

i. AS equals the average salary of a full-time Department employee working in the Department's hazardous waste program assigned to the activity. In calculating the average salary of a Department employee, the salaries for Direct support and Division overhead positions shall be included along with the salaries for employees assigned to the activity;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's hazardous waste program assigned to the activity, calculated as a percentage of the average salary. The percentage is set by the New Jersey Department of the Treasury, and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a full time Department employee working in the Department's hazardous waste program assigned to the activity, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the sum of AS and FB;

iv. OE equals operating expenses (including without limitation: postage, telephone, travel, supplies, clerical support, other support staff and data system management) attributable to a full-time Department employee working in the Department's hazardous waste program assigned to the activity;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's hazardous waste activities, divided by the total number of billable Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's hazardous waste program spends annually performing activities for which fees are imposed under N.J.A.C. 7:26G-3.3.

(d) Promptly after completing the report described in (c) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26-3.3 within the one-year period covered by the report.

(e) Promptly after making the adjustment to the fees pursuant to the report described in (c) above, the Department shall publish a notice of administrative change in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees, in N.J.A.C. 7:26G-3.3 and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report and to submit comments within 45 days of the date of publication of the notice. The Department shall provide a copy of the report to each person requesting a copy. The Department will evaluate the comments submitted and publish its responses in the New Jersey Register prior to the operative date of the adjusted fees.

SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7:26G-4.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 260, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 260 are not incorporated by reference: 260.1(b)(1), 260.2, the following definitions at 260.10: "Act or RCRA," "Administrator," and "Regional Administrator"; and 260.20(b) through (e).

(c) The following provisions of 40 C.F.R. Part 260 are incorporated by reference with the specified changes:

1. 260.1(a), after "chapter" add "and N.J.A.C. 7:26G";

2. 260.1(b)(3), after "chapter" add "and N.J.A.C. 7:26G";

3. 260.1(b)(4), after "chapter" add "and/or N.J.A.C. 7:26G"; and

4. 260.10 Definitions:

i. "Existing tank system or existing component," after "for which installation has commenced on or prior to July 14, 1986." add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, above-ground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

ii. "Manifest," after "Manifest" add "or State Manifest"; after "EPA form 8700-22" add "as modified by the State"; after "EPA form 8700-22A," add "or a form approved by the Department"; replace "part 262" with "N.J.A.C. 7:26G-6";

iii. "New tank system or new tank component," at the end of the paragraph add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996.

5. 260.20(a), after "parts 260 through 266" delete "and 268" and replace with ", 268 and N.J.A.C. 7:26A-7."; after "of this chapter" add "or N.J.A.C. 7:26G."; after "testing or analytical method to part 261,

264, or 265" add "of this chapter."; after "Section 260.22 sets forth additional requirements for petitions to exclude a waste" add "or waste-derived material."; after "the lists of hazardous wastes in subpart D of part 261" add "of this chapter. N.J.A.C. 7:26G-4.2 sets forth additional requirements for petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes for categories of hazardous waste as universal waste. All petitions for rulemaking will be subject to N.J.A.C. 1:30, Rules for Rulemaking. All petitions for rulemaking are governed by N.J.A.C. 1:30-3.6 and 7:1D-1.1.";

6. 260.21(b), delete "§ 260.20(b)" and replace with "N.J.A.C. 7:1D-1.1 and 1:30-3.6";

7. 260.21(d), after "will be incorporated in" add "and will be in addition to";

8. 260.33(a), delete "in the region where the recycler is located";

9. 260.33(b), delete "this decision may not be appealed to the Administrator." and replace with "a hearing may be requested in accordance with the provisions of the Administrative Procedure Act.";

10. 260.40(a), replace "261.6(a)(2)(iv)" with "261.6(a)(2)(iii)";

11. 260.41, replace "261.6(a)(2)(iv)" with "261.6(a)(2)(iii)";

12. Appendix I to Part 260 first paragraph, after "of the regulations they should comply." add "Appendix I contains guidance, not regulations. If any part of the appendix is inconsistent with the regulations, the regulations are controlling.";

13. Appendix I to Part 260 last paragraph, after "encouraged to write to EPA" add "and the Department"; after "(513) 684-5362" add "and New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Hazardous Waste Regulation, PO Box 414, 120 South Stockton Street, Trenton, NJ 08625-0414, (609)292-7081."

(d) When used in the term "EPA form," the definition of "Manifest," "Federal Agency" and "Person" at 40 C.F.R. 260.10, in the Appendix I to 40 C.F.R. Part 260, and 40 C.F.R. 260.11(a), the term "Agency" or "EPA" means the United States Environmental Protection Agency.

(e) When used in the definition for "hazardous waste constituent" at 40 C.F.R. 260.10, the term "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her designee.

(f) When used in the following Federal citation, the terms "EPA" and "Environmental Protection Agency" shall not be replaced with a State term, but shall retain its meaning: 40 C.F.R. 260.11(a).

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Amended (c)5.

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (d), added C.F.R. reference; and added (f).

Administrative change.

See: 32 N.J.R. 1796(a).

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (a), substituted "May 6, 2002" for "July 31, 1998".

7:26G-4.2 State definitions

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

"Administrator" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee, except where specifically noted, then it means the Administrator of the United States Environmental Protection Agency or his or her designee.

"Agency" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the New Jersey Department of Environmental Protection, except when specifically noted, then it means the United States Environmental Protection Agency.

