 7:26–1 also apply.

7:26–3A.8 Registration and fees for regulated medical waste generators, and owners and operators of transporters, collection facilities, transfer stations, intermediate handlers and destination facilities.

(a) Any person that generates regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (e) below, and shall pay annual fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into five categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Base Fee Category
1	less than 50	$ 85.00
2	50–200	$ 255.00
3	200–300	$ 425.00
4	300–1000	$ 850.00
5	greater than 1,000	$2,950.00

i. For annual regulated medical waste generator fee purposes only, quantities of body fluids and blood and blood products that are discharged or removed from a human and are disposed of into a sanitary sewer system, which shall be in compliance with all applicable Federal, State, and county and local statutes, rules and ordinances, shall not be included in a generator's annual calculation of regulated medical waste generated, but at a minimum, if the generator generates no other regulated medical waste, the generator shall be included in generator category 1.

(b) Any person that engages or continues to engage in the transportation of regulated medical waste in this State, except generators that transport their own waste and that meet the requirements of N.J.A.C. 7:26–3A.17(a), shall register with the Department as a regulated medical waste transporter in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste commercial transporters shall pay an annual fee of $3,950.00.

2. All noncommercial generator transporters of RMW shall pay an annual fee of $650.00.

(c) Commercial intermediate handlers, intermediate handlers treating, destroying or disposing of their RMW on-site and owners and operators of destination facilities shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (e) below, and pay annual fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall register with the Department and pay an annual registration, compliance inspection, technical advisement and report analysis fee in accordance with the following:

i. A destination facility that treats and destroys less than 1,000 pounds of regulated medical waste produced shall pay a registration fee of $50.00 per year.

ii. A destination facility that treats and destroys from 1,000 pounds up to and including 10,000 pounds of, regulated medical waste produced per year shall pay a registration fee of $500.00 per year.

iii. A destination facility that treats and destroys more than 10,000 pounds of regulated medical waste per year shall pay a registration fee of $2,000 per year.

2. A commercial intermediate handler shall pay an annual registration fee of $1,500.

3. A noncommercial intermediate handler, or an intermediate handler treating only its own waste that treats any quantity of liquid regulated medical waste that is disposed of into the sanitary sewer system, and treats less than 10,000 pounds of nonliquid regulated medical waste per year and sends that waste off-site as RMW for treatment, destruction or disposal is exempt from the intermediate handler annual registration fee but shall register as an intermediate handler pursuant to this section.

4. Persons that only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) Each person authorized by the Department pursuant to N.J.A.C. 7:26–3A.39 to operate a collection facility for medical wastes shall pay fees in accordance with the following:

1. Commercial collection facilities shall pay an application fee of $500.00. The application fee shall be submitted with the application required pursuant to N.J.A.C. 7:26–3A.39(c).

2. Commercial collection facilities shall pay an annual fee of $350.00 for the costs of registration, quarterly compliance monitoring, and review and maintenance of the quarterly reports submitted pursuant to N.J.A.C. 7:26–3A.39(j) and the annual reports submitted pursuant to N.J.A.C. 7:26–3A.44.

3. Collection facilities shall pay the costs of any other inspections or activities conducted by the Department for the authorization, inspection, and revocation of authorization to operate a collection facility. Such costs shall be in accordance with the fee schedule set forth at (f) below and N.J.A.C. 7:26–4.3.

4. Commercial collection facilities shall pay a fee of $250.00 for an authorization modification issued pursuant to N.J.A.C. 7:26–3A.39(*o*), which shall be paid on issuance of the authorization modification.

5. Noncommercial collection facilities collecting up to 2,000 pounds of medical wastes per year shall pay an annual fee of $10.00 for the cost of registration.

6. Noncommercial collection facilities collecting more than 2000 pounds of medical wastes per year shall pay an annual fee of $150.00 for the cost of registration.

