

CHAPTER 26H

SOLID WASTE UTILITY REGULATIONS

Authority

N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:1D-125 et seq., 13:1E-1 et seq., 13:1E-9, 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11 and 58:10A-1 et seq.

Source and Effective Date

R.2002 d.356, effective October 11, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26H, Solid Waste Utility Regulations, expires on April 8, 2008. See: 39 N.J.R. 4477(a).

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: 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 discarded automobiles, trucks and trailers and large vehicle parts.

"Commercial solid waste" means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in wholesale, retail or service establishments, including, but not limited to, restaurants, stores, markets, theaters, hotels and warehouses.

“Commissioner” means the Commissioner of the Department of Environmental Protection or any other person designated to act on the Commissioner’s behalf.

“Compacted waste” means solid waste that has been compressed by non-residential mechanical or hydraulic machinery.

“Compacted food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and consumption of meals at commercial restaurant establishments which has been compressed by non-residential mechanical or hydraulic machinery.

“Customer” means any person, partnership, firm, corporation, governmental subdivision or agency receiving service from any solid waste utility.

“Department” means the New Jersey Department of Environmental Protection.

“Director” means the Director of the Division of Solid and Hazardous Waste or any person designated to act on the Director’s behalf.

“Division” means the Division of Solid and Hazardous Waste in the Department.

“Disposal” means the storage, treatment, utilization, processing, transfer or final disposal of solid waste.

“Dry sewage sludge” means any type 12 waste, as defined at N.J.A.C. 7:26-2.13(g), which is a sludge from a sewage treatment plant which has been digested and dewatered and does not require liquid handling equipment.

“Effective competition” means the existence of circumstances which ensures customers of a competitive environment in which they are not subjected to artificially low collection rates which would endanger a competitive environment or are not subjected to exorbitant collection prices resulting from insufficient competitive pressure, collusion or tacit pricing agreements.

“Engaged in the business of solid waste” means obligating oneself, through a contract or some other means, to provide collection, transportation, treatment, storage or disposal of solid waste in the State of New Jersey, including employment of a licensed hauler, including a subsidiary, to do the actual collection, transportation, treatment, storage or disposal.

“Food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and consumption of meals at commercial restaurant establishments consisting of food scraps, soiled paper and other organic materials.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

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

“Industrial solid waste” means any type 27 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in manufacturing, industrial, and research and development processes and operations which are non-hazardous in accordance with the standards and procedures set forth in N.J.A.C. 7:26.

“Institutional solid waste” means any type 10 waste, as defined at, N.J.A.C. 7:26-2.13(g), generated in the operation of institutions, including, but not limited to, hospitals, colleges, schools, nursing homes, medical and dental professional buildings, research and development processes, and laboratories.

“Limited service” means service that is available only at certain specified hours of the day or season of the year.

“Liquid wastes” means any type 72, 73 or 74 waste, as defined at N.J.A.C. 7:26-2.13(g), including bulk liquids and semi-liquids, septic tank cleanout wastes and liquid sewage sludge, they include liquids or a mixture consisting of solid matter suspended in a liquid media which is contained within, or is discharged from, any one vessel, tank, other container which has the capacity of 20 gallons or more (not included is any type 12 waste); pumping from septic tanks and cesspools; and liquid residue from a sewage treatment plant consisting of sewage solids combined with water and dissolved materials.

“Loose food waste” means any type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the preparation and consumption of meals at commercial restaurant establishments which has not been compressed by non-residential or mechanical or hydraulic machinery.

“Loose waste” means solid waste that has not been compressed by non-residential mechanical or hydraulic machinery.

“Materials recovery” means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Material recovery facility” means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which solid waste is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

“Multiple dwelling” means any building of one or more stories which contains four or more dwelling units. The solid waste generated by residents of a multiple dwelling may be

considered waste type 10, commercial for economic regulation purposes.

“Peak rate” means the last, permanent Department approved rate for each type of ID waste accepted at a solid waste disposal utility prior to elimination of flow control except that the peak rate can be adjusted following elimination of flow control through petition and full justification to the Department. When a solid waste utility petitions the Department for a new rate different from the existing peak rate, then upon Departmental approval, the new rate becomes the peak rate.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons, whether incorporated or not, or any receiver or trustee.

“Petition” means an application made to the Department pursuant to N.J.A.C. 7:26H-2.

“Public Utility MRF” means a material recovery facility or transfer station that has received a certificate of public convenience and necessity to accept solid waste for disposal from solid waste collectors or generators.

“Recycling” means any process by which materials which would otherwise become solid waste are collected, separated, or processed and returned to the economic mainstream in the form of raw materials or product. Materials to be recycled include those materials as defined in N.J.S.A. 13:1E-99 and the individual District Solid Waste Management Plans.

“Reform Act” means the Solid Waste Collection and Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq.

“Residential service, curb collection” means service by the collector which requires collection by the collector at the curb of the residence.

“Residential service, walk-in” means service by the collector at a point other than the curb of the residence involved, provided such other collection point does not require the collector to drive the collection vehicle beyond the curb to the point of collection, or walk a distance greater than 50 feet from the curb-line.

“Residential service, special collection” means service that requires the collection of residential solid waste at irregular intervals.

“Residential solid waste” means type 10 waste, as defined at N.J.A.C. 7:26-2.13(g), generated in the day to day activities of a residence and includes animal and vegetable waste resulting from the handling, processing, preparing, cooking and consuming of food, and includes household liquids. Residential solid waste does not mean used motor oil, grass clippings and other specified nonacceptable waste as defined in the applicable District Solid Waste Management Plan or N.J.S.A. 13:1E-1 et seq.

“Resource recovery facility” means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for refuse, or a mechanized compost facility or any other solid waste facility constructed or operated for the collection, separation, recycling of metals, glass, paper and other materials for reuse or for energy production.

“Sanitary landfill” means a permitted solid waste facility, at which solid waste is deposited on or into the landfill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.

“Septic waste” means a mixture consisting of sewage solids combined with water and dissolved materials in varying amounts obtained from pumping septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

“Sewage sludge” means solid, semi-solid or liquid residue generated by the processes of a domestic treatment works as defined at N.J.A.C. 7:14A. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary, or advance wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

“Solid waste” means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such waste to swine on their own farms.

“Solid waste collection” means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

“Solid waste collection services” means the service provided by persons engaging in the business of solid waste collection.

“Solid waste collector” means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to N.J.S.A. 48:13A-6 and 48:13A-9.

“Solid waste disposal” means the storage, treatment, utilization, processing or final disposal of solid waste.

“Solid waste disposal services” means the services provided by persons engaging in the business of solid waste disposal.

“Solid waste facility” means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to this subchapter or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

“Tariff” means the Department form required by N.J.A.C. 7:26H4.

“Transfer station” means a solid waste facility at which solid waste is transferred from a solid waste collection vehicle to a licensed solid waste haulage vehicle for transportation to a solid waste facility.

“Vegetative waste” means any type 23 waste, as defined at N.J.A.C. 7:26-2.13(g), including waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper.

“Yard trimmings compost facility” means a recycling center which is designed and operated for the purpose of composting grass clippings, leaves and brush exclusively and shall also include leaf mulching operations.

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

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

Added “Peak rate”; and deleted “Mixed district load”. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In “Hazardous waste”, amended the N.J.A.C. reference; in “Multiple dwelling”, substituted “four” for “three”; added “Tariff”; deleted “Uniform tariff”.

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added definition “Grace period”.

7:26H-1.5 Offices and hours

(a) All inquiries and correspondence relative to this chapter should be directed to the following address:

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

(b) All offices of the Department are open from 8:00 A.M. to 5:00 P.M., legal holidays, Saturdays and Sundays excluded.

7:26H-1.6 Certificate of public convenience and necessity

(a) No person shall engage in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3 unless such person is the holder of a certificate of public convenience and necessity issued by the Department.

(b) Unless otherwise provided by statute or Department rule, no certificate shall be issued to any person until such person has registered with and is licensed by the Department in accordance with N.J.A.C. 7:26-16.

(c) No person may bid for a solid waste collection contract or solid waste disposal contract with a municipality or other political subdivision or commercial or industrial entity unless that person is the holder of a certificate of public convenience and necessity issued by the Department.

(d) In the event that a license, as defined at N.J.A.C. 7:26-16.2, is denied, revoked, or withdrawn, the certificate shall immediately become invalid.

(e) Collectors that transport septic waste and/or sewage sludge are not subject to the provisions of this chapter.

(f) A rail carrier as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services and that is engaged in the business of solid waste disposal or transportation by rail, but does not engage in the business of solid waste collection (as defined by N.J.S.A. 13:13E-3) by other means of transportation within the State of New Jersey, is not subject to the provisions of this chapter.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b), deleted the reference to N.J.A.C. 7:26-3; added (e).

Amended by R.2004 d.408, effective November 15, 2004.

See: 35 N.J.R. 4405(a), 36 N.J.R. 5098(b).

Added (f).

Case Notes

Municipal procedure for negotiation of public contracts after unsuccessful competitive bidding proper; unsuccessful bidder lacked standing to challenge award as it would not be entitled to contract if challenge successful; award justified; contention that contractor was morally irresponsible due to lack of PUC Certificate was patently frivolous. *Interstate Waste Removal Co., Inc. v. Bd. of Commissioners, City of Bordentown*, 140 N.J.Super. 65, 355 A.2d 197 (App.Div.1976).

7:26H-1.7 (Reserved)

Amended by R.1996 d.253, effective June 3, 1996.

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).

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was “Registration”.

7:26H-1.8 Application for a certificate

(a) Each applicant for a certificate shall file an application with the Department with:

1. The full name, business address, date of birth of the applicant or, if the applicant is a business concern, of any officers, directors, partners or key employees thereof, or if the business is a corporation, all persons holding five percent or more of the issued and outstanding stock of the applicant corporation;

2. A description of the applicant's experience, training, or education in the solid waste collection and/or solid waste disposal industry together with all supporting data in order to enable the Department to determine the applicant's qualifications to engage in such business;

3. Proof of financial responsibility including with each application a statement of financial condition;

4. New utilities shall furnish a schedule of proposed rates and charges for the character of service proposed to be rendered;

5. A copy of an approval letter pursuant to N.J.A.C. 7:26-16; and

6. Any other information the Department may deem necessary to determine the qualifications of the applicant to engage in the business of solid waste collection and/or disposal.

(b) The Department shall not begin processing an application for a certificate until the applicant has submitted a complete application which includes the items listed at (a)1 through 6 above.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), rewrote 4 and 5.

Case Notes

Requirements for obtaining certificate of public convenience and necessity to operate solid waste transfer station were neither overly broad nor burdensome. *Matter of Recycling & Salvage Corp.*, 246 N.J.Super. 79, 586 A.2d 1300 (A.D.1991).

Discussion of moral integrity as an issue in Certificate decision; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. *Little Falls Twp. v. Bardin*, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979), certiorari denied.

7:26H-1.9 Issuance of certificate

(a) The procedures for Department review and approval or denial of an application for a certificate shall be in accordance with the following:

1. Upon receipt of an application, the Department shall review the application for completeness. After reviewing

the application, the Department shall within 30 calendar days of receipt of the application notify the petitioner, in writing, whether the application is complete or incomplete.

2. If the application is deemed incomplete, the Department shall provide the applicant with a written list of the deficiencies required to make the application complete. Failure to correct the deficiencies shall constitute cause for denial of the application without prejudice. A determination of incompleteness shall stop any review until such time as a completed application is received by the Department.

3. Within 14 calendar days after receiving a notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the application or supply the requested information and the failure to supply the requested information within 60 calendar days after receiving notification of deficiency shall constitute cause for denial of the application without prejudice.

(b) The Department may impose such conditions as it finds to be proper and necessary when issuing a certificate of public convenience and necessity either in the form of a certificate or by its order.

(c) The Department may deny, after hearing, any request for a certificate of public convenience and necessity for any applicant who failed to obtain a certificate prior to operating, managing or otherwise engaging in solid waste collection.

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Stylistic changes only.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (c), deleted "authority to issue" following "any request for".

Case Notes

Proper denial of right to cross-examination during Certificate proceedings; local regulation of solid waste disposal and zoning thereof preempted by Solid Waste Management Act and Solid Waste Utility Control Act. *Little Falls Twp. v. Bardin*, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979), certiorari denied.

Board empowered to grant Certificate applications ex parte without a full hearing; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity, 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

7:26H-1.10 Application form

Every person engaged in solid waste collection or solid waste disposal on May 6, 1970, or thereafter shall, before obtaining a certificate of public convenience and necessity, complete the application form available for such purpose upon request at the address specified in N.J.A.C. 7:26H-1.5.

Amended by R.1996 d.253, effective June 3, 1996.

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).

7:26H-1.11 Revocation or suspension of certificate

(a) The Department may, upon notice, after hearing, by order in writing, revoke or suspend a certificate of public

convenience and necessity issued to any person engaged in the solid waste collection or solid waste disposal business upon finding that such person:

1. Has refused or failed to comply with any lawful order of the Department; or

2. Has failed or refused to comply with the provisions of N.J.S.A. 48:13A-7.16 through 7.18;

3. Has violated any provision of N.J.S.A. 48:13A-1 et seq., N.J.S.A. 48:13A-7.1 et seq., or N.J.S.A. 13:1E-1 et seq., or any rule, regulation or order adopted or issued thereunder;

4. Has been denied approval of a license or has failed to renew a license or has had a license revoked pursuant to N.J.S.A. 13:1E-126 et seq.; or

5. Fails to submit the annual fee as required by N.J.S.A. 48:13A-7.4, the annual assessment as required by N.J.S.A. 48:2-62, or the annual licensing renewal fee as required by N.J.A.C. 7:26-16 on or before the deadlines established by the Department.

(b) Any solid waste collector who receives a notice of intent to revoke or suspend a certificate may, upon a written request to the Department within 20 days of receipt of notice, request an adjudicative hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq. The solid waste collector shall deliver the written request to the following addresses:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION—Adjudicatory Hearing Requests
401 East State Street—PO Box 402
Trenton, New Jersey 08625-0402
Division of Solid and Hazardous Waste
PO Box 414
Trenton, New Jersey 08625-0414
Department of Law and Public Safety
Division of Law—Public Utility Section
124 Halsey Street
Newark, New Jersey 07101

1. The solid waste collector shall include the following information in a request for a adjudicatory hearing under (b) above:

i. The solid waste collector's name, address and telephone number;

ii. Information supporting the request, and specific references to or copies of other documents relied upon to support the request;

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

iv. A request, if necessary, for a barrier-free hearing location.

2. The Department may deny a request for an adjudicatory hearing under (b) above if:

i. The solid waste collector fails to provide all information required under (b)1 above; and

ii. The Department receives the request after the expiration of the time allotted under (b) above;

(c) When the Department determines that the contested suspension or revocation is necessary to alleviate an imminent danger to the environment or the public health, safety or welfare, the Department may suspend the license immediately and provide a hearing on an expedited basis.

(d) No person shall continue to engage in the business of solid waste collection or solid waste disposal if the Department has entered a final order suspending or revoking the certificate of public convenience and necessity held by such person.

(e) Motions for reconsideration of a Department order to suspend or revoke a certification of public convenience and necessity shall be filed in accordance with N.J.A.C. 7:26H-2.9(a).

Administrative change.
See: 30 N.J.R. 3948(a).

7:26H-1.12 Rates

(a) The Department upon complaint or on its own initiative may, after hearing, upon notice, by order in writing, direct any solid waste disposal utility to furnish proof that its rates for service do not exceed just and reasonable rates for such service.

(b) Should the Department find, after hearing, that the rates are unreasonable, it may order the solid waste disposal utility earning such unreasonable rates to make an adjustment in its tariffs, contracts or agreements to a sum which shall result in just and reasonable rates.

(c) Rates for solid waste disposal service which have for their objective the making effective of initial rates or revisions, changes or alterations of existing rates and which do not propose increases in charges above the peak rate to customer shall be filed in accordance with N.J.A.C. 7:26H-3.10.

(d) Rates for solid waste disposal service or petitions which have as their objective the making effective of revisions, charges or alterations of existing rates which propose to increase the charges for the service above the peak rate either directly or by the alteration of any classification practice, rule or regulation as to result in such an increase shall be filed in accordance with N.J.A.C. 7:26H-3.11.

(e) The procedures for Department review of a solid waste collection utility's rates and charges shall be in accordance with the procedures established in N.J.A.C. 7:26H-5.

Amended by R.1996 d.253, effective June 3, 1996.
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).

Amended by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).
See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), deleted "or solid waste collection" following "any solid waste disposal".

7:26H-1.13 Tariffs for collection and disposal utilities

Tariffs showing territory served, standard terms and conditions, rate schedules for various types of service and contracts shall be filed in accordance with N.J.A.C. 7:26H-4.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

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).

7:26H-1.14 Service requirements; failure to render service

(a) It shall be the duty of every solid waste utility to furnish safe, adequate and proper service, including furnishing and performing services in a manner that tends to preserve the quality of the environment.

(b) Should any solid waste collection utility fail to render service pursuant to any contract or agreement or should any customer in any geographic area have trouble securing solid waste collection services, the Department will take such action as it deems necessary in accordance with the procedures set forth at N.J.A.C. 7:26H-5.11(c).

(c) Should any solid waste disposal utility fail to render service pursuant to a filed tariff or contract, the Department may order any solid waste disposal utility engaged in such business to extend its disposal service into the area where service has been discontinued, and the Department shall permit just and reasonable rates to be charged for such service in the extended area as found by the Department in the same manner as its determination for initial rates. See N.J.A.C. 7:26H-1.12.

(d) No solid waste disposal utility shall discontinue service to any customer without first filing a petition with the Department, which petition shall give the reasons for such discontinuance. Such proposed discontinuance shall not become effective until approved by the Department.

(e) Where service to a customer is interrupted and it appears that the interruption will continue for more than one day or one pick up, a report shall be made to the Department forthwith giving a full account and statement of the reasons for such interruption and the estimated duration.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Administrative change.

See: 30 N.J.R. 3948(a).

Case Notes

Municipal incinerator authority, as created by the Solid Waste Utility Control Act, is not subject to Board's jurisdiction and cannot be compelled by Board to continue service until given permission to cease. Jersey City Incinerator Authority v. Dept. of Public Utilities, 146 N.J.Super. 243, 369 A.2d 923 (App.Div.1976), certiorari dismissed as moot 75 N.J. 600, 384 A.2d 830 (1978).

Curtailed of agreed upon six day-per-week collection to one day-per-week constituted a regulatory violation as a substantial discontinuance of service without prior Board approval. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

7:26H-1.15 Agreements to limit bidding or territorial withdrawal

(a) No solid waste collection or solid waste disposal utility shall agree with any other collection or disposal utility or person to limit bidding or withdraw from a specific territory, nor shall any solid waste collection or solid waste disposal utility, individually or in agreement with others, endeavor to eliminate competition.

(b) Actions that evidence an endeavor to eliminate competition may include, but are not limited to, the following:

1. Patterns or practices of undercharging or overcharging customers;
2. Employing predatory pricing practices;
3. Use, assumption, disposition, control, or merger and consolidation of assets, including customer lists, of any other person or business concern, whether or not that person or business concern is licensed as a solid waste collection or disposal utility, without the prior approval of the Department;
4. Patterns or practices of illegal or unauthorized disposal of solid waste; or
5. Any other activity that has the intent or effect of creating an anti-competitive economic advantage for particular solid waste collection or disposal utility(ies) or person(s).

Amended by R.1996, d.253, effective June 3, 1996.

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).

Case Notes

Fourteenth Amendment precludes court from automatic revocation of probation and imposition of prison term for nonpayment of restitution. State v. Townsend, 222 N.J.Super. 273, 536 A.2d 782 (A.D.1988).

Evidence supported determination by the Board of Public Utilities that garbage collection corporation and its president possessed dangerous probability of success of monopolizing specific areas. Matter of Inter County Refuse Service, Inc., 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Regulation prohibiting certain anticompetitive conduct by solid waste collectors was valid. Matter of Inter County Refuse Service, Inc., 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Transfer of all stock in corporation did not free corporation from moral turpitude of transferee and did not preclude revocation of corporation's certificate of public convenience and necessity. Matter of Inter County Refuse Service, Inc., 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

Authority of the Board of Public Utilities to exclude individual from solid waste collection business where such person has violated the Solid Waste Utility Control Act or regulation adopted thereunder may be reasonably implied, though the Act does not expressly authorize exclusion from the business. Matter of Scioscia, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Total exclusion of individual from solid waste business following his conviction for conspiracy to restrain trade was not unreasonable. Matter of Scioscia, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Evidence was sufficient to support conclusion of the Board of Public Utilities, in proceeding to revoke firm's certificate of public convenience and necessity, that firm and manager had violated the Solid Waste Utility Control Act prohibition against monopolization. Matter of Scioscia, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Board of Public Utilities, in determining whether to grant a new certificate or to revoke an existing certificate, is not restricted to determining whether the applicant itself has violated the Solid Waste Utility Control Act and its implementing regulations, but also may consider whether any principal of the applicant has been guilty of such a violation. Matter of Scioscia, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Board of Public Utilities could not be required to adopt regulation excluding from the solid waste business a violator of Solid Waste Quality Control Act. Matter of Scioscia, 216 N.J.Super. 644, 524 A.2d 855 (A.D.1987), certification denied 107 N.J. 652, 527 A.2d 471.

Solid waste collector not exempt from Antitrust Act; evidence sufficient that defendants involved in single overall conspiracy to eradicate competition in garbage collection industry. State v. Scioscia, 200 N.J.Super. 28, 490 A.2d 327 (App.Div.1985), certification denied 101 N.J. 277, 501 A.2d 942 (1985).

Attempt to eliminate competition warranted revocation of solid waste authority and debarment order. Matter of Allegations, Cicalese, 95 N.J.A.R.2d (EPE) 217, certification denied 143 N.J. 319, 670 A.2d 1061.

7:26H-1.16 Sale or transfer of assets; securities; debt issuances

(a) No sale or transfer of assets of a solid waste disposal utility or any change in majority control of such disposal utility shall be consummated without prior authorization of the Department. Filings for authority shall be in accordance with N.J.A.C. 7:26H-3.2 (Petitions for the approval of the sale or lease of property) and 3.3 (Petitions for authority to transfer capital stock).

(b) No solid waste disposal utility shall issue any stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior authorization of the Department. Petitions for authority to issue stock, bonds, notes, other evidence of indebtedness or to execute mortgages shall be filed in accordance with N.J.A.C. 7:26H-3.5 (Petitions for authority to issue stocks, bonds, notes, other evidence or indebtedness or to execute mortgages).

