

## NEW JERSEY STATE LIBRARY

## CHAPTER 26

## SOLID WASTE

## Authority

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

## Source and Effective Date

R.1996 d.578, effective November 18, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 26, Solid Waste, expires on November 18, 2001.

## Chapter Historical Note

Chapter 26, Bureau of Solid Waste Management, was filed and became effective prior to September 1, 1969, pursuant to authority delegated at N.J.S.A. 26:2C-1, et seq. and N.J.S.A. 26:2D-1 et seq. Amendments to Chapter 26 became effective July 1, 1974 as R.1974 d.172. See: 5 N.J.R. 369(b), 6 N.J.R. 305(c).

Subchapter 2 was partially repealed and partially recodified to Subchapter 2A and a new Subchapter 2, Disposal, was adopted by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2A, Additional Specific Disposal Regulations for Sanitary Landfills, was partially recodified from Subchapter 2 and the remainder was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Subchapter 2B, Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Composting Facilities, was adopted as new rules by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 2B, was renamed Additional, Specific Disposal Regulations for Thermal Destruction Facilities, Transfer Stations, Materials Recovery Facilities, Co-Composting and Solid Waste Composting Facilities by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 3, was adopted as R.1984 d.279, effective July 2, 1984. See 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Subchapter 3 expired on June 9, 1985 and a new Subchapter 3, Transportation, was adopted as R.1985 d.558, effective November 4, 1985. See: 17 N.J.R. 1041(a), 17 N.J.R. 2609(a).

Subchapter 3A, Special Medical Waste, was adopted as an emergency new rule by R.1988 d.429, effective August 10, 1988 (to expire October 9, 1988). See: 20 N.J.R. 2321(a). The concurrent proposal was adopted as R.1988 d.523, effective October 7, 1988. See: 20 N.J.R. 2321(a), 20 N.J.R. 2760(a). Subchapter 3A, Special Medical Waste, was repealed and a new Subchapter 3A, Regulated Medical Waste, was adopted as an emergency repeal and new rule by R.1989 d.396, effective June 26, 1989. See: 21 N.J.R. 2109(a). The concurrent proposal was adopted as R.1989 d.506, effective August 25, 1989. See: 21 N.J.R. 2109(a), 21 N.J.R. 2967(a).

Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was amended by R.1975 d.110, effective April 29, 1975. See: 7 N.J.R. 101(a), 7 N.J.R. 259(a). Subchapter 4 was further amended by R.1976 d.327, effective November 1, 1976. See: 8 N.J.R. 374(d), 8 N.J.R. 510(d); and R.1978 d.205, effective July 1, 1978. See: 10 N.J.R. 327(c). Subchapter 4, Fees for Solid Waste, Excluding Hazardous Waste, was renamed Fees for Solid Waste by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 4A, Hazardous Waste Fees, was adopted as R.1989 d.54, effective January 17, 1989. See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Subchapter 4A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 5, Rules of Practice and Procedure, was adopted, pursuant to authority of N.J.S.A. 13:1E-1 et seq., by R.1973 d.300, effective October 23, 1973. See: 5 N.J.R. 370(c). Subchapter 5 was further amended by R.1982 d.433, effective December 6, 1982. See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a); and R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a). Pursuant to Executive Order No. 66(1978), Subchapter 5, Rules of Practice and Procedure, expired on October 7, 1985 and the Department does not intend to readopt its provisions. Subchapter 5, Rules of Practice and Procedure, was repealed by R.1987 d.235, effective June 1, 1987. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b). Subchapter 5, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted as R.1990 d.50, effective January 16, 1990. See: 21 N.J.R. 2734(a), 22 N.J.R. 187(a).

Subchapter 6, was adopted as R.1979 d.502, effective December 31, 1979. See: 11 N.J.R. 616(b), 12 N.J.R. 71(b). Subchapter 6 was repealed and a new Subchapter 6, Interdistrict and Intradistrict Solid Waste Flow, was adopted by R.1982 d.434, effective December 6, 1982, in accordance with a New Jersey Supreme Court decision modifying Department of Environmental Protection authority to direct the inter-district flow of waste (A.A. Mastrangelo, Inc., et al. v. Commr. Env. Prot., August 11, 1982). See: 14 N.J.R. 1027(b), 14 N.J.R. 1368(a).

