

CHAPTER 26H

SOLID WASTE UTILITY REGULATIONS

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-1 et seq., 48:3-1 et seq., 48:13A-1 et seq. and 48:13A-7.1 et seq.

Source and Effective Date

R.2008 d.117, effective April 8, 2008.
See: 39 N.J.R. 4477(a), 40 N.J.R. 2243(a).

Chapter Expiration Date

Chapter 26H, Solid Waste Utility Regulations, expires on April 8, 2013.

Chapter Historical Note

Subchapter 1, General Requirements, was originally adopted as N.J.A.C. 14:3-10, Solid Waste Collection and Solid Waste Disposal, by R.1971 d.109, effective July 8, 1971. See: 2 N.J.R. 76(f), 3 N.J.R. 160(a).

Subchapter 5, Solid Waste Collection Regulatory Reform, was originally adopted as N.J.A.C. 14:3-11, Solid Waste Collection Regulatory Reform, by R.1993 d.83, effective February 16, 1993. See: 24 N.J.R. 1459(a), 25 N.J.R. 692(a).

Subchapter 1, General Requirements, and Subchapter 5, Solid Waste Collection Regulatory Reform, were recodified from N.J.A.C. 14:3-10 and 14:3-11, effective June 3, 1996, and Subchapter 2, Rules of Practice, Subchapter 3, Transactional Filings, Subchapter 4, Solid Waste Uniform Tariff, Subchapter 6, Uniform Bid Specifications for Municipal Solid Waste Collection Contracts, and Appendix A, Wording of the Uniform Bid Specifications, were adopted as new rules, effective June 3, 1996 by R.1996 d.253. See: 28 N.J.R. 78(a), 28 N.J.R. 247(a), 28 N.J.R. 1147(a), 28 N.J.R. 2908(a).

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

The Executive Order No. 66(1978) expiration date for Chapter 26H, Solid Waste Utility Regulations, was extended by gubernatorial directive from May 6, 2001 to June 3, 2002. See: 33 N.J.R. 1915(a).

Chapter 26H, Solid Waste Utility Regulations, was readopted as R.2002 d.356, effective October 11, 2002. As part of R.2002 d.356, Subchapter 7, Host Community Benefits, was adopted as new rules. See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Chapter 26H, Solid Waste Utility Regulations, was readopted as R.2008 d.117, effective April 8, 2008. As a part of R.2008 d.117, Subchapter 8, Privately-Owned Sanitary Landfills, was adopted as new rules, effective May 5, 2008. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

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SUBCHAPTER 1. GENERAL REQUIREMENTS

7:26H-1.1 Scope

Every utility engaged in solid waste collection and/or solid waste disposal shall be subject to the regulations as set forth herein, in addition to the Board's Rules of Practice and Administrative Orders heretofore promulgated as applicable to all utilities.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Board of Public Utilities has statutory authority to penalize solid waste licensees who commit statute, regulation or order violations; regulations promulgated under statutory authority. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

7:26H-1.2 Construction and severability

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

(b) If any subchapter, section, subsection, provision, clause or portion of this chapter or the application thereof to any person, is adjudged unconstitutional or invalid in any judicial or administrative proceeding, the remainder of this chapter shall not be affected thereby.

7:26H-1.3 Practice where these rules do not govern

The Commissioner may rescind, amend or expand these rules from time to time, and such rules shall be promulgated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In any matter concerning solid waste management that arises not governed by these rules, the Commissioner or Director shall exercise his or her discretion within the authority of N.J.S.A. 48:13-1 et seq. and 48:13A-7.1 et seq.

7:26H-1.4 Definitions

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

"Act" means the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq.

"Bulky waste" means any type 13 waste, as defined at N.J.A.C. 7:26-2.13(g), including large items of waste material, such as, appliances, furniture, tires, whole trees, branches, tree trunks and stumps generated by residential, commercial, institutional or industrial sources. Also included are waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, improvements and other structures. Specifically excluded for the purpose of Department regulation are