(c) No solid waste collection utility shall sell, lease, or otherwise dispose of its property, including customer lists, without the prior authorization of the Department. Filings for authority shall be in accordance with N.J.A.C. 7:26H-3.2 (Petitions for the approval of the sale or lease of property) and 3.3 (Petitions for authority to transfer capital stock). Filings will be reviewed by the Department in accordance with the procedures set forth at N.J.A.C. 7:26H-5.11.

(d) No solid waste collection utility shall execute a mortgage without prior authorization of the Department. Petitions for authority to execute mortgages shall be filed in accordance with N.J.A.C. 7:26H-3.5 (Petitions for authority to issue stocks, bonds, notes, other evidence or indebtedness or to execute mortgages). Filings will be reviewed by the Department in accordance with the procedures set forth at N.J.A.C. 7:26H-5.11.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Case Notes

Board of Public Utilities' decision, that transfers of utility stock resulting in a change in majority interest require Board approval, could be applied retroactively, even though numerous utilities had reasonably relied on prior Board decision; Board indicated that it would consider party's reliance on the prior decision as mitigating factor tempering its enforcement policy. Matter of Declaratory Ruling Pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:3-10.13(a), 234 N.J.Super. 139, 560 A.2d 689 (A.D.1989).

Enforcement policy of the Board of Public Utilities regarding Board approval of utility stock transfers did not have to be effectuated by administrative rule-making process. Matter of Declaratory Ruling Pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:3-10.13(a), 234 N.J.Super. 139, 560 A.2d 689 (A.D.1989).

Transfer, without prior approval of the Board of Public Utilities, of all stock in public utility engaged in solid waste collection business violated the Solid Waste Control Act and was void. Matter of Inter County Refuse Service, Inc., 222 N.J.Super. 258, 536 A.2d 775 (A.D.1988), certification granted 111 N.J. 618, 546 A.2d 535.

7:26H-1.17 Approval of consolidations, mergers or dissolutions

(a) No solid waste disposal utility shall be consolidated or merged with another solid waste disposal or solid waste collection utility or be dissolved without prior approval of the Department. Filings should be in accordance with N.J.A.C. 7:26H-3.4 (Petitions for approval of a merger or consolidation).

(b) No solid waste collection utility shall merge or consolidate its property, including customer lists, with that of any other person of business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal without prior approval of the Department. Filings should be in accordance with N.J.A.C. 7:26H-3.4 (Petitions for approval of a merger or consolidation). Filings will be reviewed by the Department in accordance with the procedures set forth at N.J.A.C. 7:26H-5.11.

Amended by R.1996 d.253, effective June 3, 1996.

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).

7:26H-1.18 Approval of management agreements

No solid waste disposal or solid waste collection utility shall enter into a management agreement with another solid waste utility or other person without prior approval of the Department. Filings for approval shall be in accordance with N.J.A.C. 7:26H-3.6 (Petitions for approval of management agreements).

7:26H-1.19 Filing of annual reports

Every utility engaged in solid waste disposal shall file on or before the due date established by the Department each year an annual report summarizing its ownership, financial condition, contractual arrangements, and operations for the preceding calendar year on forms prescribed and furnished by the Department. Such reports shall also contain a statement of income and expenses for a calendar year period. The due date for submission of the annual report shall be set by the Department, by notice to all solid waste utilities, at least 30 days before issuing the annual report forms for completion.

Amended by R.1990 d.6, effective January 2, 1990.

See: 21 N.J.R. 2702(b), 22 N.J.R. 47(a).

Added new (b) making requirements for filing of customer lists much more specific.

Amended by R.1993 d.508, effective October 19, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Amended by R.1996 d.253, effective June 3, 1996.

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).

7:26H-1.20 Records

(a) Every utility engaged in solid waste collection or solid waste disposal shall keep books, records and accounts in accordance with generally accepted accounting principles as the Department may prescribe by regulation or administrative order.

(b) Every solid waste utility shall maintain and submit, when required, records in accordance with the requirements of this section.

1. All books, records, accounts, documents and other writings relating to the business of solid waste collection, including annual reports and customer lists, shall be maintained at an office in the State of New Jersey unless otherwise approved by the Department.

2. Petitions for authority to keep books, records, accounts, documents and other writing outside the State shall conform to the provisions of N.J.A.C. 7:26H-3.9 to the extent applicable.

3. Each solid waste utility shall notify the Department of the location of the office or offices where records pertaining to the provision of solid waste services are maintained. Every solid waste utility shall make such records available for examination by representatives of the Department anytime during normal business hours.

(c) All books, records, accounts, documents and other writings, including customer complaints, annual reports and customers lists, shall be retained at the office of the solid waste utility for at least five years from the date that the documents were due or created, unless the Department specifically requires an additional retention period. Each solid waste utility shall make such books, records, accounts, documents and other writings, including customer complaints, annual reports and customer lists available for inspection by representatives of the Department at any time during normal business hours.

(d) All records pertaining to solid waste utilities, except those records set forth in (d)1 below or which by rule are accorded confidential treatment by the Department below or are subject of a protective order, which specifically are required by statute to be made, maintained or kept by and for the Department shall be public records with the meaning of N.J.S.A. 47:1A-1 et seq. Records which by rule are accorded confidential treatment or which are subject of a protective order shall be disclosed only to the extent and in the manner provided therein and shall not be deemed public records within the meaning of N.J.S.A. 47:1A-1 et seq.

1. All other records of the Department shall not be subject to the provisions of N.J.S.A. 47:1A-1 et seq., and shall be available for inspection and examination only to the extent and for such purposes as may be expressly authorized by the Department.

(e) The fee for copies of records, instruments and documents of the Department shall be the fee established under N.J.S.A. 47:1A-2.

(f) All records which are required by law to be made, maintained or kept by and for the Department which relate to accidents and the investigation of accidents concerning solid waste utilities and to safety inspections and surveys of property and equipment of solid waste utilities shall be deemed public records, copies of which may be purchased or reproduced under the provisions of N.J.S.A. 47:1A-1 et seq., unless it is determined by the Department that the inspection, copying or publication of such records shall be inimical to the public interest.

Amended by R.1996 d.253, effective June 3, 1996.

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).

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), substituted "generally accepted accounting principles" for "the Uniform System of Accounts".

7:26H-1.21 Evidence of insurance

Any utility engaged in solid waste collection or solid waste disposal shall file with the Department evidence of insurance or self-insurance which certificate or evidence shall be in a form prescribed by the Department.

Amended by R.1996, d.253, effective June 3, 1996.
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).

7:26H-1.22 Proceedings

The rules of practice adopted by the Board for other public utilities shall apply to proceedings involving utilities engaged in solid waste disposal and solid waste collection.

7:26H-1.23 Certificates for solid waste disposal and collection

(a) No person, corporation or partnership may be issued more than one certificate as a solid waste collection utility or solid waste disposal utility.

(b) The Department may, for good cause shown consistent with the public interest, find that multiple certificates shall be issued, notwithstanding the provisions set forth in (a) above.

(c) This rule does not prohibit a person, corporation or partnership from holding one certificate as a solid waste collector and one certificate as a solid waste disposal operator.

Recodified from N.J.A.C. 14:9-4.1 by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a), 23 N.J.R. 1439(b).
Amended by R.1996 d.253, effective June 3, 1996.
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).

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

7:26H-1.24 Property, equipment and facilities

(a) Unless otherwise provided in this section, all public utilities engaged in the business of solid waste collection or solid waste disposal shall own and have title to all property, equipment and facilities used and useful in providing safe, adequate and proper service.

(b) The solid waste utility may use property, equipment and facilities to which it does not have title provided it enters into a written lease and said lease is filed with the Department. Such filing shall contain a statement therein whereby the lessor of the property, equipment and facilities to be used for utility purposes agrees that the lessor's interest in such property, equipment and facilities becomes subject to the jurisdiction and regulation of the Department for term of said agreement.

Recodified from N.J.A.C. 14:9-4.2 by R.1991 d.221, effective May 6, 1991.
See: 22 N.J.R. 907(a), 23 N.J.R. 1012(a), 23 N.J.R. 1439(b).

Amended by R.1996 d.253, effective June 3, 1996.
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).

7:26H-1.25 (Reserved)

Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996; to expire March 26, 1996).

See: 28 N.J.R. 1305(a).
Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.
See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).
Repealed by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).

See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).
Readopted Emergency Repeal R.1997 d.404. Section was "Rate adjustments for construction and demolition (Type 13C) waste".

SUBCHAPTER 2. RULES OF PRACTICE**7:26H-2.1 Scope**

These rules shall govern practice and procedure before the Division of Solid and Hazardous Waste of the Department of Environmental Protection.

7:26H-2.2 Construction

These rules shall be liberally construed to permit the Department to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Department.

7:26H-2.3 Pleadings

(a) Pleadings before the Department shall be petitions, answers, and replies which, for purpose of these rules, are defined as follows:

1. "Petition" means any pleading filed to initiate a proceeding involving the jurisdiction of the Department;
2. "Answer" means any pleading filed by a respondent or other party against whom a petition is direct or who is affected by the filing of a petition; and
3. "Reply" means any pleading filed by petitioner or others in response to an answer.

(b) All pleadings, correspondence and other papers should be mailed to the address listed in N.J.A.C. 7:26H-1.5.

(c) Unless otherwise required by the Department, there shall be filed with the Department for its own use an original and four conformed copies of each pleading.

1. Filings must include a self-addressed stamped envelope for the return of a stamped and dated copy of the filing.
2. The stamped, dated copy of the filing shall constitute proof of filing.

(d) Pleadings shall be liberally construed with the view to effect justice. The Department may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Department may, on notice, strike the pleading or take such other action as it deems appropriate.

(e) Service and notice of proceedings shall be as follows:

1. Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Department, the following provisions shall govern:

i. A petition filed on behalf of a solid waste utility shall be served upon each respondent named in such petition;

ii. A petition originating a proceeding filed by a party other than a solid waste utility shall be served by the Director upon each respondent named in the petition;

iii. Every other pleading shall be served by the party filing the same on all other parties of record concurrent with or prior to the filing thereof; and

iv. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

2. Whenever a party has the right or is required to do some act within a prescribed period of time after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

(f) All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Department's own motion or the motion of the Attorney General of the State of New Jersey.

7:26H-2.4 Petitions

(a) All petitions shall comply with the provisions of this subchapter to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statute or other authority under which the Department's action is sought; and shall contain such information or statements as may be required by statute, rule or order of the Department.

(b) Petitions directed to particular respondents shall conclude with a direction that the respondent act in accordance with the demands set forth in the petition or file and serve an answer within 20 days in accordance with these rules.

(c) Where relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Department shall so state and include the following:

1. The current status of the application;

2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Department together with a copy of any order or certificate issued relating thereto; and

3. If such an application or an amendment to that application is filed with another State or Federal regulatory body subsequent to the date of the filing with the Department but prior to its determination, three copies of such application or amendments, together with three copies of any order or certificate issued relating thereto, shall be filed with the Department and served upon other parties of record.

(d) A petitioner may join in a single petition more than one request for relief, unless the Department, in its discretion, sever matters so joined for hearing and determination or take such other action as may be in the public interest.

Administrative change.
See: 30 N.J.R. 3948(a).

7:26H-2.5 Procedures for Department review

(a) The procedures for Department review and approval or denial of a petition shall be in accordance with the following:

1. Upon receipt of a petition, the Department shall review the petition for determination of completeness. After reviewing the petition, the Department shall, within 30 days of receipt of the petition, notify the petitioner, in writing, whether the petition is complete or incomplete.

2. If the petition is deemed incomplete, the Department shall provide the petitioner with a written list of deficiencies. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (a)4 below until such time as the Department makes a determination of completeness.

3. Within 14 days of receipt of notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the petition or supply the information requested to make the petition complete. The petitioner shall correct all deficiencies within 30 days of notification of incompleteness. Failure to correct all deficiencies shall result in the rejection of the petition without prejudice.

4. Upon determining that the petition is complete, the Department shall notify the petitioner, in writing, that the petition is complete and that it will be filed and assigned a docket number. No later than six months from the date of a determination of completeness, the Department shall issue an order suspending, denying or approving the petition.

(b) Unless otherwise directed by the Department, petitions and subsequent pleading shall be served by all parties as provided for in N.J.A.C. 7:26H-2.3(e).

(c) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer of acceptance, signed by the parties or their attorneys, shall be filed with the Department and if not disapproved by the Department within 20 days, the petition shall be deemed satisfied and the proceeding closed without further action.

(d) In any matter which is determined by the Department to be a contested case, the matter will be transferred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 and 54:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26H-2.6 Answers and replies

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Department in connection therewith, except in the case of any rate proceeding instituted by a solid waste utility, shall file an answer in writing thereto with the Department in accordance with the following:

1. The answer shall be so drawn as to apprise the parties and the Department fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition; and
2. Matters alleged by way of affirmative defense shall be separately stated and numbered.

(b) Unless otherwise provided in these rules or order of the Department, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Department within ten days after the service of the answer.

(c) Whenever the Department believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(d) Upon motion on notice to all parties to the proceeding, the Department may, in its discretion, extend or shorten the time to file an answer or response.

7:26H-2.7 Motions

(a) The following pertain to motions to reconsider:

1. A party may file for reconsideration of a final decision or order of the Department within 15 days of the issuance of such decision or order. Upon filing by any party of a motion for reconsideration, appropriate notice thereof shall be given by the moving party to all other parties, or their attorney of record, by service of a copy of the motion for reconsideration.

- i. The motion to reconsider must state, in separately numbered paragraphs, the alleged errors of law or fact relied upon and shall specify whether consideration, argument or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Department.

- ii. Where opportunity is also sought to introduce additional evidence, the evidence to be presented shall be stated briefly together with reasons for failure to previously present said evidence.

2. Within 10 days following the service of a motion to reconsider, any party to the proceeding may serve upon the moving party and file with the Department an answer thereto, and in default shall be deemed to have waived any objection to the granting of the motion.

3. As soon as practicable after the filing of answers to a motion to reopen or default, as the case may be, the Department shall grant or deny such motion. The action by the Department may be conditioned on reasonable terms.

4. The Department may at any time order a rehearing, argument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

5. After receipt of the initial decision, any exceptions and answers, if any, shall be disposed of by the Department based on the exceptions, answers and briefs filed unless the Department, in its discretion, requires or permits oral argument, in which case the Department will schedule the matter for argument before it.

6. The Department may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

(b) The following pertain to motions to intervene:

1. Any person, other than an original party to the proceeding, who is able to show a substantial and specific interest which would be effected by the proceeding may move, in writing, for leave to intervene prior to or at the time the matter is called for a hearing, or may make an oral motion for leave to intervene at the time of the hearing.

- i. The motion to intervene must contain the name and address of the party intervening; the name and address of the party's attorney, if any; the party's interest affected by the proceeding; the nature and quantity of evidence the party will present if the motion to intervene is granted; and if affirmative relief is sought, a clear and concise statement of the relief sought and the basis for the relief.

- ii. Where a motion to intervene seeks to broaden the issues decided at the original proceeding, such motion shall be filed with the Department and copies

shall be served upon the original parties to the proceeding at least 10 days prior to the date of the hearing.

iii. Except for good cause shown, no motion to intervene will be granted after the proceeding is under way.

2. Motions to intervene shall be considered first at all hearings or may be set for prior hearing, and an opportunity shall be afforded to the original parties to be heard thereon.

3. If the Department determines that the person seeking to intervene has a substantial and specific interest which would be affected by the proceeding and whose interest with respect to the proceeding would not otherwise be adequately represented, the Department may grant the motion to intervene at the time of the hearing, on such terms as the Department may prescribe and the intervenor(s) shall be afforded the same rights and obligations as the original parties.

4. Whenever it appears during the course of a proceeding that an intervenor has no substantial and specific interest which would be affected by the proceeding, the Department may dismiss the intervenor from the proceeding.

5. Where two or more intervenors have substantially like interests, the Commissioner may at any time during the hearing, limit the number of intervenors who will be permitted to participate in the hearing, noting nonetheless the appearance of said intervenors, the names of the witnesses to be offered and the fact that their testimony is corroborative of the position of the prior intervenors.

(c) All motions shall be deemed denied if not decided within 60 days after the filing. The Department may waive this rule on its own motion or for good cause shown by a party.

Administrative change.
See: 30 N.J.R. 3948(a).

7:26H-2.8 Compliance with orders and decisions

Upon issuance of an order or decision of the Department, the party to whom the same is directed shall notify the Department on or before the date specified in said order or decision whether or not compliance has been made in conformance therewith.

SUBCHAPTER 3. TRANSACTIONAL FILINGS

7:26H-3.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the economic transactions of solid waste collection and solid waste disposal utilities and sets forth the means by which persons engaged in the business of solid waste collection and solid waste disposal shall petition for Department approval of such transactions.

(b) The requirements of this subchapter are in addition to the pleadings requirements in N.J.A.C. 7:26H-2.

(c) All petitions submitted pursuant to this subchapter shall include the following information:

1. An itemized listing of all assets involved in the transaction; and
2. By county, a listing of the total number and classification (that is, industrial, commercial or residential) of the current New Jersey customers of all the utilities involved in the transaction.

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Added (c).

7:26H-3.2 Petitions for the approval of the sale or lease of property

(a) No sale or transfer or encumbrance of the assets of a solid waste collection or solid waste disposal utility or any change in majority control of such utility shall be consummated without prior authorization of the Department.

(b) Petitions to sell or transfer the assets or to affect a change in the majority control of a solid waste business shall be in accordance with the provisions of N.J.A.C. 7:26H-2, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The executed purchase or lease agreement including the name of the transferee or lessee, the consideration or rental and the method of payment, and any rights reserved by the transferor or lessor;
2. The proposed customer notice;
3. The proposed promissory note(s) or other security instruments;
4. The schedule of assets which are the subject of the proposed transaction;
5. The two most recent quarterly financial statements of both the buyer and seller or lessor and lessee. In the event that a solid waste utility does not, in the ordinary course of business, prepare quarterly financial statements, the solid waste utility shall submit an income statement and a balance sheet;
6. Proof of certification and licensure of the buyer or lessee by the Department;
7. A petition seeking Department approval to discontinue service to that portion of the seller's service area that is the subject of the petitioned transaction, if applicable;
8. A description of the relationship between the parties other than that of transferor and transferee, or lessor and lessee; and

9. A description of any existing mortgage or other security agreement, including, the amount, and the time required to obtain a release.

(c) Notice of the sale shall appear in a newspaper of general circulation in the service territory of the utility relinquishing its assets at least 30 days before the sale occurs.

(d) The Department has 30 days from the date of receipt to review the Notice of Intent. For the purposes of this section, receipt means arrival at and date stamped by the Division of Solid and Hazardous Waste.

(e) The Department shall deny approval of an agreement described in (a) above if it contains any of the following terms and conditions:

1. Irrevocable payments on the promissory note commencing prior to Department approval;
2. Security interests in the customer accounts;
3. Reversion of the customer accounts to the seller in the event of default; or
4. Management agreement with buyer prior to Department approval of same pursuant to N.J.A.C. 7:26H-3.6.

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b), deleted former 8 and 9 and recodified former 10 and 11 as 8 and 9; rewrote (c).

7:26H-3.3 Petitions for authority to transfer capital stock

(a) Agreements to sell or transfer any share or share(s) of capital stock of a solid waste utility to another utility or agreements to sell or transfer shares of capital stock to a corporation or person, where such sale would, by itself or in connection with other sales or transfers, vest in such person or corporation a majority interest of the outstanding capital stock shall not be consummated without prior approval by the Department.

(b) Petitions for authority to sell or transfer stocks of any solid waste utility shall conform to the requirements of N.J.A.C. 7:26H-2, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferrer and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;

3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;

4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;

5. The reason for the proposed transfer;

6. Details and explanation of any changes expected to be made, if petition is approved, in:

- i. The board of directors;
- ii. Officers and active managers; and
- iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.

Administrative change.

See: 30 N.J.R. 3948(a).

7:26H-3.4 Petitions for approval of a merger or consolidation

(a) No solid waste utility shall consolidate or merge with another solid waste disposal or solid waste collection utility or be dissolved without prior approval of the Department. Nor shall any solid waste collection utility consolidate or merge with any other person or business concern without prior approval by the Department.

(b) Petitions for the approval of a merger or consolidation shall conform to the requirements of N.J.A.C. 7:26H-2, to the extent applicable, and shall take the form of a Notice of Intent and in the body thereof, or in attached exhibits, also provide the following information:

1. A copy of the agreement of merger or consolidation;
2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;
3. The two most recent quarterly financial statements of each company and a pro forma balance sheet of the continuing company;
4. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Division;
5. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by

the surviving corporation; the par or stated value per share and the total amount of new capital stock to be issued;

6. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

7. Whether any franchise cost is proposed to be capitalized on the books of the surviving corporation, and, if so, the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

8. The names and address of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

9. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management affecting the public interest;

10. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the solid waste utilities serving in the area, pursuant to N.J.A.C. 7:26H-2.3(e);

11. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter; and

12. A statement of the fees and expenses to be incurred in connection with the merger and the accounting disposition to be made thereof on the books of the surviving corporation.