(e) Each person operating a transfer station and authorized by the Department to manage medical waste pursuant to N.J.A.C. 7:26–3A.39 shall pay an annual fee of $2,000 in addition to all other solid waste transfer station facility-related fees pursuant to N.J.A.C. 7:26–4, for the costs of registration under this subchapter, review and maintenance of reports, and compliance monitoring.

(f) Each generator, transporter, intermediate handler, collection facility, transfer station and destination facility shall register with the Department on regulated medical waste registration forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment or refund for prior registration year payment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;

2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and fees shall be payable by May 30 of each calendar year;

3. The registration year for intermediate handlers, collection facilities and destination facilities shall extend from January 1 through December 30 of each calendar year and fees shall be payable by January 29 of each calendar year; and

4. The Department's address for regulated medical waste is:

Bureau of Technical Assistance
Division of Solid and Hazardous Waste
New Jersey Department of Environmental Protection
CN 414
Trenton, New Jersey 08625–0414

(g) The Department shall charge fees for regulated medical waste program services as follows:

1. Any person not registered for regulated medical waste activities in accordance with the requirements of this subchapter that requests a written interpretation of any solid waste regulation from the Department shall submit a fee of $150.00 with the request for interpretation.

2. Any person that requests the authorization of an alternative or innovative technology pursuant to N.J.A.C. 7:26–3A.47(a) shall submit a fee of $1,500 with the request for the authorization; and

3. Any person that requests the authorization of an alternative or innovative technology demonstration program pursuant to N.J.A.C. 7:26–3A.47(c) shall submit a fee of $2,000 with the request for authorization of the demonstration program.

(h) The omission of any type of Department service from the fee schedule set forth in (f) above shall not prevent the Department from assessing a reasonable fee for such service. Any person that requests a Department service not listed at (f) above shall request an initial review of the service for purposes of determining the fee for performing such service.

1. If the Department determines that the service is of a type listed in (g)1 through 3 above, the fee shall be the applicable fee specified at (g) above.

2. If the Department determines that the service is not one of those listed in (g)1 through 3 above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of $74.73.

(i) The Department shall charge an excess fee at the hourly rate of $55.88 for excess person-hours required to perform any service for which a fee is established pursuant to (a) through (g) above. The Department shall notify the applicant or permittee of such excess fee in writing before performing the additional work.

(j) The determination of a fee pursuant to (h) above shall expire 90 days after the date such determination was issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the request for services for which the fee determination has expired, such applicant or permittee shall request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (h) above, as applicable.

(k) The Department may refrain from commencing work on the service for which a fee is established pursuant to (g) through (i) above until the Department receives full payment of such fee. If the Department has commenced work on the service the Department may suspend such work until it receives full payment of such fee.

(*l*) Any generator that fails to register pursuant to this section and that submits the annual fee pursuant to (a) above later than August 20 of each calendar year shall pay a late fee in the amount of 25 percent of the annual fee up to 15 days, 50 percent up to six months, and 100 percent up to one year, in addition to the annual fee. Neither the assessment of a late fee nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

(m) Any generator that submits the annual generator report required by N.J.A.C. 7:26–3A.21(d)30 or more days after such report is due shall pay a late fee of $50.00. Neither the assessment nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

Amended by R.1990 d.358, effective July 16, 1990.
See: 22 N.J.R. 1478(a), 22 N.J.R. 2145(a).
Generator categories expanded to 5; fees restructured.
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)1, amended base fees; in (a)1i, inserted "annual" preceding "regulated medical waste" and inserted reference to discharged fluids and blood; substantially amended (b) and (c), inserted new (d); recodified former (d) as (f); in (f), inserted references to collection facilities and transfer stations, and to refunds for prior years; in (f)2, deleted reference to 1989 registration year; rewrote (e) and (g) through (h); and added (i) through (m).

7:26–3A.9 Education

The supervisory personnel of all transporters, except generators that transport their own regulated medical waste and satisfy the requirements of N.J.A.C. 7:26–3A.17(a), collection facilities, intermediate handlers and destination facilities shall attend education and training sessions provided by the Department, and shall also be required to disseminate the information obtained at the sessions to all employees.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Inserted reference to collection facilities.