Subchapter 7, Labeling, Records and Transportation Requirements, was adopted as R.1978 d.72, effective February 27, 1978. See: 9 N.J.R. 459(d), 10 N.J.R. 146(a). Subchapter 7 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was adopted as R.1981 d.281, effective August 6, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 484(b). Public Notice: Petition for Rulemaking. See: 22 N.J.R. 994(a). Public Notice: Action on Petition for Rulemaking. See: 22 N.J.R. 994(d). Subchapter 8, Hazardous Waste Criteria, Identification and Listing, was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 9, Requirements for Hazardous Waste Facilities, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 9 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 10, Additional Operational and Design Standards for Hazardous Waste Facilities, was adopted as R.1982 d.324, effective October 4, 1982. See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d). Subchapter 10 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 11, Additional Requirements for Hazardous Waste Facilities Operating Under Existing Facility Status, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 11 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 12, Hazardous Waste Facility Permit Requirements, was adopted as R.1981 d.370, effective October 8, 1981. See: 12 N.J.R. 511(a), 13 N.J.R. 706(b). Subchapter 12 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13, Siting Criteria for New Major Commercial Hazardous Waste Facilities, was adopted as R.1983 d.276, effective July 5, 1983. See: 15 N.J.R. 113(a), 15 N.J.R. 1096(a). Subchapter 13 was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 13A, Hazardous Waste Facilities Siting Commission: Policies and Procedures, was adopted as R.1984 d.304, effective July 16, 1984. See: 16 N.J.R. 408(b), 16 N.J.R. 1989(a). Subchapter 13A was repealed by R.1996 d.500, effective October 21, 1996. See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Subchapter 14, Resource Recovery Grants or Loans, was adopted as R.1981 d.184, effective June 4, 1981. See: 13 N.J.R. 9(a), 13 N.J.R.

340(d). Subchapter 14 was repealed by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Subchapter 14A, Resource Recovery and Solid Waste Disposal Facility Loans, was adopted as R.1988 d.268, effective June 20, 1988. See: 19 N.J.R. 828(a), 20 N.J.R. 1346(a).

Subchapter 15, Recycling Grants and Loans Program, was adopted as R.1982 d.32, effective February 16, 1982. See: 13 N.J.R. 865(a), 14 N.J.R. 206(b).

Subchapter 16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a).

Subchapter 16A, Special Rules for Submission of Disclosure Statements by Existing Licensees and Applicants Whose Applications Were Pending Before the Department Prior to July 2, 1984, was adopted as R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Subchapter 17, Availability of Information; Confidential Business Information, was adopted as R.1988 d.57, effective February 1, 1988. See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a). Subchapter 17, Availability of Information; Confidential Business Information, was repealed and a new Subchapter 17, Confidentiality Determinations, was adopted by R.1996 d.578, effective November 18, 1996. See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Chapter 26, Bureau of Solid Waste Management, was renamed Division of Waste Management and amended by R.1984 d.279, effective July 2, 1984. See: 16 N.J.R. 986(a), 16 N.J.R. 1425(a), 16 N.J.R. 1766(a). Amendments to Chapter 26 became effective June 1, 1987 as R.1987 d.235. See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Pursuant to Executive Order No. 66(1978), Chapter 26, Bureau of Solid Waste Management, was readopted as R.1990 d.578, effective October 25, 1990. See: 22 N.J.R. 2882(a), 22 N.J.R. 3514(a). The expiration date of Chapter 26, Bureau of Solid Waste Management, was extended by gubernatorial directive from October 25, 1995 to October 25, 1996. See: 27 N.J.R. 4700(a). The expiration date of Chapter 26, Division of Waste Management, was further extended by gubernatorial directive from October 25, 1996 to November 25, 1996. See 28 N.J.R. 4959(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Bureau of Solid Waste Management, was readopted as Chapter 26, Solid Waste, by R.1996 d.578, effective November 18, 1996. See: Source and Effective Date. See, also, section annotations.

#### Research Note

The Water Quality Regulations of the Interstate Sanitation Commission appear as Appendix A to Title 7.

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection that govern the registration, operation, maintenance, and closure of sanitary landfills and other solid and hazardous waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for services provided by the Department to solid and hazardous waste facilities, generators and transporters; and the assessment of civil administrative penalties. These rules shall not apply to the following:

1. The purchase, sale, collection, storage, transport or controlled processing of source separated or commingled source separated recyclable, recycled or secondary non-hazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials (including fuel and reusable energy), or thermal destruction facilities. These rules shall not apply only if the conditions in (a)1i or ii below are met.