7:26H-3.5 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:3-7 and 48:3-9 and N.J.A.C. 7:26H-2 to the extent applicable, and shall in the body thereof or in attached exhibits provide the following information:

1. A statement of the amount and terms of the proposed issue including the nature of the security, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;

2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferrer, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost (estimated if not known). The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period (in the case of utility plant, additions and retirements shall be stated separately for each year); a statement indicating the source and application of funds during the period; a statement indicating the manner in which the petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a solid waste utility, the petition must contain the following:

i. A copy of certificate of incorporation;

ii. The names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;

iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;

iv. The corporate resolution or proposed resolution of directors of the utility authorizing the issuance of the stock;

v. A copy of a pro forma balance sheet of the new corporation and copy of a pro forma income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Department;

vi. The name of the municipality and the street and number therein:

(1) In which the principal office in this State is to be located, and the name of the agent in charge of such principal office upon whom process against the corporation may be served;

(2) In which the principal business office is to be located;

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:3-7.8 are to be kept and the name, place of residence within this State, and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Department may be served. The books of account must be kept in conformity with the Uniform System of Accounts prescribed by the Department. These books and records must be kept within this State unless authority to do otherwise is obtained from the Department;

vii. A detailed list of organization expenditures;

viii. A copy of a pro forma balance sheet giving effect to the issuance of the proposed securities;

ix. Copy of a pro forma income statement giving effect to the issuance of the proposed securities;

x. The effective rate of interest or of the cost of money to the petitioner and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not at a public offering, and the financial sources that the petitioner has contacted in this connection. The petitioner shall submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates which may be indicated;

8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;

9. Information relating to the current financial condition of the petitioner setting forth:

i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;

ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;

iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding; and as to each such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;

iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;

v. Amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof; and, if different rates were charged, amount charged at each rate;

vi. Amount of dividends paid upon each class of stock during previous fiscal year and rate thereof;

vii. Detailed income statement for previous fiscal year and balance sheet showing condition at the close of that year;

10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise as authorized by N.J.S.A. 48:3-5, a copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;

11. Where any contract, agreement or arrangement, verbal or written, has been made to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;

12. If no contract, agreement, or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

13. Petitions filed pursuant to this section shall contain a certified copy of the resolution of the board of directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification must include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and

14. The information required to be furnished pursuant to this section which is contained in a report, document, pleading or other instruments previously filed with the Department may be incorporated by reference to that filing provided that said information is still correct.

7:26H-3.6 Petitions for approval of management agreements

(a) No solid waste collection or disposal utility shall enter into a management agreement with any person without filing a Notice of Intent and obtaining Department approval if such management agreement contains any of the following terms and conditions:

1. Grants general operational control to the managing company including but not limited to, the authority to hire or fire employees, purchase equipment, or maintain the books and records of the utility; or
2. Delegates to the managing company the responsibility to make any filings with the Department.

(b) The solid waste collection or disposal utility shall file for Department authorization of a management agreement described in (a) above at least 30 days prior to the completion of the transaction. Notwithstanding the notice provisions of this subsection, the Department may waive the 30 day notice requirement where extraordinary circumstance can be shown. Extraordinary circumstances may include, but are not limited to, the death, disabling disease or injury of an owner or key employee. In no event will the agreement take effect without Department approval.

(c) The solid waste collection or solid waste disposal utility shall place a notice in a newspaper of general circulation in its service territory, of its intent to enter into a management agreement with any person at least 30 days prior to the completion of the transaction.

(d) In the event that a solid waste collection or solid waste disposal utility determines that it can no longer provide safe, adequate or effective service to its customers, the notice of intent to enter into a management agreement must be accompanied by a petition to discontinue service and surrender its certificate of public convenience and necessity.

(e) Prior to receiving the Department's written approval, no solid waste collection or disposal utility or any other person, whether or not such person is engaged in the business of solid waste shall:

1. Bill customers under the name of the managing company whether on the utility's invoice or manager's invoice;
2. Dispose of the solid waste at the disposal facilities under the account of the managing company;
3. Provide written notice to the customers of the proposed purchase agreement or pending management agreement; or
4. Discontinue service to any customers.

Amended by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).
See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).

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

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (c), substituted "place a notice in a newspaper of general circulation in its service territory" for "notify every affected customer".

7:26H-3.7 Petitions for authority to change depreciation rates

(a) No solid waste disposal utility shall act to cause a change in depreciation rates established in accordance with N.J.S.A. 48:2-18 without prior written approval of the Department.

(b) Petitions for the approval of change or variation in the rates of depreciation used by solid waste disposal utilities shall conform to the provisions of N.J.A.C. 7:26H-2, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The existing and proposed rates of depreciation;
2. The existing and proposed methods of calculating or determining the rates of depreciation;
3. The calculations or studies supporting the proposed change in depreciation rates;
4. The effect of the proposed changes on operating revenue deductions and operating income; and
5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this section.

7:26H-3.8 Petitions for authority to exercise power of eminent domain

(a) Petitions for authority to exercise the power of eminent domain shall conform to the requirements of N.J.A.C. 7:26H-2 and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The names and addresses, if known, of the owners of the property to be condemned or of any interest therein, with a specification of the interest of each such owner;
2. The names of such owner or owners whose whereabouts or address is unknown;
3. A map or plot plan. In addition, there shall be filed with the petition four copies of a separate sheet designated Schedule "A", which shall contain a lots and block description taken from the tax map;
4. A brief description of the improvements thereon, if any, and the present and potential character and uses of the property;
5. Allegations that the property desired is reasonably necessary for the service, accommodation, convenience and safety of the public, and that the taking of such property is not incompatible with the public interest, and would not unduly injure the owners of private property;

6. A statement of the reasons why the property cannot be purchased by negotiation; and

7. Where the petitioner has, after diligent search, been unable to determine the name and address of the owner of the property to be condemned or of any interest therein, such facts must be stated in an affidavit of inquiry prepared in the manner provided for in the rules of the Superior Court.

(b) Where the petitioner has, after diligent search, been unable to determine the name and address of any respondent, the petitioner shall publish notice of hearing, addressed to such respondent by name, or other appropriate designation if the name is unknown. Notices shall be published in a legal newspaper circulating in the county or municipality where the property is located, and in at least one newspaper of general circulation published in the State not less than 20 days prior to that date. Said publication shall contain a description of the property to be condemned. Sworn proof of publication must be filed at least five days prior to the hearing date.

Administrative change.
See: 30 N.J.R. 3948(a).

7:26H-3.9 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writing outside the State of New Jersey, filed with the Department, as required under N.J.S.A. 48:3-7.8, shall conform to the provisions of N.J.A.C. 7:26H-2 and shall in the body thereof or in attached exhibits also provide the following information:

1. A complete description of the specific books, records, accounts, documents and other writings that are proposed to be kept outside the State of New Jersey;
2. The exact location where the books and records will be kept;
3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;
4. The reason for proposing to keep its books and records at a location outside the State;
5. The availability of adequate required space, facilities and experienced personnel at the new location;
6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;
7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;
8. Whether the books and records which will be kept at the location outside the State will be, on notice in

writing of the Department, produced at such time and place within this State as the Department may designate;

9. Whether the petitioner will pay to the Department any reasonable expenses or charges incurred by the Department for any investigation or examination, if the Department grants said permission;

10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility; and

11. The name and address of the petitioner's statutory agent.

7:26H-3.10 Tariff filings which do not propose increases in charges to customers above the peak rate; solid waste disposal utilities

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations to the standard terms and conditions of existing tariffs and which are not filed because of the need for additional revenue from services covered by existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 7:26H-2 and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenue;
2. A statement of the reasons why the tariff or change is proposed to be filed;
3. A copy of the text of each of said notices;
4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Department; and
5. In the case of initial tariffs, pro forma income statements for each of the first two years of operations and actual or estimated balance sheets as at the beginning and the end of each year of said two-year period.

(b) Tariff filings which propose adjustments in solid waste disposal utility rates only, and which do not increase the rates above the established peak rate, do not require prior Department approval, and are not subject to the requirements of (a)1 through 5 above, or N.J.A.C. 7:26H-3.11.

1. Any adjustment in rates below the peak rate shall require the solid waste disposal utility to notify the Department in writing of the change within three days of the effective date of the change.

(c) Charges in disposal contracts that are not above the facility's peak tariff rates do not require prior Department approval and all such contracts shall be filed within three days following their effective date.

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

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

Added (b) and (c). Readopted provisions of Emergency Amendment R.1997 d.404 with changes effective December 1, 1997.

7:26H-3.11 Tariff filings or petitions which propose increases in charges to customers above the peak rate; solid waste disposal utilities

(a) Petitions seeking revisions, changes or alterations of existing tariffs which propose to increase any rate or charge or to so alter any classification, practice, rule or regulation as to result in such an increase, above the peak rate, shall conform to the provisions of N.J.A.C. 7:26H-2 and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 7:26H-3.10 and in addition shall contain the following:

1. A comparative balance sheet for the most recent three-year period (calendar year or fiscal year);
2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);
3. A balance sheet at the most recent date available;
4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate service rendered, the rates, tolls, or charges for which are the subject matter of the filing;
5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments, as well as calculation showing the indicated rate of return on the average net investment for the same period as that covered by the pro forma income statement that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;
6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of the foregoing paragraph, a statement showing that the facts of the particular situation meet the statutory requirements;
7. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five per cent of the solid waste disposal utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and
8. A copy of the form of notice to customers.

(b) Each solid waste disposal utility that makes a filing under (a) above shall, unless otherwise ordered or permitted by the Department, give notice as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a service, the charge for which is proposed to be increased, the clerk of the Board of Chosen Freeholders of each affected county and, where appropriate, the executive officer of each affected county; and

2. Serve a notice of the filing and a statement of the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the solid waste disposal utility's service area.

(c) Each solid waste disposal utility that makes a filing under (a) above shall, after being advised by the Department of the time and place fixed for hearing, if any, and unless otherwise ordered or permitted by the Department, serve notice at least 20 days prior to such time on those persons specified in (b)1 and 2 above; and shall give such notice to those persons designated in (b)3 above as current customers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the solid waste disposal utility's service area.

(d) The notices provided for in (b) and (c) above may be given simultaneously.

(e) Where notice is prescribed under this section it shall be at the cost and expense of the party obligated to give or serve the notice.

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

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

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

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), inserted "above the peak rate," preceding "shall conform" in the introductory paragraph.

SUBCHAPTER 4. SOLID WASTE TARIFFS

7:26H-4.1 Scope

This subchapter shall govern the arrangement, filing and posting of tariffs, schedules, rates and other charges including standard terms and conditions for solid waste collection and disposal utilities.

7:26H-4.2 General

(a) All solid waste collection and disposal utilities shall file tariffs with the Department, on forms provided by the Department, and shall keep a copy of all tariffs open to public inspection on the premises of the utility or at the office of a designated agent. Tariffs must show the service area, standard terms and conditions, and all general privileges and franchises granted. The tariffs shall be available during office hours, and shall be produced on demand for any Department official, local government official or any person for examination during normal business hours.

(b) All solid waste utility disposal facility tariffs on file with and approved by the Department as of the date of the final disposition of the *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, Civil Action No. 93-cv-02669 (D.N.J., May 1, 1997) case by the United States Supreme Court, November 10, 1997, shall constitute the peak rates for each solid waste type accepted at each facility.

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

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

Rewrote (b). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a), inserted "on forms provided by the Department," preceding "and shall keep a copy"; in (b), inserted "and approved by" preceding "the Department", inserted "November 10, 1997" following "Supreme Court," and substituted "constitute" for "establish" preceding "the peak rates"; deleted (c) and (d).

Case Notes

Request for tariff increase for soil waste disposal service was approved in part. In the Matter of the Petition of Mercer County Improvement Authority for Permanent and Interim Increases in Rates, 96 N.J.A.R.2d (BRC) 1.

7:26H-4.3 Collector and disposal facility tariffs

(a) Each tariff form filed with the Department must contain the following:

1. A tariff cover page showing the DEP number, the territories served, the complete name, address and telephone number of the solid waste collector or disposal facility and the name of the officer authorized to issue the tariff; and

2. Standard terms and conditions shall be filed on sheets consecutively numbered or in consecutive sections with the sheets of each section consecutively numbered.

(b) In addition to the requirements of (a)1 and 2 above, each disposal tariff form filed with the Department shall contain a set of rate schedules in accordance with the following:

1. All rates for solid waste disposal services shall be included in a single tariff. Within each class of service,

the rates for each waste type collected shall be filed as a separate schedule and shall whenever feasible and practicable begin on a separate sheet.

2. All rates for solid waste disposal services shall be included in a single tariff. The rates for each waste type accepted shall be filed on a rate schedule listing the cost of disposal per ton and the cost of disposal per cubic yard, to be applied only when scales are inoperable;

3. For solid waste disposal services the rate schedules for each separate and distinct class of service shall be numbered consecutively, so as to facilitate reference to the rate schedules.

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

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

Deleted (d)3; and recodified existing (d)4 as (d)3. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

7:26H-4.4 Solid waste collection tariff terms and conditions

(a) The following shall apply to all solid waste collection companies:

1. The solid waste collection utility shall have unencumbered access to any customer's container, utility container or other area from which solid waste is to be collected. If containers are located in an enclosed structure, said structure must allow for access. In the event that the structure prevents access, the collector shall return on the next regularly scheduled collection date. All containers and areas from which solid waste is to be collected shall be kept free from all hazards and potential hazards. During periods of inclement weather, containers are to be reasonably free from ice and snow.

2. Collection service shall be provided according to a schedule contained in a the collector's tariff.

3. Where more than one rate schedule is available to a particular customer, the solid waste utility shall have at all times the responsibility to assist such customer in the selection of the rate schedule most favorable for their individual requirements and to make every reasonable effort to ensure that such customer is served under the most advantageous schedule. Each such utility shall include among the terms and conditions of its tariff the provision that it will assist customers in the selection of the rate schedule most favorable for their individual requirements.

4. The collector may provide miscellaneous collection services, including collection of yard clippings, garden refuse, bulky household refuse and additional types of solid waste not provided for in the basic service. Specific provisions must be outlined in the appropriate service section of the collector's tariff.

5. The collector may require that solid waste potentially dangerous to health and liable to cause injury be packaged in a manner which limits the possibility of exposure and/or injury. Specific provisions must be outlined in the terms and condition section of the collector's tariff.

6. Collectors are prohibited from collecting commingled loads of solid waste and designated source separated recyclable materials, except in those instances where a specific municipal exemption has been granted to the generator of those materials as provided by N.J.S.A. 13:1E-99.16(d). Each solid waste management district plan contains a definition of the district's designated recyclable materials. Collectors are prohibited from disposing of leaves in any manner that differs from that outlined in N.J.S.A. 13:1E-99.21.

7. Should the collector fail to pick up solid waste on a regularly scheduled day, and such failure is not caused by any act or omission of the customer, the collector shall make the pick up as soon as possible, but in no event shall it be later than the next regularly scheduled collection day.

8. In the event of inclement weather when operation of a solid waste collection vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collector, pick-ups shall be made no later than the next regularly scheduled day. In those cases where collection is scheduled on a one collection per week basis, that collection shall be made as soon as possible.

9. A collector may discontinue service to a customer provided it gives the customer at least 10 days written notice of its intention to discontinue. A collector may discontinue service for nonpayment of bills provided it gives the customer at least 10 days written notice of its intention to discontinue. At least 10 days time for payment shall be allowed after sending a bill. The notice of discontinuance shall not be served until the expiration of the said 10-day period given for payment of the bill. However, in the case of fraud, illegal use, or when it is clearly indicated that the customer is preparing to leave, immediate payment of accounts may be required.

i. All notices of discontinuance to residential customer's shall contain the following:

(1) A statement that the collector is subject to the jurisdiction of the New Jersey Department of Environmental Protection;

(2) The address and telephone number of the collection utility; and

(3) A statement that in the event the customer is either unable to make payment of a bill or wishes to contest a bill the customer should contact the utility. The notice shall contain information sufficient for the customer to make an appropriate inquiry.

ii. A solid waste collector shall transmit copies of notices of discontinuance to the Department at the same time such notice is transmitted to the customer.

10. Residential customers who wish to discontinue or suspend service for periods of 30 days or more must give notice to the utility, by telephone or in writing, not less than seven days prior to the date they wish discontinuance of service and if applicable, indicate the date they wish service to resume. The utility is not obligated to credit a residential customer who fails to provide notice in the manner required herein.

11. A collector may terminate service to a customer for one of the acts or omissions listed below provided the collector complies with the notice provisions contained in subsection (a)9 above:

i. Non-payment of a valid bill at a present or previous location. Non-payment of bill for service to a commercial establishment shall not be cause for discontinuance of residential service;

ii. Fraudulent representation in relation to use of service;

iii. Customer moving from the premises unless the customer requests that the service be continued;

iv. Providing a collector's service to others without the collector's approval; or

v. Failure to make or increase an advance payment or deposit as provided for in the collector's tariff.

12. The collector shall have the right to refuse pick-up of waste for any of the following reasons:

i. Waste is not placed in proper containers;

ii. Waste is not placed at designated pick-up location;

iii. Waste contains hazardous material (as defined in N.J.A.C. 7:26), or other matter is likely to cause injury to the public or the collector's personnel;

iv. Waste is not placed out for collection on the scheduled day;

v. Passage on the street or into the property is obstructed in any way by the operations to pave the street, by the digging of water or sewer lines or other type of construction. Pick up shall be provided on the next regularly scheduled collection day;

vi. The collector is asked to move the collection vehicle by an authorized government official or a member of the local police or fire department because the customer, either residential, commercial or industrial, has not provided either adequate or legal parking for the collection of garbage, refuse or solid waste. Under these circumstances, the collector may leave and not be obligated to return until the next regularly scheduled collection day;

vii. Containers exceed prescribed weight limits as prescribed in the collector's tariff;

viii. Containers are over filled or overflowing;

ix. The particular service and/or waste type is not included in the collector's tariff; or

x. Solid waste is commingled with designated source separated recyclable material.

13. Collection services may be restored upon proper application when the conditions under which such service were discontinued are corrected, and upon the payment of all proper charges due from the customer as provided in the collector's tariff.

(b) The following provisions shall apply to all solid waste collection utilities regarding billings and payments for services.

1. The collector may bill customers for service on a monthly or quarterly basis in advance. At least 10 days' time for payment shall be allowed after sending a bill. Bills for payment of services shall be mailed to the address indicated by the customer at the time service is requested, absent subsequent notice by the customer.

2. If the collector does not utilize advanced billing, residential, commercial and industrial solid waste collection billings are to be made with payment due in 30 days. At least 10 days' time for payment shall be allowed after sending a bill. If payment has not been received after 10 days past the date the bill was payable, then the collector may discontinue service to the customer upon providing seven days written notice in accordance with (a)10 above.

3. All bills for collection shall include and list separately the following information:

i. The date of the bill;

ii. The time period for which the service is rendered;

iii. The size and number of containers;

iv. The frequency of service;

v. The waste type;

vi. The disposal facility and tariff rate applied, including:

(1) The disposal component (actual weight for roll-off services);

(2) The service component; and

(3) Special or additional charges, if applicable;

vii. A separate line item showing the surcharge applied, if any, pursuant to P.L. 1981, c.438, to fund county health department enforcement activities, N.J.S.A. 13:1E-9.1;

viii. A separate line item showing the Solid Waste Service Tax;

ix. A separate line item showing the Host Community Benefit surcharge, if any;

x. Separate line items showing the Sanitary Landfill Closure and Contingency Fund Tax, N.J.S.A. 13:1E-100 et seq.; and

xi. The total charge for the service.

4. Residential rates are based on an annual service charge. No credit shall be extended to the customer or deduction allowed should the collector fail to make a collection for reasons outside the collector's control, or should the customer not provide refuse, garbage or solid waste for collection except as allowed in (a)11 above.

5. If credit has not been established, the collector may request a reasonable deposit. The initial deposit shall be equal to the estimated average bill of the customer for a given billing period. In determining the amount of the deposit, there shall be excluded from the average bill such portion thereof, if any, for which payment is received in advance. If the actual bills of the customer subsequently rendered prove the deposit is either insufficient or excessive, the deposit may be adjusted in accordance with the facts. Failure to tender the required deposit shall result in the discontinuance of service in accordance with (a)10 above.

i. Customers who have defaulted in payment of bills may be required to furnish a deposit or increase an existing deposit in an amount sufficient to secure payment of future bills. The amount of such deposit shall be reasonably related to the probable charge for service during a billing period, this period to include the average time required for collection after bills are rendered. If a customer fails to make the required deposit, the disposal facility may discontinue service in accordance with (a)10 above.

ii. If a customer who has made a deposit fails to pay a bill, the collector may apply such deposit in so far as is necessary to liquidate the bill and require the deposit to be restored to the original amount.

iii. The collector shall furnish a receipt to each customer who has made a deposit.

iv. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the customer plus simple interest at a rate of 400 basis points over the short term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. § 1274, in effect on the date of the refund. Where return of the deposit is made in cash, surrender of the receipt or, in lieu thereof, proof of identity may be required.

6. No customer shall be required to pay, reward or to give any gratuity to receive the waste collection service to which the customer is entitled by contract or regulation.

7. The collector may require from institutional, commercial and industrial customers a written acknowledgment of services rendered (receipt). Such receipt will be provided by the collector and may state the date, time of arrival, time of departure, amount of refuse removed as well as other information reasonably necessary for account billing. The collector shall provide a copy of the receipt to the customer.

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

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

Deleted (a)14; deleted (b)3vi(3); and recodified existing (b)3vi(4) and (b)3vi(5) as (b)3vi(3) and (b)3vi(4). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a)9, substituted "10" for "seven" following "at least" in the second sentence and inserted "given for payment of the bill" following "10-day period" in the fourth sentence of the introductory paragraph; in (b), deleted 3vi(4) and rewrote 3viii.

7:26H-4.5 (Reserved)

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

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

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

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Solid waste collection tariff formula".

7:26H-4.6 (Reserved)

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

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

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

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Solid Waste Collection Uniform Tariff Forms".

7:26H-4.7 Solid waste disposal tariff provisions

(a) The following terms and conditions shall apply to all certificated solid waste disposal facilities.

1. The disposal utility shall operate according to the schedule contained in its permits and approved tariff. All hours and rates shall be publicly posted. In the event that a disposal utility maintains public hours that differ from operating hours, then the tariff shall so state. Approved hours shall not be extended without prior written approval from the Department. Upon notification to the Department, a facility may close, open or remain open beyond its posted hours when conditions are such as to pose a threat to the safety and welfare of its employees and customers or when continued operations or cessation of operations would create a violation of applicable statutes, rules or regulations.

2. All owners, operators and vehicles entering a facility to dispose of solid waste shall be in compliance with all rules and regulations established by the facility and the Department and shall have all licenses, permits and decals as required by law and shall, upon request, furnish evidence of compliance with same.

3. Upon arrival at the facility, each vehicle shall report as required to the scalehouse. Upon departure, unless otherwise provided for, all vehicles shall proceed to the outbound scale or return to the scalehouse to determine the tare weight, refuse quantity and disposal charges, in accordance with the posted tariff, and receive an invoice detailing the same. In the event the scales are inoperative, charges for waste disposal shall be calculated on a cubic yard basis as prescribed in the facility's approved tariff.

4. Each disposal facility shall establish and maintain records in accordance with N.J.A.C. 7:26H-1.20 and N.J.A.C. 7:26-2.13.