7:26–3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26–3A.6(a)) including sharps containing residual fluid;

2. Fluids (quantities greater than 20 cubic centimeters); and

3. Other regulated medical waste.

(c) Other regulated medical waste described at (b)3 above may be included in sharps containers. Such containers shall be managed at all times as sharps containers in accordance with N.J.A.C. 7:26–3A.11. The waste in these containers shall not be allowed to putrefy or be malodorous in any detectable manner.

(d) If other nonregulated medical waste and/or solid waste is placed in the same container(s) as regulated medical waste, or if regulated medical waste cannot be initially segregated from other solid waste, then the generator shall package, label, and mark the container(s) and manage its entire contents according to the requirements for regulated medical waste in this subchapter.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Inserted new (c) and recodified former (c) as (d) and substantially amended.

7:26–3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;

2. Leak-resistant;

3. Impervious to moisture;

4. Sufficiently strong to prevent tearing or bursting under normal conditions of use and handling; and

5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging or containers that are puncture-resistant; and

2. Package fluids (quantities greater than 20 cubic centimeters) in packaging or containers that are break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

(e) Solid waste that is not being managed as regulated medical waste shall not be packaged for shipment inside a regulated medical waste container or in containers attached to, or part of, a regulated medical waste container.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
In (c)1 and (c)2, inserted reference to containers; and added (e).

Case Notes

Fact issue: cleaning employee's fear that she would develop acquired immune deficiency syndrome (AIDS) after she was pricked by lancet while cleaning medical office precluded summary judgment in action for negligent infliction of emotional distress; it could not be said as matter of law that person who receives puncture wound from medical waste reacts unreasonably in suffering serious psychic injury from fear of AIDS. Williamson v. Waldman, 291 N.J.Super. 600, 677 A.2d 1179 (A.D.1996).

7:26–3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;

2. Maintain the regulated medical waste in a nonputrescent state, using refrigeration when necessary;

As amended, R.1980 d.250, effective June 9, 1980.
See: 12 N.J.R. 70(b), 12 N.J.R. 391(d).
As amended, R.1981 d.49, effective February 6, 1981.
See: 13 N.J.R. 129(a).
(a): Amend "April 1 through March 31" to "May 1 through April 30".
(b): Amend "April 1 through March 31" to "May 1 through April 30".
As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
(b): "October 1 through September 30" was "May 1 through April 30."
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.
Repealed by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
The rule at this cite was entitled "Fee schedule for transporting".
New Rule, R.1996 d.169, effective April 1, 1996.
See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).

7:26–4.8 Confidentiality claims

Any person submitting information to the Department and asserting a confidentiality claim in accordance with the procedures set forth in N.J.A.C. 7:26–17 or 7:26–16.4 shall pay a fee of $350.

As amended, R.1984, d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
In (a) and (b), "Board of Public Utilities" was "Board of Public Utility Commissioners", reference to form N.J.B.S.W.M. 41 deleted.
Repealed by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
The rule formerly at this cite was entitled "Exemption from fee payment".
New Rule, R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

SUBCHAPTER 4A. (RESERVED)

SUBCHAPTER 5. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26–5.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Solid Waste Management Act, N.J.S.A. 13:1E–1 et seq., including the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, amending and supplementing the Solid Waste Management Act (hereinafter "the Act"), including violation of any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act. This subchapter shall also govern the procedures for requesting adjudicatory 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, any administration order, permit, license or other operating authority issued, any district solid waste management plan approved, 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 rules promulgated, any administrative, order, permit, license or other operating authority issued, any district solid waste management plan approved, 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.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Deleted references to Part A permit application.

Case Notes

In criminal prosecution the State was required to offer evidence establishing that land was acquired after the enactment of statute and that the United States had not filed an acceptance of exclusive jurisdiction. State v. Ingram, 226 N.J.Super. 680, 545 A.2d 268 (L.1988).

7:26–5.2 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, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved 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, district solid waste management plan 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 adjudicatory hearing, pursuant to the procedures in N.J.A.C. 7:26–5.3.