"Applicant" means the person who submits an application for a permit under this chapter and in whose name the permit is to be issued, and for the purposes of N.J.A.C. 7:26G-7, the person who files an application for an approved registration statement and in whose name the approved registration statement is to be issued.

"Approved registration" means the registration of a hazardous waste treatment, storage, or disposal facility or transporter issued by the Department after review and approval of the registration statement.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Commercial hazardous waste facility" means any hazardous waste facility which accepts hazardous waste from more than one inter-company generator for treatment, storage or disposal at a site other than where the hazardous waste was generated.

"Commingling" means the transferring, bulking, or mixing of hazardous waste from one or more hazardous waste packages, containers, transport units or transport vehicles into another.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

"Compliance inspection" is a site inspection performed by a representative of the Department's hazardous waste enforcement program of a generator, transporter, or facility to verify compliance with previously cited violations.

"Compliance review" is an analysis conducted by a representative of the hazardous waste enforcement program at one of the Department's enforcement field offices to verify compliance with cited violations where the generator, transporter or facility has submitted written material for review. An example is where a contingency plan or personnel training plan has been submitted in response to violations discovered during a previously conducted initial inspection.

"Consignment state" means the state in which the designated facility is located.

"Consolidation" means the movement of closed containers of hazardous waste from one hazardous waste transport unit or transport vehicle to another or the act of transferring liquid hazardous waste from one container to one or more empty containers meeting the conditions at 40 C.F.R. 261.7 (as incorporated by reference at N.J.A.C. 7:26G-5).

"Department" or "DEP" means the New Jersey Department of Environmental Protection.

"Department of Transportation" or "DOT" means the "U.S. Department of Transportation".

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in N.J.A.C. 7:26A-7.2(d)1 and (d)3 and 7.3(d)1 and (d)3. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Director" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his designee, except when specifically noted.

"Environmental and Health Impact Statement" means a statement as to the realistically identifiable, probable impact of the proposed hazardous waste facility upon the geology, soils, hydrology, air quality, ecology, land use, socioeconomics, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at

the project site and in the surrounding region; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

"EPA" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the New Jersey Department of Environmental Protection, except when specifically noted, then it means the United States Environmental Protection Agency. However, "EPA" shall always mean the United States Environmental Protection Agency in the following terms: EPA Identification Numbers, EPA Form, EPA Hazardous Waste Number, EPA Hazardous Waste Codes, USEPA ID Number, EPA Acknowledgement of Consent, EPA Publication SW-846, and EPA Test Method.

"Exempt transporter" shall, for purposes of N.J.A.C. 7:26G-7.2, mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

"Hazardous waste cab" means any powered device to which a hazardous waste transport unit can be attached for transporting hazardous waste off-site or to a hazardous waste facility.

"Hazardous waste transport unit" means any portable non-powered device that is used to contain and transport hazardous waste off-site or to a hazardous waste facility by road, rail, water, or air and that is not normally disposed of with the waste. Hazardous waste transport unit includes, but is not limited to, roll-off containers, hoppers/dumpsters, rail cars, barges, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs.

"Hazardous waste vehicle" means any self-propelled device that is used to move hazardous waste off-site or to a hazardous waste facility. Hazardous waste vehicle is any combination of hazardous waste cab and transport unit, whether detachable or permanently attached, and includes, but is not limited to, straight boxes/vans, straight dumps, straight tanks, straight vacs, straight roll-offs, and pick-up trucks.

"HSWA" means the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

"Large quantity generator inspection" is an inspection of a generator who generates 1,000 kilograms or more of non-acutely toxic hazardous waste per month, or one kilogram of acutely hazardous waste per month; and those who generate less than these amounts but accumulate greater than 6,000 kilograms of non-acutely toxic hazardous waste at any one period of time. A generator's category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

"Licensee" shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"Major commercial hazardous waste facility" is defined at N.J.S.A. 13:1E-42.1 and 51 as "any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department, except that any facility which would otherwise be considered a major hazardous waste facility pursuant to this section solely as the result of the recycling or re-refining of any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper shall not be considered a major hazardous waste facility for the purposes of this Act."

"Non-major commercial hazardous waste facility" is a commercial hazardous waste facility which does not have a total capacity to treat, store or dispose of less than or equal to 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department.

"Non-commercial hazardous waste facility" means any area, plan or other facility for the treatment, storage or disposal of hazardous waste which is not a commercial hazardous waste facility.

"Permit" means the approval issued by the Department to construct and/or operate a hazardous waste facility and shall mean the approved registration statement and engineering design approval described in the Solid Waste Management Act.

"Permittee" shall, for purposes of N.J.A.C. 7:26G-7.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. Is a new animal drug under FFDCA section 201(w); or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or
3. Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph 1 or 2 of this definition.

"Prime contractor" means any person who enters into an oral or written agreement to store, collect, process, transfer, treat, or dispose of hazardous waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle.

"Resource Conservation and Recovery Act," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C," "Subtitle C" or "the Act" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, when referring to either an operating permit or to the Federal hazardous waste program as a whole (that is, not a specific provision of RCRA), mean the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. or any other comparable provision of New Jersey's statutes and implementing regulations, except when specifically noted, then it means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq. When the Federal language incorporated by reference refers to a specific provision of RCRA (except after references to RCRA section 3008 and 3008(h)) add the phrase "or any comparable provisions of New Jersey's statutes and implementing regulations". After references to RCRA sections 3008 and 3008(h) add the phrase "or N.J.S.A. 13:1E-9 or any other comparable provisions of New Jersey's statutes and implementing regulations."

"Registrant" means an applicant who has obtained an approved registration statement and who has registered hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable).