5. Each vehicle entering a facility shall be constructed, maintained, loaded and operated so as not to cause any spillage, excessive noise or other problems of any sort and it shall be capable of discharging its cargo quickly and expeditiously. Any vehicle which, in the opinion of facility personnel, shall create a hazard to the facility's employees or other customers, may be refused admittance.

6. The disposal utility shall accept only identifiable and acceptable solid waste in accordance with its certificate and permit, and all other applicable rules and regulations.

i. The facility may refuse to accept, permanently or temporarily, any material it would not be able to handle and dispose of in compliance with all applicable rules, regulations, ordinances, statutes, or that would endanger the safety of the facility.

ii. The facility may require any material brought to the facility to be tested to ascertain the nature of the contents of any vehicle whenever it reasonably believes that the load includes excluded waste. In the event that testing reveals that the load contains excluded waste, the actual costs of such tests shall be borne by the customer or generator.

7. The facility shall deny access to any customer under the following circumstances:

i. The customer engages in behavior which endangers the safety of other customers, facility employees or the general public;

ii. The customer is carrying unauthorized waste or otherwise fails to conform with the provisions of the tariff; and

iii. Failure to display all necessary decals on the vehicles and containers.

4. Non-credit customers disposing of waste shall pay by cash or check before leaving the facility. Cash customers who repeatedly fail to pay their disposal charges in full may not be admitted to the facility until they establish a prepayment or charge account. Any charge customer who has a history of repeatedly leaving the facility without paying may be required to make a prepayment before being allowed to dispose of any solid waste at the facility. The prepayment shall be based on the cubic yard capacity of the vehicle and the type of waste contained within the vehicle in accordance with authorized rates contained in the facility's tariff. This prepayment shall be paid with cash or money order and a refund shall be given the customer after disposal, if appropriate.

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

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

Deleted (b)2v(1); and recodified existing (b)2v(2) and (b)2v(3) as (b)2v(1) and (b)2v(2). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (a)10, substituted "9,000 pounds for a single vehicle or 16,000 pounds combined maximum gross vehicle weight for a vehicle pulling a trailer" for "5,000 pounds or less".

7:26H-4.8 (Reserved)

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

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

Recodified existing (a) and (a)1 as the undesignated paragraph; and deleted (a)2, (b), and (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Solid waste disposal tariff format".

7:26H-4.9 (Reserved)

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

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

Deleted "Rate Schedule No. — Intermediate Processing Facility". Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

See: 30 N.J.R. 3948(a).

Repealed by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Solid Waste Disposal Uniform Tariff Forms".

7:26H-4.10 (Reserved)

New Rule. R.1993 d.508, effective October 19, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Recodified from 14:11-7.10 by R.1996 d.253, effective June 3, 1996.

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).

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "In-lieu payment rates for solid waste".

7:26H-4.11 (Reserved)

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

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

Readopted Emergency Repeal R.1997 d.404. Section was "Petitions for special in-lieu payment tariff provision".

SUBCHAPTER 5. SOLID WASTE COLLECTION EFFECTIVE COMPETITION MONITORING

7:26H-5.1 Purpose

(a) The purpose of this subchapter is to establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 138 N.J.L.J. 72 (1994).

7:26H-5.2 Authority

These rules are promulgated pursuant to the authority vested in the Department by N.J.S.A. 48:13A et seq., 13:1E-1 et seq., 48:2-21 and 48:13A-7.1 et seq. and shall be construed in conformity with, and not in derogation of, such statutes.

Amended by R.1996 d.253, effective June 3, 1996.

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).

7:26H-5.3 Scope

These rules shall govern the pricing practices of the solid waste collection industry and will provide for the compilation of data to monitor the extent and effect of competition in the solid waste collection industry.

7:26H-5.4 Rates

(a) No solid waste collector shall charge or receive rates or charges for solid waste collection service which are greater than or less than rates or charges that would result from effective competition.

(b) A solid waste collector shall have the discretion to adjust their rates to a sum which shall result in competitive pricing. The Department, within its authority pursuant to the Act, shall supervise the solid waste collection industry to promote effective competition and prohibit anti-competition practices of undercharging and overcharging.

Emergency amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996; to expire March 26, 1996).

See: 28 N.J.R. 1305(a).

Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.

See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

Added (c). Changes upon adoption effective May 6, 1996.

Amended by R.1996 d.253, effective June 3, 1996.
 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).
 Amended by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).
 See: 29 N.J.R. 4170(a), 29 N.J.R. 5084(a).
 Deleted (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.
 Amended by R.2002 d.356, effective November 4, 2002.
 See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
 Rewrote (b).

7:26H-5.5 Definitions

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

"Act" means P.L. 1991, c.381, known as the Solid Waste Collection Regulatory Reform Act.

"CPI" means the averaged Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics for the New York Urban and Philadelphia area for all urban consumers for the calendar year period just ended.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which materials is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Septic waste" means pumping from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

"Solid waste" means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L. 1970, c.40 (N.J.S.A. 48:13A-6 and 48:13A-9).

"Solid waste disposal" means the storage, treatment, utilization, processing or final disposal of solid waste.

"Solid waste disposal services" means the services provided by persons engaging in the business of solid waste disposal.

"Solid waste facility" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

Amended by R.1996 d.253, effective June 3, 1996.
 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).
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
 Deleted "Rate bands".
 Amended by R.2002 d.356, effective November 4, 2002.
 See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
 Deleted "Transition period", "Transition year" and "Uniform tariff".

7:26H-5.6 Annual fee

(a) Every solid waste collector shall pay an annual fee of \$100.00. The annual fee shall be paid within 30 days from the date of the invoice issued by the Department. The annual fee will cover part of the costs of supervising the solid waste collection industry. The annual fee is in addition to the annual assessment required by N.J.S.A. 48:2-59 et seq.

(b) All checks for payment of the fees and charges established pursuant to (a) above shall be made payable to the order of the Treasurer, State of New Jersey and mailed to the address listed on the bill.

(c) Nonpayment of the annual fee set forth in (a) above shall result in suspension or revocation of the Certificate of Public Convenience and Necessity, subject to the notice and hearing requirements of N.J.S.A. 52:14B-9.

Amended by R.1996 d.253, effective June 3, 1996.
 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).
 Amended by R.2002 d.356, effective November 4, 2002.
 See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

4. Availability of substitute services available.

(b) The Department shall utilize the criteria listed in (a) above in conjunction with commonly accepted economic indicators including, but not limited to, the following:

1. Differentiation of services provided;
2. Financial requirements for entrants, including capital entry or exit costs;
3. Concentration ratios and other measures including, market share, revenues, profitability, number of employees and number of customers, designed to determine the extent of dominance of the market by a limited number of firms;
4. Evidence developed by the Department or other local, state or federal agencies of price-fixing, territory divisions, collusion, or other forms of anti-competitive behavior by persons providing, directly or indirectly, solid waste collection services;
5. The extent and influence of vertical integration of firms in the solid waste collection industry, including:
 - i. Evidence of joint ownership of collecting, disposal, or supplier firms of the industry;
 - ii. Patterns of price discrimination in the provision of services by vertically integrated firms; and
 - iii. Patterns of behavior that suggest that vertically integrated service providers discourage competition with service providers;
6. Product/service pricing and differentiation;
7. Degree of variance off the median price for similar service in similar counties or service areas; and
8. Such other factors as the Department deems appropriate.

7:26H-5.11 Procedures for Department review; supervision of solid waste collection industry

(a) The following pertain to transactions requiring Department approval pursuant to the provisions of N.J.S.A. 48:3-7:

1. All notices of intent to enter into a transaction listed at N.J.S.A. 48:3-7 shall be in the form prescribed by N.J.A.C. 7:26H-2, to the extent applicable.
2. The solid waste collector shall file a notice of intent no later than 30 days prior to the anticipated date of closing of the transaction.
3. Upon receipt of a notice of intent, the Department shall review the notice to determine whether the notice and the supporting documentation are complete. After reviewing the notice of intent, the Department shall, within 30 days of receipt of the notice, notify the applicant, in writing, whether the notice is complete or incomplete. For the purposes of this section, receipt means

arrival at and date stamped by the Bureau of Solid Waste Regulation, Division of Solid and Hazardous Waste.

i. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (a)4 below.

ii. Within 14 days after receiving a notification of deficiency, the collector shall inform the Department, in writing, of its intent to either withdraw the notice of intent or supply the information requested to make the notice of intent complete.

iii. The collector shall supply all requested information within 30 days of receipt of notification of deficiency. This time limitation may be waived through agreement with the Department.

4. The Department may require a collector to provide additional information where such information is necessary, as determined by the Department, to make the notice of intent complete prior to the decision to approve the transaction. The Department shall not make a final determination on any transaction until such time as the applicant supplies all of the requested information. Any failure to submit such information shall constitute cause for dismissal of the petition without prejudice. In the event the Department requests no additional information within 30 days of receipt of the notice, the transaction shall be deemed to have been approved.

5. In the event the Department requests additional information, the timeframe for the review of a complete notice shall be in accordance with the following:

i. The Department shall perform its review of a complete notice and make a decision within 60 days from the receipt of all requested information;

ii. The Department will approve a transaction within 60 days of receipt of a complete notice of intent unless it makes a determination pursuant to (b) below that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition; and

iii. In the event the Department fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

(b) The following pertain to Department investigation of rates and charges received by solid waste collectors:

1. On its own initiative, or upon receipt of information that a solid waste collector may be receiving rates or charges different than those that would result from effective competition, the Department may initiate an investigation of those rates and charges. The Department shall notify the solid waste collector, in writing (certified mail, return receipt requested), that it is the subject of an investigation. The notice shall include, but not be limited to, the following information.

- i. The reason(s) for the investigation;
 - ii. A description of the geographic area, type or service or class of customer which is subject to investigation;
 - iii. A list of the criteria relied upon to determine that a lack of effective competition may exist; and
 - iv. The name and address of the individual to whom a response can be directed.
2. The Department may, within 30 days following the date of notice, request that the solid waste collector submit any additional information needed to assist in its review. The request for additional information shall be made in writing (certified mail, return receipt requested) and shall set forth the reasons supporting the Department's request for additional information.
- i. The solid waste collector shall submit responses to all requests for information within 30 days of receipt of the request for information.
 - ii. Should the solid waste collector fail or refuse to submit information requested pursuant to this subsection, the Department may take action to revoke or suspend the collector's certificate of public convenience and necessity.
3. The Department shall complete its review of the collector's rates and charges within 60 days following the date of notice; unless the Department requests additional information pursuant to (b)2 above, in which case the Department shall complete its review within 60 days of receipt of all requested information.
4. If necessary to pursue an investigation pursuant to (b)1 above, the Department may require any other solid waste collector within a comparable geographic area, serving a comparable class of customers or providing a similar type of service to submit specific information concerning its rates and charges for the purposes of performing a comparison of rates.
5. Upon the determination by the Department that a lack of effective competition exists and that the lack of competition has resulted in rates and charges greater than or less than those which would result from effective competition, the Department may, after hearing by order in writing:
- i. Order the solid waste collector to adjust rates or charges to a sum consistent with the market price for such collection services in the applicable geographic area;
 - ii. Order the solid waste collector to establish an escrow account during the pendency of any adjudicated case, into which the solid waste collector shall deposit the excessive rates and charges which the Department has determined should be refunded to the collector's customers;
 - iii. Order the solid waste collector to refund, at an interest rate calculated in accordance with N.J.A.C. 7:26H-5.14, the difference between the excessive rates or charges and the competitive rates or charges ordered by the Department as of the date of the notice of the Department's intention to review the rates or charges received by that solid waste collector; and
 - iv. Direct the solid waste collector to take action to restore or promote effective competition within the affected geographic area, class of customers or type of service.
6. An order issued pursuant to (b)5 above shall be sent by certified mail to the solid waste collector (return receipt requested) and become effective upon issuance, unless an adjudicatory hearing request is made by the solid waste collector pursuant to N.J.A.C. 7:26H-5.17. In the event that the order is heard as a contested case pursuant to N.J.A.C. 7:26H-5.17, the order shall be effective after hearing and final action by the agency approving the order.
7. A Department order issued pursuant to (b)5 above shall expire no later than six months after the effective date of the order as such effective date is defined in (b)6 above.
8. Within six months following the issuance of an order pursuant to (b) above, the Department will review the actions taken pursuant to such order and will determine whether a lack of effective competition still exists within the affected geographic area, class of customers or type of service and whether the continued lack of effective competition has resulted in rates or charges which exceed rates or charges that would have resulted from effective competition. Following its review and determination, the Department may:
- i. Rescind its order and cease any further rate setting activity; or
 - ii. Issue a new order pursuant to (b)5 above and continue rate setting activity with respect to the solid waste collector subject to the original order.
 - (1) The Department shall notify the solid waste collector no fewer than 30 days prior to the expiration date of the original order that it intends to issue a new order continuing rate setting activities.
 - (2) The notice must provide the reasons for the new order and the criteria utilized by the Department in making its determination that a lack of effective competition still exists within the affected geographic area, class of customers or type of service, and the continued lack of effective competition has resulted in rates or charges which exceed rates or charges that would have resulted from effective competition.

(c) The following pertain to failures or refusals to provide collection services:

1. The Department may order any solid waste collector into any geographic area for any class of customers or any type of collection service, where there is reasonable cause to believe the collection of solid waste has been discontinued and public health and safety may be affected. Circumstances constituting cause include, but are not limited to:

i. The collection of solid waste is discontinued as a result of a solid waste collector's failure or refusal to complete, execute or perform any contract or agreement for the provision of solid waste collection services;

ii. Any class of customers within a specific geographic area is unable to secure collections services;

iii. Any person seeking a specific type of solid waste collection service is unable to secure solid waste collection services; or

iv. The Department has received complaints pertaining to the adequacy of existing solid waste collection services.

2. Should the Department order any solid waste collector to provide collection services pursuant to (c) above, the solid waste collector shall file Uniform Tariff adjustments in accordance with the provisions of N.J.A.C. 7:26H-5.9(d). After the transition period the rates and charges for the extended solid waste collection services shall be determined by the collector ordered to extend the services.

3. Within five business days of any order requiring a solid waste collector to extend its services to a customer or class of customer pursuant to (c)1 above, the Department shall provide notice to the former collector, if known, and an opportunity to be heard at a date to be set on the issues of the duration of the order extending services, additional conditions that should be imposed, penalties, and any other issues as the Department deems are warranted under the circumstances. Hearings shall be conducted in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq.

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b)1, substituted "On its own initiative, or upon" for "Upon"; in (b)6, rewrote the first sentence and amended the N.J.A.C. reference throughout.

7:26H-5.12 Customer bill of rights

(a) Collection utilities shall comply with all customer bill of rights provisions identified in (c) below.

(b) At least once each year, every solid waste collector shall notify its customers that solid waste collection services in this State are available on a competitive basis and include with that notice a copy of a customer bill of rights.

(c) The customer bill of rights shall set forth the following information:

1. A commercial, industrial or institutional customer has the right to select their solid waste collector on a competitive basis and to discontinue service at any time, unless contractually obligated by a service agreement, provided that the collector is provided with a minimum of seven days' written notice;

2. Residential customers who are responsible for hiring their own collection service have the right to select their solid waste collector on a competitive basis and to discontinue service at any time, provided the collector is given seven days written notice.

3. The solid waste collector shall provide collection service in the service territories listed in its tariff;

4. A statement that the solid waste collector's tariff showing terms and conditions is available for review at the Department and that a complete list of solid waste collectors registered to provide service in their service territory is available from the Division of Solid and Hazardous Waste;

5. The solid waste collector shall handle customer complaints in a prompt, courteous, and efficient manner and that in the event a solid waste collector fails to pick up solid waste on a regularly scheduled day and such failure is not caused by an act or omission of the customer, the collector shall make the pick up as soon as possible, but in no event shall it be later than the next regularly scheduled collection day. Should a collector fail to pick up solid waste from a commercial, industrial or institutional customer on two consecutive collection days, and such failure is not caused by an omission or act of the customer, the customer may cancel any service agreement or contract with the collector.

6. The solid waste collector shall remove and transport solid waste in an environmentally sound manner that safeguards the public health and preserves the quality of the environment;

7. The solid waste collector shall notify its customers in writing at least 10 days prior to any increase or decrease in rates;

8. The solid waste collector shall provide 10 days written notice to the customer prior to the discontinuation of service. A collector may discontinue service for non-payment of bills provided it gives the customer at least 10 days for payment of the bill before issuing the 10-day notice of discontinuing service;

9. Where solid waste collection service is provided in containers or other equipment supplied by the solid waste collector, and the service is discontinued either by the solid waste collector or the customer, the solid waste collector shall be required to remove its container or other equipment from the customer's premises within three days of the effective date of discontinuance regardless of the status of the account;

10. The Department is available to resolve service or pricing issues and disputes and the solid waste collector shall not terminate service for non-payment of disputed charges during a Department investigation;

11. The customer may make partial payments on collection service and disposal fees without risk of additional charges, penalties or disruption of service on the unresolved amount of a service or pricing issue or dispute and/or on disputes forwarded to the Department for resolution;

12. If a customer will be absent from their residence or business for at least 30 days, the customer may request suspension of solid waste collection services and billing for that period without charge;

13. The collector is responsible for assisting the customer in the selection of the most favorable service to meet the customer's needs at the most reasonable rate;

14. In the event of inclement weather when operation of a solid waste vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collection company, pick up shall be made no later than the next regularly scheduled day. In those cases where collection is made on a once per week basis, pick up shall be made as soon as weather permits;

15. A solid waste collector shall transmit copies of any notice of discontinuance of service to the Department at the same time it is transmitted to the customer;

16. Solid waste services contracts or agreements shall not include any clause which calls for an automatic renewal of the contract or agreement. The automatic renewal clause of any existing contract shall be considered void upon November 4, 2002; and

17. Solid waste collection utilities shall display their name, as it appears on their Certificate of Public Convenience and Necessity, and any "trading as name" on all vehicles and containers.

(d) Every solid waste collector shall certify to the Department that each customer was provided with a customer bill of rights as required pursuant to (a) above. The certification shall be as follows:

"I certify under penalty of law that I have notified each of my customers at least once this year that solid waste collection services in this State are available on a competitive basis as provided in the customer bill of rights and that I have provided each of my customers with a copy of the customer bill of rights in the form set forth at N.J.A.C. 7:26H-5.12(b). I am aware that there are penalties for failing to comply with the provisions of these regulations, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I will be responsible for penalties as set forth at N.J.S.A. 48:13A-12 and that violating any provision of these regulations may be grounds for suspension or revocation of any certificate of public convenience and necessity for which I may now hold."

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356. effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

7:26H-5.13 (Reserved)

7:26H-5.14 Refunds

If the Department orders a solid waste collector to pay a refund pursuant to N.J.S.A. 48:13A-7.20, the solid waste collector shall pay said refund, plus simple interest at a rate equal to 400 basis points over the short-term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. §1274, in effect on the date of the order. Interest will be calculated from the date of receipt of notice as described at N.J.A.C. 7:26H-5.11(b)1.

7:26H-5.15 Sanctions for non-compliance

(a) The Department may assess a penalty pursuant to N.J.S.A. 48:13A-12 when the Department determines that a solid waste collector has violated any provision of the Solid Waste Utility Control Act, N.J.S.A. 48:13-1 et seq. or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq., including any violation of any rule or any administrative order adopted pursuant thereto.

(b) Any person who violates any provision of the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1 et seq.), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1) or any rule, regulation or administrative order issued pursuant thereto, or who engages in the solid waste collection business or solid waste disposal business without having been issued a Certificate of Public Convenience and Necessity, shall be liable to pay a penalty of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense.

(c) Any person or any officer or agent thereof who knowingly violates any of the provisions of this Act or aids or advises in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a crime of the fourth degree and may be punished by imprisonment for not more than 18 months or by a fine of not more than \$50,000 or both; and if a corporation, by a fine of not more than \$100,000.

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

(e) Neither the assessment of a penalty nor the payment of any such penalty shall be deemed to affect the availability of any other enforcement provisions provided for by N.J.S.A. 48:13A-1 et seq. or any other statute in connection with the violation for which the assessment is levied.

(f) 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, and in addition to any other cause set forth in this chapter, the Department may revoke or suspend a solid waste collector's certificate of public convenience and necessity for any of the following causes:

1. Refusal or failure to maintain and file an annual report or any other business record requested pursuant to N.J.A.C. 7:26H-5.11, which may include, but not be limited to, the following: annual reports, customer list updates, customer lists, financial or operational information, contracts, books, accounts and records;
2. Refusal or failure to provide requested information in accordance with N.J.A.C. 7:26H-5.9, 5.11 or 5.12;
3. Refusal or failure to comply with an order of the Department to extend solid waste collection services under N.J.A.C. 7:26H-5.11; or
4. Failure to comply with an order of the Department to adjust rates to a sum which results in competitive pricing.

(g) Whenever a solid waste collector has failed to satisfy the requirements of this subchapter, the Department shall transmit a notice of a pending revocation or suspension of the solid waste collector's certificate of public convenience and necessity to the solid waste collector in conformance with the provision of N.J.S.A. 52:4A-4.

Administrative change.
See: 30 N.J.R. 3948(a).
Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Rewrote the section.

7:26H-5.16 Procedures for assessment and payment of penalties

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

1. Identify the section of the Act, rule, administrative order, permit, license violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the 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. 7:26H-5.17.

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

1. If no hearing is requested pursuant to N.J.A.C. 7:26H-5.17, the notice of penalty assessment becomes a final order on the 21st day following receipt by the violator of the notice of penalty assessment;
2. If a hearing is requested pursuant to N.J.A.C. 7:26H-5.17 and the Department denies the hearing request, a notice of 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. 7:26H-5.17 and an adjudicatory hearing has been conducted, a notice of penalty assessment becomes a final order upon receipt by the violator of a final order of a contested case.

New Rule, R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Former N.J.A.C. 7:26H-5.16, Administrative hearings; requests, re-codified to N.J.A.C. 7:26H-5.17.

7:26H-5.17 Administrative hearings; requests

(a) Any solid waste collector may, upon a written request to the Department within 20 days of receipt of an order described in N.J.A.C. 7:26H-5.11(b)5 or a notice of intent to suspend or revoke a Certificate of Public Convenience and Necessity, request an adjudicatory hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq.