(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 requested pursuant to N.J.A.C. 7:26–5.3, the notice of civil administrative penalty 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 requested pursuant to N.J.A.C. 7:26–5.3 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. 7:26–5.3 and an adjudicatory 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.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2144(a), 28 N.J.R. 5248(a).
In (a) and (a)1, deleted references to Part A permit application.

Case Notes

Violator's ability to pay penalty under Solid Waste Management Act. DEPE v. Summco, Inc., 94 N.J.A.R.2d (EPE) 252.

Company penalized for odors from plant. Department of Environmental Protection and Energy v. Westchester Lace, Inc., 94 N.J.A.R.2d (EPE) 243.

7:26–5.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory 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: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625–0402:

1. The name, address, telephone number 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 and/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.

5. Release of the loan funds may only be made to an escrow agent selected by the borrower and approved by the Department. In the case of comparatively small loans or where the local government unit, after using its best efforts, cannot retain an escrow agent which will act in accordance with this subchapter, the Department shall act as the escrow agent. The borrower shall enter into an agreement with the escrow agent specifying the escrow agent's duties and responsibilities, which agreement shall be consistent with the terms and conditions of the loan agreement and the requirements of this subchapter. Any escrow agent shall only disburse loan funds in accordance with the executed loan agreement, the escrow agreement and this subchapter;

6. Where there is an escrow agent other than the State, the escrow agent shall submit a monthly financial activity report to the Department which includes a disbursement report for the previous month, an expenditure report which identifies the specific uses of loan funds and, where applicable, a certified statement by the licensed project engineer for the local unit or the vendor in accordance with N.J.A.C. 7:26–14A.24, confirming the percentage of project construction which is completed, and an estimate of expenditures for the upcoming fiscal year.

7. Interest earned on the funds in the borrower's loan escrow account shall accrue to the benefit of the project and may only be used for project costs as defined in N.J.A.C. 7:26–14A.4; and

8. The borrower shall be responsible for paying for the services of the escrow agent.

(c) The borrower shall promptly notify the Department loan project officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the use of loan funds which shall require such notification shall include but are not limited to:

1. Rebudgeting;

2. Changes in approved technical plans or specifications for the project;

3. Changes which may affect the approved scope or objective of a project;

4. Significant changed conditions at the project site;

5. Deceleration in time for the performance of the project, construction schedule, or any major phase thereof; and

6. Changes which may increase or substantially decrease the total cost of the project. There shall be no loan modification increasing the funding amount;

7. Unforeseen expenses; and

8. Less than anticipated revenues;

(d) If, on the basis of information submitted pursuant to (c) above, the Department determines that a formal loan amendment is necessary, it shall notify the borrower and a written amendment to the loan agreement will be prepared in accordance with this subchapter.

(e) Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, constitute changes to the loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such change unilaterally. Such changes shall be in writing and shall be effected by a letter (certified mail, return receipt requested) to the borrower.

Recodified from 7:26–14A.11 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Inserted (a)1; (a)2i and (a)2ii amended to include operation of specified facilities, added (a)2iv; in (a)3, deleted reference to proposed loans; in (a)4, amended loan maturity date and repayment start date, and added partial payment provision; in (b)6, amended reporting period and added expenditure report requirement; and added (c)7 and (c)8. Former section was recodified to N.J.A.C. 7:26–14A.7.

7:26–14A.9 Payment procedures

(a) The escrow agent shall only make payments in accordance with the escrow agreement which shall be consistent with the loan agreement and this subchapter. A retainage may be held in accordance with the loan agreement.

(b) The escrow agent shall certify that all disbursements from the account will be made strictly in accordance with the escrow agreement, the loan agreement and this subchapter. The form of certification shall be subject to Department approval and shall be attached to the loan agreement and be made a part thereof.