"Registration certificate" means the hazardous waste transporter vehicle registration card which certifies the name and address of the registered company, decal number, expiration date, vehicle identification number, and the license number assigned to the registered company.

"Recycling or reclamation facility" means any place, equipment or plant designed and/or operated for the purpose of recycling or reclamation, to collect, store, process or to redistribute separated waste so as to return the material to market.

"Regional Administrator" as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his or her designee, except when specifically noted, then it means the Regional Administrator for the EPA Region in which the facility is located or his or her designee.

"Registration statement" means an application for approved registration executed on forms provided by the Department and containing such information as may be required.

"Small quantity generator inspection" is an inspection of a generator as defined at 40 C.F.R. 260.10, 261.5(e), 261.5(f), 261.5(g), 262.34(d) and 262.34(f), who meets the conditions in paragraphs 1 and 2 or 1 and 3 below:

1. Generates (in a calendar month) and accumulates (at any time) one kilogram or less of acute hazardous waste or 100 kilograms or less of spill clean-up of acute hazardous waste; and

2. Generates 100 kilograms or less of non-acute hazardous waste in a calendar month and accumulates greater than 1,000 kilograms but never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any time; or

3. Generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month and never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any time.

A generator's category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

"State CAA Director" as used in the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

"State Director" or "State RCRA Director" as used in the Code of Federal Regulations which are incorporated by reference, means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

"Subcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of hazardous waste in this State through the use, control or possession of any cab, vehicle, trailer, container, transport unit or single-unit vehicle pursuant to an oral or written agreement entered into with a prime contractor for the performance of all or part of the prime contract. A lease, pursuant to N.J.A.C. 7:26G-7.2, of hazardous waste vehicle operators and/or equipment to a permittee, licensee, or exempt transporter shall not, for purposes of N.J.A.C. 7:26G-7.2, be considered a subcontract.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of N.J.A.C. 7:26A-7.2(d)3ii or 7.3(d)3ii.

"Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of N.J.A.C. 7:26A-7:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

"Universal waste handler" means a generator (as defined in 40 C.F.R. § 260.10) of universal waste or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of N.J.A.C. 7:26A-7.2(d) or 7.3(d)), disposes of, or recycles universal waste or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway or water.

Amended by R.1996 d.577, effective December 16, 1996.
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Added definitions "battery", "destination facility", "pesticide", "thermostat", "universal waste", "universal waste handler", and "universal waste transporter".

Amended by R.1999 d.19, effective January 19, 1999.
See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Inserted "State CAA Director"; and changed "State Director" definition to "State Director" or "State RCRA Director".

Amended by R.2000 d.75, effective February 22, 2000.
See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Inserted "Exempt transporter", "Licensee" and "Permittee"; and rewrote "Subcontractor".

Amended by R.2001 d.86, effective March 5, 2001.
See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

Rewrote "Consideration"; deleted "Generator inspection"; added "Small quantity generator inspection".

Amended by R.2002 d.140, effective May 6, 2002.
See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Inserted "EPA" and "Registration certificate"; deleted phrase "or 'EPA'" from "Agency"; deleted phrase "by road" from "Hazardous waste cab"; deleted phrase "by road" from "Hazardous waste vehicle".

7:26G-4.3 Petitions to amend N.J.A.C. 7:26A-7 to include additional hazardous wastes

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of N.J.A.C. 7:26A-7 may petition for a regulatory amendment under this section, 40 C.F.R. 260.20 as incorporated by reference herein, and N.J.A.C. 7:26A-7.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Department that regulation under the universal waste regulations of N.J.A.C. 7:26A-7 is appropriate (in accord with the reasons for establishing the universal waste system as set forth in 60 F.R. 25492, May 11, 1995) for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by 40 C.F.R. 260.20(b) as incorporated by reference herein. The petition should also address as many of the factors listed in N.J.A.C. 7:26A-7.7(b) as apply to the waste or category of waste addressed in the petition.

(c) The Department shall grant or deny a petition using the factors listed in N.J.A.C. 7:26A-7.7(b). The decision will be based on the weight of evidence showing that regulation under N.J.A.C. 7:26A-7 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Department may request additional information needed to evaluate the merits of the petition.

New Rule, R.1996 d.577, effective December 16, 1996.
See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

SUBCHAPTER 5. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

7:26G-5.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 261, Federal Regulations on Identification and Listing of Hazardous Waste, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 261 are not incorporated by reference: 40 C.F.R. Part 261 Appendix IX.

(c) The following provisions of 40 C.F.R. Part 261 are incorporated by reference with the specified changes:

1. Operative dates of regulations first promulgated by EPA are determined as follows:

i. Operative dates of rules originally promulgated by USEPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and incorporated by reference on October 21, 1996, shall not be altered, because these rules are operative in all states at the time of adoption.

ii. Operative dates of rules incorporated by reference on October 21, 1996, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with October 21, 1996, because these rules are not operative in authorized states until state adoption of the rules.

iii. Operative dates of rules incorporated by reference after October 21, 1996, but prior to August 1, 1998, originally promulgated by USEPA under the authority of the Resource Conservation and Recovery Act (RCRA), shall be removed and replaced with January 19, 1999, because these rules are not operative in authorized states until state adoption of the rules.

iv. Operative dates of rules incorporated through prospective incorporation by reference shall become operative in accordance with N.J.A.C. 7:26G-1.4(k) and (l).

v. See 40 C.F.R. 271.1 Table 1, which lists all HSWA regulations. Other regulations are promulgated under RCRA.