1. The solid waste collector shall deliver the written request to the following address:

Department of Environmental Protection
Office of Legal Affairs
ATTENTION—Adjudicatory Hearing Requests
PO Box 402
401 East State Street
Trenton, New Jersey 08625-0402

2. Copies of the request for an adjudicatory hearing shall also be delivered to the party issuing the order.

(b) The solid waste collector shall include the following information in a request for an adjudicatory hearing under (a) above:

1. The solid waste collector's name, address and telephone number;
2. Information supporting the request, and specific references to or copies of other documents relied upon to support the request;
3. An estimate of the time required for the hearing (in days and/or hours); and
4. A request, if necessary, for a barrier-free hearing location.

(c) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The solid waste collector fails to provide all information required under (b) above; and
2. The Department receives the request after the expiration of the time allotted under (a) above.

(d) When the Department determines that the contested suspension or revocation is necessary to alleviate an imminent danger to the environment or the public health, safety or welfare, the Department may suspend the license immediately and provide a hearing on an expedited basis.

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

Administrative change.
See: 30 N.J.R. 3948(a).
Recodified from N.J.A.C. 7:26H-5.16 and amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Rewrote (a)2; in (c)2, substituted "(a) above" for "(b) above".

7:26H-5.18 Penalties for violation of rules adopted pursuant to the Act

(a) The Department may assess a penalty pursuant to this section of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense for each violation of each requirement of any rule listed in (f) below.

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

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

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

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>
7:26H-1.6(a)	Failure to obtain a Certificate of Public Convenience and Necessity prior to engaging in the business of solid waste collection or solid waste disposal.
7:26H-1.6(c)	Failure of solid waste utility to have a Certificate of Public Convenience and Necessity when bidding for a solid waste contract.
7:26H-1.12(c)	Failure of the disposal utility to file rate revisions, in accordance with N.J.A.C. 7:26H-3.10, for services that do not increase charges above the peak rate.

(e) The Department shall determine the amount of a penalty for each violation of any rule listed in (f) below on the basis of the provision violated. For a violation of a requirement or condition of an administrative order, permit, license or other operating authority, the Department may in its sole discretion identify the corresponding requirement of any rule summary listed in (f) below and determine the amount of the civil administrative penalty on the basis of the rule provision violated. The procedure for determining the amount of a penalty for each violation of any rule listed in (f) below is as follows:

1. Identify the rule violated as listed in (f) below;
2. Identify the corresponding base penalty dollar amount for the rule violated as listed in (f) below; and
3. To obtain the penalty, multiply the base penalty by the applicable severity factor offense multiplier as follows:

<u>Severity Factor</u>	<u>Multiplier</u>
i. First Offense	Initial Base Penalty (no multiplier)
ii. Second Offense	Initial Base Penalty x (2.5)
iii. Third and subsequent Offenses	Initial Base Penalty x (5.0)

Example:
Base penalty (for violation of N.J.A.C. 7:26H-1.19) = \$1,000 (First Offense)
For a second offense, the penalty is \$ 1,000 x (2.5) = \$2,500
For the third and subsequent offenses, the penalty is \$1,000 x (5.0) = \$5,000

(f) The rule summary in this subsection, which summarizes certain provisions in this chapter, is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in this chapter, then the provision in this chapter shall prevail.

1. The violations of N.J.A.C. 7:26H-1, General Requirements, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
\$5,000	NM	
\$5,000	NM	
\$2,000	M	30

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-1.12(d)	Failure of the disposal utility to file rate revisions, in accordance with N.J.A.C. 7:26H-3.11, for services that increase charges above the peak rate.	\$2,000	M	30
7:26H-1.14(a)	Failure of solid waste utility to furnish safe, adequate, and proper service.	\$2,500	NM	
7:26H-1.14(d)	Failure of collection utility to file a petition with the Department prior to discontinuing service to a customer, which petition shall give the reasons for such discontinuance.	\$2,500	NM	
7:26H-1.14(e)	Failure of solid waste utility to file a report with the Department when service to a customer is interrupted and it appears that the interruption will continue for more than one day or one pick up.	\$2,000	M	1
7:26H-1.20(b)1	Failure of solid waste utility to ensure all records are maintained at an office in the State of New Jersey unless otherwise approved by the Department.	\$2,000	M	30
7:26H-1.20(b)3	Failure of solid waste utility to notify the Department of the location of the office or offices where records pertaining to the provision of solid waste services are maintained.	\$2,000	M	30
7:26H-1.20(c)	Failure of solid waste utility to retain all documents for at least five years from the date that the documents were due or created, and at the office of the solid waste utility.	\$2,000	M	30
7:26H-1.21	Failure of solid waste utility to file evidence of insurance.	\$5,000	NM	
7:26H-1.24(b)	Failure of solid waste utility to have a lease on file with the Department for the use of all property, equipment and facilities that are used to provide service and are not owned by the utility.	\$2,500	NM	

2. The violations of N.J.A.C. 7:26H-3, Transactional Filings, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-3.2(a)	Failure of solid waste utility to receive authorization of the Department prior to consummating the sale, transfer, or encumbrance of the assets of the solid waste utility or any change in majority control of such utility.	\$3,000	NM	
7:26H-3.2(c)	Failure of the solid waste utility to ensure notice of sale appears in newspapers at least 30 days before sale occurs.	\$2,000	M	30
7:26H-3.3(a)	Failure of solid waste utility to petition for authority to transfer capital stock; Transfer without authorization.	\$3,000	NM	

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-3.4(a)	Failure of solid waste utility to obtain Department approval prior to consolidating or merging with another solid waste utility, merging or consolidating with any other person or business concern, or dissolution of the solid waste utility.	\$3,000	NM	
7:26H-3.5(a)	Failure of solid waste utility to petition the Department for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages and comply with requirements thereof.	\$3,000	NM	
7:26H-3.6(a)	Failure of solid waste utility to file a Notice of Intent and obtain Department approval prior to entering into a management agreement with any person.	\$3,000	NM	
7:26H-3.6(c)	Failure of solid waste utility to ensure a Notice of Intent to enter into a management agreement appears in newspapers at least 30 days prior to the completion of the transaction.	\$2,000	M	30
7:26H-3.7(a)	Failure of solid waste utility to receive approval of the Department prior to taking any action which would cause a change in the utility's depreciation rates.	\$2,500	NM	

3. The violations of N.J.A.C. 7:26H-4, Solid Waste Tariffs, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> N.J.A.C.	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-4.2(a)	Failure of solid waste utility to file a tariff and maintain a copy for public inspection.	\$3,000	NM	
7:26H-4.4(a)1	Failure of utility's customer to allow unencumbered access to containers. All containers and areas from which solid waste is to be collected shall be kept free from all hazards and potential hazards.	\$2,000	M	30
7:26H-4.4(a)2	Failure of solid waste utility to comply with collection service provisions of the approved tariff.	\$2,500	NM	
7:26H-4.4(a)3	Failure of solid waste utility to assist customers in the selection of the rate schedule most favorable for their individual requirements.	\$2,000	M	30
7:26H-4.4(a)4	Failure of solid waste utility to identify in the tariff, miscellaneous collection services, prior to providing any of these same services.	\$2,000	M	30
7:26H-4.4(a)6	Failure of solid waste utility to ensure that loads of solid waste and designated source separated recyclable materials are not commingled; Disposing of leaves in any manner that differs from that outlined in N.J.S.A. 13:1E-99.21.	\$2,500	NM	

<u>Citation</u> N.J.A.C.	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-4.4(a)7	Failure of solid waste utility to make a pick up, not later than the next regularly scheduled collection day should the collector fail to pick up solid waste on a regularly scheduled day.	\$2,000	M	30
7:26H-4.4(a)9	Failure of the collector to provide the customer at least 10 days written notice of its intention to discontinue service.	\$2,500	NM	
7:26H-4.4(b)3	Failure of solid waste utility to include all required items, listed separately, on all bills for collection.	\$2,000	M	30
7:26H-4.7(a)1	Failure of the disposal utility to operate according to the schedule contained in its permits and approved tariff; Failure to ensure all hours and rates are publicly posted.	\$2,000	M	30
7:26H-4.7(b)2	Failure of the disposal utility to comply with billing and invoicing requirements.	\$2,000	M	30
7:26H-4.7(b)4	Failure to comply with the facility's applicable rate schedule by assessing a late payment charge on an unpaid bill when such a charge is not provided for in the disposal facility's applicable rate schedule approved by the Department.	\$2,000	M	30
7:26H-4.7(c)1	Failure of the solid waste utility to comply with advanced payment account requirements.	\$2,000	M	30

4. The violations of N.J.A.C. 7:26H-5, Solid Waste Collection Regulatory Reform, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-5.4(a)	Failure of the solid waste collector to charge or receive only those rates or charges for solid waste collection service which would result from effective competition. No solid waste collector shall charge or receive rates or charges for solid waste collection service which are greater than or less than rates or charges what would result from effective competition.	\$2,500	NM	
7:26H-5.6(a)	Failure of solid waste utility to pay annual utility fee.	\$2,000	M	30
7:26H-5.9(c)1	Failure of solid waste utility to submit annual Customer List.	\$2,000	M	30
7:26H-5.9(c)7	Failure of solid waste utility to maintain customer lists in proper format and available for inspection.	\$2,000	M	30
7:26H-5.12(b)	Failure of the collector to notify customers at least once each year that solid waste collection services in this State are available on a competitive basis and include with that notice a complete copy of a customer bill of rights.	\$2,000	M	30

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-5.12(c)5	Failure of the solid waste collector to handle customer complaints in a prompt, courteous, and efficient manner.	\$2,000	M	30
7:26H-5.12(c)6	Failure of the solid waste collector to remove and transport solid waste in an environmentally sound manner that safeguards the public health and preserves the quality of the environment.	\$2,000	M	30
7:26H-5.12(c)7	Failure of the solid waste collector to notify its customers in writing at least 10 days prior to any increase or decrease in rates.	\$2,000	M	30
7:26H-5.12(c)9	Failure of the solid waste collector to remove its container or other equipment from the customers premises within three days of the effective date of discontinuance regardless of the status of the account.	\$2,000	M	1
7:26H-5.12(c)15	Failure of the solid waste collector to transmit copies of any notice of discontinuance of service to the Department at the same time it is transmitted to the customer.	\$2,000	M	30
7:26H-5.12(c)16	Failure of solid waste utility to ensure solid waste services contracts or agreements do not include any clause that calls for automatic renewal of the contract or agreement.	\$2,000	M	30
7:26H-5.12(c)17	Failure of collection utility to display their name, as it appears on their Certificate of Public Convenience and Necessity, and any "trading as" name on all vehicles and containers.	\$2,000	M	30
7:26H-5.12(d)	Failure of the collector to submit a certification to the Department certifying that each customer was provided with a customer bill of rights.	\$2,000	M	30

5. The violations of N.J.A.C. 7:26H-6, Uniform Bid Specifications for Municipal Solid Waste Collection Contracts, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base Penalty</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26H-6.15(b)	Failure of the contractor to promptly and properly attend to all complaints of residents and all notices, directives and orders of the contract administrator within 24 hours of the receipt of same; to keep a record of complaints and the date and time of the responses to such complaints, as well any action taken; to provide a written summary of all complaints and responses to the contract administrator each month.	\$2,000	M	1

New Rule, R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
Rewrote (f).

7:26H-5.19 Matrix penalty determination

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26H-5.18, when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26H-5.18 would be too low to provide a sufficient deterrent effect as required by the Act; or

2. The violation is not listed under N.J.A.C. 7:26H-5.18.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued shall constitute an additional, separate and distinct violation.

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

(d) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(e) The Department shall assess a civil administrative penalty for violations described in this section on the basis of

the seriousness of the violation and the conduct of the violator at the midpoint of the following ranges as follows:

1. A violation that meets the criteria at (e)1i through iii below and the criteria at N.J.A.C. 7:26H-5.23(c)1 through 5 is minor. Such a minor violation shall be subject to a grace period of 30 days if it meets the criteria of subsections i through iii below and N.J.A.C. 7:26H-5.23. If compliance is not achieved in the required time period, the violator shall be subject to a \$2,000 penalty, to be assessed in accordance with the procedures set forth at N.J.A.C. 7:26H-5.23.

i. The violation poses minimal risk to the public health, safety and natural resources;

ii. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

iii. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

2. A violation that does not meet the criteria set forth in (e)1 above is non-minor and the penalty shall be assessed at the mid-point of the following ranges, unless adjusted pursuant to (h) below and in accordance with the applicable severity frequency multipliers identified in (i) below.

		SERIOUSNESS		
		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
CONDUCT	Major	\$9,000- \$10,000 (\$9,500 midpoint)	\$7,000- \$8,000 (\$7,500 midpoint)	\$5,000- \$6,000 (\$5,500 midpoint)
	Moderate	\$7,000- \$8,000 (\$7,500 midpoint)	\$4,000- \$5,000 (\$4,500 midpoint)	\$2,000- \$3,000 (\$2,500 midpoint)
	Minor	\$5,000- \$6,000 (\$5,500 midpoint)	\$2,000- \$3,000 (\$2,500 midpoint)	N/A*

*N/A means not applicable.

(f) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

i. Has caused or has the potential to cause a serious risk to the health, safety and welfare of the people of this State and the economic viability and competitiveness of the solid waste collection industry; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued; serious deviation shall include, but not be limited to,

those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause a substantial risk to the health, safety and welfare of the people of this State and the economic viability and competitiveness of the solid waste collection industry;

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued;

substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included in (f)1 or 2 above.

(g) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may adjust the amount determined pursuant to (e), (f) and (g) above to assess a penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (e) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;

3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or the violation.

(i) To obtain the penalty, multiply the matrix penalty as determined by (e), (f), (g) and (h) above, by the applicable severity factor offense multiplier as follows:

<u>Severity Factor</u>	<u>Multiplier</u>
1. First Offense	Initial Matrix Penalty (no multipliers)
2. Second Offense	Initial Matrix Penalty x (2.5)
3. Third and subsequent Offenses	Initial Matrix Penalty x (5.0)

Example:

Matrix penalty (for violation of N.J.A.C. 7:26H-4.5(a)) = \$4,500 (First Offense)

For a second offense, the penalty is \$4,500 x (2.5) = \$11,250

For the third and subsequent offenses, the penalty is \$4,500 x (5.0) = \$22,500

New Rule, R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Rewrote (e).

7:26H-5.20 Penalty for submitting inaccurate or false information

(a) The Department may assess a penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the Act or any rule promulgated, any administrative order, permit, license or other operating authority issued pursuant to the Act.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a penalty for violations described in this section based on the conduct of the violator except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

2. For all other conduct under this section, the civil administrative penalty, per act or omission, shall be in the amount of \$1,000 per violation.

(d) The Department may adjust the amount determined pursuant to (c) above to assess a penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;

3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or the violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

New Rule, R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added (e).

7:26H-5.21 Penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Act, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section except as adjusted pursuant to (d) below as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Act, the penalty shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

2. For any refusal, inhibition, or prohibition of immediate lawful entry and inspection not covered under (c)1 above, the penalty shall be in an amount of not more than \$5,000 or less than \$3,000 per violation.

(d) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of the following factors:

1. The compliance history of the violator;

2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;

3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or the violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

New Rule, R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Amended by R.2006 d.343, effective September 18, 2006.

See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Added (e).

7:26H-5.22 Vehicles used to transport food not to be used to transport solid waste; exceptions and penalties

(a) Except as provided in (b), (c) or (d) below, no vehicle, including any truck, trailer or other haulage vehicle other than a truck tractor, utilized for the transportation of solid waste in this State, shall be subsequently utilized for the transportation of fresh food or fresh food products, including meat, poultry, produce or other non-processed fresh food products intended for sale for human consumption. The presence of refrigeration equipment in a vehicle shall be prima facie evidence that the vehicle is used for the transportation of fresh food or fresh food products, unless the vehicle is lawfully registered, equipped and operated for the transportation of medical waste.

(b) No vehicle which is registered pursuant to State solid waste laws and regulations for lawful solid waste transportation activities in this State shall be utilized for the transportation of fresh food or fresh food products, including meat, poultry, produce or other non-processed fresh food products intended for sale for human consumption, unless that vehicle has been appropriately cleaned and sanitized in accordance with rules adopted by the Department, after consultation with the Department of Health and Senior Services, prior to any use for the transportation of fresh food or fresh food products.

(c) The provisions of this section shall not apply to any vehicles utilized for the transportation of source separated

recyclable materials as defined in section 2 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.12).

(d) A vehicle, including any truck, trailer or other haulage vehicle other than a truck tractor, owned or operated by any person engaging in the transportation of fresh produce intended for human consumption, may be utilized for the transportation of vegetative waste material generated from the fresh produce that was transported in that vehicle if the vegetative waste material is transported without delay to a vegetative waste composting facility.

(e) Any owner or operator who knowingly violates the provisions of N.J.S.A. 48:13A-12.1 is guilty of a crime of the third degree.

(f) The provisions of N.J.S.A. 2C:43-3 to the contrary notwithstanding, any person convicted of a violation of the provisions of N.J.S.A. 48:13A-12.1 is subject to a fine of not less than \$7,500 for a first offense, not more than \$10,000 for a second offense and not more than \$25,000 for a third and every subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.

(g) If a person is convicted of a violation of the provisions of N.J.S.A. 48:13A-12.1, the court shall, in addition to the penalties provided under that statute, require the person to perform community service for a term of not more than 90 days, and the person shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year.

(h) All conveyances used or intended for use in the unlawful transportation of solid waste in violation of the provisions of N.J.S.A. 48:13A-12.1 are subject to forfeiture to the State pursuant to the provisions of P.L. 1981, c. 387 (N.J.S.A. 13:1K-1 et seq.).

(i) A violation under this section is non-minor and, therefore, not subject to a grace period.

New Rule, R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Amended by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
Added (i).

7:26H-5.23 Grace period applicability; procedures

(a) Each violation identified in the penalty tables at N.J.A.C. 7:26H-5.18(f) by an "M" in the Type of Violation column and for each violation that is determined to be minor under N.J.A.C. 7:26H-5.19(f)1, for which the conditions at (c) below are satisfied, is a minor violation, and is subject to a grace period, the length of which is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty tables at N.J.A.C. 7:26H-5.18(f) by an "NM" in the Type of Violation

column is a non-minor violation and will not be subject to a grace period.

(c) The Department or local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;
3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and
5. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:
 - i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and
 - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.
2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation, and in addition, shall not consider the minor violation for purposes of calculating the "severity penalty component" under N.J.A.C. 7:26H-5.18(e).
3. The person responsible for a violation shall submit to the Department or local government agency, before the end

of the specified grace period, written information, signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

New Rule, R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

Former N.J.A.C. 7:26H-5.23, Severability, recodified to N.J.A.C. 7:26H-5.24.

7:26H-5.24 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this subchapter are declared to be severable.

New Rule, R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).
Recodified from N.J.A.C. 7:26H-5.23 by R.2006 d.343, effective September 18, 2006.
See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).

SUBCHAPTER 6. UNIFORM BID SPECIFICATIONS FOR MUNICIPAL SOLID WASTE COLLECTION CONTRACTS

7:26H-6.1 Purpose

The purpose of this subchapter is to establish uniform bidding practices for municipal solid waste collection contracts in order to promote competition among solid waste collectors, protect the interests of consumers and to enhance the Department's ability to adequately supervise the existence of effective competition.

7:26H-6.2 Scope and applicability

(a) This subchapter constitutes the rules governing the implementation of N.J.S.A. 48:13A-7.22 which mandates the establishment, in rules and regulations, uniform bid specifications for municipal solid waste collection contracts.

(b) Every municipality which provides municipal solid waste collection services shall conform to the requirements of this subchapter. These rules shall apply only to those municipal solid waste collection contracts which are required to be publicly advertised pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11 et seq.

Administrative change.
See: 30 N.J.R. 3948(a).

7:26H-6.3 Definitions

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Bid guarantee” means the bid bond, cashier's check or certified check submitted as part of the bid proposal, payable to the contracting unit, ensuring that the successful bidder will enter into a contract.

“Bid proposal” means all documents, proposal forms, affidavits, certificates, and statements to be submitted by the bidder in response to the contracting unit's advertisement for bids.

“Bid specifications” means all documents requesting bid proposals for municipal solid waste collection services as described herein, the form of which is located at Appendix A at the end of this subchapter, incorporated hereby by reference.

“Certificate of insurance” means a document showing that an insurance policy has been written and includes a statement of the coverage of the policy.

“Collection site” means the location of waste containers on collection day.

“Collection source” means a generator of designated collected solid waste to whom service will be provided under the contract.

“Commercial waste” means any waste type 10, as defined at N.J.A.C. 7:26-2.13, generated by wholesale, retail or service establishments.

“Consent of surety” means a contract guaranteeing that the Surety will provide a performance bond on behalf of the bidder in the event that the bidder is awarded the contract.

“Contract” means the written agreement executed by and between the successful bidder and the governing body and shall include the bid proposal and the bid specifications.

“Contract administrator” is the person authorized by the contracting unit to administer contracts for solid waste collection services.

“Contracting unit” means a municipality or any board, commission, committee, authority or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts or agreements for the performance of any work or the furnishing or hiring of any materials or supplies usually required, the costs or contract price of which is to be paid with or out of public funds.

“Contractor” means the lowest responsible bidder to whom award of the contract shall be made.

“Designated collected solid waste” means garbage, refuse and other discarded materials resulting from industrial,

commercial and agricultural operations and from domestic and community activities and shall include all other waste materials including liquids. Solid waste shall not consist of recyclable materials, hazardous waste, or solid animal and vegetable waste collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

“Governing body” means the governing body of the municipality, when the contract or agreement is to be entered into by, or on behalf of, a municipality, as further defined by N.J.S.A. 40A:11-2.

“Institutional waste” means any waste type 10, as defined at N.J.A.C. 7:26-2.13, generated by hospitals, colleges, schools, nursing homes, medical and dental professional buildings, research and development processes, and laboratories.

“Legal newspaper” means a publication, as defined at N.J.S.A. 35:1-2.1, selected by the contracting unit for publishing advertisements for municipal solid waste collection contracts.

“Litter” means all garbage, refuse and other discarded materials deposited in the litter receptacles belonging to the governing body.

“Multi-family home” means any housing in which four or more units of dwelling space are occupied, or are intended to be occupied, by three or more persons who live independently of one another.

“Proposal forms” means the documents to be submitted by the bidder on which the prices for services to be provided under the contract are set forth.

"Recyclable material" means those materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

"Residential waste" means any waste type 10, as defined at N.J.A.C. 7:26-2.13, generated by single and multi-family homes. For the purposes of the uniform bid specifications, "residential waste" includes waste type 10 generated by apartment and condominium complexes.

