

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 Rate adjustments for construction and demolition (Type 13C) waste

(a) All solid waste disposal utilities with approved tariff rates for Type 13 waste on file with the Department may, after January 29, 1996, increase or decrease the approved disposal rates for the construction and demolition portion of the Type 13 waste stream (Type 13C waste) without prior Department approval.

(b) After January 29, 1996, solid waste disposal utilities shall implement rate adjustments for Type 13C waste in accordance with the following:

1. The authority to implement rate adjustments for Type 13C waste without the prior approval of the Department shall be effective until the earlier of enactment of Federal legislation authorizing flow control over C&D waste or an order of the Court imposing further or supplementary relief with respect to C&D or modifying its prior order;

2. By April 29, 1996, every solid waste disposal utility shall submit a status report to the Department, on forms provided by the Department (or on duplication of same). The status report shall, at a minimum, include:

- i. The tonnage of Type 13C waste received;
- ii. The rates charged for Type 13C waste; and
- iii. An assessment of the market stability of the C&D waste stream.

3. The Department reserves its authority to require the submission by one, some or all solid waste disposal utilities of additional status reports or a schedule of fixed rates for Type 13C waste.

(c) After January 29, 1996, a solid waste disposal utility may file a revenue neutral petition to adjust rates for some or all other waste types to recover revenues lost due to a reduction in the Type 13C waste stream in order to ensure that sufficient revenues are maintained during the effective period of these rules.

1. All such petitions filed during the effective period of these rules shall be filed on forms provided by the Department (or on duplication of same) and shall provide the following information:

i. Part "A" (1995) of the petition shall contain a statement of gross revenues at present rates by waste type and volume. The petition should then segregate Type 13 waste between C&D waste and the remaining components of Type 13 waste. The petition should then multiply C&D volume by the Type 13 rate to identify projected revenue shortfall attributable to loss of C&D waste;

ii. Part "B" (1996) of the petition should then delete Type 13C waste from the volume listed in part "A" and show the calculation of revised tariff rates based on dividing the previous Revenue Requirement by waste flow allocation. Petition shall include the revised tariff, including a rate specific to Type 13C material, if applicable; and

iii. A copy of the form of notice to customers.

2. The Department shall review the petition and prepare an order accepting the revised tariff on an interim basis.

(d) Each solid waste disposal utility that makes a filing pursuant to (c) above shall publish a notice of such filing in a newspaper of general circulation in the utility's service area which shall, at a minimum, set forth both the current and the proposed rates for each waste type which is the subject of the rate petition. Each solid waste disposal utility shall submit a copy of the public notice to the Department for approval at least 10 days prior to publication. The notice required by this subsection shall be in accordance with N.J.S.A. 48:2-32.4.

(e) After January 29, 1996 and until these rules are superseded or repealed, in-State solid waste disposal utilities may enter into long term contracts for receipt of Type 13C waste without prior review and approval of the Department. Solid waste disposal facilities shall submit copies of such contracts to the Department within five days of execution.

(f) Notwithstanding any existing tariff provision to the contrary, a designated district facility utilized for weighing or weighing and inspection may assess a reasonable fee for such services without prior Department approval; provided that such fee, if established, shall be a new fee and applicable only to Type 13C waste. The Department reserves the right to exercise oversight in the event an unreasonable fee is assessed.

(g) No solid waste disposal utility, required by the Department to have a tariff on file, shall adjust its rates for any other waste type without prior review and approval of the Department in accordance with the procedures established in (c) above.

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).

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: