

7:26-16.21 Convicted persons generally

(a) No licensee shall knowingly hire as an officer, director or key employee, nor knowingly allow to acquire an equity interest or debt liability interest, any person who has been convicted of any of the crimes enumerated in N.J.A.C. 7:26-16.8(b), without first obtaining the approval of the Department. This provision does not apply to persons who were employed or held their interests before June 11, 1984.

(b) In connection with any such request, the licensee shall file with the Department and the Attorney General an amended disclosure statement, containing the necessary information about the person, including any evidence the licensee wishes to bring forth demonstrating the person's rehabilitation.

(c) The Department shall request a recommendation from the Attorney General as to whether the person has affirmatively demonstrated rehabilitation, and shall consider the factors set forth at N.J.A.C. 7:26-16.8(c) in determining whether to grant permission to the licensee to employ the individual or allow him to acquire an interest in the licensee.

(d) Any licensee that violates (a) above may be subject to having its license revoked, notwithstanding the rehabilitation of the individual in question.

7:26-16.22 Persons convicted of environmental crimes

(a) In the case of persons convicted of violating the criminal provisions of any federal or state environmental protection laws, rules or regulations, including N.J.S.A. 2C:17-2, N.J.S.A. 13:1E-9(e) or (f) and N.J.S.A. 58:10A-10(f), or persons convicted of any crime which involved the violation of such laws, rules or regulations, the Department will not consider such person rehabilitated unless he has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities for which he was convicted, and to make restitution to any victims injured thereby; and

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that such a conviction warrants a finding of "unreliability" under N.J.A.C. 7:26-16.8(a) if the date the conviction became final (including the exhaustion of any appeals) is less than ten years preceding the filing of the application or notice of intent to revoke a license.

(c) Notwithstanding (a) and (b) above, the Department may still deny or revoke a license because of a conviction more than ten years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

7:26-16.23 "Independent contractors" or "consultants"

(a) Applicants and licensees may not avoid the effects of N.J.A.C. 7:26-16.8 and 16.9 by designating an employee as an "independent contractor" or "consultant". The Department will look beyond the form of such contracts, and if it

finds that a person designated as an "independent contractor", "consultant" or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant or licensee, the Department will regard that person as an employee.

(b) The Department may deny or revoke a license if it finds that an applicant or licensee has entered into an "independent contractor" arrangement, "consultant" agreement or similar arrangement for the purpose of avoiding disqualification under N.J.A.C. 7:26-16.8 or 16.9.

7:26-16.24 "Brokerage" by convicted persons

(a) It is the policy of the Department to discourage persons who would be disqualified from obtaining licenses under N.J.A.C. 7:26-16.8(b) from acting as brokers in the solid waste or hazardous waste industries.

(b) The Department may examine an applicant or licensee's relationship with a broker in order to determine whether the broker is or has acted as an employee. In making this determination the Department may consider the following factors:

1. Whether the broker was formerly employed by the licensee or a business concern owned, controlled or under the same ownership as the licensee or applicant.
2. Whether the broker is under retainer to the applicant or licensee, or receives any compensation that is not dependent on producing sales.
3. Whether the commissions paid to the broker are disproportionate to those paid to other brokers similarly situated in the industry.
4. Whether the broker derives the bulk of his income from one licensee, or from licensees under common ownership.
5. Whether the broker performs functions customarily performed by employees, such as signing manifests, supervising the loading of trucks, instructing drivers on routes to follow, etc.
6. Whether the broker has an agreement (written or oral) with a licensee to "steer" business to the licensee rather than to competitors, such that the broker is not exercising independent judgment in his choice of licensed operators.

(c) If the Department finds that a broker who would be disqualified from obtaining a license is or has acted as an employee, it may result in the applicant or licensee being disqualified under N.J.A.C. 7:26-16.8 or 16.9.

(d) The Department may deny or revoke a license if it finds that an applicant or licensee has set up or maintained a relationship with a broker for the purpose of avoiding disqualification under N.J.A.C. 7:26-16.8 or 16.9.

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

7:26-16A.1 Scope and applicability; Conflicts

(a) This subchapter implements section 3.a. of L. 1983, c.392, N.J.S.A. 13:1E-128.a., which states that "Every licensee who is not otherwise required to file a disclosure statement within two years of the effective date of this act shall file a disclosure statement with the department and the Attorney General within that period."

(b) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing licensees.

(c) Except where the context would require otherwise, the provisions of N.J.A.C. 7:26-16 are applicable to this subchapter.

(d) In case of any conflict between a provision of this subchapter and any other provision of this chapter, the provision of this subchapter shall govern.

(e) The Commissioner or Director may relax the application of any part of this subchapter if necessary to prevent unreasonable delay in the processing of any application that was pending before the Department prior to July 2, 1984.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R.

Deleted text from (b) "so as to . . . two year period."

7:26-16A.2 Schedule for submitting disclosure statements

(a) All persons who had received a license from the Department prior to July 2, 1984 shall submit a disclosure statement to the Department and the Attorney General on or before May 1, 1987. Disclosure statements shall be submitted according to the procedures and requirements set forth in N.J.A.C. 7:26-16.3 and 16.4.

(b) A person shall be deemed to have "received a license" if he had received from the Department final approval to operate a solid or hazardous waste collector-hauler business or treatment, storage or disposal facility, or was actually operating pursuant to any authorization equivalent to an approved registration, such as a temporary operating authorization, judicial order or administrative consent order, or the authorization conferred by "existing facility" status pursuant to N.J.A.C. 7:26-12.3.

(c) The Department may require any applicant or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

(d) Any licensee may voluntarily submit a disclosure statement earlier than demanded.

(e) The applicant or licensee shall have 90 days from the time of receipt of the demand to file a disclosure statement with the Department and the Attorney General. Refusal to file the disclosure statement shall be deemed a refusal to comply under N.J.A.C. 13:1E-128.c. and N.J.S.A. 7:26-16.7.

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

Amended by R.1987 d.54, effective January 20, 1987.
See: 18 N.J.R. 2172(a), 19 N.J.R.
Substantially amended.

7:26-16A.3 Applications pending on July 2, 1984

(a) Persons with applications pending before the Department on the effective date of these rules (July 2, 1984) shall submit a disclosure statement to the Department and the Attorney General no later than September 30, 1984.

(b) It is the Department's intention that applicants whose applications were pending before the department prior to the proposal date of subchapter 16 (May 7, 1984) shall have the licensing process delayed as little as possible by reason of the new licensing requirements imposed by L. 1983, c.392. When it finds that it is in the public interest to do so, or to prevent unreasonable economic hardship, the Department may conditionally issue a license to an applicant whose application was pending on May 7, 1984 before it has received a full investigative report from the Attorney General, provided that:

1. The disclosure statement has been filed, and a preliminary review by the Department indicates no reason for disqualification;

2. The Attorney General has conducted a check of applicable criminal history information and reported to the Department that such check indicates no reason for disqualification; and

3. The applicant has signed a statement indicating its understanding that its license may be revoked if the full investigative report or subsequent investigation indicate reasons for disqualification.

(c) Applicants who filed their applications after May 7, 1984 may not be issued licenses until completion of the investigative report. However, the Department will attempt to expedite processing of such applications by requesting the Attorney General to accord highest priority to completing investigative reports on applicants whose applications are pending before the Department prior to July 2, 1984. Also, in appropriate cases, the Department will continue technical review of such applications concurrent with the disclosure statement review and investigative report.