"Service area" means the geographical area in which the services will be provided to the contracting unit under the contract.

"Surety" means a company that is duly certified to do business in the State of New Jersey and is qualified to issue bonds in the amount and of the type and character required by these specifications.

"Yard trimmings" means vegetative matter, including, but not limited to, grass clippings, leaves, and brush. It does not include materials such as food waste, food processing waste, or soiled paper.

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In "Multi-family home", substituted "four" for "three" preceding "or more".

7:26H-6.4 General instructions

(a) For all municipal solid waste collection contracts, advertised in accordance with N.J.S.A. 40A:11-1 et seq., the contracting unit shall prepare, or cause to be prepared bid packages for prospective bidders. All such bid packages shall be prepared in accordance with this subchapter and the Uniform Bid Specification forms located at Appendix A at the end of this subchapter which are incorporated herein by reference. The contracting unit shall be responsible for providing prospective bidders with all forms listed and described in this subchapter that are not specifically provided at Appendix A.

(b) All advertisements for bids shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 30 days prior to that date. The advertisement shall designate the manner of submitting and the method of receiving bids and the time and place at which the bids will be received.

(c) The contracting unit may hold a pre-bid conference with all prospective bidders not less than 20 days prior to the bid opening to fully explain the scope of services to be bid, the procedures to be followed in preparing and submitting the bid proposal, and to answer any questions of the

prospective bidders. The contracting unit shall include the date and time of the pre-bid conference in the advertisement for bid proposals.

(d) Notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 5 days, Saturdays, Sundays and holidays excepted, prior to the date of acceptance of bids.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b), substituted "30" for "60"; in (c), substituted "20" for "50".

7:26H-6.5 Bidding requirements

(a) The bidder shall submit its bid proposal according to the criteria prescribed in this section. Failure to comply with these requirements shall result in the immediate disqualification of the bid proposal and it shall be returned to the bidder.

(b) The bidder shall sign, where applicable, all bid submissions as follows:

1. For a corporation, by a principal executive officer;
2. For a partnership or sole proprietorship, by a general partner or the proprietor respectively; or
3. A duly authorized representative if:
 - i. The authorization is made in writing by a person described in (b)1 and 2 above; and
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the business.

(c) The bidder shall deliver the bid proposal in a sealed envelope with the name and address of the bidder and the name of the project written clearly on the outside of the envelope in accordance with the contracting unit's instructions. The receiving official shall stamp the bid proposal with the date and time of delivery.

(d) The contracting unit shall not consider a bid proposal unless it contains each of the following items:

1. A photo copy of bidder's certificate of public convenience and necessity and a photo copy of a document evidencing the bidder's authorization to operate a solid waste business issued pursuant to N.J.S.A. 13:1E-126;
2. A completed questionnaire demonstrating that the bidder has the financial ability, experience, capital and equipment necessary to perform the contract. The bidder shall answer each question fully and completely; failure to answer each question completely or to provide any of the information requested shall result in rejection of the bid proposal. The form and wording of the questionnaire

shall be identical to the form and wording in N.J.A.C. 7:26H-6, Appendix A.

3. A bid guarantee made payable to the contracting unit which shall certify that upon the award of the contract, the successful bidder will execute the contract. The bid guarantee shall meet the requirements listed below:

i. The guarantee shall be in the amount of 10 percent of the bid, but not in excess of \$20,000, and may be given at the option of the bidder, by bid bond, certified check or cashier's check; and

ii. The bid guarantee shall be signed by an authorized agent or representative of the guarantor and not by the individual or company submitting the bid proposal;

4. A non-collusion affidavit which meets the requirements listed below:

i. The bidder certifies that it has not entered into any agreement or participated in any collusion with any other person, corporate entity or government entity, or otherwise taken any action in restraint of free, competitive bidding either alone or with any other person, corporate entity or government entity in connection with the bid proposal;

ii. The bidder certifies that all statements made in the bid proposal are true and correct and made with the full knowledge that the contracting unit relies upon the truth of those statements in awarding the contract;

iii. The bidder certifies that no person or business is employed to solicit or secure the contract in exchange for a commission, percentage brokerage agreement or contingency fee unless such person or business has been registered and licensed by the Department; and

iv. The form and wording of the non-collusion affidavit shall be identical to the form and wording in N.J.A.C. 7:26H-6, Appendix A;

5. A stockholder statement of ownership listing the names and addresses of all stockholders owning 10 percent or more of any class of stock and/or a list of all partners owning 10 percent or more of a partnership interest in the bidder's business. In the event that no stockholder owns 10 percent or more of the corporation's stock, or in the case of a partnership where no partner owns 10 percent or more interest in the partnership, then the preceding need not be completed except to print NONE, the signing of this form is certification to that fact;

6. A consent of surety stating that the surety company will provide the bidder with a performance bond if the bidder is awarded the contract; and

7. The bid proposal forms completed in conformance with the following:

i. Each bidder shall sign each proposal page and shall print neatly the name of the authorized signer and the name of the business entity submitting the bid; and

ii. The form and wording of the bid proposal must be identical to or a reasonable approximation of the form and wording in N.J.A.C. 7:26H-6, Appendix A;

(e) Whenever the work specifications identify a brand name, trade name, or a manufacturer's name, such designations are to be used for classification or descriptive purposes only, and the bidder may substitute an equal product, subject to the approval of the contracting unit.

(f) No bidder shall change, amend or condition any portion of the bid specifications. The contracting unit shall reject any such bid proposals.

(g) Any discrepancy between a numerical price and a price written in words shall be resolved in favor of the price as written in words. Any discrepancy between the unit price multiplied by the quantity and a corresponding total price figure set forth in the proposal form(s) shall be resolved in favor of a total price reached by multiplying the unit price by the quantity. The corrected total shall be used to determine the award of the contract. After all bid proposals have been read, the bids will be tabulated and adjusted, if necessary, in accordance with this subsection.

(h) The governing body may reserve the right to reject any bid proposal not prepared and submitted in accordance with the provisions of N.J.S.A. 40A:11-1 et seq. and this subchapter, and to reject any or all bids.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (d)1. substituted "photo" for "certified" throughout.

7:26H-6.6 Conditions and limitations

(a) Each bidder shall be familiar with and comply with all applicable local, state and Federal laws and regulations in connection with submitting the bid proposal and performing the contract including, but not limited to, N.J.S.A. 13:1E-1 et seq., 48:13A-1 et seq. and 40A:11-1 et seq., and N.J.A.C. 5:34 and 7:26.

(b) Submission of a bid proposal serves as the bidder's representation that it has read and understands the bid specifications and that it has duly considered all information contained therein in the course of preparing its bid proposal. Moreover, submission of the bid proposal serves as the bidder's representation that if awarded the contract, the successful bidder will not make any claims for, or have any right to, any concessions or damages because of a lack of understanding of the bid specifications or lack of information concerning the same.

7:26H-6.7 Award and execution of contracts

(a) The contracting unit shall publicly open and read all bid proposals at the time and place specified in the advertised notice to bidders. No contracting unit shall open or consider a bid proposal submitted after the date and time so specified.

(b) The governing body shall award the contract or reject all bids within 60 days, except the bids of bidders who consent, may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed. In the event that the governing body should fail to award the contract or request an extension before the expiration of the 60 day consideration period, all bid proposals shall be considered rejected.

(c) The contracting unit shall return all bid guarantees, except those of the three apparent lowest responsible bidders, within 10 days after opening of the bid proposals, Sundays and holidays excepted. The bid proposals of such bidders whose guarantees are returned shall be considered withdrawn. The contracting unit shall return the bid security of the remaining unsuccessful bidders within three days, Sundays and holidays excepted, after the contract is executed and the contractor's performance bond is approved.

(d) The contracting unit shall award the contract to the lowest responsible bidder in conformance with the requirements of N.J.A.C. 7:26H-6.8.

(e) In the event that the governing body rejects all bids, the contracting unit shall publish a notice of re-bid not less than 10 calendar days, prior to the date for acceptance of new bid proposals.

(f) Within 14 calendar days of the award of the contract, the contracting unit shall notify the successful bidder, in writing, by certified mail, return receipt requested, at the address set forth in the bid proposal. The notice shall contain instructions relevant to delivery of the executed contract, performance bond, vehicle dedication affidavit and affirmative action documentation. The successful bidder shall deliver the documents listed above at the time and place specified in the award notice. If for any reason, the successful bidder fails to deliver the documents as required, the contracting unit may declare the bid proposal forfeited and retain the successful bidder's bid guarantee. In such event, the contracting unit may award the contract to the next highest responsible bidder or terminate the bid process and re-bid the contract in accordance with (d) above.

(g) A contract executed pursuant to this subchapter shall be effective for a fixed term not to exceed five years and shall not be extended beyond the maximum duration; provided, however, the contracting unit may award a contract for a duration that is less than the full allowable term under this section.

(h) The following provisions shall be incorporated into the contract to be executed by the governing body and the contractor:

1. Mandatory affirmative action language in accordance with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27; and

2. A change in law or cancellation provision which anticipates and provides a mechanism for renegotiation of the contract to reflect any increases or decreases in solid waste disposal costs whenever:

i. The increase or decrease occurred as a result of compliance with an order issued by the Department directing the solid waste to be disposed at a facility other than the facility previously utilized by the person to whom the contract has been awarded; or

ii. The increase or decrease occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the facility utilized by the person to whom the contract has been awarded.

(i) For every contract for solid waste collection, solicited and awarded in conformance with this subchapter, the contracting unit shall file in a manner and on forms prescribed by the Department, the following information:

1. The name of each bidder submitting bid proposals and the prices bid;

2. The name of the bidder awarded the contract and the award price; and

3. The general service requirements:

i. The type of collection—curbside, rear yard or other;

ii. The number of days per week;

iii. The contract length;

iv. The party responsible for the tipping fee; and

v. Any other relevant aspects of the contract.

7:26H-6.8 Lowest responsible bidder

(a) All solid waste collection contracts which require public advertisement for bids shall be awarded to the lowest responsible bidder.

(b) A responsible bidder is one who at the time of the bid submission:

1. Conforms to all requirements of the bid specifications;

2. Has a tariff on file with the Department;

3. Has experience in the type of work to be performed;

4. Has the equipment necessary to perform the work described in the bid specifications; and

5. Has the financial ability to perform the work.

(c) The governing body may reject an otherwise complete bid proposal when the bidder has a history of intentional noncompliance with mandatory terms and conditions of similar collection contracts with any contracting unit or has failed to fully perform a prior collection contract with the contracting unit.

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b)2, substituted "a" for "an approved uniform" preceding "tariff".

7:26H-6.9 Performance bonds

(a) For a one year collection contract, the successful bidder shall submit a performance bond in accordance with the following:

1. The successful bidder shall provide, at the time and place specified by the contracting unit, a one year performance bond issued by a surety in an amount equal to no more than 100 percent of the award price; provided, however, that the time set for delivery of the performance bond is prior to or concurrent with the time set for the delivery of the executed contract; and

2. If the successful bidder fails to provide said performance bond prior to or at the time specified, then the contracting unit may declare the successful bidder to be non-responsive and award the contract to the next lowest responsible bidder or terminate the bid process and re-bid the collection services in accordance with the provisions of this subchapter. Failure to deliver the performance bond at the time and place specified by the contracting unit shall be cause for the assessment of damages in an amount equal to the amount of the bid guarantee.

(b) For a multi-year collection contract, the successful bidder shall submit performance bonds in conformance with the following:

1. The successful bidder shall provide, at the time and place specified by the contracting unit, a performance bond issued by a Surety in an amount equal to no more than 100 percent of the annual value of the contract; provided, however, that the time set for delivery of the performance bond shall be prior to or concurrent with the time set for the delivery of the executed contract. The "annual value of the contract" shall be included in the notice of award to the bidder and shall be equal to the total bid price for each year of the contract. The contractor shall provide a one year performance bond for each succeeding year of the contract in an amount equal to no more than 100 percent of the annual value of the contract for each succeeding year. The performance bond for each succeeding year shall be delivered to the contracting unit with proof of full payment of the premium 120 days prior to the expiration of the current bond;

2. If the successful bidder fails to provide a performance bond for the first year of the contract, then the contracting unit may declare the successful bidder to be non-responsive and award the contract to the next lowest responsible bidder or terminate the bid process and re-bid the collection services in accordance with the provisions of this subchapter. Failure to deliver the performance bond at the time and place specified by the contracting unit shall be cause for the assessment of damages in an amount equal to the amount of the bid guarantee; and

3. Failure to deliver a performance bond for any year of the contract a minimum of 120 days prior to the termination of the current bond will constitute a breach of contract and shall entitle the governing body to terminate the contract upon the expiration of the current bond. Notwithstanding termination pursuant to this section, the contractor is obligated to fully perform through the date of termination of the contract and the contractor shall be subject to damages in an amount equal to the costs associated with re-bidding the collection contract.

Amended by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

In (b)2, substituted "provide" for "provided" preceding "a performance bond".

7:26H-6.10 Vehicle dedication affidavit

(a) The successful bidder shall execute and submit at the time and place specified in the award notice a vehicle dedication affidavit which at a minimum shall certify that:

1. On the collection days specified in the contract, the successful bidder will dedicate a fixed number of vehicles to be used only for the contracting unit; such number should be reasonably calculated to meet the requirements of the bid specifications; or

2. To the extent that dedication of a fixed number of vehicles is not reasonable and feasible, the successful bidder shall covenant that the contracting unit will only be accountable for its proportional share of the waste contained in the collection vehicle and all disposal charges shall be calculated based only on its share of the waste at the time of disposal.

(b) In the event the contractor violates the terms of the vehicle dedication affidavit, the contractor shall take such action as is reasonably required to cure the violation. Failure to correct the violation shall constitute a breach of contract and will permit the contracting unit to terminate the contract.

7:26H-6.11 (Reserved)

Repealed by R.2002 d.356, effective November 4, 2002.
See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Section was "Contracts required to be filed".

7:26H-6.12 Work specifications

(a) The contracting unit shall list, identify and describe the scope of all services to be provided under the contract and provide same to all prospective bidders. Wherever the contracting unit possesses additional information and such information will aid the bidder to formulate a bid proposal, such information shall be provided in section 5 of the Uniform Bid Specifications located at the end of this subchapter in Appendix A.

(b) The contracting unit shall, in the work specifications, list the designated collected solid waste, the sources of the designated collected solid waste, and the frequency of collection. In the event that the contracting unit requests bid proposals for more than one collection option, each option shall be sequentially numbered.

(c) All specifications for the performance of residential waste collection from single and multi-family homes shall include the following information:

1. The number of residences requiring service or the actual number of pick-ups;
2. The type of waste containers that will be used, options to include, but need not be limited to, individual waste containers;
3. The location of waste containers on the premises on collection day (curbside, rear yard, etc.);
4. The frequency of collection in the number of collections per week; month; and year and the days on which collection is to occur; and
5. The types of waste(s) that will be collected and any excluded wastes.

(d) All specifications for the performance of residential waste collection from apartment and/or condominium complexes shall include the following information:

1. The name and address or location of each pick-up location;
2. The type of waste containers that will be used, options to include, but need not be limited to, individual waste containers, front-end containers, rear-end containers, or roll-off containers;
3. The location of waste containers on the premises on collection day;
4. The frequency of collection in collections per week; month; and year and the days on which collection is to occur;
5. The type of waste(s) that will be collected and any excluded wastes; and
6. The party responsible for providing the required containers.

(e) All specifications for the performance of commercial waste collection from wholesale, retail or service establishments and/or the performance of institutional waste collection from hospitals, research institutions and public buildings shall include the following information:

1. The name and address or location of each pick-up location;
2. The type of waste containers that will be used, options to include, but need not be limited to, individual waste containers, front-end containers, rear-end containers, or roll-off containers;
3. The location of waste containers on the premises on collection day;
4. The frequency of collection in collections per week; month; and year and the days on which collection is to occur;
5. The type of waste(s) that will be collected and any excluded wastes; and
6. The party responsible for providing the required containers.

(f) Where collection services other than those listed and described above are to be included in the contract, the contracting unit shall provide the following information in the work specifications:

1. A detailed description of each type of collection service, examples include but are not limited to: litter containers; yard waste bulky waste; municipal buildings; and on-call roll-off service;
2. The name and address or location of each pick-up location;
3. The type of waste containers that will be used, options to include, but need not be limited to, individual waste containers, front-end containers, rear-end containers, or roll-off containers;
4. The location of waste containers on the premises on collection day;
5. The frequency of collection in collections per week; month; and year and the days on which collection is to occur;
6. The type of waste(s) that will be collected and any excluded wastes;
7. The party responsible for providing the containers required;
8. Weight in tons or pounds of that particular kind of waste that have been generated in the past three years and projections for the life of the contract; and
9. Any additional information that will be useful for the bidder to properly evaluate the services to be provided.

(g) All bid specifications should include the following information describing the service area:

1. The population at the time of the request for bid proposals and any projections for population increases or decreases over the life of the contract;
2. Seasonal fluctuations in population, if any;
3. If any residential waste will be collected under the contract, the amount by weight in pounds or tons of residential waste generated, collected and disposed of in the service area in each 12 month period for the last three years;
4. If any commercial waste will be collected under the contract, the amount by weight in pounds or tons of commercial waste generated, collected and disposed of in the service area in each 12 month period for the last three years;
5. If any commercial waste will be collected under the contract, the amount by weight in pounds or tons of institutional waste generated, collected and disposed of in the service area in each 12 month period for the last three years;
6. The amount by weight in pounds or tons and waste type of any other type of waste to be collected under the contract in each 12 month period for the last three years; and
7. Projections for future waste generation over the term of the contract.

7:26H-6.13 Conditions for curbside and rear yard collection

(a) Unless otherwise specified in this section, individual waste containers shall be plastic or metal receptacles or bags not to exceed 32 gallons in size or 50 pounds in weight when filled, but may be greater than 32 gallons in size or 50 pounds in weight when filled, in the instance where a mechanical lifting device is utilized in the tipping of the individual waste container. Individual waste containers shall be equipped with two carrying handles.

(b) For curbside collection, containers should be left on the curb, but in the event that this is not possible, shall be placed no further than 20 feet from the curb.

(c) For curbside and rear yard collection, the contractor shall have safe and reasonable access to waste containers.

(d) The contractor is not required to enter a locked gate to remove waste containers.

(e) The contractor is not required to render service if the presence of any interference prevents access to waste containers and/or poses a threat to the contractor or the contractor's employees or agents.

(f) Waste containers that are stored in any of the following shall not be eligible for collection:

1. Under porches or other structures of a similar nature or kind;
2. On porches or other parts of the dwelling; and
3. In other areas not readily available or visible from the public sidewalk.

(g) The contracting unit shall notify all customers within the service area(s) of the conditions in (a) through (f) above and the consequences for failing to comply with those conditions. If the contractor is unable to pick-up waste in accordance with the collection schedule due to customer violation of any of the conditions in (a) through (f) above, the contracting unit shall not hold the contractor responsible. The contractor shall make the pick-up as soon as possible once the problem that prevented pick-up is rectified.

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Substituted "32" for "30" preceding "gallons" throughout.

7:26H-6.14 Authorized disposal facility

(a) All waste collected within the municipality shall be disposed in accordance with the applicable District Solid Waste Management Plan.

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

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

Deleted (b) and (c). Readopted provisions of Emergency Amendment R.1997 d.404 without change.

7:26H-6.15 Additional terms and conditions

(a) The contractor shall maintain telephone service attended by an employee of the contractor during scheduled hours of collection, on all collection days. The contractor's telephone number shall be in service prior to the commencement of service and the contracting unit shall be responsible for publishing the number in the same manner it publishes the telephone numbers of all providers of governmental services.

(b) The contractor shall promptly and properly attend to all complaints of residents and all notices, directives and orders of the contract administrator within 24 hours of the receipt of same. The contractor shall keep a record of complaints and the date and time of the responses to such complaints, as well any action taken. A written summary of all complaints and responses shall be provided to the contract administrator each month.

(c) The contractor shall ensure that no agent or employee shall solicit or be permitted to receive gratuities of any kind for any of the work or services provided in connection with the contract.

(d) All collection vehicles shall be compaction type, completely enclosed and watertight. Subject to the prior approval of the contract administrator, the contractor may employ equipment other than compaction type vehicles on streets whose width precludes the use of such vehicles. The contractor shall specify whether the vehicles are side, front or rear loading.

(e) The contractor shall maintain all collection vehicles in good working order and shall ensure that no collection vehicle is used in such a manner that littering and spillage of solid waste occurs. The contract administrator may inspect the contractor's collection vehicles during the term of the contract to ensure that the collection vehicles are being operated and maintained in accordance with the requirements of this subsection. The contractor shall comply with all reasonable requests to inspect collection vehicles and shall comply with the contract administrator's requests relative to the maintenance, cleanliness and repair of the collection vehicles. Failure to respond to reasonable requests to inspect shall constitute a breach of contract and may result in termination of the contract. Upon contractor's failure to respond to reasonable requests regarding maintenance, cleanliness and repair of a collection vehicle, the contract administrator shall have the right to order the non-conforming collection vehicle out of service. In such event, the contractor shall provide, at its sole cost and expense, a conforming vehicle.

7:26H-6.16 Invoice and payment procedures

(a) The contractor shall submit all invoices for collection and disposal services in accordance with the following requirements:

1. The contractor shall submit an invoice to the contracting unit for services rendered no more than 30 days from the end of the preceding calendar month or "billing month"; and
2. Where the contractor has paid the costs of disposal, the contractor shall submit a separate invoice to the contracting unit for reimbursement no more than 30 days from the end of the preceding calendar month or "billing month".

(b) The governing body shall pay all invoices within 30 days of receipt; provided however, the governing body shall not be obligated to pay a defective invoice until the defect is cured by the contractor. The governing body shall have 30 days from the date of receipt of the corrected invoice to make payment.

(c) All invoices for collection shall include the following information or be deemed defective:

1. The date of the invoice;
2. The amount of the invoice;
3. The time period for which service is rendered; and

4. The type of collection service rendered.

(d) All invoices for reimbursement for the costs of disposal shall include the information listed above at (c) and in addition shall contain the following or be deemed defective:

1. The number and type of vehicle used for collection in the governing body for that billing month;
2. The number of cubic yards and the tonnage of the material disposed of each day during the billing month; and
3. Monthly receipts issued by the disposal facility showing:
 - i. The dates of delivery;
 - ii. The origin of the waste;
 - iii. The vehicle license plate number(s);
 - iv. The total number or cubic yards and the tonnage of the material disposed of during the billing month; and
 - v. The authorized tipping rate plus an itemized list of all taxes and surcharges.