(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used or reused to monitor material produced in the future for use or reuse;

(5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and

(6) A determination of the waste classification of the material and the rationale used for that classification;

v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;

vi. A description of any treatment undertaken prior to the use of the material;

vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts; and

viii. The schedule for initiation and completion of the beneficial use project.

6. The Department may require additional information in order to ensure that the proposed beneficial use project will meet the requirements of (g)1 and 2 above.

7. The Department shall issue a certificate of authority to operate for a beneficial use project or deny the application for a certificate of authority to operate for a beneficial use project, in writing to the applicant, within 90 days of receipt of a complete application.

8. The owner and/or operator of a beneficial use project shall submit, on an annual basis, a report to the Department detailing the amount of material used, the date(s) of such use, the location(s) of the use, and any other information as required by the Department in the certificate of authority to operate.

9. The Department shall order an immediate termination of all operations at a beneficial use project if it determines that termination is necessary to protect human

health and the environment. The owner and/or operator of the beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

Amended by R.1982 d.433, effective December 6, 1982.

See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

Amended by R.1984 d.40, effective February 21, 1984.

See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

"Variance" not readopted.

R.1984 d.174, effective April 25, 1984.

See: 16 N.J.R. 1100(a).

Filed as an emergency rule to expire June 24, 1984. Also proposed concurrently.

R.1984 d.399, effective August 17, 1984.

See: 16 N.J.R. 1100(a), 16 N.J.R. 1627(a), 16 N.J.R. 2367(a).

Readopted without change, Emergency R.1984 d.174.

Amended by R.1985 d.666, effective January 6, 1986.

See: 17 N.J.R. 1040(a), 18 N.J.R. 99(a).

(e) added.

Emergency Amendment and Concurrent Proposal, R.1987 d.231, effective April 30, 1987 (expires June 29, 1987).

See: 19 N.J.R. 886(a).

Subsection (f) added.

Readoption of Concurrent Proposal, R.1987 d.311, effective June 29, 1987.

See: 19 N.J.R. 1452(a).

Correction: "May" substituted for "shall" in (a) and (d)1; added text to (d) "This subsection sets forth the".

See: 20 N.J.R. 2817(a).

Emergency Amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).

See: 20 N.J.R. 2817(a).

Added (g).

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted with a change in (g)4iv: added "emergency".

Administrative change in (b)1.

See: 23 N.J.R. 3325(b).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (c)2, added reference to class of facilities; in (d)1, deleted one year limitation period reference relating to certificates; in (d)1i, substituted "Department" for "Commissioner"; deleted (e) and (g); recodified former (f) as (e); substantially amended (e); added new (f) and (g).

#### Case Notes

Sludge Management Plan exempted sludge-only thermal reduction facilities from permitting requirement of the Solid Waste Management Act. *Terminal Const. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority*, 244 N.J.Super. 537, 582 A.2d 1288 (A.D.1990), certification denied 126 N.J. 323, 598 A.2d 883.

#### 7:26-1.8 Exemption from registration—land application and sewage sludge operations

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludge) and storage facilities for such non-hazardous solid waste which receive:



i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (NJDES) permit issued pursuant to N.J.A.C. 7:14A; and

ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJDES permit.

(b) All sewage sludge management equipment and operations for which permits are obtained pursuant to N.J.A.C. 7:14A and/or 7:27, except operations involving the transportation of sewage sludge or the commingling of sewage sludge with municipal solid waste, are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

(c) Transporters of marketable residual product are exempt from the registration requirements of N.J.S.A. 13:1E-4 and N.J.A.C. 7:26.

New Rule, R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Old rule recodified to 7:26-1.9.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), amended N.J.A.C. reference; and added (b) and (c).

#### Case Notes

There is implied duty on part of Department of Environmental Protection, when deciding whether facility using sludge-derived products is exempt from permitting requirements, to give notice to affected municipalities and to consider their public health and safety concerns and zoning and land-use regulations, but there is no requirement of plenary or general public hearing. *Holgate Property Associates v. Township of Howell*, 145 N.J. 590, 679 A.2d 613 (1996).

