

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Suspension adopted by Catherine R. McCabe, Commissioner, Department of Environmental Protection

Date: April 13, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (EO 103)

Effective Date: April 13, 2020

Expiration Date: Concurrent with expiration of EO 103

This is an emergency adoption of a temporary modification to allow for waiver of certain provisions of the Department of Environmental Protection's (Department) Solid Waste rules, N.J.A.C. 7:26; Recycling rules, N.J.A.C. 7:26A; Hazardous Waste rules, N.J.A.C. 7:26G; and Solid Waste Utility Regulations, N.J.A.C. 7:26H, subject to the criteria set forth herein.

By way of Executive Order No. 103, dated March 9, 2020 (EO 103), Governor Phil Murphy declared that a Public Health Emergency and State of Emergency exists in the State of New Jersey as a result of Coronavirus disease 2019 (COVID-19) pandemic and, by virtue of Section 6 of EO 103, authorized agency heads to waive, suspend or modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the COVID-19 emergency, notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1, or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Environmental Protection is authorizing necessary suspension of its rules as follows:

The circumstances surrounding the ongoing COVID-19 emergency and the Governor's direction to strictly observe the practice of social distancing, including suspending all non-essential retail business and construction, restricting travel and directing most employees to work remotely, may impact the ability of private and public entities to perform important waste collection and management and recycling functions regulated by the Department. In light of these unprecedented circumstances and recognizing that the continued, uninterrupted management of solid and hazardous wastes and recyclable materials is essential to the protection and preservation of public health and the environment, it may become necessary for the Department to take emergency action during the duration of EO 103 to ensure the continued appropriate management of solid and hazardous waste and recyclable materials.

To most effectively address emergent situations under potentially rapidly changing circumstances, the Department must have the ability to respond on a site and situation-specific basis for the duration of EO 103. Accordingly, I find that strict adherence to the above-referenced rules may, in certain circumstances, be detrimental to the public welfare during this emergency.

Therefore, by operation of this adoption, the Department may waive, suspend, modify or relax any provision of the above-referenced rules, including where any applicable conditions are set forth in permits or other approvals issued thereunder, on a case-by-case and site-specific basis, for regulated activities that include, but are not limited to, the extension of regulated holding or storage times for certain wastes due to staffing, supply chain or other limitations created by the emergency; the redirection or diversion of waste flows from a facility significantly impacted by the pandemic; the extension of permitted hours of operation of waste handling and recycling facilities; or the modification of certain reporting obligations or the time for submitting them. In order to apply the case-by-case, site-specific waiver, suspension, modification, or relaxation, the Department must find that such action is:

1. Necessary to ensure the continued appropriate management of solid and hazardous waste and recyclable materials and the services that support the same;
2. Narrowly tailored to include only those regulatory modifications necessary to address circumstances created by or directly related to the COVID-19 pandemic;
3. Applied consistently to similar situated entities and individuals;
4. Limited to the duration of EO 103; and
5. With notice of any regulatory modifications provided on the Department's website.

This emergency adoption and temporary suspension shall remain in effect until the expiration or revocation of EO 103.

Date:

4/13/20



Catherine R. McCabe, Commissioner
Department of Environmental Protection