(e) Where the contracting unit will be invoiced directly by the disposal facility for the costs of disposal of solid waste collected pursuant to collection contract, the contractor shall submit to the contracting unit all monthly receipts issued by the disposal facility, as described in (d)3 above.

7:26H-6.17 Insurance requirements

(a) If a contract is awarded, the contractor shall be required to purchase and maintain during the life of the contract, comprehensive general and contractual liability insurance, comprehensive automobile liability insurance and workers' compensation insurance with limits of not less than the following:

1. For workers' compensation, unlimited coverage and in accordance with New Jersey statutes for employer's liability;
2. For comprehensive general and contractual liability insurance coverage, the policies to include personal liability, property, contractual liability, explosion, collapse and underground hazard coverage, and completed operations coverage for the term of the contract, bodily injury liability limits of \$1,000,000 each person and property damage liability limits of \$3,000,000 each occurrence; and
3. For comprehensive automobile liability insurance coverage, bodily injury liability limits of \$500,000 each person and \$1,000,000 each occurrence, and property damage liability limits of \$1,000,000 each occurrence.

(b) The insurance certificate shall list the governing body as additional insured on the comprehensive general contractual liability, automobile liability, and umbrella policies.

(c) Each insurance policy shall contain a provision stating that neither the insured, nor the insurer may cancel, materially change, or refuse renewal without 30 days prior written notice to the contract administrator. All insurance required pursuant to (a) above shall remain in full force and effect until the final contract payment.

(d) Each insurance policy shall provide that neither the contractor, nor its insurer, shall have any right to subrogation against the governing body. Each insurance policy shall provide primary coverage for any and all losses and shall be drafted so as to protect all of the parties.

(e) Certificates of insurance shall be delivered to the contract administrator at the time designated by the contracting unit provided however, that the time so designated shall be after the contract is awarded and prior to the commencement of performance.

7:26H-6.18 Recycling

(a) The contracting unit may, at its option, request bid proposals for the collection of recyclable materials together with its request for proposals for solid waste collection and disposal services.

(b) The form and content of the bid specifications for recycling collection services may follow the requirements of this subchapter as set forth in Appendix A.

APPENDIX A

Wording of the Uniform Bid Specifications

(a) The requirements concerning the wording of the uniform bid specifications are as follows:

1. All requests for bid proposals for municipal solid waste collection services shall conform to the form contained herein, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; and

2. The forms provided are mandatory, all other forms shall be provided by the contracting unit in accordance with the provisions of this subchapter.

[CONTRACTING UNIT]
UNIFORM BID SPECIFICATIONS
SOLID WASTE
[AND RECYCLABLE MATERIALS]
COLLECTION SERVICE

1. INSTRUCTIONS TO BIDDERS

1.1. THE BID

The [CONTRACTING UNIT] is soliciting bid proposals from solid waste collectors interested in providing solid waste collection and/or disposal services for a period of []

year(s), to commence on [MONTH, DAY, YEAR] and ending on [MONTH, DAY, YEAR], in accordance with the terms of these Bid Specifications and N.J.A.C. 7:26H-6 et seq.

1.2. CHANGES TO THE BID SPECIFICATIONS

Notice of revisions or addenda to advertisements or bid documents relating to bids will, no later than five days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids, be published in the [NAME OF LEGAL NEWSPAPER CIRCULATING IN THE COUNTY OR MUNICIPALITY], and in the [NAME OF NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE STATE].

1.3. BID OPENING

All bid proposals will be publicly opened and read by the [TITLE OF OFFICIAL] at [IDENTIFY THE TIME AND PLACE INDICATED IN THE ADVERTISED NOTICE TO BIDDERS]. Bids must be delivered by hand or by mail to the [TITLE OF OFFICIAL] no later than [TIME AND DATE]. All bid proposals will be date and time stamped upon receipt. Bidder is solely responsible for the timely delivery of the bid proposal and no bids shall be considered which are presented after the public call for receiving bids. Any Bid Proposal received after the date and time specified will be returned, unopened, to the bidder.

1.4. DOCUMENTS TO BE SUBMITTED

The following documents shall be submitted by every bidder at the time and date specified in the public notice to prospective bidders:

1. Certified photo-copies of bidder's certificate of public convenience and necessity and an approval letter issued in conformance with N.J.S.A. 13:1E-126;

2. Questionnaire setting forth experience and qualifications;

3. Bid Guarantee in the form of a bid bond, certified check or cashier's check in the amount of 10% of the total amount of the bid proposal, not to exceed \$20,000; payable to the [GOVERNING BODY];

4. Non-collusion affidavit;

5. Stockholder statement of ownership;

6. Certificate of surety; and

7. Bid Proposal.

All of the foregoing shall be submitted in accordance with the instructions hereinafter contained. The division of the Bid Specifications into parts is merely for convenience and ready reference; all parts of the Bid Specifications constitute a single document.

2. DEFINITIONS

“Bid proposal” means all documents, proposal forms, affidavits, certificates, statements required to be submitted by the bidder at the time of the bid opening.

“Bid guarantee” means the bid bond, cashier’s check or certified check submitted as part of the bid proposal, payable to the contracting unit, ensuring that the successful bidder will enter into a contract.

“Bid specifications” means all documents requesting bid proposals for municipal solid waste collection services contained herein.

“Certificate of insurance” means a document showing that an insurance policy has been written and includes a statement of the coverage of the policy.

“Collection site” means the location of waste containers on collection day.

“Collection source” means a generator of designated collected solid waste to whom service will be provided under the contract.

“Consent of surety” means a contract guaranteeing that if the contract is awarded, the surety will provide a performance bond.

“Contract” means the written agreement executed by and between the successful bidder and the governing body and shall include the bid proposal, and the bid specifications.

“Contract administrator” is the person authorized by the contracting unit to procure and administer contracts for solid waste collection services.

“Contracting unit” means a municipality or any board, commission, committee, authority or agency, and which has administrative jurisdiction over any district other than a school district, project, or facility, included or operating in whole or in part, within the territorial boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government, and which has statutory power to make purchases and enter into contracts or agreements for the performance of any work or the furnishing or hiring of any materials or supplies usually required, the costs or contract price of which is to be paid with or out of public funds.

“Contractor” means the lowest responsible bidder to whom award of the contract shall be made.

“Designated collected recyclable material” means [LIST DESIGNATED RECYCLABLE MATERIALS HERE AND IDENTIFY ORDINANCE OF THE GOVERNING BODY, IF APPLICABLE].

“Designated collected solid waste” means solid waste types [WASTE IDENTIFICATION NUMBER(S)]. Designated collected solid waste shall not consist of recyclable materials, hazardous waste, or solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such waste to swine on their own farms.

“Disposal facility” means those sites designated in the [DISTRICT] Solid Waste Management Plan for use by the [CONTRACTING UNIT].

[IDENTIFY NAME AND ADDRESS OF AUTHORIZED DISPOSAL FACILITY(S) THAT ACCEPT THE TYPES OF WASTE THAT WILL BE COLLECTED PURSUANT TO THE CONTRACT]

“Governing body” means the governing body of the municipality, when the contract or agreement is to be entered into by, or on behalf of a, municipality as further defined at N.J.S.A. 40A:11-2.

“Holiday” means a regularly scheduled collection day on which the authorized Disposal Facilities are closed, including:

[LIST HOLIDAYS ON WHICH THE DISPOSAL FACILITIES IDENTIFIED ABOVE WILL BE CLOSED]

“Legal newspaper” means the [NAME OF THE NEWSPAPER SELECTED BY THE CONTRACTING UNIT FOR PUBLISHING OFFICIAL NOTICES AND ADVERTISEMENTS FOR BIDS].

“Proposal forms” mean those forms that must be used by all bidders to set forth the prices for services to be provided under the contract.

“Service area” means the geographic area described below. The service area(s) is(are) as follows:

[DESCRIBE GEOGRAPHIC BOUNDARIES OF THE CONTRACTING UNIT OR OF INDIVIDUAL DISTRICTS IN THE CONTRACTING UNIT. MAPS IDENTIFYING THE SERVICE AREA SHOULD BE ATTACHED IF SUCH MAPS WILL CLARIFY THE SERVICE AREA]

“Surety” means a company that is duly certified to do business in the State of New Jersey and that is qualified to issue bonds in the amount and of the type and character required by these specifications.

3. BID SUBMISSION REQUIREMENTS**3.1. BID PROPOSAL**

A. Each document in the bid proposal must be properly completed in accordance with N.J.A.C. 7:26H-6.5. No bidder shall submit the requested information on any form other than those provided in these bid specifications.

B. Bid Proposals shall be hand delivered or mailed in a sealed envelope, and the name and address of the bidder and the name of the bid as set forth in the Public Advertisement for Bids must be written clearly on the outside of the sealed envelope. No bid proposal will be accepted past the date and time specified by the [CONTRACTING UNIT] in the advertisement for bids.

C. Each bidder shall sign, where applicable, all bid submissions as follows:

1. For a corporation, by a principal executive officer;
2. For a partnership or sole proprietorship, by a general partner or the proprietor respectively; or
3. A duly authorized representative if:
 - a. The authorization is made in writing by a person described in sections 1 and 2 above; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the business.

D. The bid proposal contains option bids. The [GOVERNING BODY] may, at its discretion, award the contract to the bidder whose aggregate bid price for the chosen option, or any combination of options is the lowest responsible bidder; provided, however, the shall not award the contract based on the bid price for separate options.

E. Any Bid Proposal that does not comply with the requirements of the bid specifications and N.J.A.C. 7:26H-6.1 et seq., shall be rejected as non-responsive.

3.2. BID GUARANTEES

A. A Bid Guarantee in the form of a Bid Bond, Cashier's Check or Certified Check, made payable to the [CONTRACTING UNIT] in the amount of 10% of the highest aggregate [NUMBER] year bid submitted, not to exceed twenty thousand dollars (\$20,000) must accompany each Bid Proposal. In the event that the bidder to whom the Contract is awarded fails to enter into the Contract in the manner and within the time required, the award to the bidder shall be rescinded and the bid guaranty shall become the property of the [CONTRACTING UNIT].

3.3. EXCEPTIONS TO THE BID SPECIFICATIONS

Any conditions, limitations, provisos, amendments, or other changes attached or added by the bidder to any of the provisions of these Bid Specifications or any changes made by the bidder on the Proposal Forms shall result in the rejection of the Bid Proposal by the [GOVERNING BODY].

3.4. "OR EQUAL" SUBSTITUTIONS

Whenever the Work Specifications identify a brand name, trade name or a manufacturer's name, this designation is used for classification or descriptive purposes only, and the bidder may substitute an equal product, subject to the approval of the [GOVERNING BODY].

3.5. COMPLIANCE

The bidder shall be familiar with and comply with all applicable local, state and federal laws and regulations in the submission of the Bid Proposal and, if the bidder is awarded the contract, in the performance of the contract.

3.6. CONFLICT OF INTEREST AND NON-COLLUSION

Each bidder must execute and submit as part of the Bid Proposal a "Non-Collusion Affidavit" which at a minimum shall attest that:

A. The bidder has not entered into any agreement or participated in any collusion with any other person, corporate entity or government entity, or competitive bidding either alone or with any other person, corporate entity or government entity in connection with the above named project;

B. All statements made in the bid proposal are true and correct and made with the full knowledge that the contracting unit relies upon the truth of those statements in awarding the contract; and

C. No person or business is employed to solicit or secure the contract in exchange for a commission, percentage brokerage agreement or contingency fee unless such person possesses a Certificate of Public Convenience and Necessity and a License issued pursuant to N.J.A.C. 7:26-16 et seq.

3.7. NO ASSIGNMENT OF BID

The bidder may not assign, sell, transfer or otherwise dispose of the Bid or any portion thereof or any right or interest therein. This section is not intended to limit the ability of the successful bidder to assign or otherwise dispose of its duties and obligations under the contract provided that the [CONTRACTING UNIT] agrees to the assignment or other disposition. No such assignment of disposition shall become effective without the written approval of the New Jersey Department of Environmental Protection.

4. AWARD OF CONTRACT**4.1. GENERALLY**

A. The [GOVERNING BODY] shall award the contract or reject all bids within the time specified in the invitation to bid, but in no case more than 60 days, except that the bids of any bidders who consent thereto may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed. All bidders will be notified of the [GOVERNING BODY'S] decision, in writing, by certified mail.

B. The contract will be awarded to the bidder whose aggregate bid price for the selected option or options is the lowest responsible bid.

C. The [GOVERNING BODY] reserves the right to reject any bid not prepared and submitted in accordance with the provisions hereof, and to reject any or all bids. In the event that the [GOVERNING BODY] rejects all bids, the [CONTRACTING UNIT] shall publish a notice of re-bid no later than ten days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids.

4.2. NOTICE OF AWARD AND EXECUTION OF CONTRACT

Within fourteen calendar days of the award of the contract, the [CONTRACTING UNIT] shall notify the successful bidder in writing, at the address set forth in the Bid Proposal and such notice shall specify the place and time for delivery of the executed contract, the performance bond, the vehicle dedication affidavit and the appropriate affirmative action documentation. Failure to deliver the aforementioned documents as specified in the notice of award shall be cause for the [CONTRACTING UNIT] to declare the contractor non-responsive and to award the contract to the next lowest bidder.

4.3. RESPONSIBLE BIDDER

The [CONTRACTING UNIT] shall determine whether a bidder is "responsible" in accordance with N.J.S.A. 40A:11-6.1 and N.J.A.C. 7:26H-6.8. The Bid Proposal of any bidder that is deemed not to be "responsible" shall be rejected.

4.4. PERFORMANCE BOND

A. For a one year contract, the successful bidder shall provide a one year performance bond issued by a Surety in an amount equal to no more than 100% of the award price. The successful bidder shall provide said performance bond [SPECIFY THE TIME AND PLACE FOR DELIVERY OF THE PERFORMANCE BOND; PROVIDED, HOWEVER, THAT THE TIME SPECIFIED SHALL BE PRIOR TO OR CONCURRENT WITH THE DELIVERY OF THE EXECUTED CONTRACT].

B. Failure to provide the required one year performance bond at the time and place specified by the [CONTRACTING UNIT] shall be cause for assessment of damages as a

result thereof in accordance with Section D below. In the event that the successful bidder fails to provide said performance bond, the [CONTRACTING UNIT] may award the contract to the next lowest responsible bidder or terminate the bid process and re-bid the collection services in accordance with N.J.A.C. 7:26H-6.7(d) and Section 4.1 above.

C. For a [FILL IN NUMBER OF YEARS] contract the successful bidder shall provide a performance bond issued by a Surety in an amount equal to no more than 100% of the annual value of the contract. The successful bidder shall provide said performance bond [SPECIFY THE TIME AND PLACE FOR DELIVERY OF THE PERFORMANCE BOND; PROVIDED, HOWEVER, THAT THE TIME SPECIFIED SHALL BE PRIOR TO OR CONCURRENT WITH THE DELIVERY OF THE EXECUTED CONTRACT]. The performance bond for each succeeding year shall be delivered to the [CONTRACTING UNIT] with proof of full payment of the premium one hundred twenty (120) days prior to the expiration of the current bond.

D. Failure to deliver a performance bond for any year of a multi-year, contract one hundred twenty (120) days prior to the termination of the current bond will constitute a breach of contract and will entitle the [GOVERNING BODY] to terminate the contract upon the expiration of the current bond. Notwithstanding termination pursuant to this section, the contractor is obligated to fully perform through the date of termination of the contract and damages shall be assessed in an amount to the costs incurred by the [CONTRACTING UNIT] in re-bidding the contract.

4.5. AFFIRMATIVE ACTION REQUIREMENTS

A. If awarded a contract, the successful bidder will be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.

B. Within seven days after receipt of notification of the [GOVERNING BODY'S] intent to award any contract the contractor must submit one of the following to the contracting unit:

1. If the Contractor has a federal affirmative action plan approval which consists of a valid letter from the Office of Federal Contract Compliance Programs, the Contractor should submit a photo copy of its letter of approval.

2. If the Contractor has a certificate of employee information report, the Contractor shall submit a photo copy of the certificate.

3. If the Contractor has none of the above, the contracting unit shall provide the Contractor with an (A.A.302) affirmative action employee information report.

C. If the Contractor does not submit the affirmative action document within the required time period the [CONTRACTING UNIT] may extend the deadline by a maximum of the fourteen calendar days. Failure to submit the affirmative action document by the fourteenth calendar day shall be cause for the [CONTRACTING UNIT] to declare the Contractor to be non-responsive and to award the contract to the next lowest bidder.

4.6. VEHICLE DEDICATION AFFIDAVIT

The Contractor shall execute and submit at the time and place specified in the award notice a vehicle dedication affidavit which at a minimum shall attest that: The successful bidder will dedicate a fixed number of vehicles, reasonably calculated to meet the requirements of these bid specifications; or to the extent that dedication of a fixed number of vehicles is not feasible, the Contractor shall covenant that the [CONTRACTING UNIT] will only be accountable for its proportional share of the waste contained in the collection vehicle and shall be assessed charges based only on its share of the waste at the time of disposal.

4.7. ERRORS IN PRICE CALCULATION

Any discrepancy between a numerical price and a price written in words shall be resolved in favor of the price as written in words. Any discrepancy between the unit price multiplied by the quantity and a corresponding total price figure set forth in the Proposal Forms(s) shall be resolved in favor of a total price reached by multiplying the unit price by the quantity. The corrected total shall be used to determine the award of the contract. After all Bid Proposals have been read, the bids will be tabulated and adjusted, if necessary, in accordance with this paragraph. If any mathematical corrections must be made on any bid proposal, then the [GOVERNING BODY] may not award a contract until all tabulations are complete.

5. WORK SPECIFICATIONS

[THE NUMBER OF COLLECTION OPTIONS THAT MAY BE LISTED IN THE WORK SPECIFICATIONS IS UNLIMITED. EACH COLLECTION OPTION SHALL BE CONSECUTIVELY NUMBERED AND SHALL SPECIFY EACH SERVICE THAT MUST BE BID AS PART OF THAT OPTION. BE SPECIFIC. IF THE SERVICE AREA IS DIVIDED INTO ZONES, SPECIFY THE DAYS AND THE COLLECTION SERVICES TO BE PROVIDED TO EACH ZONE. IF RECYCLABLE MATERIALS WILL BE BID AS PART OF THE SOLID WASTE COLLECTION CONTRACT, THE SERVICE MAY BE DESCRIBED HEREIN.]

5.1.

The Contractor shall provide service for each Option awarded by the [GOVERNING BODY]. The [GOVERNING BODY] shall select one collection Option for the contract period of [NUMBER OF MONTHS/YEARS] in accordance with any of the option proposals submitted.

5.2.

The Contractor shall provide collection, removal and disposal from within the territorial and geographical boundaries of the [CONTRACTING UNIT] as described below:

5.3. COLLECTION OPTIONS**OPTION #1 [DESCRIPTION]**

The following materials shall be collected on [DAY(S) OF WEEK]. The Contractor may request the collection day to be changed with approval by the [CONTRACTING UNIT].

[LIST AND DESCRIBE THOSE SOLID WASTE COLLECTION SERVICES THAT ARE TO COMPRISE PROPOSAL OPTION #1; SPECIFY THE TYPE(S) OF WASTE TO BE COLLECTED AND THE SOURCE.]

OPTION #2 [DESCRIPTION]

The following materials shall be collected on [DAY(S) OF WEEK]. The Contractor may request the collection day to be changed with approval by the [CONTRACTING UNIT].

[LIST AND DESCRIBE THOSE SOLID WASTE COLLECTION SERVICES THAT ARE TO COMPRISE PROPOSAL OPTION #2; SPECIFY THE TYPE(S) OF WASTE TO BE COLLECTED AND THE SOURCE.]

[LIST ADDITIONAL COLLECTION OPTIONS AS NECESSARY.]

5.4. CONTAINERS

[SPECIFY ANY CONTAINER REQUIREMENTS HERE]

5.5. COLLECTION SCHEDULE

A. All collection services, as described in these specifications, shall be performed on all designated days between [MORNING TIME] and [EVENING TIME].

B. The following legal holidays are exempted from the waste collection schedule:

[LIST ALL DAYS THAT ARE EXEMPTED FROM THE WASTE COLLECTION SCHEDULE; ALSO SPECIFY HOW CUSTOMERS ARE TO BE NOTIFIED AND WHETHER OR NOT THERE WILL BE AN ALTERNATE COLLECTION DAY OR DAYS SCHEDULED.]

5.6. SOLID WASTE DISPOSAL

A. All solid waste collected within the [CONTRACTING UNIT] shall be disposed of in accordance with the [COUNTY] Solid Waste Management Plan. For the term of this contract, all waste collected pursuant to the terms of the contract shall be disposed of at [AUTHORIZED DISPOSAL FACILITY, INCLUDE THE ADDRESS AND A PHONE NUMBER OF THE AUTHORIZED DISPOSAL FACILITY].

B. The [CONTRACTING UNIT] reserves the right to designate another disposal facility [or, if applicable, disposal facilities] in accordance with the [COUNTY] Solid Waste Management Plan [and/or any waste flow orders] or in the event that the designated Disposal Facility is unable to accept waste. The [CONTRACTING UNIT] will assume all additional costs or benefits that are associated with such designation.

5.7. VEHICLES AND EQUIPMENT

A. All vehicles shall be registered with, and conform to the requirements of the New Jersey Department of Environmental Protection, in accordance with N.J.A.C. 7:26-3.1 et seq.

B. All collection trucks shall be compaction types, completely enclosed and water tight. Subject to the prior approval of the Contract Administrator, the Contractor may employ equipment other than compaction type vehicles on streets whose width precludes the use of such vehicles. The Contractor shall specify whether the vehicles are side, front or rear loading.

C. All vehicles shall be maintained in good working order and shall be constructed, used and maintained so as to reduce unnecessary noise, spillage and odor. The Contract Administrator shall have the right to inspect all vehicles, at any time, during the term of this contract, and the Contractor shall comply with all reasonable requests relative to the maintenance and repair of said vehicles and other equipment used in the execution of the Contract. All vehicles shall be equipped with a broom and shovel.

D. The Contract Administrator may order any of the Contractor's vehicles used in performance of the contract out of service if the vehicle is not maintained in accordance with the requirements of these Work Specifications. In such event, the Contractor shall replace such vehicle, at its sole cost and expense, with a conforming vehicle satisfactory to the Contract Administrator.