2. The phrase "in the Region where the sample is collected" shall be omitted from 40 C.F.R. 261.4(e)(3)(iii).

3. 40 C.F.R. 261.5(c)(4), replace "40 C.F.R. Part 279" with "N.J.A.C. 7:26A-6";

4. 40 C.F.R. 261.5(c)(6), replace "40 C.F.R. Part 273" with "N.J.A.C. 7:26A-7";

5. 40 C.F.R. 261.5(f)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

6. 40 C.F.R. 261.5(g)(3)(vii), replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7";

7. 40 C.F.R. 261.5(j), replace "part 279 of this chapter" with "N.J.A.C. 7:26A-6";

8. 40 C.F.R. 261.6(a)(5), replace "State requirements analogous to 40 C.F.R. Part 273." with "N.J.A.C. 7:26A-7.";

9. 40 C.F.R. 261.9, replace "part 273 of this chapter" with "N.J.A.C. 7:26A-7" and replace "under 40 C.F.R. part 273:" with "at N.J.A.C. 7:26A-7:";

10. 40 C.F.R. 261.9(a), replace "40 C.F.R. 273.2" with "N.J.A.C. 7:26A-7.1(b)";

11. 40 C.F.R. 261.9(b), replace "40 C.F.R. 273.3;" with "N.J.A.C. 7:26A-7.1(c)";

12. 40 C.F.R. 261.9(c), replace "40 C.F.R. 273.4." with "N.J.A.C. 7:26A-7.1(d).";

13. 40 C.F.R. 261.38(c)(1)(i), after "State RCRA and CAA Directors," remove "in Authorized States or Regional RCRA and CAA Directors in Unauthorized States";

14. 40 C.F.R. 261.38(c)(1)(i)(A), after "The generator must submit a one-time notice to the," remove "Regional or";

15. 40 C.F.R. 261.38(c)(1)(ii)(E), after "Name and mailing address of the," remove "Regional or State Directors" and insert "State Director."

(d) When used in the following Federal citations, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 261.10 and 11.

(e) When used in the following Federal citation(s), the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. § 261.38 footnotes to Table 1.

1. The transporter consolidating the hazardous waste is a licensed hazardous waste transporter in the State of New Jersey;

2. The hazardous waste transfer facility is not located at the interim status or permitted hazardous waste facility indicated as the designated facility on the hazardous waste manifests;

3. The transfer involves liquid hazardous waste only;

4. The contents of only one container shall be transferred at a time;

5. Prior to and after consolidation, the hazardous waste is stored in closed containers, which meet the applicable U.S. Department of Transportation packaging regulations specified in 49 C.F.R. Parts 171 through 180, as amended;

6. The storage of the consolidated hazardous waste complies with the hazardous materials segregation criteria at 49 C.F.R. 177.848 or 174.81, and with the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265;

7. The cumulative capacity of the empty containers (meeting the conditions at 40 C.F.R. 261.7 as incorporated by reference at N.J.A.C. 7:26G-5) intended to receive the waste shall be sufficient to containerize the total amount of hazardous waste involved in the transfer; and

8. The newly consolidated waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit as determined by the component of the waste load which has been at the transfer facility the longest.

(i) The commingling of hazardous wastes of different USDOT shipping descriptions is prohibited.

(j) If a shipment of hazardous waste is rejected by a designated facility after a transporter has commingled hazardous wastes, the transporter must comply with requirements set forth at N.J.A.C. 7:26G-6.3(b) and (c) and any additional requirements set forth at N.J.A.C. 7:26G-7.1(c)1.

(k) Repeated and/or multiple violations at a transfer facility may result in termination of eligibility for these transfer activities and require the cessation of such activities. Notwithstanding a hazardous waste transporter's compliance with all requirements of the hazardous waste transfer facility regulations at (c), (d), (e), (f), (g), (h), (i) and (j) above, the Department may terminate eligibility for these transfer activities and require the cessation of such activities any time the Department determines that a particular hazardous waste transporter or hazardous waste transfer facility poses a threat to the environment or that a transporter cannot be relied upon to operate the transfer facility safely and in conformance with all applicable rules and regulations. Owners or operators of such hazardous waste facilities for which the Department has terminated eligibility for one or more

activities or who have had to cease all operations, shall have the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

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

Rewrote the section.

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (c), deleted "annual" in second sentence, preceding "hazardous waste transporter license renewal"; in (d), inserted "Written or otherwise transcribed operating log(s) shall be kept available at the facility site for at least three years.

SUBCHAPTER 8. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7:26G-8.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 264, Federal regulations on the standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b), (c) and (d) below.

(b) The following provisions of 40 C.F.R. Part 264 are not incorporated by reference:

1. 40 C.F.R. 264.149 Use of State-required mechanisms;
2. 40 C.F.R. 264.150 State assumption of responsibility;
3. 40 C.F.R. 264.301(l) Design and operating requirements, Alabama landfills;
4. 40 C.F.R. 264 Appendix VI Political Jurisdictions in which compliance with § 264.18(a) must be demonstrated;
5. 40 C.F.R. 264.1030(d);
6. 40 C.F.R. 264.1050(g); and
7. 40 C.F.R. 264.1080(e).