#### 7:26-1.9 Public access to information and requirements for Department determination of confidentiality

Any confidential information obtained or used in the administration of the State solid waste program, shall be treated in accordance with N.J.A.C. 7:26-17.

R.1982 d.97, effective April 5, 1982.

See: 13 N.J.R. 724(a), 14 N.J.R. 338(a).

Recodified by R.1986 d.162, effective May 5, 1986.

See: 17 N.J.R. 2945(a), 18 N.J.R. 982(a).

Recodified from 7:26-1.8.

Amended by R.1988 d.57, effective February 1, 1988.

See: 19 N.J.R. 1869(a), 20 N.J.R. 273(a).

Changed reference from 7:14A-11 to 7:26-17.

Administrative Correction.

See: 25 N.J.R. 4595(b).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Substituted "solid waste program" for "hazardous waste program".

#### 7:26-1.10 Transfer station facility master performance permits

By June 16, 1997, every facility holding a transfer station master performance permit shall submit an application for a solid waste facility permit in accordance with the procedures set forth in N.J.A.C. 7:26-2.4 and 7:26-2B.

Repeal and New Rule, R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

#### Case Notes

No public hearing required prior to issuance of master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Department of Environmental Protection not estopped from denying public hearing before issuing master performance permit. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Performance permit was properly issued although though permit differed from district solid waste management plan. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

Master performance permit was properly issued to solid waste transfer station. *Mount Olive Tp. v. Department of Environmental Protection*, 225 N.J.Super. 94, 541 A.2d 1089 (A.D.1988).

#### 7:26-1.11 Burden of proof

(a) In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.

(b) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste.

(c) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law that renders the material conditionally exempt from N.J.A.C. 7:26.

New Rule, R.1990 d.65, effective February 5, 1990.

See: 21 N.J.R. 3219(a), 22 N.J.R. 382(a).

Amended by R.1996 d.500, effective October 21, 1996.

See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Recodified from 7:26-1.13 and amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Added references to specific request of the Department throughout; and in (c), substituted "an approved alternative use" for "a legal disposition". Section was "Exemption from SWF permitting—leaf composting facilities (leaves only)".

#### 7:26-1.12 (Reserved)

Emergency New Rule, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).

See: 20 N.J.R. 2817(a).

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted with a change in (e)1: added "or approvals".

Repealed by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Section was "Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)".

**7:26-1.13 (Reserved)**

Recodified to N.J.A.C. 7:26-1.11 by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Section was "Burden of proof".

**SUBCHAPTER 2. DISPOSAL****7:26-2.1 Scope and applicability**

(a) This subchapter and N.J.A.C. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, or 1.8.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26G. However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to the Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Original rule was "Dumps prohibited".

Amended by R.1987 d.534, effective December 21, 1987.

See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Added text in (b) "However hazardous waste . . ."

Emergency Amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).

See: 20 N.J.R. 2817(a).

Added sections 1.11 or 1.12 to (a).

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of Emergency Amendment R.1988 d.547, readopted without change.

Amended by R.1996 d.500, effective October 21, 1996.

See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), amended N.J.A.C. references; and deleted (c).

**Case Notes**

Disposing of solid waste in landfills other than those designated by state waste flow was warranted revocation of operating certificate. Matter of Allegations of Violations by Fiore and Sons, 95 N.J.A.R.2d (EPE) 88.

Receiving and storing construction and demolition debris; operating solid waste facility without a permit. DEPE v. Zanetich, 94 N.J.A.R.2d (EPE) 138.

**7:26-2.2 Construction**

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

As amended, R.1984 d.279, effective July 2, 1984.

See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

New (c) added, former (c)-(g) made (d)-(h). In (g), "the information supplied on its" was "status as listed on his". In (h), "June" was "July" and "or to declare it expired" added. (i) added.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Rule was "Registration".

**7:26-2.3 Purpose**

(a) This subchapter is promulgated for the following purposes:

1. To establish the procedure for obtaining and maintaining a solid waste facility permit;
2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;
3. To establish the general engineering design requirements for solid waste facilities; and
4. To establish the general operational requirements for solid waste facilities.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

Rule was "Domestic refuse".