5.8. NAME ON VEHICLES

The name, address and service phone number of the Contractor shall be placed clearly and distinctly on both sides of all vehicles used in connection with the collection services.

5.9. TELEPHONE FACILITIES AND EQUIPMENT

A. The Contractor must provide and maintain an office within reasonable proximity of the [CONTRACTING UNIT] with sufficient telephone lines to receive complaints

or inquiries. The Contractor shall ensure that phone service is activated prior to the commencement of service.

B. Telephone service shall be maintained on all collection days, between the hours of [0:00AM] and [0:00PM]. The [CONTRACTING UNIT] shall list the Contractor's telephone number in the Telephone directory along with other listings for the [CONTRACTING UNIT].

5.10. FAILURE TO COLLECT

A. The Contractor shall report to the Contract Administrator, within one (1) hour of the start of the Collection Day, all cases in which severe weather conditions preclude collection. In the event of severe weather, the Contractor shall collect solid waste no later than the next regularly scheduled collection day. In those cases where collection is scheduled on a one collection per week basis, that collection will be made as soon as possible, but in no event later than the next scheduled collection day.

5.11. COMPLAINTS

A. The Contractor shall promptly and properly attend to all complaints of customers and all notices, directives and orders of the Contract Administrator within twenty-four (24) hours of the receipt of same. The Contractor shall be required to maintain a log of all complaints received and the action taken to remedy the complaints. The Complaint log shall be available for inspection by the [CONTRACTING UNIT].

B. The Contractor shall submit a copy of all complaints received and the action taken to the [CONTRACTING UNIT].

5.12. SOLICITATION OF GRATUITIES

The Contractor shall ensure that no agent or employee shall solicit or receive gratuities of any kind for any of the work or services provided in connection with the contract. The Contractor shall be subject to the Liquidated Damage clause herein contained for breach hereof.

5.13. INVOICE AND PAYMENT PROCEDURE

A. The Contractor shall submit all invoices for collection and/or disposal services in accordance with the requirements of this section.

1. Within 30 days after the end of each calendar month during the term of the contract during which the Contractor provided services as provided in these Bid Specifications, the Contractor will submit an invoice to the [CONTRACTING UNIT] for the preceding calendar month (the "Billing Month").

2. Where the Contractor has paid the costs of disposal, the Contractor shall submit a separate invoice to the [CONTRACTING UNIT] for reimbursement.

B. The [CONTRACTING UNIT] shall pay all invoices within 30 days of receipt. The [CONTRACTING UNIT] will not be obligated to pay a defective invoice until the defect is cured by the Contractor. The [CONTRACTING UNIT] shall have 30 days from the date of receipt of the corrected invoice to make payment.

C. Invoices shall specify the number and type of vehicle used for collection in the contracting unit, the loads per truck, and the number of cubic yards and the tonnage of the material disposed of each day during the billing month. The tonnage for which the [CONTRACTING UNIT] shall be charged shall be the difference between the weight of the vehicle upon entering the disposal facility and the tare weight of the vehicle.

D. The Contractor shall submit an invoice setting forth the costs (including all taxes and surcharges) of disposal billed by or paid to the Disposal Facility. Where the Contractor has paid the costs of disposal, the [CONTRACTING UNIT] shall reimburse the Contractor for the actual quantity of waste disposed of based on the monthly submission of certified receipts from the Disposal Facility. The invoices shall specify the number and type of vehicle used for collection in the governing body; the number of cubic yards and the tonnage of the material disposed of each day during the billing month; and monthly receipts issued by the disposal facility showing:

1. The amount of the invoice;
2. The origin of the waste;
3. The truck license plate number;
4. The total quantity and weight of the waste; and
5. The authorized tipping rate plus all taxes and surcharges.

E. Where the [CONTRACTING UNIT] will pay the costs of disposal, the disposal facility shall bill the [CONTRACTING UNIT] directly for all costs (including taxes and surcharges).

5.14. COMPETENCE OF EMPLOYEES

The Contractor's employees must be competent in their work, and if any person employed shall appear incompetent or disorderly, the [CONTRACTING UNIT] shall notify the contractor and specify how the employee is incompetent or disorderly and the contractor shall take steps to correct and remedy the situation, including disciplinary action if necessary. Any employee who drives or will drive a vehicle in the course of the employee's employment pursuant to the contract must possess a valid New Jersey driver's license for the type of vehicle operated.

5.15. SUPERVISION OF EMPLOYEES

The Contractor shall employ a Superintendent or Foreman who shall have full authority to act for the Contractor. The Contractor shall notify the Contract Administrator, in writing, that a supervisor has been appointed. Such notification shall be given prior to beginning performance of the contract. The Contractor shall promptly notify the Contract Administrator, in writing, of any changes.

5.16. INSURANCE REQUIREMENTS

The Contractor shall take out and maintain in full force and effect at all times during the life of this Contract insurance in conformance with the requirements of N.J.A.C. 7:26H-6.17. The insurance policy shall name the [CONTRACTING UNIT] as an Additional Named insured indemnifying the [CONTRACTING UNIT] with respect to the Contractor's actions pursuant to the Contract.

5.17. CERTIFICATES

Upon notification by the [CONTRACTING UNIT], the lowest responsible bidder shall supply to the Contract Administrator, within five days of notification, a certificate of insurance as proof that the insurance policies required by these specifications are in full force and effect.

5.18. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the [CONTRACTING UNIT] from and against all claims, damages, losses, and expenses including all reasonable expenses incurred by the [CONTRACTING UNIT] on any of the aforesaid claims that may result or arise directly or indirectly, from or by reason of the performance of the contract or form any act or omission by the Contractor, its agents, servants, employees or subcontractors and that results in any loss of life or property or in any injury or damage to persons or property.

6. BIDDING DOCUMENTS

6.1. BIDDING DOCUMENTS CHECKLIST

- ___ 6.2. Photo-copies of bidder's certificate of public convenience and necessity and an approval letter issued in conformance with N.J.S.A. 13:1E-126.
- ___ 6.3. Statement of bidder's qualifications, experience and financial ability.
- ___ 6.4. A bid guarantee in the form of a bid bond, certified check or cashier's check in the proper amount made payable to the [CONTRACTING UNIT].
- ___ 6.5. Stockholder statement of ownership.
- ___ 6.6. Non-collusion affidavit.
- ___ 6.7. Consent of surety.
- ___ 6.8. Proposal.

_____	_____
Name of Firm or Individual	Title
_____	_____
Signature	Date

6.2. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY/A-901 APPROVAL LETTER

Name
Complete Address
Telephone Number

Certificate Number

Date

ATTACH AN ORIGINAL COPY OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TOGETHER WITH AN ORIGINAL COPY OF A-901 APPROVAL LETTER

6.3. STATEMENT OF BIDDER'S QUALIFICATIONS, EXPERIENCE AND FINANCIAL ABILITY AFFIDAVIT

STATE OF NEW JERSEY }
COUNTY OF }

SS: [PROJECT NAME]

I, [NAME OF AFFIANT], am the [IDENTIFY RELATIONSHIP TO BIDDER: OWNER, PARTNER, PRESIDENT, OR OTHER CORPORATE OFFICER] of the [NAME OF BIDDER], and being duly sworn, I depose and say:

1. All of the answers set forth in the Questionnaire are true and each question is answered on the basis of my personal knowledge.

2. All of the answers given in the Questionnaire are given by me for the express purpose of inducing the [GOVERNING BODY] to award to [NAME OF BIDDER] the contract for solid waste collection [and recycling] services in the event said bidder is the lowest responsible bidder on the basis of the bid proposal which is submitted herewith.

3. I understand and agree that the [CONTRACTING UNIT] will rely upon the information provided in the Questionnaire in determining the lowest, responsible bidder to be awarded the contract.

4. I also understand and agree that the [GOVERNING BODY] may reject the bid proposal in the event that the answer to any of the foregoing questions is false.

5. I do hereby authorize the [CONTRACTING UNIT], or any duly authorized representative thereof, to inquire about or to investigate the answer to any question provided in the Questionnaire, and I further authorize any person or organization that has knowledge of the facts supplied in such statement to furnish the [CONTRACTING UNIT] with any information necessary to verify the answers given.

Name of Firm or Individual Title
Signature Date

Subscribed and sworn to before me this
day of , 19

Notary Public of

My Commission expires , 19

Note: A partnership must give firm name and signature of all partners. A corporation must give full corporate name and signature of official, and the corporate seal affixed.

QUESTIONNAIRE

This questionnaire must be filled out and submitted [with] as part of the Bid Proposal for solid waste collection and disposal for the [CONTRACTING UNIT]. Failure to complete this form or to provide any of the information required herein shall result in rejection of the Bid Proposal.

Answers should be typewritten or printed neatly in black or blue ink. Answers must be legible. Any answer that is illegible or unreadable will be considered incomplete. If additional space is required, the bidder shall add additional sheets and identify clearly the question being answered.

1. How many years has the bidder been in business as a contractor under your present name?

2. List any other names under which the bidder, its partners or officers have conducted business in the past five years.

3. Has the bidder failed to perform any contract awarded to it by the [GOVERNING BODY] under its current or any past name in the past five years? If the answer is "Yes", state when, where and why. A complete explanation is required.

4. Has any officer or partner of the bidder's business ever failed to perform any contract that was awarded to him/her as an individual by the [GOVERNING BODY] in the past five years? If the answer is "Yes", state when, where and why. A complete explanation is required.

5. List all public entity contracts which the bidder or its partners is now performing or for which contracts have been signed, but work not begun. Give the name of the municipality or owner, the amount of the contract and the number of years the contract covers.

6. List the government solid waste collection and disposal services contract that the bidder has completed within the last five years. Give detailed answers to questions below relating to this subject.

- (a) Name of contracting unit;
(b) Approximate population of contracting unit;
(c) Term of contract from to;
(d) How were materials collected?

(e) Give location of disposal site or sites and methods used in the disposal of solid waste;

(f) Name and telephone number of Contract Administrator or some other official in charge of collection and disposal.

7. State all equipment owned by and/or available to the bidder for use in collection of the waste described in the work specifications. Include the make of each vehicle, the year of manufacture, the capacity, years of service, present condition and the type and size of the truck bodies.

8. Where can this equipment described above be inspected?

9. Identify all equipment that is not presently owned or leased by the bidder that will be necessary to perform the services in accordance with the work specifications.

10. Describe how you will obtain such equipment if you are awarded the contract. If such equipment is to be leased, provide the name, address and phone number of the lessor. If the equipment is to be purchased, provide the name, address and phone number of the seller.

11. If the equipment to be leased or purchased is not located at the address(s) given above in answer 9, identify where the equipment can be inspected.

12. List the name and address of three credit or bank references.

13. Supply the most recent Annual Report, as required to be filed with the Department of Environmental Protection. If the company has recently entered the collection business and has not been required to file an annual report, a financial statement for the most recent year, which includes at a minimum the bidder's assets, shall be submitted, or a financial statement for the most recent year from the bidder's parent company shall be submitted, provided the parent company's financial statement lists the assets of the bidder's company separately.

14. Additional remarks.

6.4. BID GUARANTY

[FORM SUPPLIED BY CONTRACTING UNIT]

6.5. STOCKHOLDER STATEMENT OF OWNERSHIP

[FORM SUPPLIED BY CONTRACTING UNIT]

6.6. NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY }
COUNTY OF } SS: [PROJECT NAME]

I, [NAME OF AFFIANT], of the City of _____ in the State (Commonwealth) of _____, being of full age and duly sworn according to law, on my oath depose and say that:

I am employed by the firm of [NAME OF BIDDER], the bidder submitting the Bid Proposal for the above named project, in the capacity of [TITLE OF AFFIANT], and I have executed the Bid Proposal with full authority to do so. Further, the bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project. All statements contained in said Bid Proposal and in this affidavit are true and correct and made with full knowledge that the State of New Jersey and the [GOVERNING BODY] rely upon the truth of the statements contained in this affidavit and in said bid Proposal in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the [NAME OF BIDDER].

Name of Firm or Individual Title

Signature Date

Subscribed and sworn to before me this _____ day of _____, 19____

Notary Public of

My Commission expires _____, 19____

6.7. CONSENT OF SURETY

[FORM SUPPLIED BY CONTRACTING UNIT]

6.8. PROPOSAL

Proposal for Solid Waste Collection beginning _____

[NAME OF THE CONTRACTING UNIT]:

I or We _____
of _____

[COMPLETE ADDRESS]

[CITY, STATE, ZIP]

hereby agree to provide complete performance in accordance with the Contract and Specifications for the Prices listed on the Proposal Sheets.

NOTE:

Bidders are required to sign all Option Proposal sheets.

Bidders are invited to bid on all or any Option Proposal.

Signature

Affix seal if a corporation.

Title

6.8.1. PROPOSED OPTION #1

[THE CONTRACTING UNIT SHALL LIST, BY WASTE TYPE, THE NUMBER OF COLLECTIONS PER WEEK/MONTH AND THE SOURCE, IF OTHER SERVICES ARE TO BE INCLUDED, THEY SHOULD BE LISTED BELOW]

The following is an example and shall not be construed as a mandatory form of collection option:

One (1) day collection of solid waste per week from residential and municipal sources.

	<u>SOLID WASTE</u>	<u>[RECYCLABLE MATERIALS]</u>	<u>[ADDITIONAL SERVICE]</u>
Year 1	\$ _____	\$ _____	\$ _____
Year 2	\$ _____	\$ _____	\$ _____
Year 3	\$ _____	\$ _____	\$ _____
Year 4	\$ _____	\$ _____	\$ _____
Year 5	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

Waste Directed to: [NAME OF FACILITY]
[ADDRESS]
[RATE PER TON]

Individual

Signature

Name of Firm or Title

Date

6.8.2. PROPOSED OPTION #2

[THE CONTRACTING UNIT SHALL LIST, BY WASTE TYPE, THE NUMBER OF COLLECTIONS PER WEEK/MONTH AND THE SOURCE, I OTHER SERVICES ARE TO BE INCLUDED, THEY SHOULD BE LISTED BELOW]

The following is an example and shall not be construed as a mandatory form of collection option:

Two (2) day collection of solid waste per week from residential and municipal sources.

	<u>SOLID WASTE</u>	<u>[RECYCLABLE MATERIALS]</u>	<u>[ADDITIONAL SERVICE]</u>
Year 1	\$ _____	\$ _____	\$ _____
Year 2	\$ _____	\$ _____	\$ _____
Year 3	\$ _____	\$ _____	\$ _____
Year 4	\$ _____	\$ _____	\$ _____
Year 5	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

Waste Directed to: [NAME OF FACILITY]
[ADDRESS]
[RATE PER TON]

Individual

Signature

Name of Firm or Title

Date

7. CONTRACT DOCUMENTS

7.1. CONTRACT

7.2. (Reserved)

7.3. VEHICLE DEDICATION AFFIDAVIT

AFFIDAVIT

STATE OF NEW JERSEY }
COUNTY OF } SS: [PROJECT NAME]

I, [NAME OF AFFIANT], am the [IDENTIFY RELATIONSHIP TO BIDDER: OWNER, PARTNER, PRESIDENT, OR OTHER CORPORATE OFFICER] of the [NAME OF BIDDER], and being duly sworn, I depose and say:

All statements contained in this affidavit are true and correct and made with full knowledge that the State of New Jersey and the [GOVERNING BODY] rely upon the truth of the statements contained in this affidavit and in said Bid Proposal in signing the contract for the said project.

At all times during the performance of the collection contract, I agree to commit, for use only in the in the [CONTRACTING UNIT], the number of collection vehicles reasonably calculated to ensure safe, adequate and proper service. I further warrant that in the event that dedication of vehicles for use only in the [CONTRACTING UNIT] is not feasible, that the [CONTRACTING UNIT] will not be responsible for disposal costs for waste generated outside the [CONTRACTING UNIT].

I also understand and agree that failure to comply with the representations container herein shall be cause for breach of contract and will entitle the [CONTRACTING UNIT] to damages arising therefrom.

Name of Firm or Individual Title

Signature Date
Subscribed and sworn to before me this
____ day of _____, 19____

Notary Public of
My Commission expires _____, 19____

7.4. (Reserved)

7.5. AFFIRMATIVE ACTION AFFIDAVIT

STATE OF NEW JERSEY }
COUNTY OF } SS: [PROJECT NAME]

I, [NAME OF AFFIANT], of the City of _____ in the State [Commonwealth] of _____ being of full age and duly sworn according to law, on my oath depose and say that:

I am employed by the firm of [NAME OF BIDDER], the bidder submitting the Bid Proposal for the above named project, in the capacity of [TITLE OF AFFIANT], and I have executed the Bid Proposal with full authority to do so. Further, the bidder will comply with the provisions of Public Law 1975, Chapter 127, and shall require all subcontractors to comply with the provisions of Public Law 1975, Chapter 127.

Name of Firm or Individual Title

Signature Date

Subscribed and sworn to before me this
____ day of _____, 19____

Notary Public of

My Commission expires _____, 19____

ATTACHMENT #1

Procurement and Service Contract—Mandatory Language

P.L. 1975, C.127 (N.J.A.C. 17:27)

MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and

applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

ATTACHMENT #2

**[CONTRACTING UNIT]—[MONTH/YEAR]
MUNICIPAL DATA**

RESIDENTIAL SOURCES:

Single family	[NUMBER OF UNITS]
Multi-family	[NUMBER OF UNITS]
Apartment/Condominiums	[NUMBER OF UNITS]
[OTHER]	[NUMBER OF UNITS]
Total	[NUMBER OF UNITS]

Containers [PROVIDE VOLUME OR WEIGHT LIMITS, TYPE, OTHER RELEVANT INFORMATION]

COMMERCIAL SOURCES:

Total [NUMBER OF UNITS]

Containers [PROVIDE VOLUME OR WEIGHT LIMITS, TYPE, OTHER RELEVANT INFORMATION]

INSTITUTIONAL SOURCES:

Schools	[NUMBER OF UNITS]
[OTHER]	[NUMBER OF UNITS]
Total	[NUMBER OF UNITS]

Containers [PROVIDE VOLUME OR WEIGHT LIMITS, TYPE, OTHER RELEVANT INFORMATION]

MUNICIPAL SOURCES:

Municipal buildings	[NUMBER OF UNITS]
Litter baskets	[NUMBER OF UNITS]
[OTHER]	[NUMBER OF UNITS]
Total	[NUMBER OF UNITS]

Containers [PROVIDE VOLUME OR WEIGHT LIMITS, TYPE, OTHER RELEVANT INFORMATION]

POPULATION: [DESCRIBE POPULATION AND POPULATION TRENDS FROM PAST 3 YEARS, PLUS ANY POPULATION PROJECTIONS FOR THE TERM OF THE CONTRACT. INCLUDE, WHERE NECESSARY, ANY SEASONAL FLUCTUATIONS.]

AREA: [IN SQUARE MILES]

TOTAL ROAD MILES: [APPROXIMATE NUMBER AND TYPE: STATE, COUNTY AND/OR LOCAL]

TONNAGE REPORT (199 — YEAR):

Solid Waste:	
Type 10	[TONS]
Type 13	[TONS]
Type 23, 25, & 27	[TONS]
Total	[TONS]

Recyclable Materials: (If included in the bid proposal)

Delay in implementation of uniform bid specification.

See: 28 N.J.R. 4675(a).

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

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

In 5.13 Invoice and Payment Procedure, deleted paragraph F. Readopted provisions of Emergency Amendment R.1997 d.404 without change.

Administrative change.

See: 30 N.J.R. 3948(a).

Amended by R.2002 d.356, effective November 4, 2002.

See: 34 N.J.R. 1792(a), 34 N.J.R. 3819(a).

Rewrote the section.

SUBCHAPTER 7. HOST COMMUNITY BENEFITS

7:26H-7.1 Purpose

The purpose of this subchapter is to establish uniform provisions governing the procedural regulations for the economic benefit to municipalities which host solid waste facilities as provided by N.J.S.A. 13:1E-28 and 28.1. This economic benefit is commonly referred to as a "host community benefit."

7:26H-7.2 Procedural regulations

(a) In the event the facility and the host municipality agree on the terms of an agreement governing host community benefits, they shall submit the proposed agreement to the Department for approval, along with a statement of the reasons the parties believe the agreed-upon benefits are reasonable. Within 180 days, the Department shall approve, reject or remand the agreement for modification.

(b) In the event the facility and the host municipality cannot agree on the terms of an agreement governing host community benefits, either party may petition the Department for an order establishing host or adjusting host community benefits.

(c) A petition for an order establishing or adjusting host community benefits shall be verified by a person with knowledge of the facts stated therein and shall include:

1. All available information regarding the history of any existing or prior host community benefit fee;
2. Copies of all agreements and prior approvals issued by the Department; and

3. Supporting proofs regarding what petitioner contends is the appropriate level of benefit.

(d) Notice of the submission of a proposed agreement or the filing of a verified petition, as well as copies thereof, shall be provided to all other interested parties, including the host community, the facility, their counsel, and, if relevant to the petition, any prior owners or operators of the facility.

(e) Within 45 days of receipt of the verified petition, any party that seeks to oppose the relief requested shall file a response thereto. The response shall be verified by a person with knowledge and shall attach copies of all documents supporting their position.

(f) The Department may, within 60 days of receipt of the parties' initial submissions, serve discovery on either or both parties. The parties shall respond to any discovery served within 60 days. All responses shall be verified by a person with knowledge and shall include all relevant documents. Copies of the discovery requests and responses shall be served on all parties.

(g) The Department shall issue a determination on the petition within 180 days of receipt of discovery (or 180 days from receipt of the petition if no discovery is issued). Additional written arguments and/or oral presentations from the parties will be permitted in the sole discretion of the Department and only where the Department determines that such written arguments and/or presentations will assist in its determination. In the event such presentations are permitted by the Department, they shall be held before a Hearing Officer appointed by the Commissioner for such purpose, and shall be conducted in a manner established by the Hearing Officer. The presentations shall be transcribed and petitioner shall bear the cost of providing copies of the transcription to the Department and the parties.

(h) If all parties agree, the Department may refer the matter to its Office of Dispute Resolution to determine whether a settlement can be negotiated. In the event that the matter is referred to the Office of Dispute Resolution, the time deadlines set forth above shall be tolled.

(i) The Department, in its discretion, may refer the matter, or portions of the matter, to the Office of Administrative Law.