(c) The following provisions of 40 C.F.R. Part 264 are incorporated by reference with the specified changes:

1. The term "New Jersey" shall be substituted for "State(s)," "authorized state," "approved state", and the term "New Jersey's hazardous waste program" for "approved program" in those provisions of 40 C.F.R. Part 264 which are incorporated by reference, except at 40 C.F.R. 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);

2. 40 C.F.R. 264.1(g)(9), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";

3. 40 C.F.R. 264.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";

4. 40 C.F.R. 264.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 1-877 WARNDPEP and";

5. 40 C.F.R. 264.71(a)(3), after "one copy of the signed manifest" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";

6. 40 C.F.R. 264.71(b)(3), after "one copy of the manifest or shipping paper (if the manifest has not been received)" add ", and forward the pertinent copy of the manifest form to the Department and to the generator's State agency by the next business day";

7. (Reserved)

8. 40 C.F.R. 264.113(e)(7)(v), delete "not subject to administrative appeal" and replace with "subject to appeal in accordance with the provisions of Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.";

9. 40 C.F.R. 264.119(a), substitute "October 9, 1981" for "January 12, 1981";

10. Changes to 40 C.F.R. 264.151:

i. 40 C.F.R. 264.151(l), after "Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended" add "or any comparable provisions of N.J.S.A. 13:1E-1 et seq. and implementing regulations", in the form agreements contained in these subparagraphs;

ii. 40 C.F.R. 264.151(a), 264.151(m)(1) and 264.151(n)(1), substitute "a Department of the State of New Jersey" for "an Agency of the United States Government";

iii. 40 C.F.R. § 264.151(l), in paragraph (3) of the form agreement, under the heading "Governing Provisions" delete "governing State agency (if applicable) [insert citation]" and insert instead, "State of New Jersey, particularly N.J.A.C. 7:26G-8";

iv. Whenever 40 C.F.R. 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the Department and all Regional Administrators of the United States Environmental Protection Agency of Regions which are affected by the owner or operator's financial assurance mechanisms;

v. 40 C.F.R. 264.151(a) through (n), all changes and substitutions specified in (c)10i through iv above and in N.J.A.C. 7:26G-4.2 shall also be made to the wording of each financial instrument prepared in accordance with 40 C.F.R. 264.151.

11. 40 C.F.R. 264.191(a), substitute "by April 19, 1997" for "by January 12, 1988" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

12. 40 C.F.R. 264.191(c), substitute "October 21, 1996" for "July 14, 1986" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

13. 40 C.F.R. 264.193, substitute "April 19, 1997" for "January 12, 1987" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

14. 40 C.F.R. 264.276(b)(1)(ii), in the second line of the table, substitute "0.5" for "1.25";

15. 40 C.F.R. 264.570(a), substitute "October 21, 1996" for "December 6, 1990" unless the regulated drip pads accept F032 waste; and

(d) (Reserved)

(e) The requirements of this subchapter do not apply to universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) handling the wastes listed in (e)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(f) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 264.1(j)(1) and 264.12(a).

(g) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 264.11, 264.554, and 264.1080, Comment at the end of 40 C.F.R. 264.18(b)(1)(ii)(D), Comment and forms at the end of 40 C.F.R. 264.18(b)(2)(iii), 264.151(f) and 264.151(g) and note to 40 C.F.R. 264.573(a)(5).

(h) When used in the following Federal citations, the term "RCRA" or Resource Conservation and Recovery Act" shall retain its meaning and not be replaced by a state analog: 40 C.F.R. 264.251(f), and 264.301(f)(1).

(i) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be substituted by a State term, but shall retain its meaning: 40 C.F.R. 264.12(a)(2) and 264.71(d).

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (e).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b), added 5 through 7; and added (i).

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

Rewrote section.

SUBCHAPTER 9. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7:26G-9.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 265. Federal regulations on the interim status standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 265 are not incorporated by reference: 40 C.F.R. 265.149, 265.150, 265.1030(c), 265.1050(f) and 265.1080(e).

(c) The following provisions of 40 C.F.R. Part 265 are incorporated by reference with the specified changes:

1. 40 C.F.R. 265.1(c)(12), replace "transfer facility" with "hazardous waste transfer facility in accordance with N.J.A.C. 7:26G-7.4";

2. 40 C.F.R. 265.52(b), after "or part 1510 of chapter V," add "or a Discharge Prevention, Containment and Countermeasure (DPCC) Plan in accordance with N.J.A.C. 7:1E";

3. 40 C.F.R. 265.56(d)(2), after "He must immediately notify" add "the NJDEP Hotline at 1-877-WARNDEP and";

4. 40 C.F.R. 265.90(a), 265.90(d)(1) and 265.93(a), substitute "By December 6, 1982" for "Within one year after the effective date of these regulations";

5. 40 C.F.R. 265.90(d)(2), substitute "December 6, 1982" for "one year after the effective date of these regulations";

6. 40 C.F.R. 265.119(a), substitute "January 3, 1984" for "January 12, 1981";

7. 40 C.F.R. 265.191(a), substitute "by April 19, 1997" for "by January 12, 1988" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

8. 40 C.F.R. 265.191(c) substitute "[the effective date of these regulations] October 21, 1996" for "July 14, 1986" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

9. 40 C.F.R. 265.193, substitute "[180 days after the effective date of these regulations] April 19, 1997" for "January 12, 1987" unless the regulated tank or tanks are underground tanks that cannot be entered for inspection;

10. 40 C.F.R. 265.276(a), substitute "May 21, 1984" for "the effective date of this part";

11. 40 C.F.R. 265.440(a), substitute "October 21, 1996" for "December 6, 1990" and "December 24, 1992" unless the regulated drip pads accept F032 waste; and

12. The term "New Jersey" shall be substituted for "State(s)", "authorized state", "approved state", and the term "New Jersey's hazardous waste program" for "approved program" in those provisions of 40 C.F.R. Part 265 which are incorporated by reference, except at 40 C.F.R. 265.147(a)(1)(ii), 265.147(g)(2) and 265.147(i)(4).

(d) The requirements of this subchapter do not apply to universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) handling the wastes listed in (d)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his or her designee: 40 C.F.R. 265.12(a), 265.149(a) and 265.150(a).

(f) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 265.11.

(g) When used in the following Federal citations, the term "RCRA" or "Resource Conservation and Recovery Act" shall retain its meaning and not be replaced by a state analog: 40 C.F.R. 265.301(c)(1).

(h) When used in the following Federal citations, the term "Environmental Protection Agency" shall not be substituted by a State term, but shall retain its meaning: 40 C.F.R. 265.12(a)2 and 265.71(d).

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (d).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b), changed C.F.R. references; and added (h).

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R.1669(b).

In (a), substituted "May 6, 2002" for "July 31, 1998"; in (c)3, substituted "1-877-WARNDEP" for "609-292-7172".

SUBCHAPTER 10. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7:26G-10.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 266 (including all appendices), Federal regulations on the management of specific hazardous waste, as amended and supplemented, except as provided in (b) and (c) below.

(b) (Reserved)

(c) The following provisions of 40 C.F.R. Part 266 are incorporated by reference with the specified changes:

1. 40 C.F.R. 266.103(a)(1)(ii), delete the first sentence and replace with "*Existing or in existence* means a boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. For sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, *existing or in existence* means that on or before October 21, 1996 such units are either in operation burning or processing hazardous waste, or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced.";

2. 40 C.F.R. 266.103(a)(6)(iii), after "August 21, 1991" add "for all boiler or industrial furnaces except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and prior to October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

3. 40 C.F.R. 266.103(b)(1), after "August 21, 1991" add "for all boiler or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

4. 40 C.F.R. 266.103(b)(6), after "August 21, 1991" add "for all boiler or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1996 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

5. 40 C.F.R. 266.103(c), after "August 21, 1992" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

6. 40 C.F.R. 266.103(c)(7)(i), after "August 21, 1992" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

7. 40 C.F.R. 266.103(c)(7)(i)(B), after "August 21, 1992" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators"; after "August 23, 1993" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators";

8. 40 C.F.R. 266.111(e)(1)(ii), after "August 21, 1991" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1998 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators"; and

9. 40 C.F.R. 266.111(e)(2), after "August 21, 1992" add "for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before October 21, 1997 for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators".

(d) As of October 21, 1996, any boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, which failed to comply with EPA's certification of compliance schedule as provided by 40 C.F.R. 266.103(b), (c) and (d), is also deemed not to be in compliance under State law and shall comply with the requirements of 40 C.F.R. 266.103(e), as adopted by reference at (a) above.

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a).

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (a), substituted "May 6, 2002" for "July 31, 1998".

SUBCHAPTER 11. LAND DISPOSAL RESTRICTIONS

7:26G-11.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 268, Federal regulations on Land Disposal Restrictions, and the Appendices to 40 C.F.R. Part 268, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of the Land Disposal Restrictions are not incorporated by reference:

1. The following sections of 40 C.F.R. Part 268 because these sections contain the schedule by which EPA must evaluate wastes for disposal restrictions:

i. 40 C.F.R. 268.10, Identification of Wastes to be Evaluated by August 8, 1988;

ii. 40 C.F.R. 268.11, Identification of Wastes to be Evaluated by June 8, 1989;

iii. 40 C.F.R. 268.12, Identification of Wastes to be Evaluated by May 8, 1990; and

iv. 40 C.F.R. 268.13, Schedule for Wastes Identified or Listed After November 8, 1990; and

2. The following sections of 40 C.F.R. Part 268 because they have not been delegated by USEPA to the State:

i. 40 C.F.R. 268.5, Procedures for case-by-case extension of an effective date;

ii. 40 C.F.R. 268.6, Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268;

iii. 40 C.F.R. 268.42 (b), Treatment standards expressed as specified technologies (alternative treatment method; and

iv. 40 C.F.R. 268.44, Variance from a treatment standard, paragraphs (a) through (g), national variances, and (n) through (p), constituent concentrations.

(c) (Reserved)

(d) Universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) are exempt from 40 C.F.R. 268.7 and 268.50 as incorporated herein by reference for the hazardous wastes listed in (d)1 through 3 below. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when handling the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);

2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and

3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) The regulated community in New Jersey may apply to EPA Region II for all Land Disposal Restriction extensions, exemptions and variances offered by EPA but not delegated to the States. (Examples are case-by-case extensions to an effective date, at 40 C.F.R. 268.5(a), petitions to allow land disposal of a prohibited waste, at 40 C.F.R. 268.6(a), and alternate treatment at 40 C.F.R. 268.42(b).)

(f) When used in the following Federal citations, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency: 40 C.F.R. 268.40(b).

(g) When used at 40 C.F.R. 268.1(e)(3), the term "EPA" shall mean the United States Environmental Protection Agency.

Amended by R.1996 d.577, effective December 16, 1996. See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (d).

Amended by R.1999 d.19, effective January 19, 1999. See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a); in (b)2, substituted "USEPA" for "EPA" in the introductory paragraph, and added " paragraphs (a) through (g), national variances, and (n) through (p), constituent concentration" at the end of iv.

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (a), substituted "May 6, 2002" for "July 31, 1998".