**7:26-2.4 Application procedures for a solid waste facility permit**

(a) Prior to preparing and submitting the application for a solid waste facility (SWF) permit, other than for facilities specified in (c) below, the applicant may schedule a pre-application conference with the Department to discuss the registration, environmental and health impact statement and engineering submission requirements and the review procedures. At least two weeks prior to the scheduled pre-application conference, the applicant should submit information in the form of reports, maps, studies and other relevant project documentation providing a sufficient basis for review by the Department. The material submitted prior to the pre-application conference may include the following:

1. A site location map plotted on a USGS topographic map;
2. A written description of the type of facility;
3. A written estimate of the proposed design capacity of the facility;
4. A written description of the type of waste to be handled;
5. A written plan establishing the tentative construction schedules;
6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;
7. Written documentation that the facility is included in the solid waste management plan pursuant to N.J.S.A.

13:1E-23 or that an application has been submitted to the appropriate public authority seeking inclusion in the solid waste management plan.

(b) A complete application for a SWF permit, except for applications for small-scale facilities identified in (c)1 and 2 below, shall include the following:

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.;
2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;
3. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d);
4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;
5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;
6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;
7. For sanitary landfills, a closure plan prepared and submitted in accordance with N.J.A.C. 7:26-2A.9; and
8. All applications for a SWF permit shall be submitted to:

Assistant Director for Engineering  
Division of Solid and Hazardous Waste  
Department of Environmental Protection  
CN 414  
Trenton, N.J. 08625-0414

(c) A complete application for a SWF permit for a small-scale solid waste facility as identified in (c)1 or 2 below, shall include the following:

1. For a small-scale thermal destruction facility:
  - i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:
    - (1) The waste intended for thermal destruction is nonhazardous;
    - (2) The waste is generated at the site of the thermal destruction operation, at other associated intracompany plants located within the State of New Jersey, or is regulated medical waste received by the onsite small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;
    - (3) The small-scale thermal destruction unit has a design capacity of less than 800 pounds per hour (9.6 tons per day);

(4) The facility has been included in the applicable solid waste management plan; and

(5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d); and

vi. This exemption from full application requirements is limited to one small-scale thermal destruction unit for each company site.

2. For a small-scale materials recovery facility or transfer station:

i. Documentation sufficient to demonstrate, to the satisfaction of the Department, that the capacity of the facility is less than 100 tons per day;

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)2;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

v. Documentation that the facility has been included in the applicable solid waste management plan; and

vi. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted as set forth at N.J.A.C. 7:26-16.3(d).

(d) Upon receipt of the initial application materials, the Department shall assign an application number to the application. All correspondence on written comments relating to the application shall thereafter refer to the assigned application number.

(e) All applications shall be signed by the applicant as follows:

1. The completed registration statement shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or



Court order barring Philadelphia from using privately-owned, state regulated New Jersey landfill not violative of Federal Commerce Clause as not a mere protectionist measure and as the state interest in enforcing injunction outweighed the burden on interstate commerce. *Boro of Glassboro v. Gloucester Cty. Bd. of Chosen Freeholders*, 100 N.J. 134, 495 A.2d 49 (1985), certiorari denied 106 S.Ct. 532, 474 U.S. 1008, 88 L.Ed.2d 464 (1985).

**7:26-6.10 Modifications to district solid waste management plans; plan amendments**

(a) Each plan amendment to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a plan amendment means a modification to the district solid waste management plan, which, if implemented, would have a significant impact on the environment, property rights, public and private funds or the overall solid waste management system. A plan amendment includes, but is not limited to, the following:

1. An interdistrict agreement between two or more districts for the purpose of managing solid waste and/or recyclables on a regional basis;
2. A designated waste flow for processing and/or disposing of solid waste generated within a district as specified by State law and/or rule;
3. A solid waste disposal contract entered into by the district or authority;
4. The deletion of a solid waste facility other than those listed at N.J.A.C. 7:26-6.11(b)7;
5. The identification of new or a change in the identity of existing designated plan implementation agency or agencies;
6. The method of financing solid waste management in the district;
7. The inclusion of new facilities, including landfills, resource recovery facilities, transfer stations, materials recovery facilities, solid waste and co-composting facilities, recycling facilities for Class B, Class C and Class D materials, permanent household hazardous waste collection sites, and new regulated medical waste collection, treatment, processing and disposal facilities and compost facilities;
8. An increase in the amount of material received during a 24 hour period at an existing permitted solid waste facility greater than 100 tons per day.
9. A modification to any district solid waste and recycling policy and/or program, including, but not limited to, short and long-term disposal strategies, methods for achieving designated recycling goals and blanket facility inclusion policies; and
10. Any modification to the solid waste management plan as may be identified by the Department.

(c) Upon the development of a solid waste plan amendment, a board of chosen freeholders or the Hackensack Meadowlands Development Commission shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment.

1. The designated plan implementation agency shall publish notice of a public hearing concerning the plan amendment in a newspaper of general circulation in the county or district once each week for two consecutive weeks, the second publication date being not less than 10 calendar days prior to the public hearing date. For the purposes of determining weekly publication, Sunday is considered the first day of the week, in conformance with N.J.S.A. 13:1E-23.

2. The notice of the public hearing concerning the plan amendment shall provide a detailed description of the plan amendment and, at a minimum, contain the following information:

- i. The date, time and place of the public hearing;
- ii. The name and address of the district solid waste coordinator;
- iii. When and where the plan amendment can be reviewed; and
- iv. In the case of a facility, a description and the site location, by municipality, street address, lot and block number, the proposed or expanded capacity and the waste types which will be received.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission shall submit to the Department a complete plan amendment which shall include the following:

1. One copy of the adopting ordinance or resolution;
2. Twenty copies of the plan amendment;
3. One copy of the public hearing transcript;
4. One copy of the public notice accompanied by an affidavit of publication issued by the publishing newspaper; and
5. For any plan amendment which proposes to incorporate a facility site, 20 copies of an 8 1/2 inch x 11 inch tax map identifying the location of the site, the street address, and the lot and block numbers.

(e) The plan amendment in (d) above shall be submitted to:

New Jersey Department of Environmental Protection  
Division of Solid and Hazardous Waste  
Recycling and Planning Element  
CN 414  
Trenton, N.J. 08625-0414

(f) Upon receipt of a plan amendment submitted pursuant to (d) and (e) above, the Department shall review the plan amendment for completeness. Within 10 working days of receipt of the plan amendment, the Department shall notify, in writing, the entity that submitted the plan amendment whether the plan amendment is complete or incomplete.

(g) The Department shall submit a copy of a complete plan amendment to the Advisory Council on Solid Waste Management in the department, and to the agencies, bureaus and divisions in the Department identified at N.J.S.A. 13:1E-23 for review and recommendations.

(h) Upon review of the plan amendment and upon receipt of recommendations provided pursuant to (f) above, the Department shall approve, modify or reject a plan amendment within 150 days of receipt of a complete plan amendment and shall certify such determination to the board of chosen freeholders or to the Hackensack Meadowlands Commission. If the Department takes no action on a complete plan amendment within 150 days, the plan amendment shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

#### **7:26-6.11 Administrative actions concerning a district solid waste management plan**

(a) Each administrative action taken relative to a district solid waste management plan or program shall comply with the requirements of this section.

(b) For the purposes of this section, a solid waste management plan administrative action includes, but is not limited to, the following:

1. The use of Resource Recovery Investment Tax (RRIT) grant moneys and/or the development of the associated disbursement schedules;

2. The designation of or change to prior approved truck routes to or from solid waste facilities;

3. The inclusion of new recycling facilities for processing Class A or Class C recyclable materials, or replacement units at existing regulated medical waste facilities;

- i. The inclusion and/or expansion of recycling and compost facilities shall be, at the discretion of the district, subject to any previous blanket inclusion policies approved by the Department and shall be undertaken by the district in accordance with the approved district solid waste management plan. This paragraph is intended to supplement and not replace any previously approved blanket inclusion policy for a district.

- ii. Any blanket inclusion amendment approved by the Department shall contain a provision requiring, among other things, notification to the public as to the location for the receipt of written comments and the starting and ending dates for the written comment period.

4. The expansion of capacity of any size, other than that specified at N.J.A.C. 7:26-6.10(a)8, for any regulated solid waste facility;

5. The modification of an existing facility including acceptance of additional waste types, on-site operational changes and expansions of facility buffer zones or expansions into buffer zones for ancillary operational activities;

6. The modification of a recycling program, including the designation of additional materials for recycling, procurement strategies, market strategies, public education, private incentive programs, waste audit strategies, yard waste programs, per container programs, and enforcement strategies;

7. The deletion of any facility which is included in the plan for more than two years but for which a complete permit application has not been made, or the deletion of any facility which is included in the plan but has not been in operation for more than two years;

8. Unless specifically noted by the Department within a plan certification document, any information collected and/or submitted by the district plan implementation agency, including, but not limited to, solid waste studies, reports, data collection, compost inventories, and weekly waste averaging (when the daily rate has already been included in the plan); and

9. Any other administrative action as may be identified by the Department.

(c) Nothing contained in this section shall be construed to subrogate the district solid waste management planning process. The board of chosen freeholders or the Hackensack Meadowlands Development Commission, in its discretion, may hold a public hearing prior to the adoption of any administrative district solid waste plan action.

(d) The board of chosen freeholders or the Hackensack Meadowlands Development Commission or the designated implementation agency of the affected district shall submit to the Department a letter that describes in detail the administrative action to be taken relative to the district solid waste management program.

1. The letter concerning the administrative action shall be submitted to the address at N.J.A.C. 7:26-6.10(e)6.

(e) Upon receipt of a letter describing the administrative action, submitted pursuant to (d) above, the Department shall review the information provided. Within 10 working days of receipt of the letter, the Department shall notify, in writing, the entity that submitted the letter concerning the administrative action of its receipt of such letter.

(f) The Department shall approve an administrative action within 30 working days of receipt of the letter describing the administrative action pursuant to (d) above, unless it determines that the described action is subject to the requirements for a solid waste management plan amendment pursuant to N.J.A.C. 7:26-6.10. In the event the Department fails to respond to a letter concerning an administrative action within the 30 day period, the administrative action shall be deemed approved.

New Rule, R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

#### **7:26-6.12 Compliance with district solid waste management plan**

(a) Any contract or renewed contract for solid waste collection and/or disposal which is inconsistent with an amendment to the applicable solid waste management plan and which was executed prior to the approval of the such amendment and subsequent to the effective date of this chapter, and which is for a term in excess of one year, shall be renegotiated in order to bring such contract into conformance with the provisions of the amended solid waste management plan and this chapter.

1. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract or a renewed contract as described in this subsection shall be deemed to be in violation of the Act and this chapter and of the district solid waste management plan if such renegotiation is not completed within 90 days of the effective date of this amendment, unless such solid waste collection operation or disposal facility applies to the Department, and obtains, for good cause shown, an extension of time to complete such renegotiation.

(b) All solid waste facility operators and transporters registered with the Department shall operate in compliance with the applicable district solid waste management plan as well as any amendments to and/or approved administrative actions concerning such plan. Any facility operator or transporter who fails to comply with the applicable solid waste management plan as well as any amendment to or approved administrative actions concerning such plan shall be deemed to be in violation of the Act and this chapter and shall be subject to the applicable penalties provided under the Act and this chapter, and any other applicable law or regulation.

New Rule, R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

### **SUBCHAPTERS 7 THROUGH 14. (RESERVED)**

#### **SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS**

##### **7:26-14A.1 Scope**

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. Additionally P.L. 1985, c.335 appropriated to the Resource Recovery and Solid Waste Disposal Facility Fund \$50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to

local government units for the construction and operation of resource recovery facilities and environmentally sound sanitary landfill facilities or other approved solid waste facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985 c.330, c.331 and c.335 after June 20, 1988, shall be in accordance with this subchapter.

Amended by R.1996 d.578, effective December 16, 1996.  
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Loan usage amended to include operation of specified facilities; and deleted provision relating to conforming specified loan agreements to N.J.A.C. rule.

##### **7:26-14A.2 Construction**

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

##### **7:26-14A.3 Purpose**

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;

2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing and operating resource recovery facilities and environmentally sound sanitary landfill facilities and other approved solid waste facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;

3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

(a)2 amended to include operation of specified facilities.

#### 7:26-14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

"1985 Act" means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335.

"Approved solid waste facility" means and includes the plants and structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any local government unit, including materials recovery facilities, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal and/or recovery of solid waste.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the Commissioner's designee;

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid and Hazardous Waste in the Department.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

"Escrow account" means the account established with the escrow bank or the Department for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Loan project officer" means, with respect to the local government unit or the State, the person designated to communicate, negotiate and receive all notices and communications relating to the loan agreement or the project.

"Local government unit" means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

"Project" means any work relating to the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility or an approved solid waste facility by a local government unit.

"Project cost" means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;
2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;
3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;
4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;
5. The issuance of bonds, or any interest or discount thereon;
6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary landfill facility services;