(c) The borrower shall submit a requisition to the escrow agent which sets forth the amount of the requested disbursement and the purposes for which the money to be used. The borrower shall certify that the money requisitioned will be used in accordance with the loan agreement and this subchapter. The requisition and certification shall be signed by the individual vested with such authority by the local government unit. The form of requisition and certification shall be subject to Department approval and shall be attached to the loan agreement and made a part thereof.

(d) (Reserved)

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within one year of the loan closing date of the loan agreement, all

monies in the escrow account, including all investment earnings from the monies in the escrow account, shall revert to the Fund and be credited as repayment of the principal of the loan by the borrower.

(i) In those cases in which the Department is to act as escrow agent pursuant to N.J.A.C. 7:26–14A.11(b)5, all requirements of this section shall apply to the Department except that (c) above, shall not apply. Whenever in this section reference is made to an escrow agent as a separate entity from the Department, the same term shall mean and refer to the Department which shall then carry out all functions of the escrow agent.

Recodified from 7:26–14A.12 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Inserted (b) and (c); and in (h), amended nonrequisition period from one year. Section was "Criteria for project loan priority".

7:26–14A.10 Loan agreement

(a) The Department may impose conditions precedent as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the 1980 and 1985 Acts which conditions shall include, but not be limited to, the following:

1. The borrower shall submit proof that it and its contractors and subcontractors will comply with any hazard insurance requirements of the loan agreement and that it will be able to certify that the insurance is in full force and effect and that the premiums have been paid;

2. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles;

3. The borrower shall certify that it and its contractors and their subcontractors will comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2–1 through 10:2–4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5–1 et seq.), and the rules promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27–1 et seq.; the New Jersey Prevailing Wage Act, N.J.S.A. 34:11–56.25 through 34:11–56.46; the Civil Rights provisions of N.J.S.A. 10:1–1 et seq. and the rules promulgated pursuant thereto; and

4. The borrower shall certify in accordance with N.J.A.C. 7:26–14A.24 that it is in compliance with all other requirements and conditions of the loan agreement and this subchapter.

(b) The loan agreement shall set forth the terms and conditions of the loan, which may include, but not be limited to, as applicable: a description of the project, including an estimate of all expenses to be funded, escrow agent requirements, and the approved commencement and completion dates for the project or major phases thereof.

1. The borrower shall execute four copies of the loan agreement and return them within 45 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The loan agreement shall be signed by a person authorized by resolution or ordinance to obligate the borrower to the terms and conditions of the loan agreement and this subchapter. A copy of the resolution or ordinance shall be forwarded immediately to the Department.

2. The loan agreement shall set forth the terms and conditions of the loan, which may include but not be limited to, as applicable: approved project scope including construction plans and specifications where applicable, budget, approved project costs, escrow agent requirements, construction and disbursement schedules, and the approved commencement and completion dates for the project or major phases thereof.

3. After the Department has completed its internal processing of the loan agreement, it shall transmit a copy of the executed loan agreement to the borrower.

Recodified from 7:26–14A.14 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Rewrote introductory paragraph of (b). Section was "Determination by the Department".

7:26–14A.11 Effect of loan agreement

(a) At the time of execution of the loan agreement by the Department and the borrower, the loan shall become effective and shall constitute an obligation of the Resource Recovery and Solid Waste Disposal Facility Fund in the amount and for the purposes stated in the loan agreement.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan or future loans. The Department shall not in any way be held responsible for the borrower's use of loan funds.

(c) A determination of eligibility by the Department shall not be used as a defense, by the borrower, to any action by any agency for the borrower's failure to obtain all requisite permits, licenses and operating certificates.

Recodified from 7:26–14A.15 and amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
Substituted reference to future loans and to use of loan funds for reference to cost overruns. Former section recodified to N.J.A.C. 7:26–14A.8.

7:26–14A.12 Repaid funds

All loan repayments and any interest on loans shall be deposited into the Fund. Upon a specific legislative appropriation, the Department may lend all moneys deposited in the Fund to local government units to finance other approved resource recovery or environmentally sound sanitary landfill facility or other approved solid waste facility projects in accordance with P.L. 1985, c.330.