SUBCHAPTER 12. HAZARDOUS WASTE PERMIT PROGRAM

7:26G-12.1 Incorporation by reference

(a) This subchapter incorporates by reference up to May 6, 2002 and prospectively incorporates by reference 40 C.F.R. Part 270, Federal regulations on USEPA administered permit programs: the hazardous waste permit program, as amended and supplemented, except as provided in (b) and (c) below.

(b) The following provisions of 40 C.F.R. Part 270 are not incorporated by reference: 40 C.F.R. 270.1(a) and (b), 270.3, 270.14(b)(18), 270.51 and 270.73(c) through (g).

(c) The following provisions of 40 C.F.R. Part 270 are incorporated by reference with specified changes:

1. 40 C.F.R. 270.2, in the definition of "Corrective Action Management Unit," after "RCRA Section 3008(h);" add "and all applicable provisions of N.J.S.A. 13:1E-9";

2. 40 C.F.R. 270.2, in the definition of "Final Authorization," after section 3006(b) of RCRA," add "and all

applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9”;

3. 40 C.F.R. 270.2, in the definition of “Interim Authorization,” after section 3006(c) of RCRA,” add “and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations”;

4. Two changes are needed at 40 C.F.R. 270.10:

i. Applicants must comply not only with the requirements of this section, but also with the disclosure requirements at N.J.S.A. 13:1E-126 et seq., and implementing regulations, as well as the requirement for Environmental and Health Impact Statements at N.J.A.C. 7:26G-12.2,

ii. 40 C.F.R. 270.10(e)(3), after “Section 3008 of RCRA,” add “and all applicable provisions of N.J.S.A. 13:1E-9”;

5. 40 C.F.R. 270.12, replace “40 C.F.R. Part 2” with “N.J.A.C. 7:26G-16”;

in the sentence beginning “Any such claim”, delete the phrase “on the application form or instructions or, in the case of other submissions, by stamping the words “confidential business information” on each page containing such information.”

6. 40 C.F.R. 270.149(b)(1), after “A topographic map” add “, prepared in a manner and format consistent with N.J.A.C. 7:1D, Appendix A,”;

7. 40 C.F.R. 270.14(b)(20), replace the phrase “his duties under other Federal laws as required in § 270.3 of this part” with “any duties he may have under federal laws cited in 40 C.F.R. 270.3 as well as his duties under New Jersey Statutes, including but not limited to The Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., The New Jersey Conservation and Historic Preservation Restriction Act, N.J.S.A. 23:2A-1 et seq., The Endangered Plant Species List, N.J.S.A. 13:1B-151 et seq., The Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., The Wetlands Act of 1970, N.J.S.A. 13:19A-et seq., The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., The Waterfront Development Law, N.J.S.A. 12:5-3 et seq., The Trails System Act N.J.S.A. 13:8-30 et seq., The Pineland Protection Act, N.J.S.A. 58:11-49 et seq., The Water Pollution Control Act and Clean Water Enforcement Act, N.J.S.A. 58:10A-1 et seq., The Flood Hazard Area Control Act, 58:16A-50 et seq., The Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and The Air Pollution Control Act, N.J.S.A. 26-2C et seq.”

8. 40 C.F.R. 270.32(b)(2), after “section 3005 of this act,” add “and all applicable provisions of N.J.S.A. 13:1E-1 et seq. and implementing regulations”;

9. 40 C.F.R. 270.40, after the last sentence of subsection (b), add “(c) The change of ownership or operational control shall not occur until the Department issues approval to the new owner or operator in accordance with the requirements of N.J.S.A. 13:1E-133.”;

10. 40 C.F.R. 270.70(a)(1), after “section 3010(a) of RCRA,” add “or any comparable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations”;

11. 40 C.F.R. 270.70(a)(1), in the Comment at the end of this paragraph, after “section 3010(a) of RCRA,” add “and all provisions of N.J.S.A. 13:1E-1 et seq., and implementing regulations”;

12. 40 C.F.R. 270.72(a)(5), after “Section 3008(h),” add “and all applicable provisions of N.J.S.A. 13:1E-9 and implementing regulations”;

13. 40 C.F.R. 270.72(a)(4), after the last sentence of paragraph (4), add “The change of ownership or operational control shall not occur until the Department issues approval to the new owner or operator in accordance with the requirements of N.J.S.A. 13:1E-133.”;

14. 40 C.F.R. 270.72(b)(2), after “section 3004(o),” add “and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9,”;

15. 40 C.F.R. 270.72(b)(5), after “RCRA section 3008” add “and all applicable provisions of N.J.S.A. 13:1E-1 et seq., and implementing regulations”;

16. 40 C.F.R. 270.72(b)(6), after “RCRA section 3004,” add “and all applicable provisions of N.J.S.A. 13:1E-1 et seq., including 13:1E-9, and implementing regulations”;

17. 40 C.F.R. 270.73, replace subsection (c) through (g) with the following: “Interim status can be terminated by the Department for failure to comply with interim status facility standards or violation of applicable statutes, regulations or orders, or if the activity of the facility endangers human health and the environment and cannot be regulated to acceptable levels.”; and

18. The term “New Jersey” shall be substituted for “State(s),” “authorized state,” “approved state,” and the term “New Jersey’s hazardous waste program” for “approved program” in those provisions of 40 C.F.R. Part 270 which are incorporated by reference, except at 40 C.F.R. 270.2.

(d) Universal waste handlers and universal waste transporters (as defined in N.J.A.C. 7:26G-4.2) managing the wastes listed in (d)1 through 3 below are not required to obtain a RCRA permit. These handlers are subject to regulation under N.J.A.C. 7:26A-7 when managing the below listed universal wastes:

1. Batteries as described in N.J.A.C. 7:26A-7.1(b);
2. Pesticides as described in N.J.A.C. 7:26A-7.1(c); and
3. Thermostats as described in N.J.A.C. 7:26A-7.1(d).

(e) Notwithstanding N.J.A.C. 7:26G-4.2, in the following definitions found at 40 C.F.R. 270.2 there shall not be a blanket substitution for terms such as Administrator, EPA, RCRA, Interim Authorization, or any other generally substituted term. These definitions are incorporated without change: Administrator, Approved program or approved state, Director, Environmental Protection Agency, EPA, Final Authorization, Permit, Major facility, Person, Regional Administrator, and State/EPA agreement.

(f) When used in the following Federal citations, the term "Administrator" or "Regional Administrator" means the Administrator or Regional Administrator of the United States Environmental Protection Agency or his designee: 40 C.F.R. 270.5, 270.10(e)(2), 270.10(f)(2) and (3) and (g)1i and iii, 270.32(a) and (b)(2) and 270.11(a)(3).

(g) When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 C.F.R. 270.5, 270.10(e)(2), 270.32(c), 270.51, 270.72(a)(5), 270.72(b)(5), 270.79, and 270.225 and note to 40 C.F.R. 270.10.

Amended by R.1996 d.577, effective December 16, 1996.

See: 28 N.J.R. 2240(a), 28 N.J.R. 5360(a).

Inserted (d).

Amended by R.1999 d.19, effective January 19, 1999.

See: 30 N.J.R. 3128(a), 31 N.J.R. 166(a).

Rewrote (a).

Amended by R.2002 d.140, effective May 6, 2002.

See: 33 N.J.R. 3794(a), 34 N.J.R. 1669(b).

In (a), substituted "May 6, 2002" for "July 31, 1998"; in (c), added a new 6 and recodified former 6 through 17 as 7 through 18; in (g), inserted "270.79, and 270.225 and note to 40 C.F.R. 270.10".

7:26G-12.2 Environmental and Health Impact Statement

(a) Certain applicants shall be required to submit an Environmental and Health Impact Statement (EHIS) in addition to Parts A and B of the permit application in accordance with the provisions set out in this section.

(b) Applicants for the following shall submit an EHIS in all cases:

1. An initial permit issued pursuant to this subchapter for a new commercial hazardous waste facility; and
2. Authorization to construct and operate a hazardous waste incinerator or hazardous waste land disposal unit at a hazardous waste facility where no such hazardous waste management unit is presently authorized.

(c) Applicants for the following may be required in accordance with (d) and (e) below to submit an EHIS:

1. An initial permit issued pursuant to this subchapter for a new non-commercial hazardous waste facility;
2. An initial permit issued pursuant to this subchapter to an existing hazardous waste facility; or
3. A modification or revocation and reissuance or renewal of a permit pursuant to this subchapter.

(d) Whether or not an EHIS is required with the submission of an application for the permit or changes listed in (c) above shall be determined by the Department on a case by case basis, whenever a change to authorized hazardous waste management practices may change or increase the danger to human health and the environment. Such cases are as follows:

1. Addition of waste types;
2. Increase in capacity of a hazardous waste management unit;
3. Alteration of operating conditions of a hazardous waste management unit; or
4. Addition of hazardous waste management units, including replacement of existing hazardous waste management units.

(e) The Department shall apply the following criteria to the proposed changes (to facility operation to) determine whether the changes will increase or change the nature of the risk to human health and the environment. If the Department finds that this is so, an Environmental and Health Impact Statement shall be required.

1. Dissimilarity between proposed waste types and present waste types;
2. Magnitude of facility-wide volume and capacity increases;
3. Magnitude of facility-wide waste throughput increases;
4. Relative risks posed by the proposed changes;
5. Location of the existing facility and nearby land use;
6. Nature of the existing facility;
7. Scale of new construction proposed;
8. Potential for increased transportation impacts;
9. Nature and scale of additional construction and structure usages at other than hazardous waste management units;
10. Environmental sensitivity of the land involved;
11. Existing site conditions;
12. Magnitude of facility-wide emissions increases;
13. Any circumstances peculiar to the facility.

(f) Applicants shall not be required to submit an EHIS in the following cases:

1. The applicant is seeking an initial permit issued pursuant to this subchapter for an existing hazardous waste facility, if no changes in authorized hazardous waste management practices are proposed;
2. The applicant is seeking permit revocation and reissuance or permit renewal for a permitted hazardous

waste facility, if no changes in authorized hazardous waste management practices are proposed; or

3. The facility is an on-site pre-treatment facility which is directly connected to an industrial process and which is constructed pursuant to 40 C.F.R. 403 or N.J.S.A. 58:11-49 et seq.

(g) The Environmental and Health Impact Statement shall include:

1. An Executive Summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts, issues of major concern, matters to be decided and major conclusions;

2. A Description of the Proposed Facility, including:

i. The proposed facility owner and operator;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the products or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;

iii. An identification of the waste streams which the proposed facility will accept;

iv. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

v. A narrative statement of the types of the existing and proposed hazardous waste management systems at the site. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily handling capacity of the overall facility and the anticipated operating time in hours per day and days per week;

vi. A narrative description of the proposed site location including history of site use;

vii. A site plan including a scale drawing showing location of all past, present, and future hazardous waste management areas;